

# COMMENT

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May 29, 2007

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

Ms. Jennifer Johnson  
Secretary  
OFC. OF THE SECRETARIAT  
Board of Governors of the Federal Reserve  
System  
20th Street and Constitution Avenue, N.W.  
Washington, DC 20551

Re: Docket ID OCC-2007-0003

Re: Docket No. R-1280

**Received CFTC  
Records Section**

05/30/07

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

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

Re: RIN 3064-AD16

Re: Docket ID OTS-2007-0005

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

Federal Trade Commission  
Office of the Secretary  
Room 135 (Annex C)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20585

Re: RIN 3133-AC84

Re: Model Privacy Form, FTC File No.  
P034815

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

Ms. Eileen Donovan  
Acting Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

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

Re: RIN 3038-AC04

RE: Interagency Proposal for Model Privacy Form; 72 Federal Register 14940, March  
29, 2007

Dear Sir or Madam:

The Financial Services Roundtable and BITS appreciate the opportunity to comment on the proposed model privacy form. The Financial Services Roundtable represents 100 of the

nation's largest integrated financial services companies. Roundtable members provide banking, insurance, investment products and services to American consumers and businesses. Roundtable member companies manage over \$18.3 trillion in assets, have revenues in excess of \$670 billion, and employ over 2.1 million individuals. BITS is an affiliate of the Roundtable that serves as a forum for the financial services industry on e-commerce, risk management, payments and technology issues.

### General Comments

Members of the Roundtable have been long-standing proponents of simplified privacy notices. In 2001, shortly after the current privacy notice requirements became effective, Roundtable members presented a series of recommendations on short-form privacy notices at a workshop sponsored by the Federal Trade Commission.<sup>1</sup> Subsequently, the Roundtable urged Congress to simplify privacy notices, initially as part of the renewal of the Fair Credit Reporting Act, and more recently as part of regulatory relief legislation.

Our support for simplified, short-form notices has been based upon extensive market research on short-form notices by Roundtable member companies. Appendix A includes several versions of short-form privacy notices developed by our "Short-Form Notice Working Group." Many Roundtable member companies currently use these forms, or variations of them, in conjunction with more detailed forms that are available upon a customer's request. Our member companies also regularly solicit feedback from customers and refine their privacy notices based upon that feedback.

Given this background, we obviously were pleased that Congress provided for the development of a model privacy form in Section 728 of the Financial Services Regulatory Relief Act of 2006. We also appreciate the significant amount of time and effort your agencies have devoted to this matter, even before the passage of that Act.

It is clear that Congress, your agencies, the financial services industry and consumers share a common goal — the creation of a simple, consumer-friendly privacy notice. The model form proposed by your agencies in response to Section 728 of the Financial Services Regulatory Relief Act of 2006 is a step toward the realization of this goal.

However, we are concerned that, in its proposed form, few, if any members of the Roundtable will use the model. The prescriptive nature of the proposed model form will make it impossible for most institutions to explain their privacy policies and practices fully and accurately. Inconsistencies between the proposed model form and the terms of the Fair Credit Reporting Act will confuse and mislead customers. The lack of uniform requirements by different regulators will prevent affiliates in a diversified company from using the same form. The proposed size of the model form will require a new, separate mailing to customers, which will impose significant compliance costs for individual institutions, and the industry as a whole.

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<sup>1</sup> Industry recommendations on short-form privacy notices were presented during the Federal Trade Commission's Industry Workshop on "Effective Financial Privacy Notices" on December 4, 2001.

Greater flexibility in content requirements is needed to better meet the variety of industry privacy policies and practices, and to help financial services firms comply with applicable state privacy laws. A less prescriptive format is needed to lower compliance costs for financial services firms. Uniform requirements among federal regulatory agencies are needed to enable diversified financial services firms to use just one form for all customers. Accommodating these concerns would greatly enhance the utility of the model form.

We respectfully recommend that the agencies reissue the proposed model form for a second round of comments, after the form has been revised to take into account issues raised in this comment period and the results of additional testing.

Furthermore, we recommend that the proposed model form be a compliance alternative for financial services firms, not a substitute for the model clauses contained in the existing regulation. This would permit individual financial services firms to determine the most appropriate means to comply with the privacy notice requirements of federal and state law.

Our detailed comments on the format and content of the proposed model form follow.

