COMMENT

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May 29, 2007

Via e-mail to: www.regs.comments@occ.treas.gov

RE: INTERAGENCY PROPOSAL FOR MODEL PRIVACY FORM

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

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th 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
100 F Street, N.E.
Washington, DC 20549-1090

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

Ms. Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
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 20585

Re: Model Privacy Form, FTC File No. P034815

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

Re: RIN 3038-AC04

RE: INTERAGENCY PROPOSAL FOR MODEL PRIVACY FORM

Ladies and Gentlemen:

This comment letter is submitted on behalf of Wells Fargo & Company and its subsidiaries and affiliates ("Wells Fargo") in response to the Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act ("Proposal") issued by the Office of the Comptroller of the Currency, Office of Thrift Supervision, Board of Governors of the Federal Reserve ("FRB"), Federal Deposit Insurance Corporation, National Credit Union Administration, Federal Trade Commission, Commodity Futures Trading Commission, and Securities and Exchange Commission ("SEC") (collectively, the "Agencies"). Wells Fargo appreciates the opportunity to provide our comments to the Agencies.

Wells Fargo is one of the country's largest diversified financial services organizations. The Wells Fargo family of companies includes national and state-chartered banks, consumer finance companies, insurance brokers and underwriters, and securities broker-dealers and investment advisors. We have operations in almost all 50 states as well a number of countries outside the United States. A key aspect of Wells Fargo's business strategy is to develop multiple relationships with its customers across its various lines of business, in many cases by offering packages of complementary products and services. To the extent that the Model Form Proposal inhibits doing so in an integrated fashion, it has effects on Wells Fargo that may be different in kind than the impact on other financial institutions.

Summary

Wells Fargo supports the Agencies' efforts to develop a simplified Gramm-Leach-Bliley Act ("GLBA") privacy disclosure and opt-out form that is relatively easy for consumers to read and understand. We share the Agencies' goal of providing financial institutions with a model form that provides a safe harbor for certain requirements under the regulations issued by the Agencies implementing Title V, Subtitle A of GLBA ("GLBA Regulations"). And we support the goal of making it easier for consumers to compare privacy policies and practices across different financial institutions.

By statute, use of the model form developed by the Agencies ("Model") is voluntary. To achieve the goal of comparability across institutions, the Model must be attractive enough so that it will be adopted by a critical mass of financial institutions. If the model form is not widely adopted, the clear intent of the Agencies and of Congress—to provide easily comparable GLBA privacy policies—will not be achieved. Unfortunately, the Model does not provide a viable option to

Wells Fargo, and we believe many other financial institutions will reach the same conclusion. In our view, significant changes must be made to the Model for it to have any chance of widespread use. We urge the Agencies to carefully consider the comments they receive in response to the Proposal and to issue a revised proposal for further comment.

We have two fundamental concerns with the proposed Model:

1. The format requirement that the Model be in the form of three separate sheets—for any institution that provides an opt out under GLBA or FCRA—printed on one side only, would result in prohibitive increases in paper, printing, postage and other distribution costs for initial and, especially, annual privacy notices; and
2. The extremely prescriptive content requirements make it impossible for many institutions—including Wells Fargo—to use the Model and still accurately describe information use and sharing policies and practices which are not merely allowed by GLBA, but in some respects, more protective of consumers than what the statute requires. Instead, the content required by the Proposal will, in some cases, be misleading to consumers and, in others, simply does not accurately describe the law.

Regardless of the changes made to the Model, we ask the Agencies to provide financial institutions with a meaningful safe harbor with respect to the GLBA privacy notice requirements based on content and not format. If a financial institution uses a notice substantively similar to the final text of the Model, such financial institution should be deemed compliant with the GLBA disclosure requirements even if it does not follow the proposed format.

In General

Wells Fargo believes that the Agencies should make significant modifications to the Model and repropose it for additional public comment. We believe this is appropriate because, in our opinion, the changes necessary to the Model are of such magnitude as to require an almost entirely new format and text. Specifically, we believe the Agencies should develop a Model that can be printed on a single sheet of paper (not necessarily 8.5" x 11") with modifications to the existing textual requirements. We firmly believe this objective can be achieved (and we provide some sample alternatives) while still providing consumers with the required information in a simple, clear and comparable manner. If the Agencies are not willing to explore such an approach, we believe it is unlikely that many of the larger financial institutions will adopt the Model in any form, thus defeating the goal of comparability across institutions.

