



**January 13, 2004**

# **Interagency Proposal on Alternative Forms of Privacy Notices**

*(Applies to federally-insured credit unions)*

## **EXECUTIVE SUMMARY**

- The financial institution regulators, including NCUA, have jointly issued an advance notice of proposed rulemaking (ANPR) to solicit comments on a wide range of issues associated with the format, elements, and language used in the privacy notices that would make the notices more accessible, readable, and useful. This includes examples of forms, model clauses, and other information.
- The regulators will review the comments and then decide whether to propose specific changes to the privacy rules. These specific changes will be issued as proposed rules and there will be another opportunity to comment at that time.
- The ANPR outlines the following approaches for simplifying the privacy notices:
  - A short notice with a specific format and standardized language that would just highlight key elements of the financial institution's privacy policies.
  - A short notice with a specific format and standardized language that would address all the requirements under the current privacy rules.
  - A standardized format for notices but allowing institutions to provide their own descriptions of their privacy policies. An alternative would be standardized language that could be used to develop the notice but without specifying the format.
  - Simplified opt out notices that could be used with current privacy notices.
- Comments are due on or before March 29, 2004. **Please submit your comments to CUNA by March 18, 2004.**

Please feel free to fax your responses to CUNA at 202-638-7052; e-mail them to Associate General Counsel Mary Dunn at [mdunn@cuna.coop](mailto:mdunn@cuna.coop) and to Assistant General Counsel Jeff Bloch at [jbloch@cuna.coop](mailto:jbloch@cuna.coop); or mail them to Mary and Jeff in c/o CUNA's Regulatory Advocacy Department, 601 Pennsylvania Avenue, NW, South Building, Suite 600, Washington, DC 20004-2601. You may also contact us at 800-356-9655, ext. 6732, if you would like a copy of the proposal, or you may access it on the Internet at the following address:

<http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20031223/attachment.pdf>

## **BACKGROUND**

The Gramm-Leach-Bliley Act (GLBA) requires financial institutions to provide an annual notice of its privacy policies and practices to consumers. These notices must describe the institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties and provide consumers with an opportunity to request that the institution not share nonpublic personal information about the consumer with certain nonaffiliated third parties. The notices must also provide consumers with an opportunity to opt out of the sharing of certain information among affiliates, as required under the Fair Credit Reporting Act.

NCUA and the other financial institution regulators published final rules in 2000 to implement the GLBA privacy provisions. The rules outline specific items of information that must be included in the privacy notices, along with sample clauses that institutions may use. No specific format or wording is required. Institutions may design their own notices based on their individual privacy practices, as long as the notices are "clear and conspicuous" and otherwise comply with the rules. Click below for more information about these final rules:

[http://www.cuna.org/reg\\_advocacy/member/analysis/ncua\\_051000.html](http://www.cuna.org/reg_advocacy/member/analysis/ncua_051000.html)

The financial institutions industry, consumers, privacy advocates, Congress, and the regulators all recognize that many of the privacy notices that have been issued have been long and complex. There is also recognition that the privacy notices are very difficult to compare with those of other financial institutions, even those with identical privacy policies, since the rules allow significant flexibility with regard to designing the notices.

## **DESCRIPTION OF THE ANPR**

Because of the problems described above with regard to the privacy notices, the financial institution regulators are considering proposing changes to the privacy rules to ensure that the notices are more understandable and useful for consumers. To begin this process, the regulators, including NCUA, are now

jointly issuing an ANPR to solicit comments on a wide range of issues associated with the format, elements, and language used in the privacy notices that would make the notices more accessible, readable, and useful. This includes examples of forms, model clauses, and other information.

The purpose of the ANPR is for the regulators to collect these comments, review them, and then decide whether to propose specific changes to the privacy rules. These will be issued as proposed rules, and the regulators will solicit additional public comment on these specific changes. The ANPR also notes that credit unions have an organizational and operational structure that is different from other financial institutions. Although NCUA is currently participating in this interagency effort to review privacy notices, these credit union differences may lead NCUA to issue a separate proposal after reviewing the comments received in response to the ANPR, although any proposals will be consistent with the other regulators.

