

FINANCIAL PRIVACY PROPOSAL  
QUESTIONS AND ANSWERS

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## Overall Message

- The President is fulfilling his commitment to press Congress to provide greater protections for the financial privacy of American consumers. [He pledged to propose legislation as he signed last year's Financial Modernization bill and again in his State of the Union.]
- The President believes that consumers should have the right to control how their personal information is used.
- The central principal of the Clinton-Gore plan: the more sensitive the information, the greater the protections to ensure that consumer is in control.
- Public interest in privacy protection will only continue to grow. The momentum is all one way. Those who assume the American people will wait for protections they view as essential, do so at their peril.

## **Timing and Political Prospects**

### **Question 1: Why is financial privacy legislation needed now?**

- *We must assure that consumers can enjoy the substantial benefits of technology and recent market changes with the same level of confidence in the financial system that they had before. An integral part of maintaining consumer confidence is maintaining adequate privacy protection.*
- We are in the midst of three significant changes in the financial services sector: a technological revolution, industry consolidation and a move from cash to greater reliance on electronic transactions. These changes have brought greater choice, lower costs, and more efficient services.
- Last year's financial modernization legislation was an important first step toward ensuring that financial privacy keep pace with the rapid changes in the market place. However, as the President said when he signed the bill and later in the State of the Union, additional steps are needed. This bill fulfills his promise to put forward a new plan to provide assurance to consumers.

## Timing and Political Prospects

**Question 2: Industry argues that we should wait and see how the privacy provisions of the Financial Modernization bill work. Those regulations are still under development. Why not wait and see?**

- The Financial Modernization bill only took the first step. But we know today what we need to give consumers' confidence in the financial system - control over how their information is used.
- It is clear that consumers need to have the right to choose whether their information is shared with affiliated firms or third parties. There is no compelling reason that choice should apply in an uneven way as it does today.
- Further, the sensitivity of information about your detailed spending habits or medical care requires immediate action. *The pace of technological advances - and thus the pace of information sharing - accelerates every day, and we should act to protect the most sensitive information immediately.*
- Firms are just now really beginning to take advantage of the new opportunities to affiliate made possible under last year's bill. They will be building large data warehouses of information about consumers in each of their affiliates. Isn't it better that the rules of the road for such information sharing is established now, before firms sink enormous sums into systems that will need to be redesigned?
- Finally, last year's legislation contained inconsistencies and certain problematic provisions -- targeted in this new proposal which the regulatory process has identified but cannot correct without further legislation. These problems need prompt attention to make the statute work effectively.

## Timing and Political Prospects

### **Question 3: Senator Gramm has made clear that legislation will not move this year? Why does this proposal matter?**

- Predictions about the fate of privacy legislation are made at one's peril. The public interest in this issue is only growing. Momentum for further legislation is mounting. The American people may demand that their Congress acts to protect their financial privacy.
- When the President first announced on May 4, 1999, his support for legislation to adopt financial privacy protections, some said it would never happen then and that the Financial Modernization bill would contain no privacy provisions; yet only months later, Congress passed and the President signed a bill that contained important new protections -- albeit only a first step.
- This President will be active until the last day of his Presidency working to meet the needs of Americans and pressing Congress to do the right thing. With this new proposal, the President will help build momentum for legislation.

## Timing and Political Prospects

**Question 4: Last year's bill called for a two-year Treasury Department study of information sharing between affiliated firms, yet the new proposal takes action on the issue before the study is complete. Isn't this proposal premature?**

- Our work on the study has informed this proposal. But we know that the question of information sharing among affiliates needs to be addressed now and shouldn't wait.
- The ongoing study will address several issues related to affiliate sharing practices and technologies, and will be extremely useful in informing both future regulatory implementation, and future legislative action on these issues.
- Although Congress gave Treasury 2 years to complete the study, we plan to conclude it this year, in order to better inform legislation and implementation of these proposals.

