

# THE FINANCIAL SERVICES ROUNDTABLE



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**RICHARD M. WHITING**  
EXECUTIVE DIRECTOR AND  
GENERAL COUNSEL

April 20, 2004

Communications Division  
Public Information Room, Mailstop  
Office of the Comptroller of the Currency  
250 E Street, S.W.  
Washington, D.C. 20219  
Attention: Docket No. 04-05

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552  
Attention Docket No. 2003-67

Ms. Jennifer J. Johnson  
Secretary  
1-5  
Board of Governors of the  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave., N.W.  
Washington, D.C. 20551  
Docket No. R-1180

Robert E. Feldman  
Executive Secretary  
Attention: Comments/OES  
Federal Deposit Insurance  
Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20429

Re: Request for Burden Reduction Recommendations; Consumer Protection: Lending-Related Rules; Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA")

Dear Sirs and Madams:

The Financial Services Roundtable<sup>1</sup> (the "Roundtable") appreciates the opportunity to comment to the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), and the Office of Thrift Supervision ("OTS") (collectively, "the agencies") on the regulations to reduce burden imposed on insured depository institutions, as required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, Sept. 30, 1996) ("EGRPRA").

The proposed rule is part of the agencies' ongoing effort under EGRPRA to reduce regulatory burden. The proposal requests comments on whether or not certain consumer protection/lending-related rules are outdated, unnecessary or unduly burdensome.

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<sup>1</sup> The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine accounting directly for \$18.3 trillion in managed assets, \$678 billion in revenue, and 2.1 million jobs.

The Roundtable applauds the agencies' efforts to reduce the regulatory "red tape" that has become an overwhelming burden for financial institutions. While we agree that consumer protection is vital, we believe the current rules have increased costs unnecessarily and restricted lending to consumers. We believe that action is necessary to alleviate these burdens. The Roundtable offers the following recommendations in connection with the consumer protection rules listed in this proposal.

### Home Mortgage Disclosure Act ("HMDA") (Federal Reserve Regulation C)

HMDA is primarily a data-collection and reporting regulation requirement and does not provide direct protections for consumers. The Roundtable believes there are several areas in which this regulation can be improved.

The Roundtable agrees that the public disclosure of mortgage lending data can reduce discriminatory lending practices. At the same time, we believe that the burden of the HMDA data collection requirements should be balanced against potential benefits. We believe that some of the data collected under HMDA is excessive, redundant, and not useful. It is also difficult to apply the HMDA rules and understand what information must be collected. This process requires significant personnel and systems to maintain and update this information. Ultimately, it is the consumer who pays the price for this data collection. Not only are there additional costs, but there is also an additional opportunity for errors to occur. As a threshold matter, we believe that one way to reduce the burden on smaller institutions would be to increase the current exemption for banks with less than \$33 million in assets to those with assets of \$250 million. This would assist the institutions that do not have the resources to meet these requirements.

The data being collected under HMDA raises questions about the fairness of the lending process in those companies reporting HMDA data. The recent HMDA amendments, effective January 1, 2004 include data on ethnicity, data collected in non face-to-face transactions, and pricing data both as it relates to Home Owner Equal Protection Act ("HOEPA") and to rate spread between the Annual Percentage Rate ("APR") and a comparable Treasury rate. The Board has stated that this data will prove useful in identifying instances in which the industry is not operating consistent with the Fair Lending Act, Equal Credit Opportunity Act, and the Community Reinvestment Act. We disagree and feel that this does not present the entire picture of the lending process. The Roundtable believes that the Board has overestimated the usefulness of the additional data it will receive. HMDA data already has proven to be of limited value in fair lending and anti-discrimination cases. Several of the proposed changes will make the data less valuable. The Roundtable urges the agencies to re-evaluate the HMDA requirements and what data must be collected in order to achieve the goal of fair lending without creating additional burdens on the industry.

## Equal Credit Opportunity Act (Federal Reserve Regulation B)

The Board recently conducted a lengthy review of Regulation B. The final rule amending Regulation B was effective April 15, 2003 and, to allow time for operational changes, the mandatory compliance date was April 15, 2004. The adopted final rule addressed the collection of applicants' personal characteristics in connection with nonmortgage credit and record retention for prescreened solicitations.

Since the compliance date just occurred, additional time may be necessary to analyze and comment on the rule's impact on business practices. We encourage the agencies to re-solicit comments on Regulation B later in the regulatory burden reduction process. In the meantime, we request that the agencies provide more guidance on the following issues.

### *Adverse Action Notices*

There is significant confusion on when an adverse action notice is required. Often, the consumer withdraws an application or receives alternative terms on a loan. Under these circumstances, there is uncertainty as to whether a notice must be given to the consumer.