#### Format of the Proposed Model Form

##### *Cost Impact of Paper Size*

The format of the proposed model form is significantly different than the format currently used by most Roundtable members. Most Roundtable members send privacy notices as inserts in monthly statements, such as credit card statements. Typically, these inserts are printed on paper that is less than full-size (i.e., less than 8.5 x 11 inches), are printed on both sides of a single page, and are included in monthly statements that are smaller than 8.5 x 11 inches. In contrast, the proposal calls for the privacy notice to be printed on full-size (8.5x11 inch) paper, with printing on only one side of the paper. Thus, the size requirement effectively will force institutions to send the form in a separate mailing, not as part of a monthly statement.

Monthly statements have proven to be the most effective delivery mechanism for privacy notices, and customers have become familiar with this format. Sending the notices in a separate mailing may inadvertently cause customers to ignore the notices. Also, while the proposal suggests that the notice can be satisfied with two pages of paper, many Roundtable members share information in a manner that would require the use of a third page to explain a consumer's right to opt-out of information sharing.

A separate, three-page mailing to customers would impose millions of dollars in production and postage costs on individual Roundtable member companies. One Roundtable firm has estimated that its total costs per customer to deliver the proposed model form would increase from \$0.06 to \$0.44, an increase of nearly 600 percent. Currently, that firm spends approximately \$900,000 per year to deliver privacy notices. The company estimates that the costs to print and mail the proposed notice would be in excess of \$6 million. Another Roundtable member estimates that a separate mailing to its 4 million customers would increase

its costs by more than \$2 million annually. When we extrapolate these costs to the entire financial services industry, we conclude that the overall cost to the industry to provide the proposed model form could easily approach \$400 million.<sup>2</sup>

We appreciate that the proposed model form was well-received in consumer tests. However, the potential benefits of the proposed model form are so overwhelmed by its cost that most firms will find it difficult, if not impossible, to justify the use of the form. We strongly urge you to test alternative formats that would be less costly.

*Type Size/Font/Color/Logo*

We do not believe that these requirements are necessary. Other clear and conspicuous disclosure requirements do not include such standards. In fact, when Regulation Z was modified in 1980, type size and font requirements were eliminated. We do support the limited use of color and corporate logos. Many Roundtable member companies are associated with particular colors and corporate logos. The use of colors and logos on the form will help consumer's identify the source of the form, and help to maximize our firms' accountability in the minds of our customers.

Content of the Proposed Model Form

*Inclusion of Certain Supplemental Information*

The proposed model form is more limited in scope than the notices currently used by many Roundtable member companies. While the scope of the form is consistent with the goal of creating a simple notice, flexibility in the content would allow firms to accurately describe their actual practices and thereby enhance the utility of the form for firms and consumers. "Yes" and "no" boxes simply are not sufficient to accurately describe the privacy policies and practices of most Roundtable member companies. Additional information is needed to provide consumers with a meaningful disclosure. Also, we are concerned about the risks that may arise under state unfair and deceptive practice laws if the form does not describe an institution's privacy policies and practices fully and accurately.

We recommend that individual financial services firms be permitted to add certain types of supplemental information to the form to make the disclosure more meaningful and complete. Specifically, we recommend that institutions be able to include information that (i) is related to a customer's privacy rights other than those established in the Gramm-Leach-Bliley Act ("GLBA") or the Fair Credit Reporting Act ("FCRA"); (ii) accurately explains privacy practices; and/or (iii) satisfies applicable state law requirements.

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<sup>2</sup> Roundtable members have calculated that it will cost approximately \$0.38 to mail each notice. Assuming that over one billion notices would be mailed, the total cost to the financial services industry would be approximate \$400 million.

Information related to a customer's privacy rights beyond GLBA or FCRA could include information about applicable state or federal do-not-call requirements, or information on how to prevent or respond to identity theft. Many institutions currently include such information in their notices. Typically, such information is extremely well received, and appreciated, by consumers.

Information related to privacy practices could include information such as applying a customer's opt-out election to both affiliate sharing and affiliate marketing activities, the application of an opt-out for a period greater than five years, or the application of an opt-out to closed accounts. The inclusion of such information will permit institutions to disclose their privacy policies and practices more fully and accurately.