The regulators are also interested in comments on whether all financial institutions should be required to use the same form of notice and whether a short notice should substitute or supplement a longer, more detailed notice. The regulators are also interested in any other comments with regard to improving the readability and usefulness of the privacy notices, as well as supporting research and documentation on any matter regarding the implementation of a short privacy notice.

In addition to amending the privacy rules, the regulators are also reviewing the following approaches that they may take in order to implement the development of a short notice:

- An interagency interpretation of the privacy rules, perhaps with model forms or language.
- A set of guidelines or best practices that would enable financial institutions to improve the privacy notices.

As part of the ANPR, the regulators are requesting comments on which of the above approaches would be useful to consumers, while taking into consideration the burden on financial institutions.

The ANPR outlines and requests comments on the following approaches for simplifying the privacy notices:

- A specific format and standardized language for a short notice that would just highlight key elements of the institution's privacy policy. For example, the notice could describe the types of nonpublic personal information collected, the policies for sharing it with third parties, and how consumers may opt out. These may follow the format of current nutrition labels including on food packaging and allow consumers to compare easily notices from multiple financial institutions, as well as become familiar with the standardized form

and text. The notice may also include a description of how the consumer may receive a longer, more detailed notice or the longer notice may be attached. Access the Internet link below to review an example:

<http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20031223/attachmen t2.pdf>

- A short notice with a specific format and standardized language that would address all of the requirements in the GLBA and privacy rules. This would allow consumers to compare easily notices of different institutions. This approach also recognizes that institutions may need flexibility in describing the parties to whom it discloses nonpublic personal information. Access the Internet link below to review an example and note that the categories of parties that an institution may need to modify appear in brackets:

<http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20031223/attachmen t3.pdf>

- Establishment of a standardized format for notices, but permitting financial institutions to provide their own descriptions of their privacy policies and practices. This approach is designed to permit an institution to tailor the language to suit its own policies and practices, while still being useful for consumers. Access the Internet link below to review an example:

<http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20031223/attachmen t4.pdf>

An alternative would be for the regulators to prescribe standardized language that an institution could use without a specified format. Standardized language may help consumers compare notices among financial institutions and help consumers become familiar with the circumstances under which information about them is disclosed to third parties.

- Focus on the consumer's right to opt out of disclosures. For example, the opt out notice could be provided by itself, with a statement that the privacy policy is available upon request. Alternatively, the description of the right to opt out and how to exercise it could be provided on the first page of the notice. The regulators could prescribe the language and placement to ensure prominence and readability, but without requiring further standardization of the privacy notices. Access the Internet link below to review an example:

<http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20031223/attachmen t5.pdf>

To receive any of the above examples by fax or other means, please contact Jeff Bloch at (800) 356-9655, extension 6732, or by e-mail at [jbloch@cuna.coop](mailto:jbloch@cuna.coop). To

help evaluate these approaches, the regulators are specifically requesting detailed descriptions of ways to improve the privacy notices, such as examples of language that may be used, illustrations of formats, and references to particular requirements of the privacy rules that may need to be changed. The regulators are also requesting comment on the advantages and disadvantages of the above approaches, as well as any other approach that should be considered.

**QUESTIONS TO CONSIDER REGARDING THE INTERAGENCY PROPOSAL  
ON ALTERNATIVE FORMS OF PRIVACY NOTICES  
(THE REGULATORS ARE SPECIFICALLY INTERESTED IN RECEIVING  
COMMENTS ON THE FOLLOWING QUESTIONS)**

**A. Goals of the Privacy Notice**

- What should be the goals of the privacy notice and which goals are most important?

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- Should the regulators pursue the development of a short notice to achieve these goals?

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- Are there special issues for the regulators to consider in developing a short notice that may arise from potential differences between federal and state law requirements?

