

Your Privacy is Important to Us?

A Report Card on How Bank Privacy Notices Discourage Consumers from Exercising the Right to Financial Privacy



A USAction Report

**Prepared by Citizen Action of New York
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Table of Contents

Executive summary.....	iii
Introduction.....	1
Background.....	5
Methodology.....	7
Results.....	9
Discussion and Recommendations.....	15
Appendix 1: Explanation of grading topics.....	19
Appendix 2: Scoring Tool.....	27
Appendix 3: Report Card.....	33
Appendix 4: Best and worst examples.....	35
Works Cited.....	41

* “Your Privacy is Important to Us” is the title of MBNA America’s privacy policy notice.

Your Privacy is Important to Us?

Executive Summary

Introduction

In 1999, Congress allowed large financial corporations – banks, brokerage firms and insurance companies – to merge when it passed the Financial Modernization Act, otherwise known as the Gramm-Leach-Bliley Act (GLBA). Throughout the debate on this legislation, consumer advocates worried that the law included too few protections to restrict corporate use of personal financial information.

As part of GLBA Congress instructed the Federal Deposit Insurance Corporation and other federal agencies, to develop regulations to require corporations to provide privacy notices to consumers. These privacy notices began arriving in consumers' mailboxes in April 2001. These notices tell consumers with credit cards, bank accounts, brokerage accounts, and other financial accounts how to “opt-out” of selected standard company practices for sharing information.

The federal regulations require that the privacy notice be “clear and conspicuous” and “reasonably understandable”. However, the first impression that the notices leave with the average consumer appears to be anything but clear or understandable. USAction, through its New York affiliate Citizen Action of New York, decided to test whether that first impression is fair or whether a closer look at privacy notices would find that they do provide clear, understandable information to consumers about their privacy rights

and the actions that consumers could take to protect their financial privacy.

The report examined the privacy notices of the 15 banks that issue the most credit cards, more than 116 million. The list is dominated by three banks that together issue 101 million cards: MBNA America with 44 million; Provident Bankcorp with 31 million and Bank One Corp./ First USA Bank with 26 million.

All but one of the top 15 banks made their privacy notices available to the public, either through a website or by calling the bank. Citizen Action of New York staff read each privacy notice to determine whether:

1. The privacy notice of each of the top fifteen banks complied with the federal law and regulations.
2. The privacy notice – even if it was in strict compliance with federal regulations – is adequate to allow consumers to make an informed choice about how to protect their financial privacy.

Each privacy notice was graded on 16 topics, grouped into three categories:

1. Is the notice clear and understandable?
2. How easy is it for a consumer to exercise privacy rights?
3. How comprehensive is the information provided to consumers?

Each bank received a grade for each topic, a grade for each category and an overall grade.

Results

Overall Grade: Three of the 15 banks received an F, six a D and six a C. None of the banks received higher than a C. MBNA America, the number one credit card issuer in the nation with 44 million cards, received the lowest overall grade of any bank, a 0.6 out of a possible 4.0. First Premiere Bank received an automatic F as its notice was not available to the public, only to customers.

Clear and Understandable: Regulations issued by the federal government require that a credit card company's privacy notice be "clear and conspicuous" as well as "reasonably understandable." (12 CFR, § 332.3(b)) To clarify these terms, the federal agencies provided several examples of both "clear and conspicuous" and "reasonably understandable."

Of the fourteen companies that were examined, all failed the reading grade level and twelve failed on reading ease. Seven of the companies received a C for the category. Two of the companies that passed received a D. Five companies flunked, with an F. MBNA America (0.3 out of 4.0 points) received the lowest points for this category. Citigroup and BankOne Corp/First USA Bank received the highest grades in this category, with 2.3 out of 4.0 points.

Exercising the Right to Opt-Out: The most important reason to require banks to issue privacy notices is to alert customers to their right to opt-out of sharing their non-public financial information. This category examined each company's privacy notice to see if it reflected the spirit of the law by making it easy for its customers to understand and exercise their right to

opt-out of information sharing if they so desired.

Of the fourteen privacy notices that were examined, thirteen of them passed this category. Eight of the policies received a C. Five of the policies received a D. First Union Corp. (0.8 out of 4.0 points) was the only company to fail this category. Both MBNA America and Metris Companies Inc. (Direct Merchants Bank) barely passed with a grade of 1.0. Of the companies that received a C, Chase Manhattan Corp. and First Consumers National Bank scored the highest, with 2.5 out of 4.0 points.

Comprehensive Information

Provided: Because information is crucial to the customers' ability to make an informed choice about the sharing of their private financial information, this category analyzed each company's privacy notice in relation to the comprehensiveness of the information that was provided. Some of the topics are federal requirements, while other topics go beyond the federal standards to evaluate a company's efforts to help the consumer understand what the federal requirements actually mean.

Of the fourteen companies whose privacy notices were analyzed, nine passed this category. People's Bank (3.0 out of 4.0 points) and FleetBoston Financial Corp. (2.8 points) received a B in this category. There were three companies that received a C; four companies received a D, and five companies an F. Bank of America, U.S. Bancorp and Bank One Corp/First USA Bank provided consumers with directions on how to ask direct marketing services and credit reporting agencies to stop solicitations from other companies.

Discussion

These findings indicate that banks that issue more than 116 million credit cards to US consumers are doing a poor to failing job of notifying consumers regarding their privacy rights. No bank got better than an overall grade of C, and well more than half received a D or F, fundamentally failing to provide an understandable explanation to consumers about their federal privacy rights.

Federal regulators have an obligation to assure that banks fully comply with the privacy notice regulations. The most glaring instances of banks violating the federal regulations are in the category that measured the federal requirements for a “clear and conspicuous” notice that is “reasonably understandable.” Not only did five banks fail to meet this standard but every bank failed to communicate the privacy notice in language that an average American can understand.

For example, the following is a sentence from the Metris/Direct Merchants Bank privacy notice:

We may disclose to “non-affiliates” for the purpose of those companies offering their products and/or services to you. The information we disclose to non-affiliates is limited to Identifying Information only; however, the Identifying Information may have been selected using Application Information and Transaction Information criteria. (Flesch Reading Ease for the above paragraph is 1.9% out of 100%.)

Aside from the fact that companies presented their notices in wording that was unintelligible to the average American, approximately half of the policies did not present their document in a format that made it easy for consumers to read. Privacy notices that are poorly spaced, are formatted in long paragraphs, fail to highlight

important text, and use small type size are not consumer-friendly and discourage consumers from reading these important materials.

By not making its privacy notice available to the public at-large, First Premiere Bank showed the most glaring fault. This weakness prevents consumers from making an informed choice related to personal financial privacy when shopping for a credit card. Federal laws and regulation should be amended to require that companies make a copy of their privacy notice available to the general public.

Most of the companies made it difficult for their customers to opt-out of having their information shared. They did this by:

- ✓ disguising the directions for how to opt-out,
- ✓ hiding the opt-out section of the policy,
- ✓ minimizing the methods consumers could utilize to inform the company of their decision to opt-out, and
- ✓ making each member of a joint account opt-out on his/her own.

Every bank failed in at least one of these four areas.

Also, with two exceptions – Citigroup and First Consumers National Bank – every bank actively discouraged consumers from exercising even the minimal privacy rights available under the law and most did so within the opening paragraph of the notice. Twelve companies, out of the fourteen that were examined, did not mention within the first paragraph that consumers could follow the directions in the notice to affirmatively choose to protect some financial information. In

fact, many companies tried to conceal the contents of the notice by reassuring their customers with false or misleading statements that inaccurately reflected the content of the notice. These actions have dramatic impact on the consumer, who could be discouraged from reading the entire notice based upon the content of the first paragraph.

One way in which companies could have reduced the difficulty of their privacy policies would have been to implement an “opt-in” procedure, which would require consumers to give the company permission to share their personal financial information with others. None of the banks chose the consumer friendly opt-in.

Recommendations

This analysis points to the concerns offered by consumers and advocates during the congressional debate on the Gramm-Leach-Bliley Act. The research shows that the law and regulations are written to benefit the financial institutions, not consumers. Companies have exploited the vague language in these regulations to undermine the general intent of the privacy protections.

The results of this study lead USAction and Citizen Action of New York to believe that stronger privacy protections are required on a federal level:

- ✓ Close the privacy loopholes that were included in the Gramm-Leach-Bliley Act (GLBA).
- ✓ Adopt new regulations that set objective, measurable standards for the “clear and conspicuous” requirement, instead of using

vague definitions that are open to interpretation and debate.

- ✓ Require an opt-in system, instead of the current opt-out. This step will empower consumers to make informed decisions and send a message that the federal government is on the side of its constituents, not large corporate banks.
- ✓ Close existing loopholes that allow banks to utilize a customer’s private financial information, even after they have opted-out of sharing this information. These loopholes minimize the effectiveness of opting-out, as they allow financial institutions to continue sharing information with too many people, against the wishes of the customer.