For example, we believe there are inconsistencies between Equal Credit Opportunity Act ("ECOA") and the Home Mortgage Disclosure Act ("HMDA"). A conditional approval is an approval under HMDA guidelines. Conditional approvals are communicated to the customer via a commitment letter. However, if the customer does not meet the underwriting conditions, the bank must report the application as a denial. ECOA does not have an option similar to HMDA for conditional approvals. ECOA allows only for an approval or denial under Section 202.9(a). Therefore, there is a question as to whether or not the commitment letter satisfies the notification requirements under ECOA and is interpreted as an approval. If the commitment letter satisfies the notification requirements under ECOA, and the customer subsequently does not meet the conditions and is sent an adverse action notice, then there would be an ECOA approval along with a HMDA denial. This would confuse the customer. A suggested remedy would be to include a paragraph in ECOA that addresses conditional approvals or to specifically state that it is an approval under ECOA and the customer should be notified accordingly.

The Roundtable recommends that the agencies provide additional guidance on when an adverse action notice should be sent. We recommend that the agencies further define when an application has been completed, when it may be withdrawn, and what reasons may be offered for denying an application. By clarifying these issues, the agencies will reduce the guess work and the costs for financial institutions who must determine whether a notice is required. These recommendations would also make the adverse action notice more meaningful to the consumer.

## *USA Patriot Act Issues*

We recommend that the agencies clarify the discrepancies that exist between the requirement to maintain sufficient information to identify a customer under section 326 of the USA PATRIOT Act and the Regulation B prohibition on maintaining information on the gender or race of a borrower. These rules need to be reconciled in order to ensure compliance with both provisions.

## Truth in Lending (Federal Reserve Regulation Z)

### *Three-Day Right of Rescission*

The Roundtable recommends that the agencies remove or amend the three-day right of rescission under Regulation Z. Under this rule, consumers must wait three days to receive loan proceeds after the loan is closed. In practice, this right is seldom exercised. This waiting period is often frustrating for the customer since the statute does not provide the customer the ability to waive the right of rescission. We believe that this rule should be eliminated, or at the very least, customers should be allowed to waive this right and receive their proceeds immediately.

### *Finance Charge Definition*

Roundtable member companies request that the agencies create a specific definition of finance charge. Understanding what is included or excluded from the finance charge, especially fees charged by third parties would assist institutions in calculating the annual percentage rate (“APR”). It would also provide the consumer with a better understanding of how the APR was determined.

### *Resolving billing errors*

We believe that resolving billing-errors within the limited timeframes for credit card disputes is not always practical. Most disputes cannot be resolved within this time frame, despite the institution’s best efforts, resulting in excessive provisional credits and significant losses to financial institutions. In addition, there has been an increased failure to pay legitimate charges by consumers who have recognized the protective nature of these provisions. The Roundtable recommends increased penalties for frivolous claims and more responsibility expected of consumers. We also recommend that the institutions be given additional time to adequately investigate errors.

### *Unsolicited issuance of credit cards*

The Roundtable recommends that the Board permit, within reasonable limits, the unsolicited issuance of additional credit cards on an existing account outside of renewal or substitution. Allowing issuers to send unsolicited cards to existing customers would reduce issuers’ costs by eliminating the need to produce and distribute unnecessary

replacement cards. It also allows issuers to provide additional products and services to consumers.

We believe that issuers have the ability to send additional cards or other access devices to consumers without compromising security. Technological advances have improved an issuer's ability to protect consumers from fraud. We would recommend additional security measures, such as providing at least seven day's notice by mail and requiring consumer initiated card activation to ensure the consumer is protected.

### Flood Insurance

The Roundtable recommends that the agencies provide more guidelines on flood insurance. In particular, we believe consumers should be provided easier access to flood zone information and the ability to determine if the information is current. Flood insurance requirements should be streamlined allowing the consumer to easily identify the appropriate amount of coverage that is necessary.

### Conclusion

The Roundtable will continue to work with the agencies to identify areas of regulatory burden and propose effective solutions. We believe consumer regulations should adequately protect the rights of the consumer. However, many of the current rules include duplicate or unnecessary requirements that are costly to financial institutions. In turn, these costs are passed on to the consumer. Because of the lack of guidelines in some areas, the consumers are confused as to their rights and responsibilities. This has a chilling effect on the lending process. The recommendations above are geared to enhancing consumer protections while reducing the costs and compliance burdens on the industry.

If you have any further questions or comments on this matter, please do not hesitate to contact me or John Beccia at (202) 289-4322.

Sincerely,

*Richard M. Whiting*

Richard M. Whiting  
Executive Director and General Counsel