

Consumer Federation of California Education Foundation

Financial Privacy Report Card



*A survey of the privacy policies of California's
major financial institutions*

August 2008



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Four years ago, the Consumer Federation of California Education Foundation surveyed the privacy practices of the largest banks, insurers, brokerage firms and credit card issuers in California. Our 2004 Financial Privacy Report Card was the first of its kind.

The CFC Education Foundation is now releasing a new report card that analyzes the effects of California's landmark Financial Privacy Information Act (Senate Bill 1 of 2003) on major institutions that have operations both in California and in other states. The 2008 Report Card shows measurable improvements in the number of major financial institutions receiving superior privacy grades of A or B.

This report contains information to assist consumers in making better informed choices when considering their financial service provider options. We hope that it will encourage businesses to offer stronger consumer controls over information sharing.

Christine Calouro directed this research project for the CFC Education Foundation. We thank Beth Givens and Paul Stephens of Privacy Rights Clearing House for providing valuable feedback in the development of this report. We are very grateful for the support of the Rose Foundation for making this report possible.



Richard Holober
Executive Director

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EXECUTIVE SUMMARY

The 2008 Financial Privacy Report Card finds that many financial institutions have improved their privacy policies in the four years since we last conducted a similar survey.

California enacted the nation's toughest financial privacy law in 2003. The 2008 Financial Privacy Report Card examines current privacy policies of large financial institutions that operate both in California and in other states that are regulated by weaker federal privacy laws.¹ The report examines the extent to which multi-state institutions have applied California's stronger financial privacy protections – or other voluntary consumer privacy choices – outside of California. We surveyed the privacy policies of 61 large multi-state financial institutions doing business in California. 35 financial institutions were analyzed in both our 2004 and 2008 reports.

We asked each financial institution to complete a survey on its privacy policies. We made repeated attempts to elicit information from these businesses. 20 institutions completed our survey. Another 12 provided us with federal privacy notices and letter responses. 29 institutions either declined to participate or failed to return our repeated mailings and phone calls.

For financial institutions that did not comply with our information requests, we rely on public information, including Gramm-Leach-Bliley notices, and privacy policies posted on a bank, insurance company or other institution's websites during the months of January through April of 2008. Each financial institution was assigned a letter grade evaluating the level of control consumers have over the sharing of their own financial information in California and in other states. Companies that merely obeyed the minimum privacy requirements of federal or state law received failing grades. Grades improved when an institution provided either California customers or customers in other states privacy choices that exceeded the applicable law. Businesses boosted their grades if they make it easy for consumers to stop information sharing.

The 2008 Report Card shows significant improvement in the privacy options that are available in the consumer marketplace. 34.5% of the financial institutions surveyed received grades of A; 31.1% received B's; 26.2% received C's; 0% received D's; 8.2% received F's.

In 2004, 14.5% received an excellent grade of "A-" or higher. Nearly two-thirds of financial institutions evaluated in 2004 received a grade of C or worse. In 2008, that number decreased to one-third. This may be attributed to the industry's growing recognition of consumers' privacy concerns, or the ease with which financial institutions adapted to California's stricter privacy law, or a combination of both factors.

We have attempted to portray company privacy policies as accurately as possible. Regrettably, some financial institutions did not complete our surveys and we could not locate comprehensive public information about their sharing practices. Our Report Card assumes that these companies do not provide privacy choices that exceed the requirements of law.

Privacy is only one of many factors that consumers should weigh when shopping for a bank, insurer, brokerage firm or credit card issuer. We hope that this Report Card will be useful to consumers who are weighing their choice of financial service providers.

¹ Vermont and North Dakota also have enacted state privacy laws that are more protective than federal law.

Financial Privacy Report Card

Financial privacy grades, ranked from the best (A+) to the worst (F)

Grade: A+

Allianz Insurance
 City National Bank
 E-Loan
 Pacific Life Insurance
 Progressive Insurance
 Prudential Insurance
 Rabobank

Grade: A

Bank of the Internet
 Bank of the West
 Imperial Capital Bank
 Union Bank of CA
 US Bancorp
 Wachovia Bank
 Wells Fargo Bank

Grade: A-

American Express
 Bank of America
 CA State Auto Association
 Cathay Bank
 HSBC Bank
 Quicken Loans
 TD Ameritrade

Grade: B+

Bank of New York Mellon
 Comerica Bank
 Fidelity Life Insurance
 Nationwide Insurance
 Northwestern Mutual Life Insurance

Grade: B

Charles Schwab
 CitiBank
 CitiCard
 Discover Card
 Downey Savings
 FIA Card Services (Bank AmeriCard)
 Metropolitan Life Insurance
 New York Life Insurance
 Northern Trust Corp.
 Smith Barney (CitiGroup)
 State Farm Insurance Company
 Travelers Insurance (CitiGroup)

Grade: B-

American Int. Group (AIG)
 Morgan Stanley

Grade: C+

Chase Bank Credit Card
 ING America
 JP Morgan Chase Bank
 Liberty Mutual Insurance
 Merrill Lynch

Grade: C

Allstate Insurance
 Banco Popular N.A.
 First American Title Corp.
 First Bank
 Lincoln Financial
 National City Bank
 Stewart Title Guaranty Company
 United Commercial Bank

Grade: C-

Capital One Card
 E-Trade
 Washington Mutual Bank

Grade: D

Grade: F

CHUBB Group of Insurance Companies*
 Farmers Insurance
 GE Money
 The Hartford Financial Services Group
 Zurich Financial Services

* Did not reply to survey and no other information could be found. It cannot be assumed that they offer anything more than the minimal consumer choices required by federal or California law.

CFC Education Foundation Financial Privacy Practices Survey

This research project is an update of the CFC Education Foundation's 2004 Financial Privacy Report Card, which graded the privacy policies of the 55 biggest banks, credit card issuers, insurance companies and brokerage firms doing business in California. The 2004 Report Card analyzed the level of consumer control provided over personal information sharing with a financial institution's affiliates, with third-party financial joint marketing partners, and with non-financial third parties. We also looked at how easy it was for consumers to notify their financial institutions and stop the sharing of their personal information.