Americans have the right to expect that their financial information will be kept private and not be used for commercial purposes without their explicit permission. In the brave new world of our information age, where vast quantities of information can be shared instantly and globally, the potential for growing abuse and invasion of privacy is unlimited.

Congress should stand up to the banks and financial sector and act to provide strict personal privacy financial protections to American consumers. And financial institutions should stop running rough shod over the weak laws that now exist and instead voluntarily provide clear, understandable instructions to consumers about their privacy rights, the sharing of personal information and how to easily act to protect their financial privacy.

Privacy notices of fifteen top banks that issue credit cards

Company	First Union Corp.	Columbus Bank & Trust	HSBC	First Premiere Bank	FleetBoston Financial Corp.	First Consumers National Bank	People's Bank	Metris Companies, Inc.	Citigroup	U.S. Bancorp	Bank of America	Chase Manhattan Corp.	Bank One Corp./ First USA Bank	Provident Bancorp Inc.	MBNA America
Category I: Clear and Under- standable Notice (average of 6 topics)	F	F	C	I*	F	C	C	F	C	D	C	D	C	C	F
Category II: Exercising the Right To Opt-Out (average of 6 topics)	F	D	D	I	D	C	C	D	C	C	C	C	C	C	D
Category III: Comprehensive- ness Of Information Provided (average of 4 topics)	D	C	F	I	B	F	B	D	F	D	C	F	D	C	F
Overall Grade (average of all 16 topics)	F	D	D	F**	D	C	C	D	C	D	C	D	C	C	F

* "I" means an incomplete because the privacy notice was not available to grade.

** Overall failure based upon the fact that the privacy notice was not available to the general public.

INTRODUCTION

The technological revolution has made privacy a priority concern for Americans. Technological advances afford us the ability to work, communicate, and do research much more efficiently. They have also allowed institutions to gather, store, and access tremendous amounts of information to a degree unimaginable five years ago.

These new technologies make American consumers worry that large corporate conglomerates will exploit their personal private information in an effort to increase corporate profitability. In a recent AARP poll, 81% of its membership indicated that they opposed allowing companies to share their private financial information with other companies that are part of the same corporate structure (affiliates). The same poll found that 92% opposed allowing companies to sell their personal information to companies that are outside of the corporate structure (non-affiliated third parties). (Brice, 1999) A *Business Week* poll showed that 78% of individuals who shop online are worried that the information they provide will be utilized to send them unsolicited information. Of those polled, 57% indicated that the federal government should become more involved and pass more stringent privacy standards. (Borrus, 2001)

Most recently, Gallup conducted a poll in which 63% of Internet users were “very concerned” about online databases of information. (Newport, 2001) A Harris Poll found that 87% wanted to have access to the information that companies have collected on them. (Taylor, 2001)

In 1999, Congress allowed large financial corporations to merge when it passed the Financial Modernization Act, otherwise known as the Gramm-Leach-Bliley Act (GLBA). Throughout the debate on this legislation, consumer advocates worried that the law included too few protections to restrict corporate use of personal financial information.

As part of GLBA Congress instructed the Federal Deposit Insurance Corporation and other federal agencies¹ to develop regulations to require corporations to provide privacy notices to consumers. These privacy notices began arriving in consumers’ mailboxes in April 2001. These notices tell consumers with credit cards, bank accounts, brokerage accounts, and other financial accounts how to “opt-out” of selected standard company practices for sharing information. These notices have led to lively discussion about whether these corporate privacy policies, and the regulations behind them, actually provide any real financial privacy protections for consumers.

¹ This report cites only the Federal Deposit Insurance Corporation (FDIC) and its regulations because this federal banking agency is widely known to the general public. In fact, the GLBA gave rulemaking authority to the FDIC and seven other federal agencies: Office of Thrift Supervision, Office of the Comptroller of the Currency, National Credit Union Administration, Securities and Exchange Commission, Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, and the Federal Trade Commission. The provisions of the privacy notice regulations for each of the agencies are the same.

This discussion has in effect pitted big business against individuals from all political spectrums. On one side of the debate, individuals and consumer advocates want to ensure the privacy of individual information. On the other hand, businesses argue that they cannot provide desirable services to their customers unless they utilize their private financial information. They want to be able to share this information with affiliates and business partners in order to inform their customers about other services they offer which match the customer's needs.

The legislation approved by Congress includes a system that is consistent with what the business community advocated. Federal law and regulations do require companies to issue privacy notices to each of their consumers. These notices must inform customers of their right to "opt-out", in other words, to direct the company to not share their private financial information. Even if a customer does choose to opt-out, corporations are still permitted by law to share certain information with affiliates and with non-affiliated third parties who perform marketing and other services for them. Consumer advocates argue that consumers should have stronger privacy protections that require companies to obtain consumers' permission before any private financial information is shared with another organization. This type of protection would require an "opt-in" notice to authorize a company to share information with its affiliates and non-affiliated third parties.

In this report, USAction and Citizen Action of New York evaluated the privacy notices issued by banks to their credit card customers to determine whether the notices comply with the federal regulations. We provide a report card on the privacy notices of the fifteen banks that issue the most credit cards. The report card is based on how easy it is for consumers to understand the information provided and to exercise the credit card company's option to limit the sharing of their own private information. The privacy notice report card ranked each company in sixteen topics arranged in three main categories. A grade was assigned to each topic and an overall grade was determined for each privacy notice. The topics and categories are:

- Introductory Category: Privacy Notice available to the general public
- Category I: Clear and Conspicuous Notice
 - Clear, concise sentences
 - Bulleted lists
 - Reading grade level
 - Reading ease
 - Title of the notice
 - Bold, italics, and underlining
- Category II: Exercising the Right to Opt-Out
 - Placement of opt-out
 - Number of places opt-out appears

- Clear introductory paragraph
- Variety of opt-out methods
- Ease of opting-out
- Opt-out for joint accounts
- Category III: Comprehensiveness of Information Provided
 - Extent of information collected
 - Opportunity to review and correct information collected
 - Type of private information collected
 - Ongoing legal sharing of information

Publication and distribution of this report will increase consumers' awareness of how banks can legally use their personal information in the development and marketing of financial products. The report card will help consumers who want to evaluate which of the largest banks will provide them the best opportunity to protect their private financial information. The rating system may encourage government agencies to be more energetic in enforcing the existing privacy requirements in the GLBA. In addition, the public scrutiny generated by this report may encourage financial institutions to offer stronger protections for their customers' private information.

BACKGROUND

In 1999, Congress passed the Financial Modernization Act, otherwise known as the Gramm-Leach Bliley Act (GLBA). This new federal law allows banks, insurance companies and stockbrokers to join together as mega-financial services corporations. For example, this means that a bank can now merge with a health insurance company. Consumer groups have argued that this legislation will have serious implications for the financial privacy of consumers throughout the country.

It was largely due to these arguments that Congress required financial institutions to develop and distribute privacy notices to their customers. Congress directed the Federal Deposit Insurance Corporation (FDIC) and seven other federal agencies² to develop regulations detailing what was to be included in these privacy policies.

Consumer advocates argued that the regulations should require an “opt-in” agreement, which would require companies to receive a consumer’s permission before private financial information was shared with either affiliates or non-affiliated third parties. The financial services industry argued that without the ability to share their customers’ private information, they would not be able to continue to offer personalized services to their customers. Banks argued that customers should have to opt-out, i.e. notify the company that their private information cannot be shared with other companies, in order to protect their private information. According to banks and other financial institutions, this “opt out” scenario allows consumers to continue receiving the highest possible customer service, unless of course they choose to exercise their right to opt-out.

Ultimately, the financial services corporations won this argument, and an opt-out policy was required of banks. Exemptions were also created, so that even if a consumer did choose to opt-out of having their information shared, a company could still share some or all of its customers’ information with affiliates based on the Fair Credit Reporting Act, and with other companies that provide services under contract or through a joint marketing agreement. (12 CFR Part 332)

In the Spring of 2001, consumers began receiving copies of privacy notices from financial institutions. These privacy policies once again ignited the argument between the financial service corporations and consumer groups. Consumer advocates argued that the privacy notices were too complicated, too numerous, and overall of very little use to consumers. (Schwartz, 2001) Banks and other financial service institutions claimed that the privacy policy notices afforded consumers the choice of receiving a full array of services, or if they chose to do so, of limiting the amount of services they could receive by opting-out of sharing their information.

While these arguments were taking place in the United States, the European Union (EU) had moved forward and passed privacy laws that were much more stringent than ours. For example, the EU requires companies to provide consumers with access to the information that has been collected about them, as well as give notice on how it is used. (Simpson, 2001)

² See footnote 1 on page 1.