We recognize that the Agencies have spent significant time and effort researching alternatives to the existing GLBA privacy notices. However, the Agencies seem to be relying almost exclusively on consumer testing which did not include anything resembling the notice that we

propose. In addition to considering comments received on the Proposal, the Agencies should engage in additional consumer testing of alternative versions of a privacy notice. The question is not whether consumers prefer a three-page GLBA privacy notice, because that will be a moot point if significant numbers of financial institutions decline to provide such a notice. The relevant question is whether a notice that is actually likely to be used by a critical number of financial institutions can provide GLBA privacy disclosures in a manner that is both comparable across institutions and easy for consumers to understand. To our knowledge, the Agencies have not tested such a concept.

Format, Cost and Delivery Considerations

Under the Proposal, in order to qualify for the safe harbor, a financial institution's notice must be at least two pages in length no matter how simple its privacy policy might be. Furthermore, any institution—and that would include Wells Fargo—that provides any type of opt-out choice to the consumer must add a third page. The Model notice must be printed on only one side of 8.5" x 11" paper, and must be presented in a manner that allows the consumer to view all pages simultaneously. No other information could be printed on the otherwise unused portions of these sheets, and they may not be combined into any other document. Meeting these requirements would result in enormous increases in the cost of paper, printing, production and postage, especially for the annual privacy disclosures. In addition, several of our business units are simply not able to deliver notices that conform to the Model's format requirements without making significant changes to their print production environments.

Like many other financial institutions, Wells Fargo now provides information to its customers that goes beyond what is legally required to be in the GLBA privacy notice including legally required information—such as the notice of reporting negative credit information to consumer reporting agencies required by Section 217 of the FACT Act—and other, optional information—such as how to opt out of credit bureau prescreening, information about the Direct Marketing Association's Mail Preference Service, and internal solicitation preferences (do not mail, do not call, etc.) information. We believe this information is useful to and appreciated by our customers (and, in the case of the FACT Act Section 217 notice, legally required) so we would want to (or have to) continue to provide it. This means that using the Model form would require sending at least FOUR sheets of paper, instead of the one we now use. If nothing else, the environmental and natural resource impacts inherent in the Proposal ought to invite serious reconsideration.

Some of the additional costs that would have to be incurred in order to comply with the format requirements of the Model form are described and quantified below.

Cost and Environmental Impact of Additional Paper

Just for Wells Fargo's annual privacy notices, and assuming we did not need a separate sheet of paper in order to disseminate the other required and optional information described above, we estimate that paper costs to produce the Model form would more than double compared to current costs. The cost of shipping that paper to the printer and then to distribution facilities (not including postage to deliver the notice to consumers) would also be more than double current costs. Moreover, the environmental impacts of using that much more paper are staggering: More than 2,000 additional trees would have to be cut down to produce that paper; and, using a recycling rate of approximately 50%, nearly 60 additional tons of paper would wind up in landfills.

Cost of Printing

We estimate the cost of printing annual notices using the Model format would be approximately 50% higher than the current cost, again assuming that we did not do any additional printing to provide the other information described above which, under the Proposal, could no longer be included in the privacy disclosure.

Cost of Postage

Again, just for our annual privacy disclosures, we estimate that the average weight per piece would increase from 0.21 oz. to 0.53 oz. Because of this additional weight, and because, as explained below, many of the notices that are now delivered along with periodic statements would have to be mailed separately, we estimate that we would incur an additional $3,000,000 in postage costs to deliver the Model notice.

Production Costs and Constraints

In addition to the direct costs associated with paper, printing and mailing privacy policies that are at least one, if not two, additional pages, the Model would impose other costs that are more difficult to quantify. In particular, many Wells Fargo business units would have difficulty delivering the Model using their existing delivery mechanisms.