We issued our Report Card in January 2004. This was before California's landmark Financial Information Privacy Act (Senate Bill 1 of 2003) took effect. The 2004 Report Card reflected the privacy policies of financial institutions at a time when state and federal laws were identical – and quite weak.

California Senate Bill 1 became effective in July 2004. The banking industry sued to overturn the law. In 2005, the Federal 9th Circuit invalidated the affiliate sharing provisions of SB 1, but upheld California restrictions on information sharing with third parties. Very few other states have adopted financial privacy laws. Most other states are governed by the weaker privacy requirements of federal law. (See pages 8-9 for a discussion of state and federal law)

This 2008 Report Card expands on our 2004 Report Card by analyzing the current state of financial privacy policies of 61 large banks, insurers, brokerage firms, credit card issuers and on-line financial firms that do business both in California and in other states. Beyond providing a new snapshot of financial privacy policies, the 2008 Report Card examines the extent to which multi-state financial institutions have chosen voluntarily to apply California's stricter privacy standards – or any other voluntary consumer control – in states where only adherence to the weaker federal privacy law is required.

35 of the 61 institutions surveyed in 2008 were also surveyed in our 2004 Report Card. The 2008 Report Card includes only multi-state financial institutions with a presence in the California consumer market. Many California-only institutions, including credit unions that we surveyed in 2004, did not meet the criteria for the 2008 survey.

Our findings should encourage consumers who care about privacy. In almost every category of information sharing evaluated, we found measurable improvements in privacy policies across broad numbers of financial institutions. Make no mistake - large banks and other financial institutions still have a long way to go before we can be assured that our privacy is the industry's genuine concern. We believe that tough privacy laws are essential. Nonetheless, the grades we have assigned in this Report Card demonstrate that meaningful industry privacy improvements have occurred during the past four years.



The 2008 Report Card examines the extent to which multi-state financial institutions have chosen voluntarily to apply California's stricter privacy standards in other states.

Key findings include:

- 34.5% of financial institutions surveyed received a grade of A. In our 2004 survey, 14.5% of the institutions received an A.
- The 35² financial institutions that we surveyed in both 2004 and 2008 had similar improvements. 34.3% of the institutions surveyed in both 2004 and 2008 received an A in 2008. 11.4% of the institutions included in both surveys received an A in 2004
- 31.1% of all financial institutions surveyed received a B. In our 2004 survey, 21.8% of the institutions received a B.
- 40% of the institutions surveyed in both 2004 and 2008 received a B in 2008. 25.7% of the institutions included in both surveys received a B in 2004.
- We found that 65.6% of institutions surveyed in 2008 achieved above average or superior grades of A or B, compared to 37.1% that achieved above average or superior grades in 2004.
- Banking was the industry sector that made the greatest privacy improvements. The average grade for the 22 banks surveyed in 2008 was a B. In 2004, we surveyed 19 banks and the average bank grade was a C.
- Insurers as a group made no improvements in privacy policies. In 2008, we surveyed 22 insurers. In 2004 we surveyed 16 insurers. In both surveys, the average privacy grade for insurers was a B-.
- In both industry sectors, improvements were more marked among businesses we surveyed in both 2004 and 2008. Ten banks were included in both surveys. In 2004, one of these banks received an A, and one received a B. In 2008, six of these banks received an A and three received a B. Fourteen insurers were included in both surveys. In 2004 two of these insurers received an A and four received a B. In 2008, four received A's and six received Bs.
- Conversely, the number of financial institutions receiving poor or failing grades of D and F decreased dramatically between 2004 and 2008. In 2004, 27.2% of financial institutions surveyed received a D or F. In 2008, only 8.2% received these low grades.



2/3 of the institutions surveyed achieved above average privacy grades of A or B, a significant improvement over our 2004 survey.

² JP Morgan Chase is the successor to JP Morgan, which we surveyed in 2004. We included JP Morgan Chase among the institutions we surveyed both years.

The survey analyzed the impact that California's stronger privacy law has had on the practices of multi-state institutions that do business in California and elsewhere. We wanted to determine the extent to which multi-state financial institutions adopted California rules where the law did not require it. We found that fifteen of the institutions surveyed applied California's opt-out rules for financial joint marketing information sharing in other states.

Only two of the 61 surveyed firms applied California's opt-in rules for information sharing with non-financial third party businesses. We didn't ask any businesses why they adopted their rules. Industry generally prefers opt-out rules to opt-in rules, since an opt-out puts the burden on consumers to take steps to assert their privacy rights. Consumer and privacy advocates prefer an opt-in where information is private unless the consumer affirmatively takes steps to permit sharing. Perhaps the higher rate of application of California's joint marketing opt-out standard in other states is a reflection of industry's belief that it provides a valued service to those customers who are more vigilant about privacy protection while having a modest impact on the company's overall information sharing outcome. (For a full description of California and federal standards, and an explanation of the terms opt-in, opt-out and no-opt, please see pages 7-9)

More noteworthy was the large number of financial businesses that chose to provide a standard that is superior to California's law regarding consumer control over financial joint marketing sharing. 32 institutions, or 52% of the sample, chose not to share personal information with joint marketing financial partners or chose to provide an opt-in for such sharing in California and 31% of all institutions surveyed exceeded California's opt-out requirements for joint marketing sharing in other states.

Similarly, 41 institutions, or 67% of the surveyed institutions provided some level of consumer control over affiliate sharing in California, and 37 institutions, or 61% provided some level of consumer control over affiliate sharing in other states. Federal law does not provide any consumer right to control information sharing with affiliates. In the majority of these 41 cases, the bank or other institution provided consumers an opt-out. In California, 12 firms, or 19.6% provided either an opt-in or did not share with affiliates. In other states, 10 firms, or 16.4% provided an opt-in or did not share with affiliates. It should be noted that several firms reported they do not have affiliated businesses, and as a result did not have affiliate sharing policies. These businesses received full credit for not engaging in affiliate sharing.