METHODOLOGY

Banks that Issue the Most Credit Cards

Using Card Source One, an Internet resource profiling banks, this study identified the fifteen banks that issue the most credit cards. Together these banks issue more than 116 million credit cards. Citizen Action of New York obtained privacy notices from each of the above companies in several ways. In most instances, the notices were obtained through the Internet or from Citizen Action supporters who had received the notice in the mail. In instances where the privacy policy was not on the credit card company's Web site and none of our supporters had access to the privacy policy, phone calls were made to the institution, asking for a copy of the privacy policy as a potential cardholder.

Fifteen Banks That Issue the Most Credit Cards*
Ranked in order from largest to smallest.
MBNA America – 44 million cards
Provident Bancorp Inc. – 31 million cards
Bank One Corporation/First USA Bank – 26 million cards
The Chase Manhattan Corp. – 6 million cards
Bank of America – 2.5 million cards
U.S. Bancorp – 1.5 million cards
Associates National Bank (Citigroup)** - 1.25 million cards
Metris Companies Inc. (Direct Merchants Bank)*** - 906,000 cards
People's Bank – 860,000 cards
First Consumers National Bank – 597,000 cards
FleetBoston Financial Corp. – 447,251 cards
First Premiere Bank – 327,656 cards
HSBC Bank USA – 319,000 cards
Columbus Bank and Trust – 225,000 cards
First Union Corp. – 184,300 cards
* Card Source One from Thomson Financial Media, an Internet resource profiling banks, < www.cardsourceone.com > May 7, 2001.
**Associates National Bank is an affiliate of Citigroup, which issues a standard privacy policy, differing only by the name of the institution involved. Verification occurred by checking the privacy policies of three different Citigroup affiliates, Associates National Bank, Citibank, and Hurley State Bank. Therefore, the parent company, Citigroup, was used instead.
***Judgment of Metris Companies Inc. was based upon information from its affiliate Direct Merchants Bank, because investigation into Metris revealed that its credit cards were issued through this institution.

Citizen Action of New York was not able to obtain a privacy notice from First Premiere Bank, because it was not on the Web site, none of our supporters had access to the policy, and the company would not send a copy of the policy to individuals who are not current

customers. This company automatically received an overall failing grade due to the inability of a consumer who is not a cardholder to obtain a copy of their privacy policy. Consumers should be able to review the bank's privacy policy before obtaining a credit card and divulging private information.

Data Collection and Analysis

The data for this report were collected from May through July of 2001. The overall grades for each company's privacy policy notice resulted from analyzing sixteen different topics vital to allowing consumers to make an informed choice about sharing their personal financial information. The sixteen topics reflect a combination of the requirements established by federal regulation and the principles of Citizen Action's Campaign to Protect Consumer Privacy. A full listing of the topics used in this report, with a detailed explanation of each, is located in Appendix 1.

Banks received a grade for each of the sixteen topics, which were organized into three major categories. Appendix 2 is the scoring tool that contains a full listing of the criteria used to determine grades for each topic.

After the initial grading process, each topic grade received a numerical substitute, based upon a four-point scale. A score of 4.0 was assigned to every "A;" a 3.0 was given to every "B;" a 2.0 to every "C;" and 1.0 to every "D." A grade of "F" did not receive any points. Once the score was assigned to each grade, all sixteen scores for each credit card company were added together and divided by the total number of topics (16) to determine the average (mean) overall grade. This average number grade was then retranslated to an overall letter grade score. The scoring scale can be found at the end of the Scoring Tool in Appendix 2.

Using the above methodology, Citizen Action of New York measured whether:

1. The privacy notice of each of the top fifteen banks complied with the federal law and regulations.
2. The privacy notice – even if it was in strict compliance with federal regulations – is adequate to allow consumers to make an informed choice about how to protect their financial privacy.

RESULTS

Introductory Category: Notice available to the general public

Although the federal government does not require companies to distribute their privacy notice to individuals who are not current customers of the institution, consumers cannot make informed choices about which credit card company to choose without access to the policy before surrendering personal financial information. Therefore, this category examined whether or not each company's privacy notice was available to the general public, either via the Internet, or by calling to request one on the phone. Because of the paramount importance of this category, companies that did not make their privacy notice available to the general public before they are customers automatically received a failing grade.

Twelve of the companies made their privacy notice available on the Internet. Citicorp and People's Bank made their privacy notice available to individuals who request a copy by phone. First Premiere Bank did not make its privacy notice available to non-customers. Because of this fact, this last company failed automatically.

Introductory Category: Privacy notices are available to general public																
Company	Availability of Notice	First Union Corp.	Columbus Bank & Trust	HSBC	First Premiere Bank	FleetBoston Financial Corp.	First Consumers National Bank	People's Bank	Metris Companies, Inc.	CitiGroup	U.S. Bancorp	Bank of America	Chase Manhattan Corp.	Bank One Corp./ First USA Bank	Provident Bancorp Inc.	MIBNA America
	P	P	P	P	F	P	P	P	P	P	P	P	P	P	P	P

Overall Grades

Of the fifteen companies identified, three received an “F”, six received an overall passing grade of “D”, and six received an overall passing grade of “C”. First Premiere Bank failed automatically because its privacy notice was not available to the public, only current customers. Failure to meet this criterion resulted in an automatic failure. People’s Bank (2.4 out of 4.0 points) scored the highest; MBNA America (0.6 out of 4.0 points) scored the lowest. A copy of the entire report card can be found in Appendix 3.

Category Subtotals and Overall Grades Privacy notices of fifteen top banks that issue credit cards															
Company	MBNA America	Provident Bancorp Inc.	Bank One Corp./ First USA Bank	Chase Manhattan Corp.	Bank of America	U.S. Bancorp	Citigroup	Metris Companies, Inc.	People’s Bank	First Consumers National Bank	FleetBoston Financial Corp.	First Premiere Bank	HSBC	Columbus Bank & Trust	First Union Corp.
Category I: Clear and Understandable Notice	F	C	C	D	C	D	C	F	C	C	F	I*	C	F	F
Category II: Exercising the Right To Opt-Out	D	C	C	C	C	C	C	D	C	C	D	I	D	D	F
Category III: Comprehensive- ness of Information	F	C	D	F	C	D	F	D	B	F	B	I	F	C	D
Overall Grade (average of all 16 topics)	F	C	C	D	C	D	C	D	C	C	D	F**	D	D	F
* I means an incomplete because the privacy notice was not available to grade. ** Overall failure based upon the fact that the privacy notice was not available to the general public.															

Category I: Clear and Understandable Notice

Regulations issued by the federal government require that a credit card company's privacy notice be "clear and conspicuous" as well as "reasonably understandable." (12 CFR § 332.3(b)) In order to clarify these terms, the federal agencies provided several examples of both "clear and conspicuous" and "reasonably understandable."

Of the fourteen companies that were examined, all failed the reading grade level and twelve of them failed on reading ease. When all six topics in this category were averaged together, the failing scores were raised by the other topic scores so that nine were deemed to the requirements of the federal law for this category. Seven of the companies that passed received a "C." Two of the companies that passed received a "D." Five companies flunked, with an "F". MBNA America (0.3 out of 4.0 points) received the lowest points for this category. Citicorp and BankOne Corp/First USA Bank received the highest grades in this category, with 2.3 out of 4.0 points. First Premiere received an Incomplete in this category, as we could not acquire a copy of its privacy notice for analysis.

Category I: Clear and Understandable Notice															
Company	MBNA America	Provident Bancorp Inc.	Bank One Corp./ First USA Bank	Chase Manhattan Corp.	Bank of America	U.S. Bancorp	Citigroup	Metris Companies, Inc.	People's Bank	First Consumers National Bank	FleetBoston Financial Corp.	First Premiere Bank	HSBC	Columbus Bank & Trust	First Union Corp.
Clear, concise sentences	C	A	A	F	A	F	C	F	F	C	C	I*	A	F	C
Bulleted lists	F	B	A	F	B	B	C	B	A	B	F	I	C	A	F
Reading Grade Level	F	F	F	F	F	F	F	F	F	F	F	I	F	F	F
Reading Ease	F	F	F	F	F	F	C	F	C	F	F	I	F	F	F
Title of the Notice	F	C	C	C	C	F	A	C	C	A	C	I	C	F	C
Bold, Italics, and underlining	F	B	A	A	B	A	A	F	A	C	F	I	B	F	F
Category I Grade	F	C	C	D	C	D	C	F	C	C	F	I	C	F	F
Average points for Category I	0.3	2.0	2.3	1.0	2.0	1.2	2.3	0.8	2.0	1.8	0.7		1.8	0.7	0.7
* I means an incomplete grade because the privacy notice was not available to grade.															

Category II: Exercising the Right to Opt-Out

The most important reason to require banks to issue privacy notices is to alert customers to their right to opt-out of sharing their non-public financial information. This category examined each company's privacy notice to see if it reflected the spirit of the law by making it easy for their customers to understand and exercise their right to opt-out of information sharing if they so desired.

