



CUNA & Affiliates
A Member of the Credit Union System

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VIA E-MAIL – regcomments@ncua.gov

July 11, 2005

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

RE: Comments on Interim Final Rule Part 717, Fair
Credit Reporting – Medical Information

Dear Ms. Rupp:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on an interagency interim final rule that will provide exceptions to the restrictions on obtaining and using medical information that were included in the Fair and Accurate Credit Transactions (FACT) Act, which was enacted in 2003. CUNA represents more than 90 percent of our nation's 9,100 federal and state-chartered credit unions.

When the proposed rule regarding the exceptions to the FACT Act medical privacy restrictions was issued last year, a significant issue that we addressed in our comment letter in response to the proposal was that the rule would only apply to federal credit unions, not to state-chartered credit unions. This is because the FACT Act gives NCUA direct rulemaking authority over federal credit unions and is silent regarding state-chartered credit unions. Although other agencies also have explicit rulemaking authority with regard to the use of medical information, none of those rules would apply to state-chartered credit unions. The result could have been that state-chartered credit unions would not be able to benefit from the exceptions to the provisions of the FACT Act that severely restrict the ability of creditors to obtain and use medical information.

We commend NCUA and the other agencies for clarifying that the exceptions will be available to all creditors, including state-chartered credit unions. To accomplish this, the Federal Reserve Board (Fed) has issued a separate rule to



cover those creditors not covered under the proposed rule, including state-chartered credit unions, nonbank finance companies, and others.

Although we generally agree that this will effectively resolve the issue, we do note that this separate rule does not contain the provisions with regard to the sharing of medical information among affiliates. NCUA's rule that applies to federal credit unions creates the two following additional exceptions that permit the sharing of medical-related information among affiliates under the standard Fair Credit Reporting Act (FCRA) exceptions, such as the sharing of transactional or experience information among affiliates or the sharing of certain other information after providing consumers with the opportunity to "opt-out:"

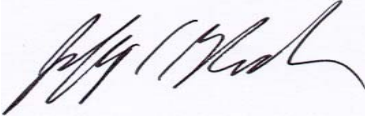
- If the information is disclosed to an affiliate in connection with a credit eligibility determination, as permitted under these rules.
- As otherwise permitted by order of the appropriate government agency.

We understand these provisions were not included in the Fed's separate rule because although the Federal Trade Commission (FTC) does not have rulemaking authority with regard to the FACT Act provisions on obtaining and using medical information, it does have rulemaking authority with regard to the specific provisions that address the sharing of medical information among affiliates. We also realize that the FACT Act itself includes many exceptions that state chartered credit unions can utilize and are assessing whether there are other circumstances in which credit unions would need to use the two additional exceptions that have been included in NCUA's interim rule for federal credit unions. We have and will continue to be in contact with the FTC to discuss the need for the FTC to issue rules in this area.

We also commend NCUA and the other agencies for broadening the exception for certain information used for credit eligibility determinations, as long as the medical information is not used to the detriment of the consumer, and the exception for situations in which the consumer or legal representative specifically requests that medical information be used, both of which were suggested in CUNA's comment letter in response to the proposed rule. We also suggested that the effective date for the rule be delayed for a significant period of time after the rule is issued in final form. We commend the agencies for delaying the effective date until March 7, 2006.

Thank you for the opportunity to comment on the interim final rule that will provide exceptions to the FACT Act restrictions on obtaining and using medical information. If Board members or agency staff have questions about our comments, please contact Senior Vice President and Associate General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Bloch", is centered on the page. The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Jeffrey Bloch
Senior Assistant General Counsel