Finally, firms should be able to include information required under state laws. This is particularly important for insurance firms. Insurers are subject primarily to state law, and in order for them to use the model, it is imperative that they be able to address various state requirements. For example, many state insurance authorities require privacy notices for insurance companies to include information on the collection and use of medical information. Without the ability to provide information about state law, insurers will find it impossible to use this form and to comply with state law. It also is important for all financial institutions to be able to include information about other state laws, such as the Vermont and California laws. Otherwise, consumers will not be able to receive all applicable privacy related information in a single notice.

Expanding the notice to permit institutions to include such supplemental information will make the notice more accurate, useful, and less confusing to consumers, but should not detract materially from the goal of a simple, more uniform notice.

#### *Joint Use of Proposed Model Form*

The instructions to the proposed model form indicate that it is intended for use by individual companies or groups of affiliated companies. However, the prescriptive nature of the form does not allow a company to clearly identify affiliates. More specifically, it is not clear if the definition of affiliate on page two is intended to be a general definition of the term affiliate, or a list of the affiliated companies that are providing the form. Furthermore, if that box is intended to identify all of the companies that are providing the form, it may not be large enough for many Roundtable member companies. Roundtable member companies are among the nation's largest, most diverse financial services firms. As such, they typically have multiple affiliates, many more than may be listed in the space provided. We urge the agencies to clarify how a group of companies should be identified on the form when the form is intended to apply to such a group.

#### *FCRA*

The box in the table on page one and the optional check box on page three related to the sharing of information between affiliates for marketing purposes do not match the requirements of FCRA. Section 624 of FCRA does not limit the sharing of information among affiliates, only

the use of such information for marketing purposes. Additionally, those sections of the model form do not acknowledge the various exceptions to Section 624, such as pre-existing business relationships. We recommend that the form be revised to conform to the requirements of FCRA. Otherwise, the form could mislead and confuse consumers. Additionally, the utility of the form will be enhanced if institutions can use it to disclose both GLBA and FCRA privacy policies and practices.

### *30-Day Waiting Period*

Page three of the form refers to a 30-day waiting period after which an institution may begin sharing information. No such waiting period is required in FCRA or GLBA. We recommend that this sentence be eliminated.

### *Check Box*

The check box on page three is based upon a mail-in response by a customer. Some Roundtable member companies do not offer a mail-in option, but permit customers to communicate opt-out choices over the telephone or on-line. We recommend that the form permit institutions to acknowledge response options, and that the heading on the check box be labeled “Your Choices” rather than “Check Your Choices.”

### Other Matters

#### *Sample Clauses*

We strongly recommend that the existing sample clauses not be replaced with the proposed model form. We make this recommendation for several reasons. First, retaining the existing clauses is consistent with Section 728 of the Financial Services Regulatory Relief Act of 2006, upon which the model is based. When Section 728 was crafted, Congress was well aware of the existing sample clauses, and did not require that the model be a replacement for them. Instead, Section 728 expressly states that the model form is to be an “option” for financial services firms. Thus, the model should be a supplementary means to meet privacy notice requirements, not a substitute for existing compliance forms.

Second, many firms, including some Roundtable member companies, have invested significant resources into their current privacy notices, and would prefer to use those forms, regardless of the safe harbor protections provided by the model form. Those firms should be able to continue to select the most appropriate means to comply with the notice requirements.

#### *Uniformity in Forms*

The model form proposed by the Securities and Exchange Commission (“SEC”) is slightly different from the form proposed by the other federal agencies. In the form proposed by the SEC, the language in the “What” box on page one, and in the third box of “sharing practices”

on page two, is somewhat different than the other agency proposals. While the differences are relatively minor, they make it impossible for diversified firms to use a single form for all customers. We recommend that the basic requirements in the forms be harmonized, so that the form may be used by diversified firms. Alternatively, institutions that are part of diversified firms should be able to rely upon the SEC model or a model proposed by another relevant agency.

#### *Web-based Designs*

The Roundtable does not believe your agencies need to develop an on-line form or prescribe a specific on-line presentation for the proposed short-form notice. Most Roundtable member companies present the GLBA notice along with other information outside the scope of GLBA. We see no need to alter these presentations.

#### *Customer Identification*

Page three of the form proposes to use account numbers to identify customers. This approach would be appropriate if privacy preferences were maintained at the account level. However, most Roundtable member companies maintain privacy preferences at the customer level. Thus, we recommend that institutions be permitted to determine the most appropriate identifier, including Social Security numbers.