Of the fourteen privacy notices that were examined, thirteen of them passed this category. Eight of the notices received a "C." Five of the notices received a "D." First Union Corp. (0.8 out of 4.0 points) was the only company to fail this category. Both MBNA America and Metris Companies Inc. (Direct Merchants Bank) barely passed with a grade of 1.0. Of the companies that received a "C", Chase Manhattan Corp. and First National consumers Bank scored the highest, with 2.5 out of 4.0 points. People's Bank followed with a 2.3, and three other companies scored 2.2 points. Provident Bancorp was the only company to provide a TDD number for customers who need this option to exercise their opt-out. Because of the inability to obtain a privacy notice from First Premiere Bank, it received an Incomplete.

Category II: Exercising the Right to Opt-Out															
Company	MBNA America	Provident Bancorp Inc.	Bank One Corp./ First USA Bank	Chase Manhattan	Bank of America	U.S. Bancorp	Citigroup	Metris Companies, Inc.	People's Bank	First Consumers	FleetBoston Financial Corp.	First Premiere Bank	HSBC	Columbus Bank & Trust	First Union Corp.
Placement of opt-out	F	D	A	A	C	A	A	F	A	D	F	I	F	F	F
Number of places opt-out appears	F	A	A	B	D	C	B	F	A	A	F	I	F	F	F
Clear introduction	F	F	F	F	F	F	A	F	F	A	F	I	F	F	F
Variety of methods to opt-out	F	C	D	D	B	C	F	F	D	F	D	I	D	D	C
Ease of opt-out	C	C	C	B	B	B	C	C	B	C	C	I	C	C	B
Joint accounts	A	C	C	A	C	C	F	A	C	A	A	I	A	A	F
Category II Grade	D	C	C	C	C	C	C	D	C	C	D	I	D	D	F
Average points for Category II	1.0	1.8	2.2	2.5	1.8	2.2	2.2	1.0	2.3	2.5	1.2		1.2	1.2	0.8

Category III: Comprehensiveness of Information Provided

Because information is crucial to the customer's ability to make an informed choice about the sharing of their private financial information, this category analyzed each company's privacy notice in relation to the comprehensiveness of the information that was provided. Some of the topics are federal requirements, while other topics go beyond the federal standards to evaluate a company's efforts to help the consumer understand what the federal requirements actually mean.

Of the fourteen companies whose privacy notices were analyzed, nine passed this category. People's Bank (3.0 out of 4.0 points) and FleetBoston Financial Corp. (2.8 points) received a "B" in this category. There were three companies that received a "C," four companies received a "D," and five companies an "F". First Premiere Bank received an incomplete due to the fact that we were not able to obtain a copy of its privacy notice. Bank of America, U.S. Bancorp and Bank One Corp./First USA Bank provided consumers with privacy notices that included directions on how to ask direct marketing services and credit reporting agencies to stop solicitations from other companies.

Category III: Comprehensiveness of information provided															
Company	MBNA America	Provident Bancorp Inc.	Bank One Corp./ First USA Bank	Chase Manhattan Corp.	Bank of America	U.S. Bancorp	Citigroup	Metris Companies, Inc.	People's Bank	First Consumers National Bank	FleetBoston Financial Corp.	First Premiere Bank	HSBC	Columbus Bank & Trust	First Union Corp.
Extent of Information Collected	D	B	A	F	A	B	D	F	A	D	B	I	D	A	F
Ability to Review and Correct Information	F	C	F	F	C	F	F	C	C	F	C	I	F	F	C
Type of Non-Public Information Collected	F	A	F	F	A	C	F	A	A	F	A	I	C	A	A
Ongoing Legal Sharing of information	F	F	F	C	F	F	F	F	C	F	C	I	F	F	F
Category III Grade	F	C	D	F	C	D	F	D	B	F	B	I	F	C	D
Average points for Category III	0.3	2.3	1.0	0.5	2.5	1.3	0.3	1.5	3.0	0.3	2.8		0.8	2.0	1.5

DISCUSSION AND RECOMMENDATIONS

These findings indicate that banks that issue more than 116 million credit cards to US consumers are doing a poor to failing job of notifying consumers regarding their privacy rights. No bank got better than an overall grade of C, and well more than half received a D or F, fundamentally failing to provide an understandable explanation to consumers about their federal privacy rights.

Federal regulators have an obligation to assure that banks fully comply with the privacy notice regulations. The most glaring instances of banks violating the federal regulations is in the category that measured the federal requirements for a “clear and conspicuous notice” that is “reasonably understandable.” Not only did five banks fail to meet this standard but every bank failed to communicate the privacy notice in language that an average American can understand. Every notice failed the readability standard of a 8th grade average reading level, with every score representing a 12th grade reading level, as judged by the Flesch-Kincaid Readability Standard. None of the banks’ notices would meet criteria for reading ease established by the laws in several states.³

For example, the following is a sentence from the Metris/Direct Merchants Bank privacy notice:

We may disclose to “non-affiliates” for the purpose of those companies offering their products and/or services to you. The information we disclose to non-affiliates is limited to Identifying Information only; however, the Identifying Information may have been selected using Application Information and Transaction Information criteria. (Flesch Reading Ease for the above paragraph is 1.9% out of 100%.)

Aside from the fact that companies presented their notices in wording that was unintelligible to the average American, half of the banks did not present their document in a format that made it easy for consumers to read. While eight of the fourteen companies have taken the necessary steps to present their document in a format that is easily read, six companies failed at least one of the topics related to this category. Privacy notices that are poorly spaced, are formatted in long paragraphs, fail to highlight important text, and use small type size are not consumer-friendly and discourage consumers from reading these important materials. See Appendix 4 for other examples of poor practices.

By not making its privacy notice available to the public at-large, First Premiere Bank showed the most glaring fault. This weakness prevents consumers from making an informed choice related to personal financial privacy when shopping for a credit card. Consumers must first surrender their personal financial information before being informed of the bank’s privacy

³ The Flesch Reading Ease score is judged on a scale of 100. The higher the score, the easier the document is to read. The grading system utilized in this report reflect the standards established by law in several states throughout the country. Arkansas, Indiana, Kentucky, and Ohio have set a standard that all insurance plans must score at least a 40 on the Flesch Reading Ease Scale, only People’s Bank (41.1) and Citigroup (40.2) would pass this standard. None of the credit card companies’ notices would meet requirements set by Connecticut and Florida, which require a minimum score of 45; or that of Maine, which requires a minimum score of 50. (Hochhauser, 1997)

policy. The ability of this company to legally act in such a manner also highlights a glaring weakness in the federal laws and regulations, which mandate only that companies make a copy of their privacy notice available to their customers, not the general public. This oversight should be corrected immediately by both the federal government and the individual company.

Most of the companies made it difficult for their customers to opt-out of having their information shared. They did this by:

- disguising the directions for how to opt-out,
- hiding the opt-out section of the notice,
- minimizing the methods consumers could utilize to inform the company of their decision to opt-out, and
- making each member of a joint account opt-out on his/her own.

Every bank failed in at least one of these four areas.

Also, with two exceptions – Citigroup and First Consumers National Bank – every bank actively discouraged consumers from exercising even the minimal privacy rights available under the law and most did so ***within the opening paragraph of the notice***. Twelve companies, out of the fourteen that were examined, did not mention within the first paragraph that consumers could follow the directions in the notice to affirmatively choose to protect some financial information. But that ability is at the heart of why consumers are being sent the notice in the first place. In fact, many companies tried to conceal the contents of the notice by reassuring their customers with false or misleading statements that inaccurately reflected the content of the notice. These actions have dramatic impact on the consumer, who could be discouraged from reading the entire notice based upon the content of the first paragraph.

For example, near the beginning of the Bank of America privacy notice, under the heading “Protecting Information About You From Marketers Outside the Bank of America (BOA) Family” there are the following sentences:

You don't need to take any action to prevent disclosure. [Italics in the original.] While we may offer products and services on behalf of outside companies, Bank of America and companies that work for us control the information to make these offers.

But, three pages later buried in a section titled “Sharing Information With Companies that Work for Us” is the federally-required disclosure that in fact acknowledges that BOA will share private information with marketing firms:

In addition, we may share any of the five types of customer Information with companies that work for us to provide marketing and other services or other financial institutions with whom we have joint marketing agreements.

One way in which companies could have reduced the difficulty of their privacy notices would have been to implement an “opt-in” procedure, which would require consumers to give the company permission to share their personal financial information with others. The opt-out method of privacy protection automatically leads to a more complex system where companies are trying to explain very complicated regulations to consumers. By choosing the opt-in method, companies could easily explain to their consumers what they need to do in order to allow the company to share the consumer’s information. The “opt-in” system would also provide incentives to companies to provide the consumer with as much information as possible in an easy-to-read format, because under this system, a company has to convince consumers that they should share their private information. None of the banks in this analysis chose the consumer friendly opt-in.

