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Federal Trade Commission
Office of the Secretary
Room 159-H
600 Pennsylvania Avenue NW
Washington, DC 20580



To whom it may concern:

Comments: Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act

Biography

I'm a readability consultant. In 2001 I reviewed 60 GLB financial privacy notices (attached) and participated in the December "Get Noticed" Conference. I've also consulted with the Department of Health and Human Services on language issue in HIPAA Privacy Notices, and I've written extensively about consent forms in clinical trials, managed care report cards, employee benefits documents—all projects that reviewed how complicated information was presented to consumers in response to Federal regulatory requirements.

Compliance vs communication is the major problem

Above all, because financial institutions want to be in compliance with GLB regulations, they use language taken directly from the Federal Register. But such regulatory language is often inconsistent with basic communication principles. As long as compliance is the major (or only goal), GLB notices will not be written in consumer-friendly language. (See enclosed article on "Compliance v Communication")

The need for testing and readability standards for GLB Notices

Often a junior high reading level is recommended because policy makers assume that anyone with eight years of education will understand. But that isn't always so. Readability doesn't taken into account document design, reader interest, etc. Plus, writing at a junior high level is very hard; most of the complicated documents I review are written at about a grade 14-17 reading level. Because rewritten versions come down one or two grade levels, getting GLB privacy notices to an 8th grade level will be very difficult—perhaps impossible. Plus, the most widely used readability formula, the Flesch-Kincaid in Microsoft Word is flawed: It does not report scores higher than grade 12.

There is a need for consumer testing of financial privacy notices. Financial institutions or associations should give focus groups of consumers several different forms and let the consumers tell them what they like, what they don't like, what they understand, and what they don't understand.

Draft versions can be evaluated in several ways. Qualitatively, notices can be evaluated using one-on-one interviews, or focus groups. Quantitatively, readability formulas can provide some basic information about how hard or easy the document is to read, or cloze testing can be used to measure comprehension more precisely.

Plain language principles to guide the draft

Of course privacy notices should be written using plain language techniques. But note that the HIPAA regulations stated: "A covered entity can satisfy the plain language requirement if it makes a reasonable effort to: organize materials to serve the needs of the reader; write short sentences in the active voice, using "you" and other pronouns; use common everyday words in sentences; and divide materials into short sections."

But, "We do not require particular formatting specifications, such as easy-to-read design features (e.g., lists, tables, graphics, contrasting colors and white space), type face, and font size." As a result, some organizations reduced the size on their copiers to get everything to fit on one sheet of paper. Such HIPAA forms might be readable, but not legible!

Moreover, although HIPAA notices were "required" to be written in plain language, I have yet to see a single plain language HIPAA notice. That plain language requirement was not met, and there are no penalties for writing notices that are incomprehensible. "Requiring" plain language GLB notices will probably have no effect on the way the notices are actually written.

Privacy notice writers would benefit from having several templates as examples from which to choose. Some compromises would have to be made; financial institutions probably wouldn't use large type (which is more readable) if it requires too many sheets of paper and adds too much to postage costs.

Consumer testing as the key part of privacy notice development

Consider GLB privacy notices as a "product" that financial institutions are trying to sell to their customers. If consumers opt-out, they decided not to "buy" the privacy product; If they allow information sharing, they decided to "buy" the privacy product. Viewing privacy notices as products means that they can (and should) go through the same kind of consumer testing and market research as more traditional products.

From this perspective, consumer testing is the most important part of privacy notice development. Include typical consumers in the writing and editing process, and give them the opportunity to evaluate different privacy notice designs and content.

Standardization might help

Standardized formats might help by allowing consumers to more easily recognize privacy notices. But standardized language has to be done with some opportunity for language flexibility. Will a one-size-fits-all notice work? Ask consumers by giving them several versions to evaluate.

Yours truly,



Lost in the Fine Print: Readability of Financial Privacy Notices

By Mark Hochhauser, Ph.D.
Readability Consulting

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Posted on the Privacy Rights Clearinghouse Website, July 2001
www.privacyrights.org

Note: This document replaces "Lost in the Fine Print I" and II, which were posted on the PRC Website in April 2001 and May 2001.

Summary:

Readability analyses of 60 financial privacy notices found that they are written at a 3rd-4th year college reading level, instead of the junior high school level that is recommended for materials written for the general public. Consumers will have a hard time understanding the notices because the writing style uses too many complicated sentences and too many uncommon words.

Beginning this year, banks and other financial institutions have begun to inform their customers about their privacy rights. The federal Financial Services Modernization Act, also known as Gramm-Leach-Bliley (GLB), requires customers to be given the choice to opt-out of their bank's sharing of personal information with third parties. "Privacy notices" are being mailed to consumers in their bank statements, credit card statements, investment reports, mortgage statements, insurance mailings and so on.

How readable are the "Privacy Notices?"

I reviewed 60 privacy notices using several software programs including Prose, WStyle 1.6, Grammatik 6.0, Reader 1.2, and Correct Grammar 2.0. These programs calculated the Flesch Reading Ease Score, writing style, sentence and vocabulary complexity and word commonness.

