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By electronic delivery

November 7, 2006

Office of the Comptroller of the
Currency
Communications Division
Public Information Room
Mailstop 1-5
Attention: 1557-NEW
250 E Street, SW.
Washington, DC 20219
regs.comments@occ.treas.gov

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue,
NW.
Washington, DC 20551
regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance
Corporation
550 17th Street, NW.
Washington, DC 20429
Comments@FDIC.gov

Information Collection
Comments, Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.
Washington, DC 20552
Attention: "Survey of Information
Sharing Practices with Affiliates (1550-
NEW)."
infocollection.comments@ots.treas.gov

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, NW.
Washington, DC 20580
"Affiliate Sharing Study: FTC File
No. P064802"
affiliatestudy@ftc.gov

Neil McNamara
Deputy Chief Information Officer
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
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Survey of Information Sharing Practices with Affiliates
71 *Federal Register* 51888, 31 August 2006

Ladies and Gentlemen:

The American Bankers Association ("ABA") is pleased to submit our comments on the draft "Survey of Information Sharing Practices with Affiliates" ("survey") proposed by the Office of the Comptroller of the Currency, Department of the Treasury, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the

Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (“the Agencies”). The proposed survey is intended to gather information regarding the sharing of information among affiliates of financial institutions, other creditors, and users of consumer reports to be used to assist the Agencies in preparing their report to Congress on such information sharing practices. The notice and request for comment is required by the Paperwork Reduction Act of 1995 as a means to reduce paperwork and respondent burden.

In order to encourage participation and to ensure meaningful, accurate, and complete results, we believe that some important modifications and clarifications to the draft survey are necessary. The draft survey does not take into account numerous variations in affiliate sharing practices within a single holding company. As a result, in many cases, the response options are inapplicable, inaccurate, or incomplete. This, coupled with the lack of definitions, renders the survey confusing to potential respondents, which will inhibit participation. Moreover, the results will not accurately capture actual practices. For these reasons, we suggest that the Agencies meet with financial institutions and their representatives to discuss how to devise a more manageable survey which will be less time-consuming to complete and produce more accurate results.

The ABA on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

Background.

The Agencies drafted the proposed survey pursuant to their responsibility under Section 214(e) of the Fair and Accurate Credit Transactions (“FACT Act”) Act to “jointly conduct regular studies of the consumer information sharing practices by financial institutions and other persons that are creditors or users of consumer reports with their affiliates.” In conducting the studies, the Agencies must identify:

- (i) the purposes for which financial institutions and other creditors and users of consumer reports share consumer information;
- (ii) the types of information shared by such entities with their affiliates;

- (iii) the number of choices provided to consumers with respect to the control of such sharing, and the degree to and manner in which consumers exercise such choices, if at all; and
- (iv) whether such entities share or may share personally identifiable transactions or experience information with affiliates for purposes:
 - a. that are related to employment or hiring, including whether the person that is the subject of such information is given notice of such sharing, and the specific uses of such shared information; or
 - b. of general publication of such information.

In addition, the Agencies must “specifically examine the information sharing practices that financial institutions and other creditors and users of consumer reports and their affiliates employ for the purposes of making underwriting decisions or credit evaluations of consumers.”

The information collection is “voluntary for financial institution respondents.” The Agencies estimate that respondents will spend between four and eight hours for consultation and data collection and less than two hours for completing the survey.

General Comments.

We believe that the draft survey requires revision in order to be usable and reflective of actual information sharing practices. As drafted, the survey assumes that practices are consistent for each affiliate cross the holding company, for each product, and in each state. This does not reflect actual practices of most financial institutions that share information with affiliates. For example, individual state laws may necessitate significant exceptions to a general affiliate sharing practice. Affiliate sharing practices of a single entity may vary depending on the affiliate and also may depend on the type of product involved. Further, certain affiliates may share with some, but not all other affiliates. In some cases, information may only be shared “in one direction” for legal and other reasons. There may also be variations in practices based on particular customers’ contracts, depending on when and by whom the customer was acquired.

The draft, in contrast, appears to assume a single information sharing policy applied across the enterprise, with few exceptions or variations. Respondents will be less inclined to participate or simply tend to reply that they share all information (as permitted by law) to cover any

potential application, even though there are significant variations. Neither reaction will produce meaningful, useful results.

For these reasons, we believe that significant revisions are necessary in order to reflect the variations of information sharing practices. Given the variability involved, we suggest that the Agencies arrange discussion with institutions to assist in re-designing the survey. We believe that such discussions will provide valuable information, enable enhancements without adding undue complexity, and expedite the revision process.

Specific comments.

The survey should include definitions of important terms, including: affiliate, consumer, customer, personally identifiable transaction or experience information, purposes related to employment or hiring. Some of these are terms of art with which those responsible for completing the survey will be unfamiliar. The others need clarification to facilitate participation and to ensure accurate results.

For example, the questions refer to “consumer information,” which is different from “customer” information, both by common usage and based on various statutes, including the Fair Credit Reporting Act and the provisions of Gramm Leach Bliley. As a matter of practice, in some cases “consumer” information might be shared for employment purposes, but “customer” information would not. Respondents would be confused about how to respond.

“Purposes related to employment or hiring” also needs clarification. We suggest that it be narrowed to refer only to the recruiting and hiring aspects of employment.

In addition to clarifying the meaning of important terms, to facilitate participants’ comprehension and response, the survey should clarify that the questions assume compliance with the Fair Credit Reporting Act, Gramm Leach Bliley Act, state laws, and any other laws related to information sharing restrictions, exceptions, and notice requirements. Otherwise respondents will become unnecessarily over-concerned that they might be suggesting a noncompliant policy, distracting them from the core of the question.

Questions 1 through 4 deal with how and what information is shared with affiliates. The responses should include a common practice of sharing information with affiliates for customer service purpose. Many depository institutions allow customers to use a single phone number or website in order to access all the customers’ accounts across the organization. Accordingly, it should be among the response options.

In question 7, the response options suggest that there is only one choice. Some banks, however, may give consumers both the option to opt in or to opt out, depending on the type of information or product, for example. Therefore, we suggest that the survey offer that choice.

Question 11 asks respondents to estimate the percentage of all consumers that exercise their opt-out choices through each of the various methods. There should also be an option to indicate that the institution does not track the percentage of all consumers that exercise their opt-out choices through the various opt-out methods.

Conclusion. ABA appreciates the opportunity to comment on the proposed survey. We believe that important revisions are necessary in order to encourage participation, minimize the labor burden, and ensure useful, accurate, and complete results. To accomplish this, we strongly recommend that the Agencies consult institutions for their suggestions on re-crafting the questions to capture a more meaningful representation of affiliate sharing practices.

Sincerely,

Nessa Eileen Feddis