THE FINANCIAL SERVICES ROUNDTABLE

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October 18, 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. 0418

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention: Docket No. 2004-35

Ms. Jennifer J. Johnson
Secretary
1-5
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20429
Attention: Docket No. R-1206

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance
Corporation
550 17th Street, N.W.
Washington, D.C. 20551
Attention: Comments/OES

Re: Request for Burden Reduction Recommendations under EGRPRA: Consumer Protection: Account/Deposit Relationships and Miscellaneous Consumer Rules

Dear Sirs and Madams:

The Financial Services Roundtable[1] (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proposed rule is part of the Agencies' ongoing effort under EGRPRA to review regulations to determine whether they are outdated, unnecessary or unduly burdensome. The Agencies' proposal requests comments on certain consumer protection

[1] 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.

regulations under the categories of account/deposit relationships and miscellaneous consumer rules.

The Roundtable appreciates the Agencies undertaking a comprehensive review of regulations that affect financial institutions and consumers. Financial institutions are currently subject to significant compliance burdens and reporting requirements under numerous regulations, including the Community Reinvestment Act of 1977, the USA Patriot Act, Home Mortgage Disclosure Act, the privacy provisions of the Gramm-Leach-Bliley Act ("GLB Act"), and the Sarbanes-Oxley Act. Compliance with these laws requires an enormous commitment of personnel and financial resources by financial institutions. The Roundtable would like to offer the following recommendations in connection with the consumer protection rules listed in this proposal.

Privacy of Consumer Financial Information

Title V of the GLB Act requires financial institutions to provide customers with initial and annual privacy notices outlining the financial institution's privacy policies and procedures. There are unnecessary burdens associated with the content and delivery of these notices. We recommend that a short form notice be created that would be easy for consumers to understand. A uniform national standard for these notices is necessary to alleviate burdens on the industry and reduce consumer confusion.

The Roundtable believes that the current privacy notices are confusing to the consumer. Simplified notices would benefit the consumer and better meet their need to understand the privacy policies of those with whom they do business. Shorter, less complicated notices would also be less burdensome and less costly for financial institutions. We recommend that the Agencies develop model privacy notices that would be easy to understand and written in plain English. These notices should be conspicuous and readily understandable. The Roundtable supports developing a short-form notice that contains basic elements. The short form notice would: (1) identify the financial institutions or group of institutions to which the notice applies, (2) identify, in general terms, how the institution collects or obtains data about the consumer, and (3) explain, in general terms, how the institution uses or shares information about the consumer. A short form notice would better serve the majority of customers while those consumers who want more detailed information about a bank's privacy policies and practices could be given a brief explanation about where to find that additional information upon request (*e.g.*, web site, publications, toll-free telephone number, etc.).

The notice would also contain a convenient, meaningful opt-out notice. This opt-out notice would: (1) explain the consumer's right to opt-out and how that right may be exercised, (2) be conspicuously presented in written or electronic form, and (3) give the consumer a choice of one or more methods to exercise the opt-out right, such as a mailing address or a toll-free telephone number.

The Roundtable believes that financial institutions should be given some flexibility in creating privacy notices that are tailored to their business. However, we recommend that the Agencies develop model disclosures which would list the basic information required in the privacy notices. While institutions should not be compelled to use the model notice, the model disclosures would serve as a safe harbor for financial institutions choosing to use it.

Most importantly, simplified notices cannot be achieved without uniform national standards and preemption of state privacy laws. Federal preemption of inconsistent state privacy laws is of critical importance to consumers and the financial services industry.

Several states are actively engaged in enacting their own privacy laws that will affect federal privacy notices. Currently, California and Vermont mandate specific privacy notices to residents of those states. California requires that its privacy notice be incorporated with the GLB Act notice. Seven other states, including Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, and Utah, are considering proposals that, if enacted, would require separate notices to residents of those states.

Individual state privacy notices would add to consumer confusion and frustration. These additional state notices would be especially confusing for consumers who wish to do business with financial institutions in various states. Both the consumer and the industry would benefit from preemption. Preemption of state laws will assist the consumer by alleviating the number of different forms and notices they receive. Uniformity in notices would allow the customer to better understand the information provided to them.

Without preemption, it would be impossible to keep notices simple. In addition, financial institutions would be faced with a serious burden and economic hardship as they attempt to comply with privacy laws in fifty states. Costs for preparing different forms would be astronomical. And new operations systems, additional personnel, and further policies and procedures would be required for compliance.

The Roundtable encourages the Agencies to continue their evaluation of alternative privacy notices, though we would oppose any final rule on the subject until the preemption issue has been resolved by Congress.

