

**Before the
Federal Trade Commission
Washington, D.C. 20580**

| | | |
|--------------------------------------|---|---------------------|
| |) | |
| In the Matter of |) | |
| |) | |
| Interagency Proposal to Consider |) | FTC File No. 034815 |
| Alternative Forms of Privacy |) | |
| Notices Under the Gramm-Leach-Bliley |) | |
| Act |) | |
| |) | |

To: The Commission

**COMMENTS OF THE
ELECTRONIC PRIVACY INFORMATION CENTER**
March 29, 2004

We applaud the Gramm-Leach-Bliley Act (GLBA) Agencies for holding this rulemaking designed to simplify privacy notices issued under the Act.¹ In July 2001, EPIC and seventeen other consumer organizations filed a petition with the GLBA Agencies, urging them to adopt requirements of clear, concise language for privacy notices, and to require more effective measures to allow consumers to opt-out from financial information sharing.² Improving notice is an important first step to meeting the goals of the 2001 petition. The second step—to improve the measures by which individuals can opt-out, also is important. Thus, we renew our call to require more effective measures to opt-out from financial information sharing.

In Addition to Clear Notice, Individuals Need Simple, Effective Ways to Opt-Out

The Gramm-Leach-Bliley Act (GLBA) has placed the burden of opting-out squarely on the consumer in order to safeguard personal information. Information is shared with non-affiliates and other third parties unless, after receiving notice, the consumer takes action and tenders an objection.

An opt-in standard would place the responsibility on the financial institutions that ultimately benefit from the disclosure of private consumer information. An opt-in practice would prevent private information from being shared with third parties unless consumers first agreed to the information sharing. Such an opt-in process would eliminate unknowing or unwanted disclosures of private individual consumer information.

¹ Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act, 68 Fed. Reg. 75164 (Dec. 30, 2003) [hereinafter Joint Proposal].

² GLBA Petition for Rulemaking, Jul. 26, 2001, available at <http://www.epic.org/privacy/consumer/glbpetition.pdf>

The combined results of surveys by Star Systems, Inc. (an ATM company) and E-Loan (an on-line lender) reveal that most consumers:

- *would want an opt-in before information is shared with non-affiliates
- *would want the ability to block data sharing even among affiliates
- *desire a private right of action against financial entities for violation of their privacy interests.³

Star Systems, Inc. found that 57% of the survey participants were concerned about financial services corporations sharing data with their partners or third parties and 62% of the respondents were concerned that financial institutions were sharing private financial data with affiliated companies.⁴ The survey by E-Loan found that 66% of survey participants favored an opt-in strategy, and 80% indicated that they were "not at all comfortable" with their financial institutions selling their private information to other entities.⁵

In the absence of legislation mandating an opt-in procedure, we can look to successful opt-out implementations for guidance in improving privacy. We believe that the recently-created FTC Telemarketing Do-Not-Call Registry is an example of a user-friendly opt-out implementation. According to FCC Chairman Michael K. Powell, over 730,000 people added their telephone numbers to the Registry on the first day it was available to the public.⁶ Nearly 50 million Americans have added their home and cellular telephone numbers to the Registry as of September 2003.⁷ This number comprises about 17% of all Americans (based on U.S. population statistics as reported by the Census Bureau) as opposed to the 5% opt-out rate for the financial services industry concerning limiting the sharing of private consumer data.⁸

Individuals have opted out because the process is simple. It only requires a two-step process, and the opt-out extends to virtually all telemarketers.

Financial services institutions have not implemented opt-out mechanisms that compare favorably to the Do-Not-Call Registry. Rather, individuals are confronted by opt-out procedures that differ at every institution. Furthermore, there is no central place where one can opt-out of all financial information sharing. Instead, individuals must opt-out at every institution. Because financial services institutions have not implemented user-friendly, effective opt-out mechanisms, we again urge the GLBA agencies to require more simple procedures for opting out.

Finally, we urge the agencies to consider creating a unified opt-out system that could combine telemarketing, financial services, FCRA prescreening, and other opt-out mechanisms that are created in the future. Opt-out has been deemed by some to be more efficient for the economy,

³ Paul Schwartz & Ted Janger, *The Gramm-Leach-Bliley Act, Information Privacy, and the Limits of Default Rules*, 86 Minn. L. Rev. 1219, 1237-8 (2002), at <http://www.paulschwartz.net/minn-final.pdf>.

⁴ *Id.* at n83 (citing "Not-So-Private Banking," Privacy Times, January 7, 2002, at 3-4).

⁵ *Id.* at n83 (citing "Poll: Californians Want Speier Bill," 22 Privacy Times, February 27, 2002, at 6-7).

⁶ "Do Not Call Registry Faces Tougher Challenge: Second Judge Blocks List, Citing Free Speech Concerns," available at <http://www.cnn.com/2003/ALLPOLITICS/09/25/congress.no.call/>.

⁷ *Id.*

⁸ Lee, W.A., "Opt-Out Notices Give No One a Thrill," American Banker, July 10, 2001.