



Federal Savings
Bank

Todd J. Haynes, Counsel
Phone: (309) 766-2278
Telecopy: (309) 766-7423
Email: todd.haynes.g8nn@statefarm.com

August 11, 2004

Department of the Treasury
Office of Thrift Supervision
Regulation Comments, Chief Counsel's
Office
1700 G Street, N.W.
Washington, D.C., 20552
Attention: No. 2004-31
RE: Number 2004-31

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance
Corporation
550 17th Street, N.W.
Washington, D.C. 20429
RE: RIN Number 3064-AC73

Department of the Treasury
Office of the Comptroller of Currency
250 E Street, SW
Mail Stop 1-5
Washington, D.C. 20219
RE: OCC Docket Number 04-16

Becky Baker, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
RE: Fair Credit Reporting –
Affiliate Marketing

Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Ave., NW
Washington, D.C. 20551
RE: Docket Number R-1203

Dear Sir or Madam:

This comment letter is sent on behalf of State Farm Mutual Automobile Insurance Company in response to the notice of proposed rulemaking issued by the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA") (collectively referred to as "the agencies") regarding the Fair Credit Reporting Act Affiliate Marketing Regulations, published in the *Federal Register* on July 15, 2004 (69 *Fed. Reg.* 42501). State Farm appreciates the opportunity to comment on the agencies' proposed rules.

State Farm Bank, F.S.B., Bloomington, Illinois, began operations in March of 1999 as a wholly owned subsidiary of State Farm Mutual Automobile Insurance Company ("State Farm Mutual"). State Farm Bank now has assets in excess of \$9 billion and services its

customers through a network of roughly 16,000 Bank certified agents. State Farm Mutual is the leading underwriter of private passenger automobile insurance in the United States. State Farm Mutual with its affiliated property companies State Farm Fire and Casualty Company, State Farm General Insurance Company and State Farm Florida Insurance Company, is the largest homeowner insurance carrier in the United States. The State Farm group of companies provide insurance products and financial services to consumers across the United States.

Our comments focus on the language of the Fair and Accurate Credit Reporting Act ("FACT Act") affiliate sharing provisions in Section 214(a) (adding Section 624 of the Fair Credit Reporting Act, codified at 15 U.S.C. 1681s-3), and requiring that the language be carried forward to the agencies' rules. Specifically, State Farm is concerned with the omission of explicit and meaningful language from the statute in the proposed regulations.

The scope of Section 624 is outlined in subsection (a)(4). That provision provides, in relevant part:

(4) Scope. This section shall not apply to a person – (A) using information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship.

The legislation provides a clear definition of "pre-existing business relationship" in Section 624(d)(1) as "a relationship between a person, or a person's licensed agent, and a consumer based on four possible scenarios.

The agencies' proposed rules omit a crucial phrase from the statutory definition of pre-existing relationship. The same omission is evident in the proposed regulations which define the term "pre-existing business relationship," as follows: the OCC proposed regulations at section 41.3(m), the Board's proposed regulations at section 222.3(m), the FDIC proposed regulations at section 334.3(m), the OTS proposed regulations at section 571.3(m), and the NCUA proposed regulations at 717.3(m). The proposed definitions in these sections should mirror the statute's language by providing that the term "Pre-existing business relationship" means a relationship between a person or a person's licensed agent and a consumer based on the types of relationships outlined in the statute.

State Farm also provides comment with respect to the proposed sections regarding the scope of the affiliate marketing rule (*i.e.*, the OCC proposed regulations at section 41.20(c), the Board's proposed regulations at section 222.20(c), the FDIC proposed regulations at section 334.20(c), the OTS proposed regulations at section 571.20(c), and the NCUA proposed regulations at section 717.20(c)). Notably, the introductory portion should be modified to mirror the scope provisions set forth in section 624(a)(4) as provided in Section 214 of the FACT Act, quoted above. In this respect, we offer the following language for your consideration:

(c) *Exceptions.* The provisions of this part [or subpart, as the case may be]

shall not apply to a person using eligibility information received from an affiliate:
(1) To make or send a marketing solicitation to a consumer with whom the person making the solicitation has a pre-existing business relationship as defined in §[41.3(m), 222.3(m), 334.3(m), 571.3(m), or 717.3(m), as the case may be];

This language follows both the actual language and intent within the "scope" provisions of Section 214.

Finally, State Farm believes an example of an exception may provide some guidance in relation to the pre-existing business relationship exception, particularly to the extent "pre-existing business relationship" must be defined in terms of a relationship between a person or a person's licensed agent, and a consumer. Such an example may outline those instances where a consumer has purchased a policy of insurance or other financial service product through a person's licensed agent. In those instances, the agent has a pre-existing business relationship with the consumer and provisions of this part of the regulations are not applicable to the solicitations of such licensed agent.

We appreciate the opportunity to provide these comments to the agencies. Thank you for your consideration. Please feel free to contact me in the event you have any questions.

Sincerely yours,



Todd J. Haynes
Bank Counsel

Cc: Stan Ommen