## **Relationship to Financial Modernization Legislation (Gramm-Leach-Bliley Act)**

**Question 5: Information sharing is one of the most powerful synergies driving affiliation between financial firms. Doesn't your privacy proposal undermine the very purpose of Financial Modernization that you so actively supported last year?**

- We believe that the benefits of affiliation are fully consistent with increased privacy protection.
- Last year's modernization bill allowed broad affiliation among financial companies, to increase efficiency in the industry, increase the choices available to consumers, and help institutions remain internationally competitive.
- Our firms will specifically be able to share information to serve their customers better through things like consolidated customer service centers and all-in-one monthly statements.
- When it comes to choice, institutions will prove to customers that they will use their information appropriately and truly for their benefit. We believe that our proposal will not inhibit the operations or growth of our financial firms, and that the choice of how information should be handled rightfully belongs in the hands of consumers.

## Relationship to Financial Modernization Legislation (Gramm-Leach-Bliley Act)

### **Question 6: What are the gaps in last year's Financial Modernization legislation that this proposal would fill?**

- This bill provides greater protection for consumers, and greater certainty for financial institutions, by filling gaps and clarifying key inconsistencies in the existing statute.
- ***Closing the Joint Marketing Loophole:*** This proposal closes the “joint-marketing” exception that would have allowed a firm to share a list without consumer choice if they were jointly marketing products with another firm.
- ***Earlier Notices:*** In addition, consumers would get privacy notices and choice earlier (upon application or request), so that she could effectively comparison shop on privacy policies. Current law appears to only require that these be provided when a customer relationship is established.
- ***Eliminating Exceptions:*** Unnecessary special exceptions for certain financial institutions will be closed. This bill eliminates those special exemptions, and treats financial institutions equally.
- ***Strengthening Enforcement:*** The bill also strengthens enforcement authority. Under existing law, institutions that are not regulated by a financial (bank, insurance or securities) regulator are subject to FTC enforcement. The bill strengthens the penalties that the FTC can seek and provides a “second set of eyes” for these firms, by granting new authority to State Attorneys General. It would allow them to pursue actions in coordination with the FTC against persons who violate the privacy laws and regulations under this bill.
- ***Limiting Reuse:*** Finally, current law does not preclude those who are transferred information (without consumer choice) for authorized purposes from reusing the information for their own profit. The proposal would close that gap.

## **Relationship to Internet Privacy**

### **Question 7: Is the new financial privacy proposal consistent with the Administration's position on online privacy?**

- Yes. The Administration's longstanding position has been to encourage self-regulatory efforts by industry in the on-line world. We have also consistently stated that legal protections are required for especially sensitive information, such as medical, children's on-line, *and financial records*.
- For medical records, this year will see historic, final rules that will legally guarantee key privacy protections.
- When children go online, the new rules under the Children's Online Privacy Protection Act ensure that web sites must get verifiable parental consent before the sites can gather children's personal information.
- For financial records, the President said, when signing the financial modernization bill last November, that the new law "takes significant steps to protect the privacy of our financial transactions." The President also said that the bill did not go far enough, and he promised to announce a new legislative proposal to complete the unfinished business. The proposal today, once enacted, would do just that.

## **Relationship to Internet Privacy**

### **Question 8: Would the proposal handle financial information online and offline any differently?**

- No. For these activities, the rules would apply identically to online and offline behavior. For instance, the rules would apply in the same way to information from a credit card purchase made in person or over the Internet.
- As under current law, most of the financial privacy proposal would apply to activities that are “financial in nature.” The special opt-in before sharing detailed descriptions of personal spending habits applies to any firm providing a payment service (checking account, debit card, credit card, or digital wallet) whether on-line or off-line.