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- In what ways should a privacy notice be useful to a consumer? Please identify which of the following ways are the most or least important:
    - To permit ready comparisons among different institutions' privacy policies.
    - To provide sufficient information to make an informed decision about whether to opt out.
    - To highlight the consumer's right to opt out.
    - To provide convenient mechanisms for the consumer to opt out.
    - To provide a mechanism for the consumer to opt out in the same medium used to provide the privacy notice.
    - Other ways.
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## **B. Elements of a Privacy Notice**

- What are the key elements of a privacy policy that a short notice should contain?
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- Are these elements the same from the perspective of institutions and consumers? If not, explain the differences and why.
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- Is there an optimal number of elements to include in a short notice (beyond which would be too many)?
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- Should a short notice contain all of the information required under the GLBA and the privacy rules? If not, should it include a statement that the complete privacy policy is available upon request?
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- Should certain requirements, such as a description of the right to opt out, if applicable, be given prominence or presented in a certain order?
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- Should statements describing information sharing not subject to an opt out, such as disclosing information to nonaffiliates under joint marketing agreements, be highlighted in the short notice?
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### **C. Language of a Privacy Notice**

- Are there any “privacy” terms or words that consumers readily understand that should be included in the short notice? Should any terms or language currently used in the notices be avoided?
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- Should financial institutions be required to use standardized clauses in a short notice?
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- Rather than using standardized language, should a financial institution be permitted to develop its own language in a short notice, as long as the notice incorporates specified items of information?
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#### **D. Format of a Privacy Notice**

- Should the regulators develop a standardized graphic design for the short notice? Which graphic design would be most suitable?
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- Based on your experiences with the current privacy notices, which of the alternative forms of notices described above are likely to be useful to consumers and/or financial institutions?
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- How long should the short notice be? How long should the phrases and sentences within the notice be?
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- Do you have suggestions for overall design of the notice, including layout, color use, graphic devices, and font sizes of the text?
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- What form should the privacy notices take for those institutions that are not required to provide an opt out?

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- Should the institution be allowed to modify its short notice to include requirements that may be required under state laws? How can the notice be designed to include these requirements?

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### **E. Mandatory or Permissible Aspects of a Privacy Notice**

- Should use of the short notice be mandatory?

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- Should use of standardized language and/or format for a short notice be mandatory or should each institution be permitted to create its own short notice that follows guidelines from the regulators?

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- If a short notice is standardized, should only parts of the notice be mandatory? Is so, which parts? Or should the entire standardized notice be mandatory?

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- If use of standardized parts or clauses is not required, should there be a “safe harbor” from enforcement for those that use standardized parts or a complete standardized notice?
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- Should an institution be required or permitted to deliver both a short and long notice?
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- Institutions that do not need to provide an opt out and that do not use joint marketing agreements are now permitted to use an abbreviated notice. If a short notice is developed, should these institutions continue to be able to use their current notice or should the regulators develop a special short notice for these institutions to use?
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- Some institutions offer consumers rights to opt out of information sharing even if the opt out is not required. If the short notice is mandatory, should these institutions be allowed to include in the notice information about these additional opt out rights?
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- Should financial institutions be allowed to include other information about their privacy policies and practices in their short notices, such as when institutions allow consumers to opt in for information sharing among affiliates for marketing purposes?
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## **F. Costs and Benefits of a Short Notice**

- What are the costs and benefits of providing a short notice and how do these compare with the requirements under the current privacy rules?
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- How do the costs and benefits depend on the following?
    - Whether the notice is mandatory or voluntary.
    - Whether the format or language is standardized.
    - Whether the short notice requires the institution to make additional privacy information available upon request.
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## **G. Additional Questions**

- Are there models or samples that work well with consumers that the regulators should consider? Please provide any samples, research, and supporting documentation and the results of any consumer testing.
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- What processes or types of consumer testing should the regulators use to evaluate standardized terms, language, or formats for notices, including short notices?
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- Should consumer education accompany introduction of a new type of notice? What types of education would be effective?
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