The GLBA Regulations require, in many circumstances, a financial institution to provide customers the initial GLBA privacy policy no later than at the time the customer relationship is established. Some of our business units ensure compliance with this requirement by integrating the privacy policy into the other required disclosures and materials provided to the consumer at

the time of account opening. This type of delivery would appear to be prohibited if we were to adopt the Model. Simplicity of delivery is critical in light of the fact that it is not practical to train our own employees and also employees of establishments for whom we issue private label and similar forms of credit, on the finer points of regulatory compliance requirements. If the Model must be three pages, and the pages must not have any other information on them, it is not clear to us how a card-issuing financial institution could provide failsafe "take one"-style applications (or any other application styles, for that matter) in a retail environment without redesigning significant portions of the marketing and compliance components of the card program.

In addition to the difficulties we would have in delivering the Model privacy policy at the point of account opening, some of our businesses would have problems mailing the Model, either as an initial or an annual privacy policy. Most of our annual privacy notices are delivered along with periodic statements. Our credit card division, for example, sends billing statements in envelopes that simply cannot accommodate 8.5" x 11" paper. Other business units have the same problem. To use the Model notice they would need to reconfigure their production processes, either by changing envelopes or mailing the annual notice as a stand alone document in a larger envelope. Both options are expensive. Even in the businesses that can currently accommodate 8.5" x 11" paper in their statement envelopes, stuffing three additional pieces of paper is significantly harder, more expensive and more prone to error than stuffing just one. Also some units produce privacy statements "in stream" with other documents being sent in the same envelope. The size of the file for each customer is a significant production consideration. Also, the large areas that need to be printed in dark ink prescribed in the Model form may not dry fast enough in a high-speed printing environment causing pages to stick together and/or smear.

Alternative Formats

It would be one thing if the three-sheet format, and the prohibition of including any other information, were the only way to achieve the stated goals of readability and comparability. However, that is demonstrably not the case. Exhibits A, B and C to this letter are samples of single-sheet disclosures (using, for the sake of example only, the content prescribed in the Proposal). While they "sacrifice" either font size or the ability to place all three pages side-by-side, we believe each is perfectly readable by the average consumer. Moreover, each has some space which could be used for other required disclosures or "optional" information without detracting or distracting from the GLBA privacy notice. Most importantly, a single-sheet notice actually has some chance of being adopted by a significant number of financial institutions—if the content issues discussed below can be resolved.

Electronic Delivery

The only electronic delivery method sanctioned by the Proposal (to qualify for the safe harbor in terms of delivering a clear and conspicuous policy to consumers) is the posting of a pdf version of the Model on the financial institution's web site. It appears that any other electronic delivery mechanism, such as delivering the notice as text in an e-mail, or posting it as text on a web page, would not qualify for the safe harbor. This could result in fewer financial institutions adopting the Model. We urge the Agencies to provide more flexibility in making the safe harbor available in connection with the use of the Model in a variety of electronic environments (*e.g.*, e-mail text, web site HTML text, etc.).

Content Issues

The Proposal makes it clear that a financial institution may alter the Model in only a few narrowly prescribed ways without entirely losing the safe harbor. If the changes financial institutions would need to make to the Model were only a few minor adjustments, this lack of flexibility might not be an issue. However, the Model as drafted in many respects simply does not accurately reflect Wells Fargo's information policies and practices, nor does it accurately reflect the scope of consumers' rights under federal law. Wells Fargo would have to make substantial changes to the content of the Model to describe our policies and practices accurately. The materiality of such changes would not only mean we could not claim the protection of the safe harbor, but would also make it difficult for us to evaluate whether the Agencies would deem the resulting notice to be compliant with GLBA.

General Accuracy

Wells Fargo does not share NPI with non-affiliated third parties for the purpose of marketing products or services of those third parties except in very limited circumstances involving private label, co-branded or affinity credit programs. We have also determined that we will offer only a single opt out to customers covering both the "affiliate sharing" requirements of Section 603(d)(2)(A)(iii) of FCRA and the "affiliate marketing" requirements of Section 624. We believe that offering separate opt outs would be confusing both to our customers and our own employees, not to mention that doing so would require major information systems changes. Wells Fargo simply could not accurately describe its privacy policies and practices within the required and permitted content of the Model. Not only is the required and permitted text incapable of describing our information practices accurately, the text also misstates (or simply creates) consumers' rights under applicable federal law. We must have the flexibility to tailor the content of the Model to accurately describe our policies and practices, and to reflect only those rights actually granted to consumers by the relevant statutes. While it may not be necessary to include text that is unquestionably complete and precise with respect to our information

practices, the permitted language cannot be patently incorrect with respect to how we handle information.