We did not interview the privacy officers or other decision makers at any of the financial institutions, and we cannot pinpoint whether any decisions to enhance privacy protections were a direct result of California's SB 1. We believe that our survey demonstrates that California's leadership in protecting consumer financial privacy has made a difference across the nation.



More financial institutions are now going beyond the minimum requirements of law by voluntarily providing consumers better options to limit the sharing of personal information.

On January 1, 2008, the Federal Trade Commission adopted regulations under the Fair and Accurate Credit Reporting Act (FACTA) that will provide limited consumer controls over affiliate information sharing. These new regulations take effect on October 1, 2008. We did not give financial institutions credit for implementing these very modest federal rules in advance of the deadline date for adoption.

Some Caveats:

- This report is based on a survey of the consumer privacy policies that banks and other financial institutions have posted on websites, in Gramm Leach Bliley notices or in other materials provided to consumers. Our survey does not measure the compliance of these institutions with their posted privacy policies. The collusion of large telecommunications companies with the federal government's domestic surveillance project and the retroactive immunity from prosecution for misdeed that Congress granted these phone companies is a powerful reminder that a business may not always honor its privacy policies. This report does not attempt to investigate issues of compliance with posted policies.
- This is not a report on data security. It does not consider security measures that banks or other institutions have put in place to safeguard private consumer data. A privacy policy is only as good as the safeguards that make sure that data remains private. Security breaches can result from a failure to encrypt data, failure to remove data from laptop computers that are susceptible to loss or theft, failure to destroy records, and other errors or deliberate acts of theft. We did not attempt to measure any financial institution's security protocols.
- This is not a survey of any financial institution's overall consumer practices. We only rate the institutions' financial privacy policies. A bank, insurer, brokerage firm or other financial business that received a good or excellent privacy grade may engage in other behaviors that are abusive of its customers.



Telecom companies' participation in unlawful domestic surveillance is a reminder that a business' actual practice may violate its stated privacy policy.

DEFINITIONS

Type of information covered by financial privacy laws

“Non-public personal information” Both the California Financial Information Privacy Act of 2003 (SB 1) and the Gramm Leach Bliley Act place some restrictions on the sharing of “non-public personal information”. SB 1 states that:

"Non-public personal information" means personally identifiable financial information (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the financial institution. Nonpublic personal information does not include publicly available information that the financial institution has a reasonable basis to believe is lawfully made available to the general public from (1) federal, state, or local government records, (2) widely distributed media, or (3) disclosures to the general public that are required to be made by federal, state, or local law. Nonpublic personal information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any nonpublic personal information other than publicly available information, but shall not include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any nonpublic personal information.

California law defines the term “personally identifiable financial information” as:

(b) "Personally identifiable financial information" means information (1) that a consumer provides to a financial institution to obtain a product or service from the financial institution, (2) about a consumer resulting from any transaction involving a product or service between the financial institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in connection with providing a product or service to that consumer. Any personally identifiable information is financial if it was obtained by a financial institution in connection with providing a financial product or service to a consumer. Personally identifiable financial information includes all of the following: (1) Information a consumer provides to a financial institution on an application to obtain a loan, credit card, or other financial product or service. (2) Account balance information, payment history, overdraft history, and credit or debit card purchase information. (3) The fact that an individual is or has been a consumer of a financial institution or has obtained a financial product or service from a financial institution. (4) Any information about a financial institution's consumer if it is disclosed in a manner that indicates that the individual is or has been the financial institution's consumer. (5) Any information that a consumer provides to a financial institution or that a financial institution or its agent otherwise obtains in connection with collecting on a loan or servicing a loan. (6) Any personally identifiable financial information collected through an Internet cookie or an information collecting device from a Web server. (7) Information from a consumer report.

TYPES OF SHARING

Federal and California law establish three distinct categories of businesses with which financial institutions may share information subject to differing consumer consent rules: Our Report Card rated information sharing policies based on these three categories: a) sharing within a financial institution’s family of **affiliates** and subsidiaries; b) sharing with non-affiliated **third party financial joint marketing partners**; and c) sharing with other third parties, including all **non-financial third parties**.

Affiliates include other financial businesses that are owned or controlled by the financial institution or its parent or holding company. Under federal law, affiliation exists when a company directs or controls at least 25% of the outstanding shares of stock of another business. For example, affiliate sharing might entail a bank sharing a checking account customer’s information with a brokerage firm that it wholly or partially owns, or by a holding company that owns both the bank and the brokerage firm.

Financial Joint Marketing Partners are non-affiliated third party financial institutions that have a written agreement to market financial products or services. For example, a local community based bank that does not issue credit cards may enter into a joint marketing agreement with a national bank to market the national bank's cards to the local bank's customers, using the local bank's name or logo.

Sharing with Non-Financial Third Parties may be with any outside third party, with the exception of financial joint marketing partners. Third party sharing often is information sharing between a financial institution and a non-financial business such as an airline, retail store or travel agency.

LEVEL OF CONSUMER CONTROL

Our Report Card graded financial institutions based on three different levels of consumer control: 1: "Ask Me First" - No sharing permitted without first securing consumer consent (also known as opt-in); 2) Sharing permitted, unless the consumer tells the institution not to share (opt-out); and 3) No consumer control to restrict sharing (no-opt). A financial institution that does not share information provides the highest level of privacy protection.

