

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

Comments on Advance Notice of Proposed Rulemaking

By

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Introduction.

I am writing in support of developing a required GLBA short notice for all financial institutions¹. There is ample evidence that the current notices do not serve consumers effectively. However as I hope my comments will demonstrate, substantial research needs to be conducted prior to writing a new rule.

Privacy notices provide information to promote informed consumer choice. The importance of information to consumer decision-making as a means for minimizing risk has a long history in marketing. In particular, researchers have noted that information disclosure can improve consumer decision processing and choice.² Researchers have analyzed the effectiveness of information disclosures in improving consumers' situations across a wide array of contexts including advertising, product and nutrition labels, and warnings for products and services³.

For this discussion, it is useful to place privacy notices in the more general context of consumer information processing. Previously, consumer marketing transactions were typically operationalized in terms of a single utilitarian exchange where goods or services are given in return for money or other goods. However, increasingly consumer transactions also involve a "second exchange" where consumers also make a non-monetary exchange of their personal information for value. This is particularly true for consumer interactions using the Internet.

When consumer transactions are viewed in terms of these two exchanges, privacy notices serve a function that is roughly analogous to a product label or warning notice for the second exchange. Just as consumers use information about products to make sound purchase decisions, they also need information to decide whether to disclose their personal information. For example, a recent study found that consumers use online privacy notices to manage risk and that these notices are used as one part of an overall strategy to manage the risks of disclosing personal information. In addition to privacy notices, consumers also relied on their own experience with a company, the company's reputation or brand, and privacy seals to manage risk⁴. It is my opinion that what we have learned about product labels and warnings in general and nutrition (or food) labels in particular provide a useful backdrop for thinking about how to improve current GLBA privacy notices.

¹ All views presented here are my own.

² See for example Beales, Howard, Richard Craswell and Steven C. Salop, "The Efficient Regulation of Consumer Information," *Journal of Law & Economics*, 24 (December 1981), 491-539.

³ For a review of this literature, see Stewart, David W. and Ingrid M. Martin, "Intended and Unintended Consequences of Warning Messages: A Review and Synthesis of Empirical Research," *Journal of Public Policy and Marketing*, 13:1 (Spring 2004) 1-19.

⁴ George R. Milne and Mary J. Culnan, Strategies for Reducing Online Privacy Risks: Why Consumers Read [Or Don't Read] Online Privacy Notices, *Journal of Interactive Marketing*, Vol 18, No. 3, 2004 forthcoming.

