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May 29, 2007

**COMMENT**

**VIA EMAIL**

Office of the Comptroller of the Currency  
250 E Street, SW Mail Stop 1-5  
Washington, DC 20219  
[www.regulations.gov](http://www.regulations.gov)  
Docket ID: OCC-2007-0003

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal  
Reserve System  
20<sup>th</sup> Street and Constitutional Avenue NW  
Washington, DC 20551  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)  
Docket No: R-1280

Mr. Robert E. Feldman, Executive  
Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
[comments@FDIC.gov](mailto:comments@FDIC.gov)

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
[www.regulations.gov](http://www.regulations.gov)  
Attention: OTS-2007-0005

Ms. Mary Rupp, Secretary of  
the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-3428  
[regcomments@ncua.gov](mailto:regcomments@ncua.gov)

Federal Trade Commission/Office of the  
Secretary, Room 135 (Annex C)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[secure.commentworks.com/ftc-modelform](http://secure.commentworks.com/ftc-modelform)  
FTC File No: PO34815

Ms. Eileen Donovan, Acting Secretary  
of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581  
[secretary@cftc.gov](mailto:secretary@cftc.gov)

Ms. Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
[rule-comments@sec.gov](mailto:rule-comments@sec.gov)  
File No: S7-09-07 Model Privacy Form

**Re: Interagency Proposal for Model Privacy Form under the Gramm-Leach-Bliley Act.**

Dear Sirs and Madams:

The Wisconsin Bankers Association (WBA) is the largest financial institution trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities

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throughout the state. WBA appreciates the opportunity to comment on the interagency proposal for the model privacy form.

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), National Credit Union Administration (NCUA), Federal Trade Commission (FTC), Commodity Futures Trading Commission (CFTC) and Securities Exchange Commission (SEC) (collectively, the Agencies) have proposed amendments to their rules that implement the privacy provisions of the Gramm-Leach-Bliley Act (GLBA). These rules require financial institutions to provide initial and annual privacy notices to their customers. To assist the Agencies with their proposed model privacy form, WBA offers the following comments.

## **Background**

The Regulatory Relief Act (Act) directs the Agencies to "jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under Section 503 of GLBA." The Act stipulates that the model form shall be a safe harbor for financial institutions that elect to use it. The Act further directs that the model form shall: (1) be comprehensive to consumers, with a clear format and design; (2) provide for clear and conspicuous disclosures; (3) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and (4) be succinct, and use an easily readable type font.

The GLBA requires each financial institution to provide a notice of its privacy policies and practices to its customers who are consumers. In general, the privacy notices must describe a financial institution's policies and practices with respect to disclosing non-public personal information about a consumer to both affiliated and non-affiliated third parties. The notices also must provide a consumer a reasonable opportunity to direct the institution generally not to share non-public personal information about the consumer with non-affiliated third parties other than as permitted by statute. In addition, the privacy notice must provide, where applicable under the Fair Credit Reporting Act (FCRA), a notice and an opportunity for a consumer to opt out of certain information sharing among affiliates.

## **Proposed Privacy Model Form**

The Agencies' proposed privacy model form has either two or three pages. The third page is to be used exclusively to identify the financial institution's opt-out provisions. Institutions using the proposed model form must include page three in their notices only if they share or use information in a manner that triggers an opt-out, or chooses to provide opt-outs beyond what is required by law. The Agencies are requiring that each of the pages of the model form be printed separately and only on one side of an 8.5 by 11 inch piece of paper. The proposed model form is designed to be customized by each financial institution by inserting, for example, the institution's name, contact information, and information about affiliates, non-affiliates, or joint marketing partners, if any, with which it shares personal information. In addition, the disclosure table requires that each institution complete the responses in each of the boxes provided in a manner that accurately reflects its information sharing policies and practices. No other information may be included in the model form; however an institution's corporate logo may be included so long as it does not interfere with the readability of the model form or space constraints on each page.

The Agencies have proposed a 10-point font as the minimum type size. The Agencies have not mandated a particular type style or "x-height", however the Agencies have provided

suggestions for both. The Agencies have also proposed the use of white or light color paper with black or suitable contrasting color ink.