FEDERAL LAW

In 1999, the Gramm-Leach-Bliley Financial Services Modernization Act (GLB) was enacted. This law reversed New Deal legislation that had restricted common ownership among or between three types of financial institutions: banks, insurance companies and brokerage firms. Enactment of Gramm Leach Bliley permitted mergers or purchases across these three lines of business, creating "financial supermarkets". An example of a post-Gramm Leach Bliley financial supermarket is Citigroup, which owns Citibank, Travelers Insurance, and Smith Barney brokerage subsidiaries.

Congress responded to concerns about the potential for widespread sharing of personal customer financial information within a family of affiliated companies by including minimal privacy regulations in the GLB Act (Title V). Financial institutions were required to provide an "Opt-Out" for information sharing with non-financial third parties. The law gave consumers no right to restrict information sharing among a company's affiliates or with financial joint marketing partners. It required financial institutions to send customers an annual privacy notice outlining their information sharing practices. GLB gave states some authority to enact privacy laws that were stronger than the new federal floor.

CALIFORNIA LEGISLATION

After three years of relentless opposition from banks and other financial institutions, California enacted the nation's strongest financial privacy law in 2003 (Senate Bill 1 – Speier). SB 1 succeeded only because consumer and privacy advocates had collected 600,000 signatures to qualify a strict financial privacy initiative for a 2004 statewide election. Proponents scheduled a date to turn in the petitions to elections officials. Facing certain defeat at the ballot box, banks reversed course and accepted SB 1, avoiding the initiative's stronger privacy restrictions as well as the likelihood that an electoral victory for privacy in California would start a political wave that would sweep the country.

California's new law gave customers the right to opt-out of information sharing within a family of affiliates, or between a financial institution and another non-affiliated financial joint-marketing partner. It established an "Ask Me First" standard (opt-in) for sharing with non-financial third parties. The bill required financial institutions to send a privacy notice containing a user-friendly opt-out form to California customers. SB 1 took effect on July 1, 2004.

THE FAIR AND ACCURATE CREDIT REPORTING ACT (FACT ACT)

Soon after Governor Gray Davis signed SB 1, President Bush signed HR 2622 which renewed 1996 provisions of the Fair Credit Reporting Act (FCRA) which would have expired at the end of 2003. In contrast to the Gramm-Leach-Bliley Act which gave states the authority to enact stricter financial privacy laws, the FCRA preempts state regulations concerning the sharing of non-public private financial information within a financial institution's family of affiliates. HR 2622 instructed the Federal Trade Commission and other regulators to adopt rules granting a financial institution's new customers limited rights to stop information sharing for marketing purposes within a family of affiliates.³ These regulations were recently adopted by the FTC with a mandatory compliance date of October 1, 2008.

AFFILIATE SHARING PORTION OF SB 1 OVERTURNED

In 2004, The American Bankers Association (ABA) and other trade associations filed a legal challenge to SB 1 on the grounds that the Fair Credit Reporting Act preempts states from regulating financial institutions' information sharing practices. Federal District Court Judge Morrison C. England upheld SB 1, ruling that Gramm Leach Bliley allows states to enact stricter financial privacy laws and that the FCRA only restricts states from enacting laws that impedes a financial institution's ability to share credit reports with affiliates.⁴ The industry appealed the ruling and the United States Court of Appeals for the Ninth Circuit overturned part of the District Court's ruling, finding instead that the FCRA prohibits states from regulating the sharing of financial information within a family of affiliated businesses.⁵ The Court of Appeals left intact the provisions of SB 1 restricting information sharing with third parties.

A comparison between California and Federal Law follows:

Type of Sharing	California law under SB 1	Federal Law
Sharing with Affiliates	No-Opt	No-Opt ⁶
Sharing with Financial Joint Marketing Partners	Opt-Out	No-Opt
Sharing with Non-Financial Third Parties	Opt-In	Opt-Out

FINANCIAL INSTITUTIONS EVALUATED BY THIS SURVEY

We sent mailings that included a policies practices survey form to each of the surveyed institutions' chief privacy officer, or to the chief executive officer and general counsel, asking for their cooperation in completing the survey. We mailed the request at least three times to institutions that did not reply. We made repeated phone calls to chief privacy officers and other senior management at these firms, to encourage them to reply to our questionnaire. Nineteen of the 61 surveyed institutions completed the short survey that we sent to them. Four institutions responded with letters describing their policies, instead of filling out our survey form. Six sent us their Gramm-Leach-Bliley notice, and the remaining 32 either formally declined to respond or never responded to our repeated requests for information.

³ Source: FTC. "The Fair and Accurate Credit Reporting Act of 2003".

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ159.108.pdf

⁴ Source: Electronic Privacy Information Center. "ABA v. Lockyer"

<http://epic.org/privacy/preemption/abavlockyer.html>

⁵ Source: Privacy Rights Clearinghouse. "Frequently Asked Questions about Financial Privacy."

<http://www.privacyrights.org/fs/fs24d-FinancialFAQ.htm>

⁶ As of October 1, 2008 financial institutions will be required to offer consumers the option to Opt-Out of affiliate marketing.

For these 32 non-responding institutions, we analyzed Gramm Leach Bliley notices and/or privacy policies we found on the institutions' web sites. One insurer, the CHUBB Group, did not respond to our repeated information requests, and we were not able to find any relevant privacy policies on their various websites (privacy policies posted on their sites were internet usage privacy policies, and were not helpful in determining their consumer privacy practices). We made the assumption that this company does not have privacy policies that exceed the requirements of law. We assigned it a failing grade.

The 61 businesses surveyed include many of California's largest financial institutions. Since a major purpose of this report was to assess whether California's stricter financial privacy laws affected policies in other states, we excluded California financial institutions that are not active outside of California. The survey included 22 of the state's largest banks (selected by their total assets) and 22 property and casualty, life and title insurers with the largest California market share. We evaluated seven credit card issuers and four brokerage firms. We could not identify the largest of these by California market share. We selected the largest based on total size. Six large online financial service providers were chosen for the survey.

