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March 29, 2004

Office of the Comptroller of the Currency  
250 E Street, SW.  
Washington, DC 20219

National Credit Union Administration  
ATTN: Becky Baker, Secretary of the  
Board  
1775 Duke Street,  
Alexandria, VA 22314-3428

Office of Thrift Supervision  
Chief Counsel's Office  
1700 G Street, NW  
Washington, DC 20552

Federal Trade Commission  
Office of the Secretary  
Room 159-H  
600 Pennsylvania Ave., NW  
Washington, DC 20580

Board of Governors of the  
Federal Reserve System  
ATTN: Jennifer Johnson, Secretary  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Commodity Futures Trading Commission  
ATTN: Jean A. Webb, Secretary  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Federal Deposit Insurance Corporation  
Attn: Robert E. Feldman, Executive Secretary  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Securities and Exchange Commission  
ATTN: Jonathan G. Katz, Secretary  
450 5<sup>th</sup> Street, NW  
Washington, DC 20549-0609

Re: Office of the Comptroller of the Currency, Docket No. 03-27

Office of Thrift Supervision, No. 2003-62

Board of Governors of the Federal Reserve System, Docket No. R-1173

Federal Trade Commission, Project No. P034815

Securities and Exchange Commission, File No. S7-30-03

**ANPR to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act**

Ladies and Gentlemen:

The American Bankers Association appreciates this opportunity to respond to the December 30, 2003 Advance Notice of Proposed Rulemaking (ANPR) on the interagency proposal to consider alternative forms of privacy notices under the Gramm-Leach-Bliley Act (GLB). ABA brings together all elements of the banking community to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings institutions, trust

companies, and savings banks – makes ABA the largest banking trade association in the country.

According to the background information in the ANPR, the agencies will review the information collected through this comment process and through independent research conducted by the agencies and determine “whether to propose changes to the privacy rule and, if so will seek further public comment on specific proposals.” As we will explain below, the American Bankers Association believes that now is not the time to create a new privacy notice requirement.

### **Reasons for the ANPR**

In the ANPR, the agencies are seeking comment on issues related to the format, elements, and language used in privacy notices that would make the notices more “accessible, readable, and useful.” The agencies are pursuing this goal, in part to “encourage and facilitate the efforts already underway” by financial institutions to improve privacy notices.

Specifically, the agencies request comment on whether to pursue the development of a short privacy notice. There are, according to the agencies, several ways to exercise their authority for developing a short notice. The agencies could offer model forms or language; provide sets of guidelines or best practices; or propose amendments to the privacy rule. The agencies request comment on what approaches “would be most useful to consumers while taking into consideration the burden on financial institutions.”

### **The Agencies Should Delay Creation of a Government Privacy Notice**

The ABA has reviewed the myriad of questions posed by the agencies as they consider what steps to take to improve the GLB privacy notices with many segments of our membership. Perhaps the following response of a community banker best sums up the reaction of many of our members:

*For most of us banks out here in the 'heartland', frankly, the current privacy notice hasn't been a big concern for either banks or our customers since the first year of enactment. We do our annual mailing - - and hear nothing back. I think the consumer is beginning to treat the mailing like junk mail since they now get them from every insurer as well as financial institution. For the average family, I'm sure they get a dozen or more per year.*

Another institution pointed out:

*The only time we have really had any comments [from customers] was when the notice was first mailed out and that was mainly because of all the news media on the issue. Once the topic died down, we have really had not issues come up.*

Other points of emphasis from the membership are the burden of the mandatory annual privacy notice that is seen as nothing more than a nuisance to most consumers, particularly since it must be sent even if there have been no privacy policy changes at the bank. In addition, a number of bankers have expressed concerns that an agency short notice will simply be in addition to the longer notice. That is an unacceptable approach. It should also be noted that the second most costly regulation for compliance departments are the privacy laws and regulations.<sup>1</sup> Therefore, we strongly urge the agencies to consider carefully

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<sup>1</sup> See, the Nationwide Bank Compliance Officer Survey, ABA Banking Journal/June 2003

the cost of developing, producing and distributing a new privacy notice, no matter how short.

ABA supports clear and concise notices for bank customers and we believe that the industry has already made the appropriate adjustments to the original GLB notices. For the ANPR, the American Bankers Association has five (5) recommendations.

**Recommendation 1.** *If the agencies decide to issue formal guidance or a rule regarding how to provide a short version of the notice, it should either be in lieu of the longer form, or at the discretion of the institution.*

**Recommendation 2.** *ABA opposes any new federal mandate in this area unless it includes a preemption of state requirements on potentially conflicting privacy notices. It is clear that preemption in this area benefits consumers both by keeping compliance costs down and enabling customers to understand an institution's privacy notice without having to learn 50 state variations.*

ABA emphasizes that the industry appreciates the benefits of utilizing a short form to explain the basics of privacy policies to bank customers. If the agencies decide to require a short form notice, our members need assurance that a bank could comply with its notice requirement by posting a short form on their website, and make the longer form available upon request.

**Recommendation 3.** *The agencies should consider permitting financial institutions to provide the short form notice via the entity's website.*

ABA would be remiss if we did not mention the obvious potential confusion that customers may face with the various notices that will be required under the Fair and Accurate Credit Transactions Act (FACT Act) and possibly the CAN-SPAM Act of 2003. There is no question that sending customers several different notices for different purposes will cause even greater confusion than currently exists.

Therefore, it would appear to be prudent to delay implementation of this effort until the industry and the government are made fully aware of all of the new notice requirements.

**Recommendation 4.** *ABA urges the agencies to refrain from issuing a regulatory proposal for short notices until the FACT Act process is completed.*

Finally, faced with examiner scrutiny and, at times, a myriad of interpretations of what constitutes compliance with regulations such as the GLB privacy notices, the industry must have regulatory certainty.

**Recommendation 5.** *If the agencies ultimately decide to issue a short form notice as an option, a regulatory "suggestion" (in the form of a guidance), or as a new mandate, the industry must have a "safe harbor" to ensure that use of the short form constitutes complete compliance with the GLB privacy provisions.*

## Conclusion

The American Bankers Association offers to continue to work with the agencies on these important issues. We might assist the agencies in developing questions for consumer focus

groups or surveying our membership as to the acceptability of suggested approaches. We urge the agencies to proceed carefully and deliberately taking into account the benefits to customers, the cost and burdens to the industry and the practicability of alternatives before proceeding with a formal rulemaking process at this time.

If you have any questions or need additional information, please contact me at 202-663-5029 or [jbyrne@aba.com](mailto:jbyrne@aba.com).

Sincerely,

A handwritten signature in black ink, appearing to read "J. Byrne". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John J. Byrne  
Director, Center for Regulatory Compliance