Recommendations:

This analysis points to the concerns offered by consumers and advocates during the congressional debate on the Gramm-Leach-Bliley Act. The research shows that the law and regulations are written to benefit the financial institutions, not consumers. Companies have exploited the vague language in the regulations to undermine the general intent of the privacy protections.

The results of this study lead USAction and Citizen Action of New York to believe that stronger privacy protections are required on a federal level:

- Close the privacy loopholes that were included in the Gramm-Leach-Bliley Act (GLBA).
 - Forbid banks from sharing private information with their affiliates unless the consumer consents.
 - Forbid banks from sharing private information with companies based on a joint marketing agreement.
 - Forbid banks from sharing private information with companies based on contractual agreements unless the information is necessary to provide requested services related to an existing account.
- Adopt new regulations that set objective, measurable standards for the “clear and conspicuous” requirement, instead of using vague definitions that are open to interpretation and debate.
- Require an opt-in system, instead of the current opt-out. This step will empower consumers to make informed decisions and send a message that the federal government is on the side of its constituents, not large corporate banks.
- Close existing loopholes that allow banks to utilize a customer’s private financial information, even after they have opted-out of sharing this information. These loopholes minimize the effectiveness of opting-out, as they allow financial institutions

to continue sharing information with too many people, against the wishes of the customer.

Until the federal government acts, corporations will further erode the privacy of America's citizenry. As technological advances continue, financial institutions will have increased ability to gather and store financial data on every one of their consumers, which could lead to decreased confidence in the American banking system, both domestically and internationally.⁴

Americans have the right to expect that their financial information will be kept private and not be used for commercial purposes without their explicit permission. In the brave new world of our information age, where vast quantities of information can be shared instantly and globally, the potential for growing abuse and invasion of privacy is unlimited.

Congress should stand up to the banks and financial sector and act to provide strict personal privacy financial protections to American consumers. And financial institutions should stop running rough shod over the weak laws that now exist and instead voluntarily provide clear, understandable instructions to consumers about their privacy rights, the sharing of personal information and how to easily act to protect their financial privacy.

⁴ We are already seeing this to a certain extent in that American banks and other financial institutions do not comply with the much stricter European Union privacy standards for electronic commerce. "Safe-harbor" provisions negotiated between the EU and the US do not include financial services firms, jeopardizing contractual relationships between American financial institutions and their EU partners. (Simpson, 2001)

APPENDIX 1

Narrative Explanation of Grading Topics

This report analyzed the privacy policy notices of banks using 16 topics grouped together into three main categories: (1) clear and understandable notice, (2) exercising the right to opt-out, and (3) the comprehensiveness of information provided. There was also an introductory category assessing the availability of the privacy notice to the general public. This latter category did not figure into the final grading unless a company failed it, in which case they failed overall. The topics are explained below.

Introductory Category: Privacy Notice is available to the general public

- The federal regulations do not require that banks and other financial institutions provide copies of their privacy policies to the general public (individuals not currently a customer of their institution). From a consumer standpoint, this is a serious omission in the federal law because it prevents consumers from comparing privacy policies much like they compare interest rates before selecting a credit card company. Therefore, companies received grades in this category based upon whether or not they provided access to their privacy policy for non-customers. Companies who passed this category either sent consumers a copy of their privacy policy through the mail (solicited by a phone call) or post it on the Internet. Companies who failed this category did not make their privacy policies available to the general public. **Companies who received a failing grade in the category automatically received an overall failing grade.**

Category I: Clear and Understandable Notice

- **The privacy notice uses clear, concise sentences-** This topic reflects the example “clear and concise” provided within the federal regulations (12 CFR §332.3(b)(1)). Privacy notices that use understandable, brief sentences are much easier for consumers to read. The difficulty of the notice increases as the sentences become longer and more complex. Hochhauser (2001) indicates that sentences averaging 15 – 20 words are easily understood. The highest grades in this category went to companies that kept the average sentence length of their privacy notice to 20 words or less. The lowest scores went to companies whose privacy notices averaged over 25 words per sentence.
- **Short explanatory sentences or bullet lists are used whenever possible-** This topic was provided to banks as an example within the federal regulations (12 CFR §332.2(b)(2)). By providing brief bulleted lists, companies make the privacy notice easier for consumers to read. Privacy

notices that have lists grouped together in paragraph format or in long, drawn out sentences are difficult to follow. Companies receiving high grades in this category had all lists within their privacy notice bulleted in short phrases. Those receiving low grades bulleted few, if any, of their lists.

- **Reading Grade Level**—The average American reads at a junior high grade reading level. (Hochhauser, 2001) Each company's privacy notice was entered into the Microsoft Word program to determine the Flesch-Kincaid Grade Level, a widely used grading tool for determining the readability of a document. In fact, the formula serves as the readability standard for The United States Department of Defense. (Hochhauser, 1997) In assessing the readability of a company's privacy notice, the average American's reading level, 8th grade, received the highest grade. The lowest score went to those banks whose notices were scored at the most difficult level, 12th grade.
- **Reading Ease**- The Flesch Reading Ease grades written materials on a scale of 0-100%. The higher the score, the easier a document is to read. For example, a document that receives a score of 90% will be easier to read than a document that receives a score of 30%. Several states have legal requirements for reading ease for any notices issued by an insurance company. Ohio, Arkansas, Indiana, and Kentucky require that insurance policies receive a score of at least 40% on the Flesch Reading Ease scale, Connecticut and Florida require a minimum score of 45, and Maine requires a minimum score of 50. (Hochhauser, 2001). Since these are well-established guidelines, the same standards are used in this report. Privacy notices receiving the highest grade scored 50 or better on the Flesch Reading Ease. Those receiving the lowest grade earned under 40 on the Flesch scale.
- **The title of the notice clearly states its nature**- Customers make a decision about whether or not they should read a document based upon its title. Companies can discourage the reading of their privacy notice by titling it in a manner that minimizes the likelihood that consumers will learn how companies use their personal financial information. Therefore, companies received a grade based upon the wording of their privacy notice title. High grades went to companies that reflect the notice's importance and utilize the term "opt-out" within the title. Low scores went to companies that minimize the document's importance within the title.
- **Bold, Italics and Underlining**- Formatting tools such as bold lettering, italics, and underlining help customers to identify text that is more important. Some customers will glance through a privacy notice reading only information that is formatted in one of these ways. Therefore, it is crucial for companies to distinguish important text using one of these formatting methods and to ensure that only important information is set

apart. High grades went to companies who used bold, italics, and underlining in an effective manner to help customers make an informed decision about opting-out of sharing their personal financial information. Low scores went to companies who either did not use formatting to distinguish important text or who emphasized phrases that could mislead the consumer.

Category II: Exercising the Right to Opt-out

- **Conspicuous placement of opt-out notice**—This topic examined the placement of the opt-out notice within the overall privacy notice of each institution. Most people read only topic headings. If they move beyond the heading of the section, they are likely to read the first sentence to make a determination as to whether they will continue reading. Companies received high grades if they have notices that draw a consumer’s attention to the opt-out notice by including a title that clearly identified the section’s nature and by distinguishing the opt-out information from the surrounding text. Notices that did not distinguish the opt-out information from other surrounding materials and did not have a title that adequately reflected the importance of the section received the lowest grade.
- **Number of Places the term “opt-out” appears-** Opt-out information should appear prominently within the privacy notice. This topic assessed the number of places that the term “opt-out” appeared, maximizing the chance that customers would see the term and easily identify what they have to do if they wish to exercise this option. Companies receiving high grades in this category included the term “opt-out” in all section headings where it was relevant, and within the text of the section that discussed the consumer’s ability to opt-out. Companies who received a low grade in this category did not use the term “opt-out”, choosing instead a term that could be misleading to consumers.
- **Clear Introductory Paragraph-** The introductory paragraph of the privacy notice establishes a general overview of the privacy notice. Customers will often determine whether or not they will read the document based upon the information contained within the first paragraph. Therefore, if a company misleads the customer in the first paragraph, they can have a dramatic impact on whether or not that individual reads the notice. Companies who received a high score in this topic mentioned the right to opt-out somewhere within the introductory paragraph. Companies that received low scores did not mention the term opt-out, or any comparable concept.

- **Variety of methods in opting-out**—This topic assessed banks based upon the number of ways they offered consumers to opt-out of sharing their private financial information. By offering a wide range of methods to opt-out, companies increase the chance that consumers who want to opt-out will actually do so because they find at least one technique easy-to-use. There are seven different ways an institution could allow a consumer to opt-out: mail-in form, written letter, toll free phone number, e-mail, in-person at a local branch, Internet form, or TDD dialing. Each privacy notice must directly mention each method in their privacy policy in order to receive credit for it. Grading took place based upon the number of ways an institution allowed its customers to opt-out. High grades went to companies that discussed a full range of options to exercise the right to opt-out. Low grades went to companies who provided minimal options.
- **Ease of opting-out**—This grade reflected whether companies offered consumers easy methods to opt-out of sharing their private financial information. Typically, the most widely available and therefore the easiest methods for consumers to use are a toll-free phone number or a form that can be filled out and returned by mail. The technological revolution has also made the Internet an easy option for many Americans. For this topic, companies were graded on whether they provide consumers with the choice of opting-out through a toll free phone number, a mail-in form, and the Internet. High scores went to corporations that offered all three options. Low scores went to companies that offered none of these options, as well as to those that offered the Internet without one of the other two options, which are more widely available.
- **Opt-out for joint accounts**—This topic examined how banks treated opt-outs for consumers who have a joint account. Often consumers who opt-out of a joint account will automatically assume that their decision applies to every individual on the credit card, whether that is accurate or not. High scores went to banks that automatically opt-out every member of an account when one member exercises their right to opt-out. Low scores went to companies that make each individual member of an account opt-out for themselves.