SURVEY QUESTIONS

The survey consisted of seven questions, which contained sub-questions within them. Questions 1-3, asked with whom the financial institution shared consumer information and what control consumers were offered to limit such sharing. Question 1 asked about company policy in regards to sharing consumer information with affiliates, whether the policy in California changed in 2004 after SB 1 took effect, and whether the institution changed its policy again in 2005 after the affiliate sharing portion of SB 1 was overturned, Question 2 asked if it shares information with financial third parties in California and whether that policy differs in other states, and Question 3 asked the same for non-financial third parties. Questions 1-3 also asked:

1. If they do share information, with how many entities is this information shared (for example, the number of bank affiliates);
2. What kind of consumer control does the institution provide (broken into three information sharing standards (a) "Ask Me First" (opt-in); (b) Sharing is permitted until consumer withdraws consent (opt-out); or (c) No consumer control over sharing (no-opt); and
3. If sharing is permitted until consumer withdraws consent, how many different ways can they withdraw that consent, e.g.: filling out a form, over the internet, or through a toll-free phone call.

The last four questions of the survey focused on more specific aspects of financial privacy and the trading of consumer information. Question 4 asked whether the institution receives any form of payment from leasing or sharing personal consumer information outside of the institution and its affiliates. Every institution that responded to the survey answered "No", with the exception of one who admitted to receiving payment through joint marketing agreements. Question 5 asked how much personal consumer information is shared. For example, do they simply share a customer's name, address and phone number (basic information) or do they disclose the customer's income, spending habits, credit rating, and so on. Almost every institution that answered this question said that they share basic information as well as the type of account the customer holds with the institution and information about the customer's purchases. Question 6 asked if they share "contact lists" which contain non-public personal consumer information about groups of consumers who meet a certain criteria; for example, homeowners with income between \$50,000 and \$75,000. Twelve institutions said that they do not share such contact lists, while five answered that they do (three of the five said they share this with affiliates only). Question 7 asked if the institution encountered any problems in complying with SB 1. Three of the four institutions that responded to this question stated that complying with privacy laws that differ in California and other states is confusing to customers and costly to the business.

HOW GRADES WERE ASSIGNED

Grades are based solely on questions 1, 2, and 3 including the data we were able to collect from public sources from the institutions that failed to respond to our survey. We gave a small point bonus to the institutions that responded to our survey. We did not include questions 4 through 7 in our grading because few institutions answered these questions, and we could not gather this data on our own.

The financial institutions were given number grades which have been converted to letter grades.⁷ All firms started with a grade of 65. A financial institution which does not exceed the requirements of law received an “F”.⁸ We added points to the beginning grade of 65 as follows:

- Five points for not sharing with affiliates in California. Five points for not sharing with affiliates in other states. A total maximum of ten additional points for not sharing with affiliates in any states. Similarly, five points for not sharing with joint marketing financial partners in California, and five points for not sharing with joint marketing financial partners in other states. Five points for not sharing with non-financial third parties in California, and five points for not sharing with non-financial third parties outside of California. A firm that does not engage any of the three forms in California and in other states got 30 points.
- Firms received the full five points for providing an opt-in for each of these categories, except for third party non-financial sharing in California, since an opt-in policy is required by California law.
- For those firms that share consumer information with affiliates, 2.5 points were added for providing consumers an opt-out in California, and 2.5 points added for offering an opt-out in other states. Firms that share information with financial joint marketing third parties received 2.5 points if they provided consumers an opt-out in states other than California. No points were given for complying with federal requirement that banks provide consumers an Opt-Out for sharing credit worthiness information with financial affiliates, or for complying with the federal requirement taking effect in October 2008 that provides new customers an opt-out for marketing related information sharing within a family of affiliates.
- Firms that offered all consumers an opt-out for affiliate sharing for marketing purposes received full opt-out credit (2.5 points for California and/or 2.5 points for other states).
- No points were given to firms that comply with SB 1, which requires firms to provide California consumers an Opt-Out for sharing with joint-marketing financial third parties.
- Firms that provided for consumers more than one way to opt-out of information sharing (for example, email and toll-free call) received one point. Institutions that provided several ways to opt-out received one point for each method beyond the first, with a maximum of three points allotted. (For example, a firm that allowed customers to opt-out in person in the bank, and that also provided a printed form, a toll free number and a website to opt-out received three points).
- Five points were given to firms who completed the survey, three points were given to firms who wrote a letter/essay response to the questions and two points were given to firms that only sent us a GLB notice.
- Scores were rounded up.

⁷ Grade Ranges: F=65, D=66-69, C=70-79, B=80-89, A=90-100.

⁸ Chubb Group did not respond to our information requests. It does not post its consumer privacy policies on its websites. Its grade of “F” is based on our assumption that its privacy choices do not exceed the requirements of law.

Grades reflect the institutions' privacy policies at the time we conducted the survey. Data from websites was accurate as of February 2008. Institutions that replied to our survey furnished data during the months of March through June 2008.

A summary of the grading follows:

Each institution begins with 65 pts.

Grade Range: F=65, D=66-69, C=70-79, B=80-89, A=90-100

Institutions that merely obey the law receive 0 pts.

