

## **Final Model Privacy Form Under the Gramm-Leach-Bliley Act**

### A Small Entity Compliance Guide

#### **Introduction**

On December 1, 2009, the Federal Trade Commission (“Commission”), together with seven other federal agencies, published in the Federal Register amendments to the rules implementing certain privacy provisions of the Gramm-Leach-Bliley Act (“GLB Act”) and adopting a model privacy form. The GLB Act and the Commission’s Privacy Rule, 16 CFR Part 313, require certain “financial institutions” to provide initial and annual privacy notices to their customers. These financial institutions include, but are not limited to, mortgage lenders, finance companies, mortgage brokers, auto dealers, check cashers, “pay day” lenders, wire transferors, collection agencies, credit counselors and other financial advisers, tax preparers, and providers of real estate settlement services (“FTC regulated entities”). These notices must describe the entities’ information collection and sharing practices and inform customers of their right to opt out of certain of these practices. The model privacy form is designed to make it easier for consumers to understand how financial institutions collect and share their personal financial information and to compare different institutions’ information practices.

FTC regulated entities may rely on the model privacy form as a safe harbor to comply with these disclosure requirements. The Commission also is eliminating the safe harbor associated with the use of notices that incorporate the sample clauses in the Privacy Rule.

The amendments were effective December 31, 2009, except for the amendments eliminating the sample clauses and associated safe harbor; those become effective for notices sent after December 31, 2010.

#### **The Model Privacy Form**

The model privacy form, which can be found at <http://www.ftc.gov/privacy/privacyinitiatives/PrivacyModelForm.pdf>, is a two-page disclosure form. It is designed to be succinct and comprehensible and allow consumers to easily compare the privacy practices of different financial institutions. Use of the model privacy form is voluntary. An FTC regulated entity that chooses to use the model privacy form consistent with the instructions to the form will satisfy the disclosure requirements for privacy notices under the GLB Act and the Privacy Rule (*i.e.*, will obtain a “safe harbor”).

To rely on the safe harbor, FTC regulated entities must, among other requirements, present the model privacy form in a way that is clear, conspicuous, and intact, so that a customer can retain the content of the model form. In addition, they

must provide the model form to customers using the same page orientation (portrait), format, and order of elements as provided in the rule amendments (and shown in the form). FTC regulated entities may not change the content of the form or add any information, except as specifically permitted in the instructions to the form. FTC regulated entities may customize the form only where terms or spaces are shown in brackets, by either selecting from the menu of terms provided in the instructions to the form, or inserting the relevant information, as indicated in the instructions to the form.

Provided that an FTC regulated entity's use of the model privacy form meets these standards, they may:

- Print the form on both sides of a single sheet of paper (or on two pages);
- Incorporate the form into another document or with other notices, and include additional documents or information so long as the form is presented in a clear and conspicuous manner;
- Provide a single form jointly with affiliated institutions (including affiliated institutions regulated by different agencies), as long as each institution is clearly identified in the correct space of the form;
- Include color and logos to create visual interest, provided they do not interfere with the readability of the form;
- Use different sizes of paper, provided the paper is large enough to meet the layout and minimum 10-point font size requirements and provides sufficient white space around the model form text;
- Include certain information on state and international privacy law or provide for an acknowledgement of receipt in the blank spaces provided;
- Include a mail-in version of the opt-out form as described in the rule; and
- Translate the form into languages other than English.

### **Online Form Builder**

The Commission will provide a link on its website, [www.ftc.gov](http://www.ftc.gov), to an online model privacy form builder that any FTC regulated entity may download and complete to create a customized privacy notice. The Commission anticipates that a temporary Online Form Builder will be available early in 2010 and that a more robust version will be available later in the year.

### **Elimination of Sample Clauses and Associated Safe Harbor**

The Privacy Rule currently contains an appendix with sample clauses that FTC regulated entities can use as a safe harbor in designing their privacy notices. The

amendments remove the sample clauses from the Privacy Rule effective January 1, 2012, and FTC regulated entities may no longer use them as a safe harbor for privacy notices they provide after December 31, 2010. Although only the final model privacy form provides a safe harbor for compliance with the privacy disclosure provisions under the GLB Act and the Privacy Rule, FTC regulated entities may continue to use other types of notices that vary from the model privacy form, including notices that use the sample clauses, so long as these notices comply with the GLB Act and the Privacy Rule.

### **Other Resources**

The text of the model form rule is at [http://www.ftc.gov/privacy/privacyinitiatives/PrivacyModelForm\\_FR.pdf](http://www.ftc.gov/privacy/privacyinitiatives/PrivacyModelForm_FR.pdf).

### **Contacting the Federal Trade Commission**

Staff in the Commission's Division of Privacy and Identity Protection is available to answer questions about the model privacy form. Contact the Division of Privacy and Identity Protection at (202) 326-2252.

### **SBREFA Statement**

This guide was prepared by the staff of the FTC as a "small entity compliance guide" under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended. The guide summarizes and explains rule amendments adopted by the Commission, but is not a substitute for any rule. Only the Privacy Rule, 16 CFR Part 313, can provide complete and definitive information regarding its requirements.