## **Relationship to Internet Privacy**

**Question 9: The new proposal requires customer opt-in for descriptions of personal spending habits, while the Administration has supported opt-out for Internet privacy. How do you explain this difference?**

- The Administration believes that the details of your spending habits is especially sensitive information and deserves the more careful protection of the opt-in. The Administration also believes that less sensitive marketing activities should continue to be subject to an opt-out, both for financial institutions and for the on-line world generally.
- The President's proposal would apply an opt-out for the sharing of financial information in order to include a customer on an aggregate marketing list. This sort of opt-out is consistent with Administration policy for on-line commerce, where we have encouraged companies to provide at least an opt-out for sharing of customers' information.
- In both settings where opt-out is required, individuals must have clear notice of how their information will be used, as well as an effective choice to say no to uses of their information of which they do not approve. In both settings, the information is being used to provide an entire group of consumers with a service, in contrast to the especially worrisome practice of singling out individuals for special scrutiny based on examination of particularly sensitive information.

## **Relationship to EU Negotiations on a Safe Harbor**

### **Question 10: How will the Administration's new proposal affect the safe harbor talks with the European Union?**

- It shouldn't affect those talks. The safe harbor talks focus on consumers in Europe, while the focus of the proposed legislation would be on American consumers.

### **Background:**

In March, the U.S. Department of Commerce and the European Commission announced a "tentative agreement" on the safe harbor approach for all sectors except financial services. That tentative agreement will be considered by the Member States in late May, with the intention that the agreement will be in place for the US-EU Summit at the end of May.

Because the regulations under the financial modernization act are not yet final, the EU and U.S. will continue working together with the goal of bringing the benefits of the safe harbor to the financial sector. Neither side anticipates problems with interruptions in data flows while they continue their good faith efforts to resolve these issues.

The Safe Harbor process will create a framework for transfers of personal data from the EU to the US. Companies that sign up for the safe harbor will be considered to have "adequate" privacy protections under European law. For such companies, agreeing to a set of commonsense privacy principles will assure that trade can proceed free from the threat of data blockages. Eliminating this threat to trans-Atlantic trade means jobs for Americans.

The safe harbor approach is also a milestone for the Administration's approach to e-commerce. The approach highlights the role of self-regulatory organizations on the Internet. Companies can agree to meet the standards set by these self-regulatory groups, which we believe can greatly reduce the need for cumbersome legal regulation of the Internet. In this way, the privacy approach in the safe harbor talks can serve as a model for flexible approaches in other e-commerce areas, including consumer protection in a global Internet. In addition, the safe harbor talks are an example of constructive action involving the US and the European Union on a complex trade issue.

## **Questions About Proposal Details: Consumer Choice and Affiliate Sharing**

### **Question 11: What does the bill do to improve consumer choice? Can firms share with affiliates without consumer choice?**

- Last year's legislation granted important rights to opt out of information sales to telemarketers and other unaffiliated firms ("third parties"). This proposal extends those protections to information shared with "affiliates" within a financial conglomerate.
- Under current law, these conglomerates can include everything from a bank to a data processor to a travel agency. Consumers dealing with one firm would not reasonably expect that information about them would be spread so widely.
- In addition, last year's legislation does not ensure that consumers will receive notice of a financial institution's privacy policies and practices early enough to make meaningful comparisons between institutions.
- In order to make comparison shopping easier, the proposal clarifies that consumers should be able to receive a firm's privacy policy upon request, or with an application for a product or service -- not just before they are about to sign on the dotted line.