We agree with the observation that the "laws governing the disclosure of consumers' personal information are not easily translated into short, comprehensible phrases that are also legally precise." For example, it would not be practical to list all of the reasons that could be included as an "everyday business purpose" or all of the sources of information collected. Like the existing sample clauses in the GLBA Regulations ("Sample Clauses"), portions of the Model include concise language that gives consumers an accurate impression of *the types* of practices engaged in by a financial institution. We urge the Agencies to retain that approach in the Model with respect to those practices that can be described with generality.

Safe Harbor

Below are specific examples of how the text in the Model could be improved (either by the Agencies or by us if we had the requisite flexibility). Regardless of whether our suggestions are adopted, it is critical that the Agencies expressly state in a final rule that financial institutions that use the text (or something substantially similar) provided by the Agencies will have the flexibility to engage in any information practices permitted under GLBA, including those permitted by notice and opt out and for "everyday business purposes." If the Agencies do not provide such a safe harbor, and the final Model does not include legally precise language, use of the Model may not provide acceptable protection from liability, whether through federal, state, or private enforcement.[1] This is necessary not only for federal enforcement purposes, but also to assist state attorneys general and judges in determining whether liability is warranted under state claims based on unfair/deceptive theories.

Description of Information Practices: For Our Marketing Purposes

On page 1 of the Model, there is a statement pertaining to a financial institution's ability to disclose NPI to third parties "[f]or our marketing purposes—to offer our products and services to you." The Proposal says that this statement "includes service providers contemplated by section [__.13] of" the GLBA Regulations. We ask the Agencies to modify the form so that the statement can be more reflective of the breadth of disclosures permitted under § __.13. We also ask the Agencies for a more explicit statement indicating that, regardless of any change made to the Model, a financial institution that uses the text provided by the Agencies will have met its

[1] The safe harbor in the Proposal as it relates to federal administrative enforcement pertains only to § __.6 and § __.7 of the GLBA Regulations. The safe harbor does not appear to extend to § __.4, which requires a financial institution's GLBA privacy policy to be one that "accurately reflects [the financial institution's] privacy policies and practices."

obligation to provide the disclosure required under § __.13, even if the disclosure of NPI is for reasons other than those listed in the Model (but still permitted under § __.13).

Description of Information Practices: Affiliate Sharing

The Model's descriptions of affiliate sharing do not accurately describe the affiliate sharing engaged in by Wells Fargo. For example, two of the three boxes in the chart on page 1 suggest that a financial institution shares NPI with its affiliates "[f]or our affiliates' everyday business purposes"—meaning for the affiliates' disclosure(?)/use(?) in responding to court orders, processing the affiliates' own transactions, and any other purpose that would be permitted for *the affiliates'* purposes under § .__14 or § __.15. While it is true that a financial institution may disclose NPI to an affiliate so that the affiliate can prevent fraud, for example, we do not believe that the text in the Model provides a sufficiently complete description of affiliate sharing to be considered an accurate description. We believe it would be sufficient to state that the affiliate sharing is "For our affiliates' use" in the boxes that currently refer to "affiliates' everyday business purposes." This is an accurate and concise statement financial institutions can use to describe their affiliate sharing practices.

While the Proposal defines "everyday business purposes" with respect to the "general" exceptions in the GLBA Regulations, it is not at all clear that consumers will share that understanding of this phrase. Maybe it is time to recognize that GLBA takes the long way around to what could be a fairly straightforward destination. Instead of following GLBA's tortuous route of prohibiting all disclosures of NPI to non-affiliates—and then exempting virtually all disclosures except those made for marketing purposes—perhaps the Model should use a more direct and descriptive phrase, such as "purposes other than marketing."

Likewise, we believe it would be appropriate to modify the descriptions of the types of information that may be disclosed to affiliates for their use. The reference to "transactions and experiences" and to "creditworthiness" may be clear to those who have read the preamble to the Proposal and are familiar with the nuances of the Fair Credit Reporting Act ("FCRA"), but it is not at all obvious that they are sufficiently descriptive for consumers. For example, it is not clear that the provisions describe the disclosure of a consumer's name and/or address to an affiliate, which is usually viewed as not requiring notice and opt out. It is also not clear that a consumer would understand his or her payment history with the financial institution to be "transaction" information as opposed to "creditworthiness" information. Instead, we believe it would be clearer to describe those categories of information as "information that is not credit report information" and "information we obtain from you or third parties about your creditworthiness," respectively.