Instead of being written in plain English, the 60 privacy policies average a 3rd-4th year college (grade 15.6) reading level, making them "difficult" to read on the Flesch Reading Ease Score. Note that readability software programs don't score higher than grade 17--first year graduate school. It's possible that some of the policies written at a graduate school reading level may be more complicated than a grade 17. In short, average readers will find these notices hard to understand, especially the elderly and those whose primary language is not English.

Recent Census data shows that about 85% of adults have a high school degree. About 25% have one or more college degrees. Despite these levels of educational attainment, research shows that many people read three-to-five grades lower than their highest level of educational attainment. Thus, it's not unusual for someone with a high school diploma to be reading at a 7th to 9th grade reading level. Because of that gap, literacy experts recommend that materials written for the "general public" be at about a junior high reading level.

One of the factors involved in readability is the number of words per sentence. Research suggests that to be easily understood, documents should average about 15-20 words per sentence. When sentences

get too long (over 40 words), readers may forget the beginning of the sentence by the time they get to the end.

The following table shows the results of my readability analyses of 60 GLB privacy policies. These policies are ranked from "best" to "worst" in terms of Reading Ease. None of the notices, however, scored any better than "difficult," since the scores ranged from 24 to 47. Rudolf Flesch calculated Reading Ease based on the following scoring system:

Flesch Reading Ease Score

0 - 29 = Very Difficult	70 - 79 = Fairly Easy
30 - 49 = Difficult	80 - 89 = Easy
50 - 59 = Fairly Difficult	90 - 100 = Very Easy
60 - 69 = Standard	

Financial Privacy Notice	Flesch Reading Ease	Grade Level (8 recommended)	Writing Style
	(60 recommended)		
River Valley Credit Union	Difficult/47	13	Weak
Manufacturer & Traders Trust	Difficult/47	13	Weak
Northern Trust	Difficult/46	14	Weak
Seattle Savings Bank	Difficult/44	13-14	Poor
Anchor Bank	Difficult/43	14	Poor
Washington Mutual	Difficult/42	14	Weak
FDS	Difficult/42	14	Weak
Discover Card	Difficult/42	14-15	Poor
ePacific	Difficult/41	14	Poor
Deseret First Credit Union	Difficult/40	14-15	Weak
Postal Credit Union	Difficult/39	14-15	Weak
Key	Difficult/38	15	Poor
Patelco Credit Union	Difficult/38	15	Poor
Missoula Federal Credit Union	Difficult/38	15	Poor
May National Bank	Difficult/38	15	Weak
Providian Bank	Difficult/38	15	Poor
Bank of America	Difficult/37	15	Poor
UNCLE Credit Union	Difficult/37	15-16	Poor
Synovus	Difficult/37	15-16	Poor
FirstStarBank	Difficult/36	15-16	Poor
Sears	Difficult/36	16	Poor
Target (Retailers National Bank)	Difficult/36	15	Poor
Wescom Credit Union	Difficult/35	15-16	Weak
Advanta National Bank	Difficult/35	15	Poor
Boeing Credit Union	Difficult/35	15	Poor
Capital One	Difficult/35	16	Poor
State Farm	Difficult/35	15-16	Poor
National City Bank	Difficult/35	15	Poor
Provident Financial Group	Difficult/35	15-16	Poor
Mellon Financial Services	Difficult/35	15-16	Poor
USBancorp	Difficult/35	15-16	Poor

Wescom Credit Union	Difficult/36	15-16	Weak
Macy's	Difficult/34	16	Poor
Bank One	Difficult/34	15-16	Poor
Cascade Bank	Difficult/34	15-16	Poor
Greater Nevada Credit Union	Difficult/34	15-16	Poor
Unitrust Financial Services	Difficult/33	16	Poor
Fleet Boston Financial	Difficult/33	16	Poor
Household Bank	Difficult/33	16	Poor
Wells Fargo	Difficult/33	16	Poor
Sterling Financial Services	Difficult/31	16	Poor
Exxon Credit Card	Difficult/31	16	Poor
People's Bank	Difficult/31	16-17	Poor
California Federal Bank	Very Difficult/30	16	Poor
Chase	Very Difficult/30	16-17	Poor
Cambridge Savings Bank	Very Difficult/29	Graduate School	Very Poor
MBNA	Very Difficult/29	Graduate School	Poor
Union Bank of CA	Very Difficult/29	16	Poor
USAA	Very Difficult/28	16	Poor
Conseco	Very Difficult/28	Graduate School	Poor
PNC Bank	Very Difficult/28	Graduate School	Poor
Forum Credit Union	Very Difficult/28	Graduate School	Poor
Members 1st Credit Union	Very Difficult/27	16	Poor
Marquette Bank	Very Difficult/27	Graduate School	Poor
American Express	Very Difficult/27	Graduate School	Poor
Wachovia	Very Difficult/25	16	Poor
Evergreen National Bank	Very Difficult/25	Graduate School	Very Poor
Honeywell Federal Credit Union	Very Difficult/25	Graduate school	Poor
Zions First National Bank	Very Difficult/25	Graduate School	Poor
Webster Bank	Very Difficult/25	Graduate School	Poor
Countrywide Loans	Very Difficult/24	Graduate School	Poor
Average	Difficult/34	15.6	Poor

How do the Notices compare to state readability requirements?

