

**Summary of Presentation by the
Independent Community Bankers Association (ICBA) and
the America's Community Bankers (ACB)
GLB Interagency Meeting on the ANPR on Privacy Notices
February 4, 2004
Federal Trade Commission**

Participants:

Rob Rowe (ICBA)
Peter Hong (ACB)
Rob Drozdowski (ACB)

Comments:

The ACB reported on two recent surveys of their membership regarding privacy notices. Its 2001 compliance survey on privacy opt-outs indicated that the majority of consumers are not opting out or not finding the notices helpful. The 2001 survey also indicated that the costs of implementing the notice requirement has been disproportionately high for members. The ACB added that the costs of redesigning notices would be particularly burdensome on those institutions that do not share outside of the exceptions. Some members have suggested that the privacy rules should be amended to require one-time notices with subsequent notices provided only when a material term changes.

The ICBA commented that while the concept of short-form notices is enticing, the devil is in the details. Tweaking or minor adjustments to privacy notices are very costly, requiring new software and additional training of personnel. Members are concerned that they will not be able to use their old notices if the agencies mandate use of a short form. Consequently, a regulatory fix might cost more than any benefits that consumers might receive. Also, members may want to tailor their notices based on their individual customer base, and may not want to use a standardized notice. For example, while smaller banks might prefer a standardized model form, large banks might prefer a form like Appendix C which provides more flexibility for customizing the policy.

According to the ICBA, the key for any model form that could be accepted by industry is flexibility. Model notices, safe harbors, best practices are all positives, but industry is concerned about potential rigidity. The ICBA added the concern that a model short form would not be beneficial if institutions still had to provide a long form. Also, if a form is developed for institutions that do not share outside of the exceptions, it should not say "as permitted by law."

The ACB supports the short-form project and revisions of the sample clauses, so long as use of the short-form or model clauses are not mandatory. Members do not want to be prohibited from using current notices, which in some cases may be shorter. Also, the ACB would not want a privacy notice that discriminates between a large bank that

shares within an affiliate structure and small banks that have to engage in a lot of third-party sharing to provide the same level of service.

The ICBA stated that complaints received most frequently are that a member is not providing an opt-out because it only shares under the exceptions in .14 and .15, so the short form must address this situation. Also, members need guidance as to what to do with an opt-out form when the bank did not offer an opt-out.

The ICBA does not believe that privacy notices are a shopping tool for consumers. While privacy considerations may be a factor in choosing a bank, such considerations will not drive a consumer's decision. Even if notices are simplified, consumers will not shop based on privacy.

With regard to the forms provided in the ANPR, both trade associations had favorable reactions to Appendices A and B, but had concerns about requiring use of a standardized form. Also, the forms did not appear to contemplate other state requirements that might apply (e.g., the Illinois opt-in).

About the degree of testing undertaken by members, the ICBA stated that generally, only the larger banks have conducted any consumer testing (e.g., Washington Mutual, Bank of America). Smaller banks are more interested in compliance.

Regarding goals of privacy notices, the ICBA stated that notices should reaffirm that trust and confidence of customers is well placed in the institution. The ACB believed that notices should be able to give choices beyond those permitted by law, since some institutions are offering opt-outs even though they are not sharing outside of the exceptions.

On the costs of redesign, the ACB stated that in 2001, the average compliance cost for notices (including development) was \$1.37 per customer. In 2002, after the notices were already created, costs of providing notices dropped to \$0.65 a customer.