As noted above with respect to the GLBA safe harbor, the Agencies should provide a clear shield from liability no matter what language they offer in the Model as it relates to affiliate sharing. A financial institution should have the ability to rely on language specifically chosen and tested by the Agencies for purposes of its compliance obligations under GLBA and FCRA. It is inconceivable that a financial institution might become a "consumer reporting agency" under the FCRA because a consumer successfully alleges that the disclosure provided in the Model notice is not sufficient to describe the entire information sharing practices of the institution with respect to affiliate sharing. Again, if the Model is perceived to be inaccurate or incomplete, it simply will not be used. The consequences of providing insufficient affiliate-sharing disclosures are too significant for any financial institutions to take such a risk.

In addition, the Model does not accurately describe the disclosure a financial institution must provide to consumers under Section 624 of FCRA. In particular, a consumer must have the right to opt out of the use of *limited* types of information by an affiliate to generate solicitations to the consumer. The law does not provide a blanket opt out with respect to the *sharing* of such information, nor does the opt out apply to the use of all information obtained by the affiliate. The text in the Model, however, suggests that the consumer can opt out of all information sharing among affiliates if the affiliates would use it to market to the consumer. This is simply not an accurate description of how Section 624 of the FCRA operates. The text that currently states "[f]or our affiliates to market to you" should be changed to "[f]or our affiliates to make a solicitation for marketing purposes to you—information about your creditworthiness that we create or obtain from you or third parties." In the chart, in the "can you limit this sharing" column, it could say "no, but you have the right to limit the use of the information by affiliates to make solicitations to you." If the language does not accurately reflect the contours of Section 624 of FCRA, financial institutions—including Wells Fargo—simply will not use the Model as a vehicle to provide the Section 624 disclosures.[2]

It is also important that the Agencies make conforming changes to pages 2 and 3 of the Model as they relate to affiliate sharing. The descriptions of the opt-out rights granted to consumers on pages 2 and 3 should mirror those described on page 1. The explicit safe harbor should also to apply to the opt-out language on page 3 as it would to the descriptions of affiliate sharing on page 1.

Description of Affiliates

GLBA and the GLBA Regulations require a financial institution to inform consumers of the "categories" of affiliates to whom the financial institution may disclose NPI. If the financial institution does not have affiliates, *or if the institution does not disclose NPI to affiliates*, the

[2] Neither FCRA nor GLBA require the "affiliate marketing" disclosure to be provided in the GLBA privacy notice.

institution need not make reference to affiliates in the privacy policy. The Model, however, would appear to require a description of affiliates regardless of whether the financial institution has any affiliates or discloses NPI to them.

For those financial institutions that must describe the categories of affiliates to whom they disclose information, the Model is not clear as to how to describe those affiliates. We assume the financial institution would describe only those affiliates to whom it may disclose NPI, not all of the affiliates it may have. We also assume that a financial institution need not list each affiliate despite the instruction to "list affiliates" in C.3.(b). of the Proposal. The existing language to describe affiliates is awkward for financial institutions that may list only one or two affiliates. It should be sufficient to name the affiliates in question, or the category to which they belong.

State Law

Given the fact that a proliferation of state privacy laws is perhaps the single largest impediment to developing a concise, standardized privacy policy, we were surprised by the lack of attention paid to state law in the Model and the Proposal. The only reference to state law in the Model is that "[s]tate laws...may give you additional rights to limit sharing." This may not be sufficient for financial institutions to avoid potential liability at the state level. The Proposal would seem to require a financial institution to use a separate document to explain any difference in its information practices that may vary as a result of state law. Although such a document should, in theory, be sufficient, it would not be an appealing option if state attorneys general or the class action plaintiffs' bar view such a practice to be somehow unfair or deceptive. Thus we believe financial institutions should be permitted to include state law addenda in the notice itself without jeopardizing safe harbor status.