Many states have readability requirements for insurance policies sold within the state. For example, Arkansas, Indiana, Kentucky and Ohio require a minimum score of 40 on the Flesch Reading Ease. Only 10 of the 60 notices reviewed would have met that requirement. Connecticut and Florida require a minimum of 45 on the Flesch; three of the notices met those state requirements. Maine requires a 50; none of the notices met that requirement.

Why elderly consumers will have a hard time understanding the Notice.

Across all age groups, people 65 and older have the lowest literacy scores, with an average educational attainment between 11th and 12th grade. Seventy year-old bank customers (born in 1931) with an average 11th - 12th grade education completed their education in the late 1940s. The following table shows the education levels of the populace versus individuals age 65 and over.

Educational attainment (1998)	Total Persons	65 and over
Not a high school graduate	17%	33%
High school graduate	34%	35%
Some college (no degree)	17%	13%
Associate degree	8%	4%
Bachelor's degree	16%	9%
Advanced degree	8%	6%

How "Clear and conspicuous" are the privacy notices?

According to the law, these new financial privacy notices are supposed to be written in a "clear and conspicuous" style. This means that the language used should be "reasonably understandable," a term which is not defined. But based on the readability statistics, none of these 60 notices was even close to meeting that criterion. WStyle, which analyzes writing style, classified 10 notices as having a "weak" writing style; 48 have a "poor" writing style, and 2 have a "very poor" writing style.

The GLB regulations offer six strategies for ensuring that the notice is written in a "clear and conspicuous" manner.

1) *Presenting information in a clear and concise way.* The readability analysis shows that the notices were not written in a clear and concise writing style. Being concise isn't the same as being clear.

Most notices say that "We maintain physical, electronic and procedural safeguards to protect customer information." (12 words) That's concise, but what does it mean?

The longer version (27 words) doesn't help much: "We also take other steps to safeguard customer information by maintaining physical, electronic, and procedural safeguards that comply with federal standards to guard your non-public personal information."

And the really long version (63 words) only confuses things more: "As further described below, we maintain administrative, technical and physical safeguards designed to (1) insure the security and confidentiality of customer records and information, (2) protect against anticipated threats or hazards to the security or integrity of such information and records, and (3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to our customers."

2) *Using short explanatory sentences or bullet lists.* Although all of the notices used bullet lists to some extent, some of the notices included too many bullet points with too much information. A bullet point doesn't help much if it's followed by two paragraphs of text (150 words). By the time you finish reading the bullet point you've forgotten what the bullet point is supposed to summarize. The 60 notices averaged about 48 sentences per notice: Grammatik software estimated that about 17% of those sentences were "short."

Grammatik 6.0 also measures "Sentence Complexity," based on the number of words and clauses in the notice--with a maximum "very complex" score of 100. The 60 privacy notices averaged 70, with a range of 38 to 92.

3) *Using concrete everyday words.* One way to measure this is to analyze word "commonness" of the privacy notices. Based on Reader software, a normal score is 1,450: a lower score means that the

notice has many common words, and a higher score means that the notice has many uncommon words. The average score for the 60 notices was 1,993, which means that most notices are full of uncommon words. Nineteen of the notices scored below 1,450; forty-one scored above 1,450 -- with a range from 1,075 to 4,217.

Grammatik 6.0 measures "vocabulary complexity" based on the number of syllables in a document and a comparison to words in a list of unusual or difficult words -- with a maximum "very complex" score of 100. These 60 privacy notices averaged a vocabulary complexity score of 62, with a range of 42 to 75.

4) *Using the active voice.* WStyle Writing Style Analyzer software recommends that about 60% of sentences should be in the active voice. These notices averaged about 65% in the active voice, with a range of 43% to 83%. For example, a passive voice sentence is: "Every product or service we offer is designed to reflect the ways our customers actually use their accounts." The active voice version is: "We design every product or service to reflect the ways our customers actually use their accounts."

5) *Avoiding multiple negatives.* Most people have a hard time understanding sentences that have double negatives in them. On the one hand, federal guidelines state one way to make notices reasonably understandable is to avoid multiple negatives. On the other hand, those same guidelines offer a sample clause that will meet the opt-out requirements:

"If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law.)"

Here are a few other examples:

- "If you choose not to receive such solicitations from unaffiliated third parties, you may instruct Cal Fed not to disclose your non-public personal information (see below)." (California Federal Bank)
- "If you choose not to exercise your opt-out of sharing, no action is required." (Webster Bank)
- "We do not provide nonpublic information about you to any non-Fleet company whose products and services are being marketed unless you authorize us to do so." (Fleet Boston Financial)
- "We have opted out all of our customers from sharing with non-affiliated parties, meaning you do not have to formally notify us not to disclose your nonpublic personal information to non-affiliated parties." (Provident)
- "If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law.)" (Advanta) This is the approved clause in the federal regulations.

6) *Avoiding imprecise explanations that may be interpreted differently.*

Some examples of sentences open to interpretation:

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