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**Bank of America**



Bank of America Corporation  
DE5-001-05-07  
Bracebridge I  
1100 N. King Street  
Wilmington, DE 19884

May 29, 2007

BY ELECTRONIC MAIL

Office of the Comptroller of the Currency  
250 E Street, S.W.  
Mail Stop 1-5  
Washington, DC 20219

RE: Docket ID OCC-2007-0003

**COMMENT**

OFFICE OF THE SECRETARIAT

2007 MAY 29 PM 4:13

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CFTC

Dear Sir or Madam:

Bank of America Corporation ("Bank of America") appreciates the opportunity to comment on the Interagency Proposal for Model Privacy Form under the Gramm-Leach-Bliley Act (the "Model Proposal") issued by the Office of the Comptroller of the Currency (OCC); the Board of Governors of the Federal Reserve System (Board); the Federal Deposit Insurance Corporation (FDIC); the Office of Thrift Supervision (OTS); the National Credit Union Administration (NCUA); the Federal Trade Commission (FTC); the Commodity Futures Trading Commission (CFTC); and the Securities Exchange Commission (SEC) and collectively, the "Agencies."

Serving individual consumers, small and middle market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services, Bank of America is one of the world's largest financial institutions. The company provides unmatched convenience in the United States, serving more than 56 million consumer and small business relationships with more than 5,700 retail banking offices, more than 17,000 ATMs and award-winning online banking with nearly 22 million active users.

We would like to compliment the Agencies on their desire to discern clarity of language; to better understand priorities in customer's use of information contained in the privacy notice; and to present content in an uncluttered format that is easy-to-read. These objectives are consistent with our priorities in sharing our privacy practices with consumers in a manner that builds trust and understanding.

Bank of America has participated in industry organizations, peer forums and other similar events and it is clear that there is broad industry consensus on several of our views. As a leading financial institution in the privacy discussion, we want to add our voice to this issue. To the extent that a Model Form is adopted, a less prescriptive format that balances the needs of

financial institutions to accurately and clearly disclose practices with the customers' preference for brevity and readability would be more appropriate. Specifically, we believe there are four fundamental issues that warrant comment.

- Model Form is not flexible enough to accommodate different sharing practices within the same legal entity.
- Model Form limits the ability to clearly and accurately describe practices and/or forces the omission of information that customers say is important to them.
- Model Form's scope would prevent the inclusion of other privacy-related disclosures beyond GLBA and FCRA.
- Potential benefits of the Model Form design would be overwhelmed by the potential cost and environmental impacts.

### **Model Form Flexibility**

Bank of America uses one privacy policy across a large number of affiliates, minimizing risks and costs associated with multiple policies. As proposed, the Model Form does not accommodate a variety of our privacy practices. For example:

- Bank of America operates under both a "share" and "no share" practice with non-affiliates, depending on product. The Model Form, which prescribes only a "yes" or "no" position on information sharing practices, does not contemplate such situations and, as is, prohibits complex organizations from attaining safe harbor.
- Our application of information sharing opt-outs varies between affiliate and non-affiliate sharing. To accommodate a customer base with multiple credit cards, some of which may be sponsored by an affinity or special interest organization, we observe third party sharing opt-outs at the account level; affiliate sharing preferences, however, are applied at the customer level. As drafted, the Model Form would not allow us to inform customers of such differing practices.
- With one policy applying to a large number of affiliates, many with different names and specialties, the Model Form does not provide space to list all of the Bank of America affiliates for which the policy applies.

We respectfully request the Agencies consider recommending a safe harbor solution that addresses the complexities and differing privacy practices common within the financial industry. Without such a safe harbor, widespread adoption of the Model Form is less likely to occur.

### **Model Form Clarity**

We understand the motivation of making the language in the Model Form simpler based on research and general public studies. In fulfilling this desire, the Model Form may inadvertently be detrimental to consumers' understanding. It is ineffective in conveying some of the more subtle points of the law and has introduced new requirements that have not been fully explained or vetted. This is evidenced in the Model Form's section on affiliate sharing which incorrectly references a limitation on sharing among affiliates for marketing; FCRA limits the use of information for marketing, but it does not limit the sharing of all information. Also, the 30-day waiting period referenced in "Contact Us" is a new requirement, and it is unclear how it will apply when used in an annual notice; thus creating potential variation in its application among financial institutions, and potentially leading to customer confusion.