Contacting the Financial Institution to Opt Out

Page 3 of the Model requires financial institutions to state "[u]nless we hear from you, we can begin sharing your information 30 days from the date of this letter. This language is required neither by GLBA nor by the GLBA Regulations. For that reason it should not be required in the Model. If the Agencies retain the concept of informing consumers about a timeframe to opt out, the required language must be amended to account for the following issues:

- A financial institution can share NPI immediately (and even prior to the privacy policy being delivered) for any reason other than pursuant to notice and opt out (including with the consent of the customer);
- Even for third-party disclosures subject to an opt out, the Agencies have indicated that a 30-day waiting period is not necessary in all circumstances;

- There is no waiting period at all if the notice is an annual notice;
- The Model may or may not be part of a "letter;"
- The Model most likely would not have a "date" printed on it from which the consumer can start a 30-day clock; and
- By suggesting that the financial institution need only "hear from [the consumer]," the statement implies that the consumer can opt out by contacting the financial institution in any manner, regardless of whether such manner is designated by the financial institution.

Wells Fargo, like many other financial institutions, retains and honors opt-out requests (for both the "old" FCRA "affiliate sharing" and the "new" FACT Act "affiliate marketing" rules) indefinitely. However the "unless you contact us…" language of the Model will result in many customers who already have an opt out on file contacting us again, year after year, to needlessly "renew" these opt-out requests. Processing these contacts would be a waste of resources for the financial institution and making them would be an unnecessary burden on consumers. Financial institutions should have the flexibility to inform consumers if they maintain opt outs indefinitely and, if so, that a consumer who has already requested opt-out status does not need to contact the institution again.

Inability to Otherwise Customize when Appropriate or Necessary

A financial institution should be able to make modifications to the Model if the financial institution determines such modifications to be appropriate or necessary. For example, the Model makes several declaratory statements regarding a financial institution's information practices which may or may not be true. The Model makes statements such as "[w]hen you close your account, we continue to share information about you according to our policies," "[t]he types of personal information we collect and share depend on the product or service you have with us," and "[w]e also collect your personal information from others, such as credit bureaus, affiliates, or other companies." These statements, and several others, may or may not be true depending on the financial institution or the product offered. A financial institution should have the ability to state that the information collected "may" vary depending on the product, for example.

A financial institution may also need to explain features of its information practices that are not currently included in the Model. For example, it is common for a financial institution to have multiple privacy policies depending on the financial product in question. As another example, a jointly marketed financial product may have a privacy policy applicable to both financial institutions that is different from the privacy policy each institution delivers to its other respective customers. The Model does not appear to give financial institutions the ability to explain the limited applicability of a specific privacy policy in these circumstances. Similarly,

financial institutions oftentimes rely on consumer consent in connection with disclosures of NPI to third parties, such as co-brand partners. A financial institution should be able to explain the scope of the consumer's consent as part of the Model. The inability to customize the Model in these and other ways will serve as a significant disincentive to financial institutions using the Model if they need that flexibility.

Ability to Modify for Use by Diversified Financial Institutions

The Agencies specifically state that the Model could be used by "a group of financial holding company affiliates that use a common privacy notice." However, the SEC has provided text that differs from the other Agencies' text, yet no Agency will allow for deviation from its text without sacrificing the protection of the safe harbor. It would be impossible, therefore, for a diversified financial institution such as Wells Fargo that has both a broker-dealer and a bank to provide the same privacy policy to all consumers. We urge the Agencies to grant a safe harbor to a financial institution that uses any text offered by any Agency in connection with its use of the Model. Similar issues exist with respect to insurance entities subject to state privacy disclosure requirements. Unless sufficient flexibility is granted, many diversified financial institutions will not be able to use the Model to deliver a single privacy notice to customers of different business units.

Brevity

As noted above, Wells Fargo strongly believes that financial institutions should be given the option of providing a single-sheet GLBA notice to consumers. We believe that this goal is realistic, especially given the unused space in the Model as it is proposed. Not only is there significant empty space that could be eliminated without sacrificing the clarity of the Model, but there are also significant amounts of information that are not necessary to comply with the GLBA or the GLBA Regulations.

