

Small Entity Compliance Guide for the Model Privacy Notice Form¹

Introduction

On December 1, 2009, the Federal Deposit Insurance Corporation (FDIC), along with seven other federal agencies,² issued amendments to rules implementing the privacy provisions of the Gramm-Leach-Bliley Act (GLBA) and adopted a model privacy notice form.³ Part 332 of the FDIC's Rules and Regulations requires state nonmember banks to notify consumers of their information-sharing practices and inform consumers of the right to opt out of certain sharing practices. The model notice can be used by state nonmember banks to comply with these requirements.

The Model Privacy Notice Form

The model privacy notice is a two-page disclosure form designed to be succinct and comprehensible and allow consumers to easily compare the privacy practices of different financial institutions.⁴ Use of the model privacy form is voluntary. A state nonmember bank that chooses to provide the model privacy notice form to consumers in a manner consistent with the form's instructions will be deemed to be in compliance with the disclosure requirements for privacy notices under the GLBA and Part 332.

To rely on the safe harbor, state nonmember banks must, among other requirements, present the model privacy form in a way that is clear, conspicuous, and intact so a customer can retain the content of the model form. In addition, the model form must be provided to customers using the same page orientation (portrait), format, and order of elements provided in the rule and appendix. Institutions may not change the content of the form or add any information, except as specifically permitted by the form's instructions. State nonmember banks may customize the form only where terms are shown in brackets, by either selecting from the menu of terms provided in the instructions or inserting the relevant information, as indicated in the instructions.

Provided that a state nonmember bank's use of the model privacy form meets the standards set forth in the rule, the bank may:

- Print the form on both sides of a single sheet of paper (or on two pages);
- Incorporate the form in another document or with other notices, and include additional documents or information provided the form is presented in a clear and conspicuous manner;
- Provide a single form jointly with other affiliated institutions (including affiliated

¹ This guide is issued in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, 110 Stat. 857).

² The Board of Governors of the Federal Reserve System, the U.S. Commodity Futures Trading Commission, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the U.S. Securities and Exchange Commission.

³ 74 FR 62890 (December 1, 2009).

⁴ <http://www.fdic.gov/news/news/financial/2009/fil09065.html>

institutions regulated by different agencies), provided each institution is clearly identified in the correct place on 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 minimum 10-point font size and provide sufficient white space around the model form text;
- Include certain information on state and international privacy law in the blank space 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.

State nonmember banks also should ensure they are in compliance with all other requirements of Part 332, including ensuring consumers receive notices, providing a reasonable means for consumers to opt out, and complying with a consumer's opt-out direction as soon as reasonably practicable.

Online Form Builder

The FDIC has a link on its Web site to an online model privacy notice form builder that can be downloaded and completed to create a customized privacy notice. The form builder may be accessed at http://www.federalreserve.gov/bankinfo/reg/privacy_notice_instructions.pdf

Elimination of Sample Clauses

The Appendix to Part 332 of the FDIC's Rules and Regulations contains model language (sample clauses) that state nonmember banks may use in their privacy notices and, if so, they are deemed to be in compliance with the privacy provisions of the GLBA. These sample clauses and the associated compliance safe harbor will be eliminated from Part 332 following a transition period. Thus, financial institutions will not be able to rely on the safe harbor for the sample clauses incorporated into notices delivered to consumers on or after January 1, 2011. The sample clauses will be removed entirely from Part 332 on January 1, 2012.

Other Resources

FIL-65-2009, which summarizes the rule changes and provides links to the final rule and the model privacy notice, is available at <http://www.fdic.gov/news/news/financial/2009/fil09065.html>