## **Questions about Proposal Details: Consumer Access**

### **Question 12: Are the access and correction provisions really necessary? Don't existing laws (like the Fair Credit Reporting Act) adequate?**

- With all the important information about you that your financial firms may collect, not merely from its own records, but from affiliates and third parties, it is important that consumers have the ability to know what the firms know and ensure that decisions about what products to offer you and on what terms are not influenced by incorrect information.
- For example, if a bank learns from its insurance affiliate that, because of your driving record, you are in a high risk car insurance pool, and may choose to offer you higher priced credit services as a result, you should have the ability to know what they know and make sure it is right. Similarly, banks may not report bounced checks to credit reporting agencies, but their credit card company may not offer you their best deal on credit card rates if they think you bounce checks. If that information is wrong, you should be able to correct it.
- Assuring individuals the right to see their financial records and correct mistakes will empower ordinary individuals and reduce the risk that important mistakes will creep into the new holding companies' databases.
- The principle that individuals should have access to important information about themselves is built into American law and practice in many settings. The Privacy Act of 1974 ensures that Americans have access to information held about them in federal government files. The right to access is incorporated in the well-known OECD Privacy Guidelines, approved by the United States Government in 1980, as well as in the privacy practices the Administration has encouraged in the online setting.
- The law does provide some access and correction rights for financial records. When credit histories contain incomplete or inaccurate data, a person can be turned down for a job or for a mortgage or other loan. For this reason, the Fair Credit Reporting Act of 1970 includes strong assurances that individuals will be able to see their credit history and correct any mistakes. However, it does not cover all the information that a financial firm might get about you from affiliates or other sources.

## **Questions about Proposal Details: Consumer Access**

### **Question 13: Won't the new access rules be burdensome for industry?**

- No. In many instances, financial services firms already provide detailed customer account statements that let consumers see their important records. Where financial services firms already provide effective access and correction, the new provision should not be burdensome.
- The provision also states that individuals will have access to their records that are reasonably available to the institution. Institutions will not have to disclose confidential commercial information, will be able to recoup a reasonable fee for providing access to a consumer's financial information, and will not have to create any new records.

## **Questions About Proposal Details: Opt-In for Personal Spending Habits**

### **Question 14: Why has the Administration chosen to support opt-in for descriptions of personal spending habits?**

- A central theme of the Administration's privacy policy is that more sensitive information should be treated more carefully. We believe that the information included in the detailed descriptions of spending habits, such as a list of every purchase made on a person's credit card, is truly sensitive information.
- Consumers should be able to use a credit or debit card, or write a check, with confidence that their financial institution will not release this detailed personal information without consent. Similarly, consumers should know that their list of purchases will not become a target for private investigators or others who want to use people's payment history as a database to search.
- Just as we don't expect a postal worker to read our mail, we don't expect a bank processing our checks to take our most sensitive financial information and then sell a highly personal description of our personal spending habits to outsiders for marketing.
- Consumers have little choice but to rely on payment systems for their everyday life. It is hard to carry out their household affairs without a checking account or credit or debit card. And these systems are often the only way to make a purchase over the telephone or in the rapidly growing area of on-line commerce. As Americans use these payment systems more and more, Americans should have confidence that their payment history will be treated confidentially. The price of having a credit or debit card should not be to have every purchase made with that card available to outsiders unless the customer specifically requests otherwise.

## **Questions About Proposal Details: Opt-In for Personal Spending Habits**

**Question 15: Last year's legislation gave consumers the right to opt out of having their financial information shared with firms that were not affiliates of their financial institution. How does the opt out requirement work in conjunction with the opt in requirement for especially sensitive information?**

- This bill extends the consumers' right to opt out to include sharing among affiliates.
  - Before a financial firm can transfer an aggregate list of customers for marketing or other purposes, each consumer on the list will have had a chance to *opt out* of having information about him included in the transfer.
- We recognize, however, that some types of financial information are more sensitive than others.
- This proposal would require consumers to give affirmative consent (**opt in**) before a payment service provider could share a detailed description of personal spending habits with anyone -- medical records held by an insurance affiliate, for example, or information about who we write our checks to or who writes them to us.
- Just as we don't expect a postal worker to read our mail, we don't expect a bank processing our checks to take our most sensitive financial information and then sell a highly personal description of our personal spending habits to outsiders for marketing.