Category III: Comprehensiveness of Information Provided

- **Extent of information provided**—This topic assessed companies on the amount of information they provide to consumers in their privacy notices. Federal regulations mandate that companies include such information as the categories of affiliates with whom information will be shared, categories of non-affiliated third parties with whom information will be shared, how to opt-out, and categories of information that will be shared, with examples for each category (12 CFR §332.6(a)). Companies that

scored the highest in this category went beyond what the law requires to include a full listing of affiliates and the categories of non-affiliated third parties with whom they share information, as well as detailed examples of pieces of information that the company collects and shares. Low scores reflected companies who strictly followed the law and did not expand on the information they provided to their customers.

- **Opportunity to review and correct information collected**—The records held by financial corporations can have a dramatic impact on a consumer’s future transactions. Therefore, consumers should have the ability to review and correct all of the information that a company collects about them to ensure that the records remain current and accurate. Companies that received high scores provide customers with a printout of all information that they have upon request, allowing the customer to verify it and make any necessary corrections. Companies with low scores did not state in their notice whether consumers had the right to review and correct information collected about them.
- **The categories of non-public personal information that are collected**- Federal regulations require that companies inform their customers about information they collect, and provide examples (12 CFR §332.6(c)). Companies receiving high grades surpassed the federal requirements by providing a number of examples in each category, informing customers as to the scope of the information that is collected. Companies that scored low did meet the federal regulation; however, the examples they used did not adequately demonstrate to their customers the scope of the information that is collected.
- **Ongoing Legal Sharing of Information**- The regulations issued by the federal government contain a number of clauses that allow companies to continue to legally share a customer’s private financial information, even after they have opted-out. The Fair Credit Reporting Act (FCRA) gives customers the ability to opt-out of disclosures of certain information among affiliates; the federal regulation mandates that companies inform their customers of this right. (12 CFR §332.6(a)(7)) Federal regulations also require a separate statement of the categories of information disclosed under 12 CFR 332.13 (companies that have a contract to perform services for the bank which may include marketing activities pursuant to a joint agreement), as well as the categories of the third parties that have been contracted. (12 CFR §332.6(a)(5)) Federal law also mandates that companies inform customers that further information may be disclosed “as permitted by law” even if the customer chooses to opt-out. This information relates to non-affiliated third parties that have contracted with the company to perform services and to information shared to protect against fraud or to comply with a subpoena. (12 CFR §332.6(b)) Companies that received a high grade for this topic surpassed the federal

requirements to make it clear and easy for average consumers to understand that some or all of their private financial information will continue to be shared in certain circumstances. Companies that received a low grade merely met the federal minimum, a standard that favors corporations not consumers.

Overall, Category, and Topic Grades

- **The overall grade-** The overall grade for a bank was calculated by determining the average (mean) of the total points for all 16 topics; this number was then converted into an overall letter grade based on the scoring scale at the end of Appendix 2.
- **Category grade-** The category grade for a bank was calculated by determining the average (mean) of the total points for all topics in that category; this number was then converted into a category letter grade based on the scoring scale at the end of Appendix 2.
- **Topic grade-** Each of the 16 topic grades were determined by the Scoring Tool in appendix 2. The points for each letter grade are based on the scoring scale at the end of appendix 2, a scoring scheme used by many colleges.



Protect Your Privacy

Campaign to Protect Consumer Privacy

Consumers' Privacy Concerns

Consumers want to know what information corporations are collecting about them. Corporate notices to consumers must be easy to understand and available at the time consumers begin shopping for a financial product, insurance policy or health service.

Consumers want corporations to get their permission before they give personal financial and health information to another company. Consumers do not expect that companies will be giving information about their car loan or medical history to another company that is a member of the same mega financial conglomerate. Consumers do not want telemarketing companies using their personal information to develop more sophisticated marketing plans.

Consumers want to be able to review and correct the information that corporations have collected about them. In addition, consumers want to know whether corporations have a good track record on protecting the privacy of the information they collect.

Consumers want corporations to use reliable and verifiable technology and procedures to protect the confidentiality of the information they collect about consumers. While the advent of the computer and Internet have many benefits for consumers, the ease of sharing huge quantities of information and the incidence of hacking pose new threats to consumer privacy.

Consumers want strong state and federal privacy laws and regulations with rigorous enforcement. The government must conduct routine audits to determine whether corporations are complying with privacy requirements. There should be stiff sanctions to punish privacy violators and consumers should have the ability to sue companies that fail to protect their confidential information.

Citizen Action of New York
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APPENDIX 2

Scoring Tool

The scoring tool detailed below describes the criteria for grades issued in each topic of the report card. The scoring scale for topic, category and overall grades is listed at the end of this appendix. A narrative explanation of each topic can be found in Appendix 1 starting on page 17. A full copy of the report card can be found in Appendix 3 on pages 31-32.

Introductory Category: Privacy Notice is Available to the General Public

No points given for passing this category; failure in this category means the privacy notice receives an overall failing grade.

- The notice is available, over the web or through the mail, to the general public before they make decision to become customers—Pass
- The notice is not available either through the mail or over the Internet to consumers before they are customers—Fail

Category I: Clear and Understandable Notice

The federal regulations require that banks write their privacy notices in a format that is “clear and conspicuous.” In order to help define this term, the regulations define two separate terms, “reasonably understandable” and “designed to call attention to the nature and significance of the information,” with examples of each. The following topics grade the banks on whether their notices are clear and understandable..

Clear, Concise Sentences—4 points possible

- The privacy notice has an average sentence length of 20 words or less—A (4 pts.)
- The privacy notice has an average sentence length of 21-25 words—C (2 pts.)
- The privacy notice has an average sentence length of 26 or more words—F (0 pts.)

Bulleted Lists Whenever Possible—4 points possible

- All lists are bulleted, and bulleted lists are stated in short phrases—A (4 pts.)
- Most lists are bulleted, and bulleted lists are stated in short phrases—B (3 pts.)
- Some lists are bulleted, and bulleted lists are stated in short phrases—C (2 pts.)
- Few or no lists are bulleted, and/or bulleted lists are stated in long phrases or sentences—F (0 pts.)

Reading Grade Level—4 points possible

- 8th grade level-----A (4 pts.)
- 9th grade level-----B (3 pts.)
- 10th grade level-----C (2 pts.)
- 11th grade level-----D (1 pt.)
- 12th grade level-----F (0 pts.)

Reading Ease—4 points possible

- The privacy notice has a Flesch Reading Ease score of 50 or above---A (4 pts.)
- The privacy notice has a Flesch Reading Ease score in the range of 45-49—B (3 pts.)
- The privacy notice has a Flesch Reading Ease score in the range of 40-44—C (2 pts.)
- The privacy notice has a Flesch Reading Ease score of 39 or below—F (0 pts.)

Title of the Notice—4 points possible

- The privacy policy notice title reflects its importance and reflects the consumer’s right to opt-out—A (4 pts.)
- The notice is called “Privacy Policy,” “Privacy Notice,” or a similar term—C (2 pts.)
- The notice’s title fails to reflect its importance in regard to right to opt-out—F (0 pts.)

Using bold lettering, italics, and underlining—4 points possible

- All of the important information is bolded, italicized or underlined—A (4 pts.)
- Most of the important information is bolded, italicized, or underlined—B (3 pts.)
- Some of the important information is bolded, underlined, or italicized—C (2 pt.)
- Little or no important information is bolded, italicized, or underlined and/or misleading information is emphasized—F (0 pts.)

Category II: Exercising the Right to Opt-out

The most important aspect of the privacy notice is alerting consumers to their right to opt-out of having their private financial information shared. Therefore, notices were graded based on the ease with which customers can find and utilize the right to opt-out.

Conspicuous Placement of Opt-out—4 points possible

- The opt-out directions are easily distinguished from the surrounding text and the title of the section makes it clear consumers have the right to opt-out—A (4 pts)
- The opt-out directions are easily distinguished from the surrounding text, but the title of the section does not make it clear that consumers have the right to opt-out—C (2 pts.)
- The title of the section makes it clear that consumers have the right to opt-out, but the opt-out directions are not distinguished from the surrounding text—D (1 pts.)
- The opt-out directions are not easily distinguished from the surrounding text and the section title does not make it clear that consumers have the right to opt-out—F (0 pts.)