#### Conclusion

Without exception, Roundtable members support the objectives of the proposed form. It is critical that consumers receive clear and concise information about how we protect and use information. However, we have substantial concerns with the form as proposed. The prescriptive nature of the proposed form will make it impossible for most institutions to explain their privacy policies and practices fully and accurately. Inconsistencies between the proposed form and the terms of the Fair Credit Reporting Act will confuse and mislead customers. The lack of uniform requirements by different regulators will prevent affiliates in a diversified company from using the same form. The paper size requirements will require a new, separate mailing to customers, and this will impose significant compliance costs for individual institutions, and the industry as a whole. Unless these concerns are addressed, few, if any, members of the Roundtable will use the form.

Greater flexibility in content requirements is needed to better meet the variety of industry privacy policies and practices, and to help financial services firms comply with applicable state laws. A less prescriptive format is needed to lower compliance costs for financial services firms. Uniform requirements among federal regulatory agencies are needed to enable diversified financial services firms to use just one form for all customers. Additionally, the proposed model should be a compliance alternative for financial services firms, not a substitute for the model clauses contained in the existing regulation.

We respectfully recommend that the agencies reissue the proposed form for a second round of comments after the form has been revised to take into account issues raised in this comment period and the results of further testing. We also recommend that the proposed model be a compliance alternative for financial services firms, not a substitute for the model clauses contained in the existing regulation.

Sincerely,



Leigh Williams  
President  
BITS



Richard M. Whiting  
Executive Director and General Counsel  
Financial Services Roundtable

**Attachment** - Sample Information Sharing Notices & Forms

# ACME INFORMATION SHARING NOTICE

## WHO WE ARE

This notice describes the privacy practices of ACME Corporation and its companies providing financial products and services governed by the laws of the United States of America.

## INFORMATION COLLECTED

We collect information from you to conduct our business and deliver the top quality service you expect. This includes identification information (such as name and address), transaction and experience information (such as purchases and payments), and credit eligibility information (such as credit reports).

## INFORMATION SHARED

We share information about you with ACME companies to offer you new products and services that may be of value to you as well as to offer exclusive discounts on special merchandise and other offers. We share information about you with other companies so they can offer you their latest goods and services along with special discounts and selected products and services.

## YOUR PREFERENCES

You may choose not to have us share credit eligibility information about you with our companies or any information about you with other companies. To exercise any of these choices, you may mail back the attached Information Sharing Opt-Out Form below, click on "choice" at [www.XXXXX.com](http://www.XXXXX.com), or call us at 1-800-xxx-xxxx.

## IMPORTANT INFORMATION

Your opt out will apply to each account you specify and remains effective until revoked in writing. Federal law requires us to provide this short-form privacy notice on an annual basis, whether or not you previously opted out. *Please remember that if you previously opted out an account, you do not need to opt out that account again.*

## HOW TO CONTACT US

For a copy of ACME's complete privacy notice, you may call us at 1-800-xxx-xxxx, visit us online at [www.xxxxx.com](http://www.xxxxx.com), or write to: Consumer Department, ACME Bank, P.O. Box XXXXX, Anytown, USA 198XX. The complete privacy notice explains certain exceptions applicable to your information sharing preferences.

## INFORMATION SHARING OPT-OUT FORM

*If you choose not to have your information shared, check the appropriate box(es) below:*

Please do not share credit eligibility information about me with ACME companies.

Please do not share information about me with companies outside of ACME.

*I understand that by restricting information sharing, I may not receive information on new products and services that maybe of interest to me.*

Your Name \_\_\_\_\_  
*As it appears on your account*

Your Address \_\_\_\_\_  
\_\_\_\_\_

Your Account Number \_\_\_\_\_

Please detach, place in an envelope, and mail to: ACME, P.O. Box XXXX, Anytown, USA 198XX. Or, you may visit our website at [www.XXXXX.com](http://www.XXXXX.com) or call us at 1-800-XXX-XXXX.