Consumer Protection in Sales of Insurance

The term "insurance" is not defined under Section 305 of the GLB Act. The Agencies instead rely on the term as defined in other regulations and through judicial interpretations. By relying on such a broad definition rather than adopting their own definition, the Agencies have unnecessarily expanded the application of disclosure requirements to a broad array of insurance products, many of which do not have similar characteristics to a deposit or savings product. The result is an undue burden on

institutions which are now required to disclose to consumers that certain insurance products are not deposits and are consequently not federally insured. Institutions must also get written acknowledgement from the consumer that the proper disclosure has been made even for property and casualty products historically offered by financial institutions (*e.g.,* credit insurance products).

The disclosure and acknowledgment requirements are imposed as a result of the broad definition currently followed by the Agencies. We do not believe that consumers would reasonably confuse credit insurance, property and casualty, long-term health care and other insurance products with savings and deposit products. Therefore, we recommend that disclosure requirements be applied only to those insurance products having similar characteristics to a deposit or savings product and that a consumer might reasonably confuse with a deposit product.

Section 305 of the GLB Act also requires that disclosures be made in writing in transactions where offers are made orally. This presents some burdens in the context of a transaction made via telephone. In order to comply with the requirements of an oral offer, financial institutions must make an oral disclosure and get an acknowledgement on the phone (which is recorded). The institution must then mail the disclosure to the consumer's home within three business days after the sale and request written acknowledgement. The institution must make a "reasonable effort" to obtain the written acknowledgement to the oral sale. The extra requirement of obtaining a second, written acknowledgment is costly and burdensome to the industry and provides little value to the consumer. We recommend that an oral acknowledgement of an oral sale be sufficient.

Electronic Fund Transfers (Regulation E)

Regulation E governs the rights and responsibilities of financial institutions and consumers in transactions involving Electronic Fund Transfers ("EFTs"). Some of the requirements in Regulation E are outdated and burdensome. We offer the following proposed revisions to Regulation E:

- Section 205.9(b) requires that financial institutions send consumers a periodic statement for each monthly cycle in which an EFT occurs and a quarterly statement if no EFT occurs. The Roundtable believes that the Agencies should make a concession for those accounts with daily online access. Online access provides the consumer with a convenient means to obtain this information and should substitute for the costly disclosure requirement.
- Section 205.1(b)-3 of the Official Staff Commentary ("Commentary") to Regulation E currently states that a tape-recorded telephone conversation does not constitute proper authentication for purposes of preauthorized EFTs. The Board has recently proposed amendments to Regulation E which would remove this section from the Commentary. We recommend that the Board go one step further and specifically state that tape-recorded authorization is permitted for preauthorized EFTs under Regulation E.

- The Roundtable recommends increasing consumer liability in Section 205.6(b) for unauthorized transactions when the consumer writes a personal identification number ("PIN") on an access device or keeps the PIN in the same location as the access device. We believe that consumer liability should be $500 in these instances regardless of when the notice of the unauthorized transfer is provided to the institution by the consumer.
- We recommend extending notification requirements under Regulation E for a change in account terms or conditions from 21 days to 30 days to make the notification requirements consistent with Regulation DD.

Truth in Savings (Regulation DD)

Roundtable member companies believe that many of the disclosure requirements under Regulation DD are burdensome to the industry while providing little benefit, if any, to the consumer. We encourage the Agencies to consider a study that would gauge the level at which consumers review these disclosures and determine what benefits the disclosures provide.

The Roundtable is also concerned about the different disclosure requirements under Regulation DD for print advertisements and electronic media. Television and radio advertisements require fewer disclosures. The Roundtable recommends that the Agencies consider making the disclosure requirements the same for both print and electronic media to simplify the regulatory framework and ease compliance burdens on institutions.

Finally, the Roundtable recently submitted significant comments to the Board on their proposal to amend Regulation DD in conjunction with the proposed interagency guidance that identified concerns raised by institutions, financial supervisors, and the public about the marketing, disclosure, and implementation of overdraft protection programs. We recommended that the Board reconsider certain amendments which we believe would burden institutions while providing little or no benefit to the consumer. In particular, we believe that disclosing aggregated data of overdraft fees on periodic statements is unnecessary. In addition, advertising specific fees and terms of overdraft services may have the unintended effect of encouraging additional use of these programs. If the Board proceeds with the amendments to Regulation DD, we recommend allowing the industry adequate time to make the necessary system and personnel changes to comply with the new rules.

Conclusion

The Roundtable appreciates the opportunity to provide the Agencies recommendations on streamlining the regulatory process. We welcome the opportunity to discuss the suggestions above in more detail with the Agencies' staff.

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