For example, the following portions of the Model content are not required under any law or regulation:

- The "FACTS" title line on each of the pages;
- The information in the "Why?" box;
- The information in the "How?" box;
- The joint marketing disclosure for financial institutions that do not engage in joint marketing;
- The FCRA affiliate-sharing disclosure for financial institutions that do not share consumer report information with affiliates;

- The "[f]or nonaffiliates to market to you" disclosure for financial institutions that do not share NPI with third parties for that purpose;
- The information in the "Contact Us" box;
- The information in the "How often does [financial institution] notify me about their practices" box;
- The information in the "Why can't I limit all sharing" box;
- The information in the "Affiliates" box for financial institutions that do not share NPI with affiliates;
- The information in the "Nonaffiliates" box for financial institutions that do not share NPI with nonaffiliates; and
- The information in the "Joint marketing" box for financial institutions that do not share NPI pursuant to joint marketing agreements.

We understand that this information may have value both to consumers as well as to financial institutions. For this reason the information should be *optional*. We believe that financial institutions would be more likely to include such information in the Model if the information did not result in a disclosure of more than one sheet, but some financial institutions may still choose to include those disclosures even if doing so might require a second sheet. Alternatively, some institutions might elect to include other information—such as that now provided by Wells Fargo in its privacy notice (see above at page 4).

We also note that it is not necessary to require that the opt-out form be on a separate page. It could be included as a tear-off portion of the same sheet as the rest of the privacy policy, as many financial institutions do today in full compliance with the law. As shown in Exhibits A, B and C, it is possible to include a tear-off opt-out form on a single-sheet notice without removing any of the required text. Indeed, many financial institutions simply do not accept opt outs by mail.

Branding

The Proposal allows financial institutions the ability to use "spot color" on the Model form and to include "a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page." Financial institutions should have broader flexibility so that the Model notice may include colors, markings, logos, and other visual effects consistent with other communications from the financial institution. So long as these branding mechanisms do not interfere with the disclosures provided, we do not believe the Agencies should limit a financial institution's ability to customize the appearance of the Model.

Other Issues

Repeal of Existing Safe Harbor and Sample Clauses

The Agencies propose to repeal the Sample Clauses and their safe harbor status in the GLBA Regulations one year after a final rule is adopted. We believe the Sample Clauses and the existing safe harbor should be retained. Although Congress directed the Agencies to develop "a" model form as part of the Financial Services Regulatory Relief Act of 2006, it did not direct the Agencies to make it "the" model form, nor to repeal any existing safe harbor. Many financial institutions will not be able to use the Model absent significant revisions to it, so a repeal of the current safe harbor will leave such financial institutions with no meaningful guidance or legal certainty with respect to their GLBA privacy notices. Not only would this result in unnecessary uncertainty at the federal level, but financial institutions could also face significant difficulties at the state level if there is not a widely accepted standard with respect to adequate GLBA privacy policies.

Even if the Agencies eliminate the existing Sample Clauses and safe harbor, we believe the Agencies should clearly state that they will not view failure to use the Model as evidence of noncompliance with the GLBA Regulations. The Agencies note in the Proposal, for example, that they are granting a year for continued use of the Sample Clauses "for compliance purposes." Although Wells Fargo appreciates that the Agencies are not proposing to delete the Sample Clauses immediately, we are concerned with the implication that financial institutions must cease use of the Sample Clauses in order to be in compliance with the GLBA Regulations after the one-year transition period. We agree with the Agencies' existing views that a financial institution can comply with the privacy policy notification requirements of the GLBA Regulations through use of the Sample Clauses. We are unaware of any developments that would change this view, and we believe it would be capricious for the Agencies to grant the Sample Clauses safe harbor status one day and view them as evidence of noncompliance literally the next day.

Use of Social Security Numbers

The Agencies also request comment as to whether financial institutions "need [the consumer's account number, Social Security number, or other personal information] in order to process opt-out requests, or would the customer's name and address alone, or the customer's name, address, and a truncated account number for a single account, be sufficient to process opt-out requests, including for customers with multiple accounts at the same institutions?" In short, financial institutions should continue to be permitted to request Social Security numbers or any other reasonably necessary information in connection with an opt-out request.

A consumer that provides only a name and address may or may not provide sufficient information to fully and correctly implement an opt out. For example, the name provided by the consumer on the opt-out form may or may not match the name on any given account depending on whether the consumer lists his/her name on the opt-out form exactly as it appears in the financial institution's records. The same is true for an address. This is especially difficult if there are two people with the same or similar names at the same address.