## **Questions about Proposal Details: Opt-In for Medical Information**

### **Question 16: How does the financial privacy proposal protect medical records within financial holding companies?**

- The proposal features strong protections for the privacy of medical records within financial holding companies:
  - First, for companies that are covered by the proposed medical privacy protections under the Health Insurance Portability and Accountability Act, the entire range of strict medical privacy provisions will apply.
  - Second, for life insurance, auto insurance, and other companies that are not covered by the proposed medical rules, the new proposal would require affirmative (opt in) consent before any health information goes from the company to an affiliate or outside company
  - Third, the proposal contains a new provision that would prevent companies inside financial holding companies from gaining any advantage, in sharing medical information, from their placement in the holding company. The new provision would only allow sharing of medical information, even with the opt-in, if the same information is required of all customers, including those who do not have any other relationship with the holding company. In this way, financial institutions would not gain any extra ability to share medical information when the medical information is held by their corporate affiliates.

**Questions about Proposal Details: Opt-in for Medical information:**

**Question 17: The sharing of medical records within holding companies was a contentious issue last year during consideration of the financial modernization bill. The Administration opposed the medical privacy provisions in last year's bill and they were dropped at your insistence? What has changed?**

- Last year, the Administration was seriously concerned that the proposal on medical records would actually *lower* medical privacy protections in major ways. The President's proposal, in sharp contrast, would assure that the strict medical privacy rules would have their full effect.
- In addition, the President's proposal adds important new protections for medical information within financial holding companies. *Even for companies that are outside of the scope of the proposed HHS rules, such as life and auto insurance companies*, medical information could be shared with other companies only with affirmative (opt in) consent, and companies would not gain any advantage in sharing medical information by being part of a financial holding company.

### **Questions about Proposal Details: Opt-in for Medical Information:**

#### **Question 18: Does this proposal mean that there is no longer any need for medical privacy legislation?**

- Not at all. Because of gaps in HHS’s legislative authority, the Administration also strongly believes that we need to enact comprehensive medical privacy legislation to supplement the protections of the HHS regulation.
- The President promised in the State of the Union this year that the proposed medical privacy rules would become final this year. At the announcement of the proposed medical rules, the President stated that they “represent an unprecedented step toward putting Americans back in control of their own medical records.” The President also, however, called for passage of a comprehensive medical privacy law. He pointed out, for example, that “only through legislation can we cover all paper records and all employers.”
- The proposal today would address the specific issue of limiting flows of personal medical information within financial holding companies. Additional legislation is needed to make sure that proper protections are in place for other uses of medical information.

## **Questions About Proposal Details: Joint Marketing and Other Exceptions**

### **Question 19: You say you are closing loopholes? Which exceptions have you eliminated?**

- ***First, we will close the joint marketing exception.*** Under last year's legislation, financial institutions can share customer information with other companies acting on their behalf or engaged in joint marketing arrangements with them. Consumers have no control over these transfers of information about them.
- This specific "joint marketing" exception was to avoid disadvantaging smaller banks that contract out many services including marketing because they are not part of financial conglomerates and cannot, therefore, rely on affiliate services.
- ***(Second, we will level the playing field between affiliates and nonaffiliates.)*** Therefore, there is no need for a special exception, particularly one that was not in fact narrowly targeted but undermined consumers' ability to prevent unwanted marketing.
- ***Third, we would eliminate special carve-outs for certain industries.*** Under this proposal, all financial firms will be treated equally.