Affiliate Sharing - Maximum Points: 10

No Sharing (CA)	5
<u>No Sharing (Other states)</u>	<u>5</u>
	10 (Maximum Points)

Opt-in (CA)	5
<u>Opt-in (Other states)</u>	<u>5</u>
	10 (Maximum Points)

Opt-out (CA)	2.5
<u>Opt-out (Other states)</u>	<u>2.5</u>
	5 (Half Credit)

No-opt (CA)	0
<u>No-opt (Other states)</u>	<u>0</u>
	0 (No Credit)

Non-Financial Third Parties – Maximum Points: 10

No Sharing (CA)	5
<u>No Sharing (Other states)</u>	<u>5</u>
	10 (Maximum Points)

Opt-in (CA)	0 (Required by CA law)
<u>Opt-in (Other states)</u>	<u>5</u>
	5 (Half Credit)

Opt-out (CA)	0 (Not allowed by CA law)
<u>Opt-out (Other states)</u>	<u>0 (Required by Federal Law)</u>
	0 (No Credit)

No-opt (CA)	0 (Not permitted by CA law)
<u>No-opt (Other states)</u>	<u>0 (Not permitted by Federal Law)</u>
	0 (No Credit)

Non Affiliate Financial Joint Marketing Partners - **Extra Points** – Maximum Points: 10

Maximum Points: 10

No Sharing (CA)	5
<u>No Sharing (Other states)</u>	<u>5</u>
	10 (Maximum Points)

Opt-in (CA)	5
<u>Opt-in (Other states)</u>	<u>5</u>
	10 (Maximum Points)

Opt-out (CA)	0 (Required by CA law)
<u>Opt-out (Other states)</u>	<u>2.5</u>
	2.5 (One quarter credit)

No-opt (CA)	0
<u>No-opt (Other states)</u>	<u>0</u>
	0 (No Credit)

Turning in Survey: 5 points

Turning in Letter Response: 3 points

Sending GLB: 2 points

Number of ways customer can opt-out:

2 ways: 1 points

3 ways: 2 points

4 ways: 3 points

We believe our grading scheme provides an objective comparison of financial institutions' responses to SB 1 and consumer privacy concerns. Partial credit was awarded for partial steps that fall short of the "ask me first" gold standard. Some firms who failed to respond to our requests had online GLB notices that describe privacy policies that comply with federal law, but that do not refer to the additional protections afforded to California residents. In these cases, we assumed that they complied with the minimum requirements of California law.

Grades For Each Financial Institution

Banks	Grade	Insurance (Continued)	Grade
<i>(Ranked by Assets)</i>		11. Progressive Insurance	A+
1. Bank of America	A-	12. Allianz Insurance	A+
2. JP Morgan Chase Bank	C+	13. CHUBB Group of Insurance Co.	F
3. CitiBank	B	14. First American Title Corp.	C
4. Wachovia Bank	A	15. Lincoln Financial	C
5. Wells Fargo Bank	A	16. Metropolitan Life Insurance	B
6. Washington Mutual Bank	C-	17. Northwestern Mutual Life Ins.	B+
7. US Bancorp	A	18. Prudential Insurance	A+
8. HSBC Bank	A-	19. Pacific Life Insurance	A+
9. Bank of New York Mellon	B+	20. New York Life Insurance	B
10. National City Bank	C	21. Fidelity Life Insurance	B+
11. Union Bank of California	A	22. Stewart Title Guaranty Co.	C
12. Northern Trust Corp.	B		
13. Comerica Bank	B+	Credit Card Companies	Grade
14. Bank of the West	A	1. FIA Card Services (Americard)	B
15. City National Bank	A+	2. CitiCard	B
16. Downey Savings	B	3. Chase Bank Credit Card	C+
17. Banco Popular North America	C	4. Capital One Card	C-
18. United Commercial Bank	C	5. Discover Card	B
19. First Bank	C	6. American Express	A-
20. Rabobank	A+	7. GE Money	F
21. Cathay Bank	A-		
22. Imperial Capital Bank	A	Brokerages	Grade
		1. Merrill Lynch	C+
		2. Morgan Stanley	B-
		3. Charles Schwab	B
		4. Smith Barney (CitiGroup)	B
Insurance Companies	Grade	On-Line Financial Institutions	Grade
1. Zurich Financial Services	F	1. ING America	C+
2. State Farm Insurance Company	B	2. TD Ameritrade	A-
3. American Int. Group (AIG)	B-	3. E-Trade	C-
4. Allstate Insurance	C	4. E-Loan	A+
5. CA State Auto Assoc. (AAA)	A-	5. Quicken Loans	A-
6. Farmers Insurance	F	6. Bank of the Internet	A
7. Travelers Insurance (CitiGroup)	B		
8. Liberty Mutual Insurance	C+		
9. Nationwide Insurance	B+		
10. The Hartford Financial Group	F		

Non-public Personal Information Sharing Practices of Financial Institutions and Consumer Controls

Banks								
<i>Financial Institution</i>	<i>Grade</i>	<i>Affiliate Sharing</i>		<i>Financial 3rd Party Sharing</i>		<i>Non-Financial 3rd Party Sharing</i>		<i>Survey Response</i>
		<i>California</i>	<i>Other States</i>	<i>California</i>	<i>Other States</i>	<i>California</i>	<i>Other States</i>	
Banco Popular N. America ⁹	C	Opt-Out	Opt-Out	Opt-Out*	No-Opt	Opt-In*	Opt-Out**	Completed Survey
Bank of America	A-	Opt-Out	Opt-Out	No Sharing	No-Opt	No Sharing	No Sharing	Completed Survey
Bank of New York Mellon	B+	No Sharing	No-Opt	No Sharing	Opt-Out	No Sharing	Opt-Out	Completed Survey
Bank of the West	A	Opt-Out	Opt-Out	No Sharing	Opt-Out	No Sharing	No Sharing	Completed Survey
Cathay Bank	A-	No Sharing	No Sharing ¹⁰	Opt-Out	No-Opt	No Sharing	No Sharing	Completed Survey
CitiBank	B	Opt-Out	Opt-Out	No Sharing	Opt-Out	No Sharing	Opt-Out	None
City National Bank	A+	Opt-In	Opt-In	Opt-In	Opt-In	No Sharing	No Sharing	Completed Survey
Comerica Bank	B+	Opt-Out	Opt-Out	Opt-Out	Opt-Out	No Sharing	No Sharing	Completed Survey
Downey Savings	B	Opt-Out	Opt-Out	Opt-Out	Opt-Out	No Sharing	No Sharing	None
First Bank	C	No-Opt	No-Opt	Opt-Out*	No-Opt	No Sharing	No Sharing	None
HSBC Bank	A-	Opt-Out	No-Opt ¹¹	No Sharing	No Sharing	No Sharing	No Sharing	Sent Letter Response
Imperial Capital Bank	A	Opt-Out	Opt-Out	Opt-In	Opt-In	No Sharing	No Sharing	Completed Survey
JP Morgan Chase Bank	C+	Opt-Out	No-Opt ¹²	Opt-Out	No-Opt	No Sharing	Opt-Out	Letter Response
National City Bank	C	No-Opt	No-Opt	Opt-Out	No-Opt	No Sharing	No Sharing	None
Northern Trust Corp.	B	Opt-Out	Opt-Out	Opt-Out	Opt-Out	No Sharing	No Sharing	Sent GLB Notice
Rabobank	A+	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	Completed Survey
Union Bank of CA	A	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	None
United Commercial Bank	C	No-Opt	No-Opt	Opt-Out*	No-Opt	No Sharing	No Sharing	None
US Bancorp	A	Opt-Out	Opt-Out	No Sharing	No Sharing	No Sharing	No Sharing	Completed Survey
Wachovia Bank	A	Opt-Out	Opt-Out	No Sharing ¹³	Opt-Out	No Sharing	No Sharing	Completed Survey
Washington Mutual Bank	C-	Opt-Out	Opt-Out	Opt-Out*	No-Opt	Opt-In*	Opt-Out	None
Wells Fargo Bank	A	Opt-Out	Opt-Out	Opt-In	Opt-In	No Sharing	No Sharing	Completed Survey