While an institution may in some circumstances be able to use the last four digits of an account, in conjunction with a name and address, to implement an opt out on a single account, Wells Fargo, like most institutions, applies opt outs to all accounts of a given consumer. There simply must be a unique identifier available to the financial institution for it to implement opt outs across multiple accounts. This is also true for organizations such as Wells Fargo that implement opt outs across the family of companies.

Conclusion

Wells Fargo strongly urges the Agencies to develop a Model that will provide consumers with clear, concise, and succinct GLBA privacy policies. In order to achieve this goal, however, the Agencies must develop a Model that a large number of financial institutions are willing to use for large numbers of accounts. We believe the proposed Model has material shortcomings that will hinder its widespread adoption by financial institutions. We hope the Agencies will consider the comments they receive, engage in additional consumer testing involving alternatives that are likely to be adopted by financial institutions, and propose a new Model for additional feedback.

Again, we thank the Agencies for the opportunity to comment on the Proposal and the Model. Please do not hesitate to contact the undersigned if you have any comments or questions, or if Wells Fargo may be of further assistance in this matter.

Sincerely,

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WELLS FARGO

Wells Fargo
Privacy Policy

Keeping Your Information Safe and Secure

Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ■ processing transactions, mailing, and auditing services ■ providing information to credit bureaus ■ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *Our affiliates include companies with a Neptune name; financial companies, such as Orion Insurance, and nonfinancial companies, such as Saturn Marketing Agency.*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *Nonaffiliates we share with can include mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *Our joint marketing partners include credit card companies.*

If you want to limit our sharing

Contact us

By telephone: 1-800-XXX-XXXX — our menu will prompt you through your choices

On the web: www.wellsfargo.com/privacy

By mail: mark your choices below, fill in and send form to:

Wells Fargo
Privacy Department
PO Box 00000
City, State 00000

Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.

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Check your choices

Your choices will apply to everyone on your account.

Check any/all you want to limit:
(See page 1)

- ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.
- ❑ Do not allow your affiliates to use my personal information to market to me. *(I will receive a renewal notice for this use for marketing in 5 years.)*
- ❑ Do not share my personal information with nonaffiliates to market their products and services to me.

Your Name

Your Address

Account Number

Mail to:

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F A C T S	WHAT DOES WELLS FARGO DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and income ■ account balances and payment history ■ credit history and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Wells Fargo chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Wells Fargo share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus	Yes	No
For our marketing purposes— to offer our products and services to you	Yes	No
For joint marketing with other financial companies	Yes	No
For our affiliates' everyday business purposes— information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes— information about your creditworthiness	Yes	Yes *(Check your choices, p. 2)*
For our affiliates to market to you	Yes	Yes *(Check your choices, p. 2)*
For nonaffiliates to market to you	Yes	Yes *(Check your choices, p. 2)*

Contact Us	Call 1-800-XXX-XXXX or go to www.wellsfargo.com/privacy

Sharing practices	
How often does Wells Fargo notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does Wells Fargo protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Wells Fargo collect my personal information?	We collect your personal information, for example, when you ■ open an account or deposit money ■ pay your bills or apply for a loan ■ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ■ affiliates' everyday business purposes—information about your creditworthiness ■ affiliates to market to you ■ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.

WELLS FARGO

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FACTS — WHAT DOES WELLS FARGO DO WITH YOUR PERSONAL INFORMATION?

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and income
- account balances and payment history
- credit history and credit scores

When you close your account, we continue to share information about you according to our policies.

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For our marketing purposes— to offer our products and services to you	Yes	No
For joint marketing with other financial companies	Yes	No
For our affiliates' everyday business purposes— information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes— information about your creditworthiness	Yes	Yes *(Check your choices, p. 2)*
For our affiliates to market to you	Yes	Yes *(Check your choices, p. 2)*
For nonaffiliates to market to you	Yes	Yes *(Check your choices, p. 2)*

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How does Wells Fargo protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Wells Fargo collect my personal information?	We collect your personal information, for example, when you ■ open an account or deposit money ■ pay your bills or apply for a loan ■ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ■ affiliates' everyday business purposes—information about your creditworthiness ■ affiliates to market to you ■ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.

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