WBA acknowledges the efforts the Agencies have undertaken since 2001 relating to improving privacy notices and the development of one model privacy form. WBA is concerned, however, that the proposed prescribed privacy model form adds substantial cost and is too narrow in its requirements. The requirement that the privacy disclosure must only be printed on one side of the paper does not result in greater understanding by consumers, rather it merely adds to production and distribution costs of such disclosure. Other regulatory disclosures currently provided by financial institutions to consumers are on double-sided documents. WBA struggles to see why a privacy disclosure should be treated differently. Financial institutions are required under Regulation P to provide a clear and conspicuous notice that accurately reflects a financial institution's privacy policies and practices. WBA believes this can easily be accomplished in a double-sided printed disclosure. WBA also believes that a separate page devoted exclusively to the financial institution's opt-out options is burdensome. If such options may be incorporated clearly and succinctly elsewhere within the notice, financial institutions should not be required to utilize a separate page for this purpose. WBA believes financial institutions should be afforded the flexibility to incorporate opt-out provisions accordingly.

### **Removal of Safe Harbor for Existing Regulation P Sample Clauses**

The Agencies' proposed model form is a standardized notice that would replace the Sample Clauses currently found in Appendix A of the privacy rule Regulation P. The proposed model form could be used by financial institutions to comply with requirements for a clear and conspicuous privacy notice in sections \_\_.6 and \_\_.7 of Regulation P. The Agencies have proposed the elimination of the current Sample Clauses from Regulation P. The Agencies in recognition of this compliance burden have proposed to provide a transition period of one year after which financial institutions using the current Regulation P Sample Clauses for their privacy notices must revise their privacy notices to the proposed model form to obtain a safe harbor. Privacy notices using existing Sample Clauses that are delivered to consumers to meet the annual notice requirements of Regulation P \_\_.9(c) would also have a safe harbor for one year.

WBA is greatly concerned with the elimination of the safe harbor currently provided to financial institutions using Regulation P's existing Sample Clauses. Financial institutions have gone to great lengths and expense to meet Regulation P requirements in developing privacy notices they currently use. Financial institutions have incorporated the Sample Clauses into such notices in reliance on the safe harbor the Sample Clauses afford. To now require each financial institution to revise its current privacy disclosure, which includes the safe harbor Sample Clauses, would undoubtedly create huge regulatory burden and associated costs – costs that will likely be passed along to the consumer. As such, WBA seriously questions whether the costs will outweigh the benefits the Agencies believe a singular model privacy notice would provide.

Financial institutions have worked diligently to create required privacy disclosures under the Agencies existing Sample Clauses and have helped educate consumers on privacy matters since induction of privacy notice requirements. To require the exclusive use of the proposed model form to obtain a safe harbor will require financial institutions to toss out everything already accomplished in satisfying Regulation P privacy notice requirements and begin the process all over. WBA does not believe that the Act or GLBA require the elimination of the existing Sample Clauses, and the attendant safe harbor, in order to implement a model form. Therefore, we vehemently oppose such elimination. Financial

institutions already anticipate revision to their privacy notices once the Agencies finalize all requirements under the Fair and Accurate Credit Transaction Act (FACT Act). Once finalized, new requirements will have an impact on the substantive content of financial institutions' privacy notices thus requiring revisions of privacy notices yet again. This is a pattern WBA argues needs to stop. WBA strongly recommends the Agencies retain the existing Regulation P Sample Clauses and their safe harbor, and merely add the proposed model privacy form as another option in Regulation P that would likewise provide a safe harbor.

### **Conclusion**

WBA would again like to acknowledge the efforts of the Agencies behind the proposed privacy model form. However, WBA believes the format restrictions are an unnecessary regulatory burden. Financial institutions are required to provide a clear and conspicuous notice that accurately reflects the privacy policies and practices of each financial institution. WBA believes that financial institutions can accomplish this requirement through the use of their existing privacy notice formats. As such, WBA recommends the Agencies allow for financial institutions the flexibility to print on double-sided paper and be allowed to incorporate opt-out provisions where appropriate. WBA also strongly encourages the Agencies retain the existing Regulation P Sample Clauses and their safe harbor for financial institutions rather than impose a huge regulatory burden and excessive costs for revision of privacy notices to ensure protection under the proposed exclusive safe harbor.

Once again, WBA appreciates the opportunity to comment on the proposed privacy model form.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Bauer", with a large, stylized initial "K" that loops around the first part of the name.

Kurt R. Bauer  
President/CEO