*The institution's posted Gramm-Leach Bliley Privacy Statement is not in compliance with California law and a California specific Privacy Policy (SB 1 Notice) was not available. Therefore, we assumed that the institution merely complies with the minimum privacy protections CA law requires.

** The institution's posted Gramm-Leach Bliley Privacy Statement reserves the right to share information with non-financial third parties, but does not address the federal law's requirement to allow consumers to opt-out of this sharing. However, we assumed that the institution is compliant with federal law.

⁹ In its survey, Banco Popular N.A. claimed that it does not share information with affiliates, joint marketing partners and non-financial third parties; however its Privacy Statement clearly states that it reserves the right to engage in these forms of sharing. <http://www.bancopopular.com/us/about/us-abu-privacy-en.html>

¹⁰ Although Cathay's Privacy Statement does not specifically indicate that it does not share information with affiliates for marketing purposes, through discussing the issue with its Chief Compliance Officer, it provided sufficient evidence to convince us that it indeed does not share with affiliates.

¹¹ HSBC has indicated that it will add an additional affiliate marketing opt-out (Affective October 1, 2008), which is required by the FACT Act (discussed on pg. 9 of this report). It received no credit for this because federal law requires it offers this opt-out beginning Oct 1, 2008.

¹² JP Morgan Chase has indicated that it will add an additional affiliate marketing opt-out (affective October 1, 2008), which is required by the FACT Act (discussed on pg. 9 of this report). It received no credit for this because federal law requires it offers this opt-out beginning Oct. 1, 2008.

¹³ Although Wachovia's Privacy Statement does not specifically indicate that it does not share private information in California through Joint Marketing Agreements, through discussing the issue extensively with its Privacy Officer, it has provided sufficient evidence to convince us that it indeed does not share with Joint Marketing Partners in California.

Insurance Companies

Financial Institution	Grade	Affiliate Sharing		Financial 3rd Party Sharing		Non-Financial 3rd Party Sharing		Survey Response
		California	Other States	California	Other States	California	Other States	
CA State Automobile Association ¹⁴	A-	Opt-Out	Opt-Out	No Sharing	No Sharing	No Sharing	No Sharing	Sent GLB
American Int. Group (AIG)	B-	No-Opt	No-Opt	Opt-In	No-Opt	No Sharing	No Sharing	None
Allianz Insurance	A+	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	Completed Survey
Allstate Insurance	C	No-Opt	No-Opt	Opt-Out*	No-Opt	No Sharing	No Sharing	None
Farmers Insurance	F	No-Opt	No-Opt	Opt-Out*	No-Opt	Opt-In*	Opt-Out**	None
CHUBB Group of Insurance Companies ¹⁵	F	No-Opt*	No-Opt**	Opt-Out*	No-Opt**	Opt-In*	Opt-Out**	None
Fidelity Life Insurance	B+	No-Opt	No-Opt	No Sharing	No Sharing	No Sharing	No Sharing	Letter Response
First American Title	C	No-Opt	No-Opt	Opt-Out*	No-Opt	No Sharing	No Sharing	None
Liberty Mutual	C+	No-opt	No-Opt	Opt-Out*	No-Opt	No Sharing	No Sharing	Sent GLB
Lincoln Financial	C	No-Opt	No-Opt	Opt-Out*	No-Opt	No Sharing	No Sharing	None
MetLife	B	Opt-Out	Opt-Out	Opt-Out	Opt-Out	No Sharing	No Sharing	None
Nationwide	B+	Opt-Out	Opt-Out	Opt-Out ¹⁶	Opt-Out	No Sharing	No Sharing	Completed Survey
New York Life	B	Opt-out	Opt-Out	Opt-Out	Opt-Out	No Sharing	No Sharing	Letter Response/ GLB
Northwestern Mutual	B+	No-Opt	No-Opt	No Sharing	No Sharing	No Sharing	No Sharing	Sent Letter Response
Pacific Life Insurance	A+	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	Completed Survey
Progressive Insurance	A+	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	Completed Survey
Prudential Insurance	A+	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	No Sharing	Sent Letter Response
State Farm Insurance Company	B	Opt-Out	Opt-Out	Opt-Out	No-Opt	No Sharing	No Sharing	Sent Letter Response
Stewart Title Guaranty Company	C	No-Opt	No-Opt	Opt-Out*	No-Opt	No Sharing	No Sharing	None
The Hartford Financial Services Group	F	No-Opt	No-Opt	Opt-Out	No-Opt	Opt-In	Opt-Out	None
Travelers Insurance (CitiGroup)	B	No-Opt	No-Opt	No Sharing	No Sharing	No Sharing	No Sharing	None
Zurich Financial Services	F	No-Opt	No-Opt	Opt-Out*	No-Opt	Opt-In*	Opt-Out	None

*The institution's posted Gramm-Leach Bliley Privacy Statement is not in compliance with California law and a California specific Privacy Policy (SB 1 Notice) was not available. Therefore, we assumed that the institution merely complies with the minimum privacy protections CA law requires.