In addition, the brevity, albeit directionally correct, restricts the ability to provide examples that drive clarity and help consumers make informed choices. The use of examples lengthens a privacy policy, but the trade-off is enhanced understanding. To help customers better understand our sharing practices, examples of the types of organizations and situations are provided with which information may be shared. Periodically, Bank of America receives reactions to our Privacy Policy from customers and many items not included in the Model Form are cited as valuable, such as information unique to Bank of America regarding how we protect and manage consumer sensitive information; tips for *Guarding Your Own Information* and privacy-related external information sources, e.g., National Do Not Call list and Credit Bureaus.

All these issues are symptomatic of the prescriptive nature of the Model Form. It limits Bank of America's ability to accurately disclose information, may inhibit customer understanding and may remove the flexibility to include information our customers have indicated is useful.

### **Model Form Disclosure Inclusion**

The Model Form makes no provision for including other disclosures. Currently our policy includes reference to specific state law requirements and serves as our "Do Not Call" policy. Of particular note, GLBA allows states to impose more restrictive sharing standards, yet the Model Form does not accommodate adequate disclosure of such requirements. If Bank of America were required to restrict privacy disclosures to just GLBA-related elements, we would be compelled to address several other disclosure requirements through additional customer communications, increasing costs due to print and distribution, increasing risk due to more and varying disclosures required at account opening and increasing customer dissatisfaction and confusion.

### **Model Form Design**

The Model Form would impose increased operating costs for Bank of America while providing information in a manner that is likely to have negative environmental impacts in paper consumption. The use of 8 ½ x 11 inch sheets mandates multiple one-sided pages which may exceed the Model Form's three pages if an institution has a large number of affiliates.

In addition, Bank of America, similar to other financial institutions, meets the annual notification requirement by delivering the policy in customer statements; a practice which will not be possible to continue. This change would result in a separate mailing and increase the cost of annual notification by more than three-fold.

If a separate SEC Model Privacy Form is required for financial institutions with SEC-regulated affiliates, many customers would receive two versions of the company's privacy policy which at best, would be potentially viewed as of little value or even confusing to customers.

Alternative designs with less rigidity would meet the needs of an industry with diverse privacy policies and practices while still satisfying the information needs of customers.

## Summary

Bank of America concurs with the principles espoused in the Regulatory Relief Act\* that have culminated in this privacy policy enhancement initiative. We believe that a better approach may be derived through additional thoughtful and diverse discussion. To that end, we urge the Agencies to both consider the comments they receive and the additional consumer research planned, and then issue a revised proposal for further comment. A less prescriptive format that balances the needs of financial institutions to accurately and clearly disclose practices with the customer's preference for brevity and usability would be universally beneficial.

We also respectfully request that the Agencies retain the current safe harbor clauses. We think that those clauses will still be of value for institutions that cannot use the Model Form.

We would be happy to discuss our views in greater detail or to discuss other ideas that the Agencies would like to pursue.

Sincerely,



Michelle Shepherd  
Senior Privacy Executive  
Bank of America Corporation  
302.432.1088

\*Regulatory Relief Act, Section 728 directs that the Model Form shall be comprehensible to consumers, with a clear format and design; provide for clear and conspicuous disclosures; enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and, be succinct, and use an easily readable type font.

CC:

Mr. Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, DC 20429

RE: RIN 3064-AD16

Ms. Mary Rupp  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-3428

Re: RIN 3133-AC84

Ms. Nancy M. Morris

Secretary  
Securities and Exchange Commission  
Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: File Number S7-09-07, Model Privacy Form

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve  
System  
20<sup>th</sup> Street and Constitution Avenue  
Washington, DC 20551

Re: Docket No. R-1280

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, DC 20552  
Attention: OTS-2007-005

Re: Docket ID OTS-2007-0005

Federal Trade Commission  
Office of the Secretary  
Room 135 (Annex C)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Model Privacy Form, FTC File No.  
P034815

Ms. Eileen Donovan

Acting Secretary of the Commission  
Commodity Futures Trading

Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

Re: RIN 3038-AC04