## **Questions about Proposal Details: Enforcement**

### **Question 20: How would this bill improve enforcement of financial privacy protections?**

- ***Clarify what are violations:*** The proposal would clarify the nature of violations by making clear that it is a violation of law for an institution to fail to live up to the privacy policy disclosures that it makes to consumers.
- ***A second set of eyes (State AGs):*** The bill provides authority for States Attorneys General to enforce the privacy provisions with respect to institutions that are engaged in financial activities, but are not covered by a bank or other financial regulator. These institutions currently come under the jurisdiction of the FTC, which has enforcement powers different from those of financial regulators, and does not have similar examination authority. States will now be able to coordinate with the FTC to improve enforcement for these companies.
- ***Enhanced Penalties:*** The bill authorizes the FTC to seek monetary penalties. Under current law, penalties can only be sought by the FTC for a second violation.
- ***State AG Enforcement of Pretext Calling:*** The bill gives the States AGs similar additional authority to help enforce anti-pretext calling provisions that aim to deter identity theft.
- ***FTC Rulemaking for Certain Entities:*** It would give the FTC the same rule making authority under the Fair Credit Reporting Act as to firms not covered by bank, insurance, or securities regulators as those regulators obtained under last year's legislation for those types of firms.

## **Questions About Proposal Details: Redislosure and Reuse**

### **Question 21: What effect would this proposal have on the ability of authorized recipients of information to reuse the information for their own purposes?**

- Last year's legislation allows third parties that receive information from a financial institution to transfer the information to others for permitted purposes. However, they can reuse the information, including to do their own marketing, without limits.
- This proposal would tighten the limits on a third party's ability to pass customer information along to another firm and extend the limits to apply to affiliates. It would also limit an affiliate's or third party's ability to reuse information it receives about a customer for its own marketing purposes.

## **Questions About Proposal Details: Preemption**

### **Question 22: How would this proposal preempt or otherwise affect state law?**

- The bill would not make any change in the preemption of state law.
- The inclusion of affiliate opt-out, of course, would apply as a new nationwide floor for consumer protection, as would the other protections included in the bill.

## Comparison to Other Bills

### **Question 23: How does the Clinton-Gore financial privacy proposal differ from the other major privacy bills before the Congress?**

- Two other significant financial privacy bills have been introduced, one led by Senators Sarbanes and Leahy, the other by Representative Markey and Senators Shelby and Bryan. (Senator Shelby also has introduced another targeted bill.)
- All are excellent efforts to provide leadership in this important area. While we differ on some details, we applaud the leadership of these members.

**The Sarbanes/Leahy bill (S. 187)** provides for *opt-out* choice for sharing of information among *affiliated firms*, and *opt in* choice for sharing with *third parties*. Our bill also provides an opt out for all affiliate sharing. However, we offer an opt in for the sharing of the most sensitive information on an individual's spending habits regardless of whether the sharing is with an affiliate or a third party. This provides stronger protections for this information than S. 187. The Clinton-Gore initiative also places an opt in restriction on the transfer of sensitive medical information among financial affiliates, again providing stronger protection. In addition, the Clinton-Gore plan also includes provisions - not found in the Sarbanes bill - that strengthen enforcement; address gaps in the protections in last year's financial modernization bill, such as the joint marketing exception; and cover a broader range of institutions and types of financial information.

**The Markey/Shelby legislation (H.R. 3320)**, like the Clinton-Gore initiative and unlike the Sarbanes bill, builds on the protections in last year's financial modernization law. The central difference is that the Markey bill requires opt in consent for sharing with both affiliates and third parties. This approach could have the unfortunate effect of denying consumers too many of the benefits of information sharing, as few customers might make the effort to opt-in even when they have not objection to the nature of sharing of certain less sensitive information. The Clinton-Gore approach focuses the higher opt-in standard on the most sensitive forms of information, namely medical and detailed personal spending data. In other areas, the Clinton-Gore package addresses issues not fully covered by the Markey bill, such as placing stronger restrictions on the reuse of information by those who receive it from financial institutions, and ensuring that consumers can "shop around" for the best privacy protections.

**The Shelby targeted legislation (S. \_\_\_)**: Shelby's bill, labeled the "Freedom from Behavioral Profiling Act of 2000," would require opt-in for sharing detailed information where you spend money and for what and where you earn money. Despite its name, it does not appear to cover descriptions of spending habits, as the Administration bill does, but that may be a technical drafting issue.