Number of Places “Opt-Out” Appears—4 points possible

- The term “opt-out” appears in all section headings where it is discussed and within the text of the sections as well—A (4 pts.)
- The term “opt-out” appears in all of the section headings in which it is discussed or within the text of the sections—C (2 pts.)
- The term “opt-out” does not appear anywhere within the privacy notice—F (0 pts.)

Clear Introductory Paragraph—4 points possible

- The bank mentions customers’ right to opt-out of sharing their personal financial information within the first paragraph and the first paragraph contains no misleading information—A (4 pts.)
- The bank mentions the term opt-out within the introductory paragraph, but it also includes misleading information—C (2 pts.)
- The bank does not mention the customer’s right to opt-out within the first paragraph of the notice and it misleads the customer—F (0 pts.)

Variety of Opt-Out Methods (toll-free phone number, mail-in form, Internet, TDD, personal visit to a local branch, hand written letter, or e-mail)—4 points possible

- 6-7 methods are listed--A (4 pts.)
- 4-5 methods are listed--B (3 pts.)
- 3 methods are listed-----C (2 pts.)
- 2 methods are listed-----D (1 pt.)
- 1 method is listed-----F (0 pts.)

Ease of Opting-Out—4 points possible

- It is possible to opt-out through a mail-in form, a toll-free phone number, and the Internet—A (4 pts.)
- It is possible to opt-out using two of these three methods: Internet, mail-in form, or a toll-free telephone number—B (3 pts.)
- It is possible to opt-out using either a mail-in form or toll-free phone number, but not both—C (2 pt.)
- It is possible to opt-out via the Internet, but neither a mail-in form nor a toll-free phone number are options—D (1 pts.)
- There is no provision to opt-out through Internet, mail-in form or toll-free phone number—F (0 pts.)

Opt-Out for Joint Accounts—4 points possible

- An individual opt-out directive applies to all individuals that are members of the account—A (4 pts.)
- An individual opt-out directive only applies to the individual who makes the directive, unless otherwise specified—C (2 pts.)
- An individual opt-out directive applies to only the individual who opts-out, and there is no mention of opting out for others—D (1 pt.)
- The privacy notice does not state to whom an opt-out directive applies in cases of joint account—F (0 pts.)

Category III: Comprehensiveness of Information Provided

Privacy notices are only as effective as the information they provide to the customer. Therefore, the amount of information that banks provided to customers in their privacy notices was examined.

Extent of Information Provided—4 points possible

- The notice names all affiliates and provides a detailed list of examples regarding the information that is shared—A (4 pts.)
- The notice names some affiliates and provides a detailed list of examples regarding the information that is shared—B (3 pts.)
- The notice discloses categories of affiliates and provides a detailed list of examples regarding the information that is shared —C (2 pts.)
- The notice names some affiliates and provides a vague or limited list of examples regarding the information that is shared—D (1 pt.)
- The notice meets the federal requirements for disclosure of categories of affiliates and information shared, but does not fulfill the spirit of the regulations because it fails to give consumers enough useful examples and descriptions about what information is shared—F (0 pts.)

Opportunity to review and correct information collected—4 points possible

- Consumers may obtain a copy of all of the information a corporation has gathered about them and request that changes be made where it is incorrect—A (4 pts.)
- Consumers may check the information as it comes in their bills, and on other credit reports, and request that changes be made if it is incorrect—C (2 pt.)
- There are no guidelines stated in the notice for how consumers can verify the information the bank has collected about them and how to address possible incorrect information—F (0 pts.)

Categories of non-public information collected—4 points possible

- The notice lists the categories of information that a company collects, and provides a detailed list of examples for each category—A (4 pts.)
- The notice lists the categories of information they collect, and provides a list of examples that explains some of the intrusive information that is collected—C (2 pts.)
- The notice meets the federal requirements by listing the categories of information collected, but provides consumers with few examples that do not illustrate the intrusive nature of some of the information collected—F (0 pts.)

Ongoing Legal Sharing of Information—4 points possible

- The privacy policy notice makes it clear, easy-to-find and easy-to-understand that even after customers exercise their right to opt-out, the company can continue to legally share some or all of their customers' private financial information (a) with affiliates, (b) with companies under contract to provide business services, (c) with companies who sign a joint marketing agreement with the bank, and (d) with law enforcement agencies---A (4 pts.)
- The notice meets the federal requirements to indicate all the ways that the company can legally continue to share some or all of its customers private financial information, presents some additional information to illustrate the type of information sharing that will continue even after the customer opts-out, and provides the information in a way that a diligent reader can understand and find—C (2 pts.)
- The notice meets the federal requirements to indicate all the ways that the company can legally continue to share some or all of its customers private financial information but fails to communicate this information in a way that the average consumer can easily understand and easily find---F (0 pts.)

Scoring Scale

Topic letter grades and points

- A = 4 points
- B = 3 points
- C = 2 points
- D = 1 point
- F = 0 points

Overall and category averages and letter grades

- 3.6-4.0 average = A
- 2.7-3.5 average = B
- 1.7-2.6 average = C
- 1.0-1.6 average = D
- Below 1.0 average = F

APPENDIX 3 Report Card

Company	First Union Corp.	Columbus Bank & Trust	HSBC	First Premier Bank	FleetBoston Financial Corp.	First Consumers National Bank	People's Bank	Metris Companies, Inc.	Citigroup	U.S. Bancorp	Bank of America	Chase Manhattan Corp.	Bank One Corp./ First USA Bank	Provident Bancorp Inc.	MBNA America
Privacy notices are available to general public															
Availability of Notice	P	P	P	P	P	P	P	P	P	P	P	P	F	P	P
Overall Grades															
Overall Grade	F	C	C	D	C	D	C	D	C	C	D	F**	D	D	F
(average points for all 16 topics)	0.6	2.0	1.9	1.4	2.1	1.6	1.8	1.1	2.4	1.7	1.4		1.3	1.2	0.9
Category I: Clear and Understandable Notice															
Clear, concise sentences	C	A	A	F	A	F	C	F	F	C	C	I*	A	F	C
Bulleted lists	F	B	A	F	B	B	C	B	A	B	F	I	C	A	F
Reading Grade Level	F	F	F	F	F	F	F	F	F	F	F	I	F	F	F
Reading Ease	F	F	F	F	F	F	C	F	C	F	F	I	F	F	F
Title of the Notice	F	C	C	C	C	F	A	C	C	A	C	I	C	F	C
Bold, Italics, & underlining	F	B	A	A	B	A	A	F	A	C	F	I	B	F	F
Category I Grade	F	C	C	D	C	D	C	F	C	C	F	I	C	F	F
Average points for Category I	0.3	2.0	2.3	1.0	2.0	1.2	2.3	0.8	2.0	1.8	0.7		1.8	0.7	0.7
* I means an incomplete because the privacy notice was not available to grade.															
** Overall failure based upon the fact that the privacy notice was not available to the general public.															

Category II: Exercising the Right to Opt-Out

	Company	MBNA America	Bancorp Inc. Provident	Bank One Corp./First Manhattan	Chase Bank of America	U.S. Bancorp	Citi Group	Metris Companies	People's Bank National Bank	First Consumers National Bank	FleetBoston Financial Corp.	First Premier Bank	HSBC	Columbus Bank & Trust	First Union Corp.
Placement of opt-out	F	D	A	A	C	A	A	F	A	D	F	I	F	F	F
Number of places opt-out appears	F	A	A	B	D	C	B	F	A	A	F	I	F	F	F
Clear introductory Paragraph	F	F	F	F	F	F	A	F	F	A	F	I	F	F	F
Variety of opt-out methods	F	C	D	D	B	C	F	F	D	F	D	I	D	D	C
Ease of opt-out	C	C	C	B	B	B	C	C	B	C	C	I	C	C	B
Joint accounts	A	C	C	A	C	C	F	A	C	A	A	I	A	A	F
Category II Grade	D	C	C	C	C	C	C	D	C	C	D	I	D	D	F
Average points for Category II	1.0	1.8	2.2	2.5	1.8	2.2	2.2	1.0	2.3	2.5	1.2		1.2	1.2	0.8

Category III: Comprehensiveness of information provided

Extent of Information Collected	D	B	A	F	A	B	D	F	A	D	B	I	D	A	F
Ability to Review and Correct Information	F	C	F	F	C	F	F	C	C	F	C	I	F	F	C
Non-Public Information Collected	F	A	F	F	A	C	F	A	A	F	A	I	C	A	A
Ongoing Legal Sharing of information	F	F	F	C	F	F	F	F	C	F	C	I	F	F	F
Category III Grade	F	C	D	F	C	D	F	D	B	F	B	I	F	C	D
Average points for Category III	0.3	2.3	1.0	0.5	2.5	1.3	0.3	1.5	3.0	0.3	2.8		0.8	2.0	1.5

* I means an incomplete because the privacy notice was not available to grade.