**A Gramm-Leach Bliley Privacy Statement was not available. Therefore, we assumed that the institution merely complies with the minimum privacy protections federal law requires.

¹⁴ These privacy practices reflect the policy of CA State Automobile Association, which operates in Northern California, Nevada and Utah. The Automobile Club of Southern California, as well as American Automobile Associations that operate in other states have varying privacy policies that are not addressed in this report.

¹⁵ CHUBB Group declined to participate in our survey and a Privacy Statement applicable in the U.S. was not available. The privacy policy posted on its website is merely an "Internet Privacy Policy" that only addresses the use of the information obtained through their website. Therefore, we assumed that the institution merely complies with the minimum privacy practices that federal and state law require.

¹⁶ Nationwide has indicated that they currently do not share information through Joint-Marketing Agreements; however they do reserve the right to do so. <http://www.nationwide.com/other/privacy.jsp>

Credit Card Companies								
		Affiliate Sharing		Financial 3rd Party Sharing		Non-Financial 3rd Party Sharing		
<i>Financial Institution</i>	<i>Grade</i>	<i>California</i>	<i>Other States</i>	<i>California</i>	<i>Other States</i>	<i>California</i>	<i>Other States</i>	<i>Survey Response</i>
American Express	A-	Opt-Out	Opt-Out	No Sharing	No Sharing	No Sharing	Opt-Out	Completed Survey
FIA Card Services (Bank of America)	B	Opt-Out	Opt-Out	No Sharing	No-Out	No Sharing	Opt-Out	Completed Survey
Capital One	C-	No-Opt	No-Opt	Opt-In	Opt-Out	Opt-In	Opt-Out	None
Chase Bank Credit Card	C+	Opt-Out	No-Opt ¹⁷	Opt-Out	No-Opt	No Sharing	Opt-Out	Letter Response
CitiCard	B	Opt-Out	Opt-Out	No Sharing	Opt-Out	No Sharing	Opt-Out	None
Discover Card	B	Opt-Out	Opt-Out	No Sharing	No-Opt	No Sharing	Opt-Out	Sent GLB
GE Money	F	No-Opt	No-Opt	Opt-Out*	No-Opt	Opt-In*	Opt-Out	None

Brokerage Firms								
		Affiliate Sharing		Financial 3rd Party Sharing		Non-Financial 3rd Party Sharing		
<i>Financial Institution</i>	<i>Grade</i>	<i>California</i>	<i>Other States</i>	<i>California</i>	<i>Other States</i>	<i>California</i>	<i>Other States</i>	<i>Survey Response</i>
Charles Schwab	B	Opt-Out	Opt-Out	Opt-Out	Opt-Out	No Sharing	No Sharing	None
Merrill Lynch	C+	Opt-Out	Opt-Out	No Sharing ¹⁸	No-Opt	Opt-In	Opt-Out	Sent Letter Response
Morgan Stanley	B-	Opt-Out	Opt-Out	Opt-Out*	No-Opt	No Sharing	No Sharing	None
Smith Barney (Citigroup)	B	Opt-Out	Opt-Out	No Sharing	Opt-Out	No Sharing	Opt-Out	None

On-Line Financial Institutions								
		Affiliate Sharing		Financial 3rd Party Sharing		Non-Financial 3rd Party Sharing		
<i>Financial Institution</i>	<i>Grade</i>	<i>California</i>	<i>Other States</i>	<i>California</i>	<i>Other States</i>	<i>California</i>	<i>Other States</i>	<i>Survey Response</i>
TD Ameritrade ¹⁹	A-	No Sharing	Opt-Out	No Sharing	Opt-Out	No Sharing	Opt-Out	Completed Survey
Bank of the Internet	A	No Sharing	No Sharing	Opt-In	Opt-In	Opt-In	Opt-In	None
E-Loan	A+	No Sharing	No Sharing	Opt-In	Opt-In	No Sharing	No Sharing	Completed Survey
E-Trade	C-	No-Opt	No-Opt	Opt-Out*	No-Opt	Opt-In	Opt-In	None
ING America	C+	No-Opt	No-Opt	Opt-Out*	No-Opt	No Sharing	No Sharing	Sent GLB
Quicken Loans	A-	Opt-Out	Opt-Out	No Sharing	No Sharing	No Sharing	No Sharing	None

*The institution's posted Gramm-Leach Bliley Privacy Statement is not in compliance with California law and a California specific Privacy Policy (SB 1 Notice) was not available. Therefore, we assumed that the institution merely complies with the minimum privacy protections CA law requires.

¹⁷ Chase Bank has indicated that it will add an additional affiliate marketing opt-out (effective October 1, 2008), which is required by the FACT Act. It received no credit for this because federal law requires they offer this opt-out option.

¹⁸ Although Merrill Lynch's Privacy Statement does not specifically indicate that it does not share information in California with financial third parties through joint marketing agreements, through discussing the issue with their Chief Privacy Officer, it has provided sufficient evidence to convince us that it indeed does not share with financial third parties through joint marketing agreements in California.

¹⁹ Although TD Ameritrade's Privacy Statement does not specifically indicate that it does not share private information with affiliates in California, through extensive discussion with their Chief Privacy Counsel, it has provided sufficient evidence to convince us that it indeed does not share information with affiliates in California.

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