



March 27, 2004

Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Attention: Docket No. 03-27

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution
Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1173

Office of the Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue, NW
Washington, DC 20580
Attention: Project No. P034815

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

Ladies and Gentlemen:

Bank of America Corporation ("Bank of America") appreciates the opportunity to comment on the Advanced Notice of Proposed Rulemaking issued by the Federal Deposit Insurance Corporation, Federal Reserve Board, Office of the Comptroller of the Currency, Office of Thrift Supervision and the Federal Trade Commission (collectively, the "Agencies") regarding the "Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act" (the "ANPR"). Bank of America is committed to making banking work for customers and clients like it never has before. Through innovative technologies and the ingenuity of its people, Bank of America provides individuals, small businesses and commercial, corporate and institutional clients across the United States and around the world new and better ways to manage their financial lives. The company enables customers to do their banking and investing whenever, wherever and however they choose through the nation's largest financial services network, including approximately 4,200 domestic offices and more than 13,200 ATMs, as well as 31 international offices serving clients in more than 150 countries, and an Internet Web site that provides online banking access to 7 million active users, more than any other bank. The company's Web site is <http://www.bankofamerica.com/>.

Background

In the APNR, the Agencies seek input on amendments to the Gramm-Leach-Bliley Act (“GLB”) to streamline and simplify the privacy notices required by GLB. The APNR describes various approaches the agencies could pursue to allow or require financial institutions to provide alternative types of privacy notices that would be more readable and useful to consumers. It also seeks comment on whether differences between federal and state laws pose any special issues for developing a short privacy notice.

Bank of America supports the concept of simplified, short form privacy notices. We have done focus group research each year since 2000 and used the results to try to develop, improve and simplify our privacy notices, while meeting the legal requirements contained in GLB and the Agencies’ regulations. While Bank of America has not received many complaints about the length or complexity of its privacy notice, focus group research indicates that consumers would prefer a shorter more concise notice which clearly outlines what the consumer needs to understand about the bank’s privacy practices.

Notice Elements

With respect to the elements to be included in such short form notices, it is very important to allow for flexibility. Bank of America heard from customers in research that many of the elements of the Bank of America privacy notice that customers particularly appreciated were not required by GLB or the regulations. These include information about how to opt out of receiving marketing communications from Bank of America companies or other companies, how to opt out of prescreened credit solicitations and how to help protect themselves from identity theft. Generally, customers were more interested in this type of information than some of the elements of the privacy notices required by GLB and the regulations (such as what information we collect and the categories of our affiliates). Thus, in any effort to simplify and shorten notices, Bank of America strongly urges the Agencies to allow financial institutions to provide additional, useful information to their customers.

Thus, Bank of America would support a consistent format and terminology, but there should be flexibility to include additional information or highlight features of the institution’s policies that may serve to differentiate that institution or are important for consumers to see. This will also serve the purpose of allowing consumers to compare policies so that while they will see the policies in similar formats and using similar terminology, they will also be able to readily identify the differences. If the short form policies only include the basic information required by GLB, virtually all institutions’ policies will fall into one or two basic groupings and consumers will not be able to compare and understand other elements. Of the proposed sample forms contained in the ANPR, Bank of America prefers Appendix B, which allows for a consistent format and terminology. However, we recommend that a section be added to provide for the ability to include additional important information. However, we do not think that it is

necessary to include an information sharing opt out form. Currently, Bank of America does not accept affiliate sharing opt outs (and does not share with third parties outside the GLB exceptions, so does not offer a third party opt out) in writing because we have found that written requests to opt out often do not contain sufficient information, or are not sufficiently legible, to enable us to effect that request. Therefore, we now accept opt out requests by toll-free telephone and online.

Relationship to Full Notice

It is also important to understand when the short form policy would be given and when (or if) a longer form policy would be required to be delivered. Bank of America supports the idea of providing a short form policy, that contains a notice that the customer can request a copy of the long form policy, at the time a customer relationship is established and annually. We believe that the Agencies have the regulatory authority to authorize delivery of a short form with the customer being able to request the full longer form. However, we have concerns that the short form, by definition, may not fully explain the institution's policy and give complete explanations and definitions. Thus, institutions could be subject to liability both for failure to meet their GLB obligations and also for misrepresentations (or incomplete representations) in the short form notices. Institutions must be provided with a safe harbor from liability by providing the specified short form notice. Institutions also should be given the authority to provide both the short and long form notice initially and then only provide the short form notice on an annual basis.

Relationship to State Notices

For institutions, it will take time and resources to develop and deliver the short form notice and also be prepared to deliver a longer form notice on request. However, this would be acceptable given the benefits to consumers, if institutions are not also subject to having to provide multiple additional state-specific privacy notices. Some states have already enacted state-specific notice requirements (e.g. California and Vermont) and clearly are authorized under GLB to provide such notices to the extent they do not cover affiliate sharing. It would be counterproductive to implement a short form privacy notice requirement while still exposing institutions to additional state notice requirements. This will also result in confusion to consumers, rather than the simplification that is the goal of the ANPR.

Guidance on Other Notice Requirements

In addition, Bank of America does not feel that it is appropriate to implement a short form notice requirement until the issue of how the notices required by the FACT Act for affiliate sharing direct marketing is addressed. Institutions also have not had additional regulatory guidance on the current FCRA affiliate sharing opt out. The latter is required to be part of the GLB notices and the former is very likely to be included in those notices. As such, they should be included in any short form notice and the terminology, such as the classification of the types of information covered, should be addressed in any short

form notice regulation. Thus, it is very important to work through those issues prior to finalizing a short form privacy notice regulation. If this is not done, the short forms will immediately be incomplete and not address several elements that must be covered in the policy. Bank of America agrees, however, that the Agencies should proceed with information gathering and research with consumers to obtain information on how to create useful privacy disclosures for GLB notices as well as for the FCRA affiliate sharing opt outs and the FACT Act affiliate direct marketing opt out.

We would be happy to discuss our views in greater detail, or to discuss any new ideas that the regulatory authorities wish to pursue. In that regard, please contact the undersigned.

Very truly yours,

Kathryn D. Kohler
Assistant General Counsel

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