** Overall failure based upon the fact that the privacy notice was not available to the general public.

APPENDIX 4

Best and Worst Examples in Privacy Notices from top 15 Banks that Issue Credit Cards

Category I: Clear and Understandable Notice

- **The privacy notice uses clear, concise sentences**

Best- Bank of America

Bank of America used short, succinct sentences to present its privacy notice, an average of 17 words per sentence. This makes it easier for customers to read through the notice and interpret what it is telling them.

Worst- People's Bank

People's Bank privacy notice averaged 30 words per sentence. These long sentences are difficult to follow and could discourage customers from reading through the entire document.

- **Short explanatory sentences or bullet lists are used whenever possible**

Best- People's Bank

People's Bank's privacy notice presents information in a format that is easy for customers to read. Short bulleted lists are used whenever possible. For this reason, the privacy notice from People's Bank appears much easier to read and much less intimidating, increasing the chances that customers will read it.

Worst- Tie between MBNA America and Chase Manhattan Corp.

Neither MBNA America nor Chase Manhattan Corp. effectively uses bulleting in their privacy notices. Each company uses bullets once throughout its privacy notice. Chase uses bullets in the introduction, to inform consumers about what is inside the privacy notice. MBNA only uses bullets to present what information is collected, and even in this instance, the bullets are not succinct, thereby neutralizing the overall effectiveness.

- **Reading Grade Level**

Best- NONE

Worst- ALL

Every company received the worst score possible, a 12.0 reading grade level.

- **Reading Ease**

- **Best- People’s Bank**

- People’s Bank had the highest reading ease based upon the Flesch Reading Ease score. The scale reads from 0.0-100.0. The higher the score is, the easier it is to read. People’s Bank scored a 41.1 on the scale.

- **Worst- HSBC**

- HSBC had the lowest score on the Flesch Reading Ease Scale, with a 31.4. This means that its notice was the most difficult to read.

- **The title of the notice clearly states its nature**

- **Best- First Consumers National Bank**

- First Consumers National Bank was the only bank to include privacy and “opt-out” in the title of its privacy notice. The title was in large block print at the top of the first page of the privacy notice.

- **Worst- MBNA America**

- MBNA’s privacy notice begins with the title “Your privacy is important to us.” This title is misleading and could discourage consumers from reading further; therefore, customers are more likely to miss that the notice includes important information about how they can protect their privacy.

- **Bold, Italics and Underlining**

- **Best- Bank One/First USA**

- Bank One/ First USA’s privacy notice puts in bold print every section that tells the customer what needs to be done in order to opt-out. They also bold section headings. The bold print is not used so much that it decreases the importance of the feature; however, it is used enough to ensure that the most important parts of the privacy notice are distinguished from the rest of the text.

- **Worst- Columbus Bank and Trust**

- While Columbus Bank and Trust did use bold and italics, its choice of what to highlight intentionally misleads customers. When text is bolded, an individual’s eye tends to automatically drift to that spot. By repeatedly (4 times) bolding text that reads “...you do not need to do anything,” while not highlighting text with opt-out information, Columbus Bank and Trust is repeatedly misleading customers into misreading the notice.

Category II: Exercising the Right to Opt-out

- **Conspicuous placement of opt-out notice**

Best- Citigroup

Citigroup's privacy notice prominently displays the opt-out information by beginning the section with a heading that is larger than anything else in the notice. Following this heading are four subsections that explain each opt-out choice. On another detachable page, is a form that allows the consumer to immediately see the subject of the document. This form is also easily distinguishable from the rest of the document.

Worst- MBNA America

MBNA's privacy notice did not include the term opt-out within the section heading. Nor was the information on how to opt-out prominently displayed in the section discussing it. By hiding this information within the notice, MBNA made it difficult for customers who wanted to opt-out to locate the information that they need in order to do so.

- **Number of Places the term "opt-out" appears**

Best- Tie between People's Bank and Bank One Corp./First USA Bank

Both Bank One Corp./ First USA Bank and People's Bank place the term "opt-out" in section headings that are prominently displayed, as well as in the text of the section where it is described. This format helps customers who want to opt-out to easily locate and identify exactly which information they need.

Worst- FleetBoston Financial Corp.

Fleet does not include the term "opt-out" anywhere within its privacy notice. Further, the information on opting out is included within the section titled "Sharing Information Within the Fleet Corporate Family." By including the opt-out information within this section and not informing its customers that this is where it is located, Fleet made the opt-out information very difficult to locate and identify.

- **Introductory Paragraph**

Best- Tie between Citigroup and First Consumers National Bank

Citigroup and First Consumers National Bank were the only companies to mention the customer's ability to opt-out within the first paragraph of the privacy notice. By doing so, they effectively informed the customer about what the notice was about, thereby increasing the chances the individual would read it.

Worst- Bank of America

Bank of America's privacy notice begins by informing customers that Bank of America does not share information with companies that are not affiliates. It then goes on to state, in italics, "you do not need to take any action to prevent disclosure." This sentence misleads consumers into thinking that there is nothing more that can be done to further protect their private financial information.

- **Variety of methods in opting-out**

Best- Bank of America

Bank of America outlines the most methods, a total of four, by which customers can exercise their right to opt-out. By providing customers a broad range of options, Bank of America is increasing the likelihood that consumers will exercise their right to opt-out, if they so choose.

Worst- Tie among MBNA America, Citicorp, and Metris

MBNA, Citicorp and Metris all mentioned only one method of opting out within their privacy notice. By limiting the number of choices that customers have, all three companies are decreasing the likelihood of customers exercising their right to opt-out, even if they want to.

- **Ease of opting-out**

Best- Tie between People's Bank and Chase Manhattan Corp.

Both People's Bank and Chase Manhattan Corp. included a toll-free phone number and a mail-in form. These two techniques have much more universal access than an Internet form, which also counted in this category.

Worst- 9 tied

Nine other companies' privacy notices provided only one easy means of opting-out.

- **Opt-out for joint accounts**

Best- Chase Manhattan Corp.

Chase Manhattan Corp. describes how it handles joint accounts by including the information in a section of its own, with a title that reads "Note for Joint Accounts." The heading is distinguished with italics. This allows customers who are in a joint account to easily identify what they have to do to exercise their right to opt-out.

Worst- Tie between Citigroup and First Union Corp.

Neither Citigroup nor First Union Corp. mentioned how joint accounts are handled within their privacy notice. Failure to mention this

topic leaves a question unanswered for customers who are members of joint accounts. This could lead to unintended sharing of information, depending on the company's actual policy.

Category III: Comprehensiveness of Information Provided

- **Extent of information provided**

Best- People's Bank

The privacy notice from People's Bank clearly details a broad number of categories. While several other policies provided a full listing of affiliates, People's Bank surpassed the others in the number of examples provided in their section about collecting information. By providing customers with detailed information about this topic, People's Bank allows its customers to make informed decisions about whether or not to opt-out of sharing their information.

Worst- First Union Corp.

First Union Corp.'s privacy notice does not list all of their affiliates. Further, while the notice includes what information is shared, with minor examples, it is difficult to understand. This confusion can lead customers to ignore their opportunity to opt-out.

- **Opportunity to review and correct information collected**

Best – Tie among People's Bank, Metris, and Bank of America

The Metris privacy notice, the People's Bank privacy notice, and the Bank of America privacy notice all have a separate section with information on how customers can correct wrong information. This section is clearly marked and easily identifiable.

Worst- 8 tied

Eight companies did not include any mention in their privacy notices on how customers could handle incorrect information.

- **The categories of non-public personal information that are collected**

Best- Tie between People's Bank and Bank of America

The privacy notices of People's Bank and Bank of America both reflect a commitment to make customers aware of exactly what information is being collected about them. Both notices provide numerous examples for each category. Further, they provide more categories of information than the majority of privacy notices, because they group the

information in a manner that makes it easier for the customer to understand.

Worst- MBNA America

MBNA America's privacy notice does not adequately inform customers about the information that is collected. MBNA's notice provides vague categories and generic descriptions to explain to customers the information that is collected. This means that the customer has to guess as to what information MBNA collects.

- **Ongoing Legal Sharing of Information**

Best- FleetBoston Financial Corp.

FleetBoston Financial Corp.'s privacy notice clearly outlines each of the legal exemptions. Fleet provides the most information for when information can be shared "as permitted by law." Fleet also makes it very clear as to what information can continue to be shared among affiliates, as well as what information can be shared under the marketing loophole.

Worst- Metris

Although Metris' privacy notice does do an average job of informing customers about what information can be shared through contractual agreements, it failed to adequately describe the information shared through the joint marketing exemption. Further, Metris did a below average job of informing customers of their right to opt-out of sharing information among affiliates. These failures mislead customers so they feel they have more protections than they actually do.

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