# INFORMATION SHARING FACTS

## ACME Corporation

U.S. Deposit, Credit Card, Consumer Finance,  
and Credit Protection Products for Consumers

### Information Collected:

- Identification and Contact
- Transaction and Experience
- Credit Eligibility

### Information Shared within ACME and with Other Companies:

- Identification and Contact
- Transaction and Experience
- Credit Eligibility

### Information Sharing Choices:

- Keep receiving information on special products and offers by not taking any action to opt out
- Prohibit sharing of credit eligibility information within ACME
- Prohibit sharing of all information with other companies

### To express your privacy preferences:

You may prohibit either or both types of information sharing by calling ACME's toll-free automated response line at 1-866-757-1255. We will ask you to verify your identity and the specific accounts to which your choices apply. Please have your account, membership, or reference numbers (and for deposit accounts, your SSN or TIN) available when you call.

### To obtain the complete privacy notice:

Federal Law requires us to provide this short-form privacy notice on an annual basis and provides exceptions allowing information sharing notwithstanding your privacy preferences. You may have other privacy protection under state law. If you would like to receive a copy of ACME's complete privacy notice, please call toll-free 1-800-XXX-XXXX.

# ACME

## Privacy Policy Highlights

### SCOPE

This statement applies to Acme and members of the Acme family of companies

### PERSONAL INFORMATION

- We collect information directly from you and from your transactions with us and others.
- We obtain information, such as your credit report and demographic and lifestyle information, from information providers.

### DISCLOSURES

- We do not share information with others for purposes of marketing their products and services to you.
- We share information about you within the Acme family both directly and through common databases to provide you with products and services, to service your accounts and to manage our business. We only share medical or health information with our companies for service.
- We share information about you with our service providers, credit bureaus, law enforcement and others as necessary to perform transactions.

### YOUR CHOICES

- You may direct us to limit certain information sharing within our family of companies.
- You may opt out of receiving direct mail, telephone and/or e-mail marketing offers from us.
- To make any of these choices, call 800.xxx.xxxx, go to [www.xxxx.com](http://www.xxxx.com) or visit a Acme banking center.

### IMPORTANT INFORMATION

- Contact us for free resource materials on identity theft or for help if you become a victim.
- Contact us for a copy of our full privacy policy.

### HOW TO REACH US

For more information about our privacy policy:

- Go to [www.xxxx.com](http://www.xxxx.com), click "privacy & security" and click "contact us"
- Call us at 800.xxx.xxxx

# Acme

## Privacy Policy Highlights

**SCORE**  
These statements apply to the Acme family of companies owned by Acme.

**PERSONAL INFORMATION**

- We collect information directly from you and from your transactions with us and others.
- We obtain information, such as your credit report, from information providers.

**USES**

- We manage information to serve you.
- We share information about you within the Acme family to provide you with other products and services.
- We share information about you with other companies for offers of their products and services.
- We share information about you with our service providers, credit bureaus and law enforcement.

**YOUR CHOICES**

- You may direct us not to share information about you for non-financial offers.
- You may direct us to limit certain information sharing within our family of companies.
- You may direct us not to contact you with offers.
- To make any of these choices, call 1-800-XXX-XXXX.

**IMPORTANT INFORMATION**

- Contact us for free resource materials on identity theft or for help if you become a victim.
- Contact us for a copy of our full privacy policy.

**HOW TO REACH US**

- Go to [www.chase.com](http://www.chase.com), click "privacy & security" and click "contact us"
- Call the Chase Privacy Hotline at 1-800-XXX-XXXX.

Dated: April 1, 2002

# Acme Company Privacy Notice

SCOPE

This statement applies to Acme Company and several members of the Acme family of companies.

PERSONAL INFORMATION

We collect information directly from you and maintain information on your activity with us, including your visits to our website.  
We obtain information, such as your credit report and demographic and lifestyle information, from other information providers.

USES

We use information about you to manage your account and offer you other products and services we think may interest you.  
We share information about you with our sister companies to offer you products and services.  
We share information about you with other companies, like insurance companies, to offer you a wider array of jointly-offered products and services.  
We share information about you with other companies so they can offer you their products and services.

YOUR CHOICES

You may opt out of receiving promotional information from us and our sharing your contact information with other companies. To exercise your choices, call (800) 123-1234 or click on "choice" at ACME.com.

IMPORTANT INFORMATION

You may request information on your billing and payment activities.

HOW TO REACH US

For more information about our privacy policy, write to:  
Consumer Department  
Acme Company  
11 Main Street  
Anywhere, NY 10100  
Or go to the privacy statement on our website at acme.com.