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From: Hurwitz, Evelyn S on behalf of Public Info
Sent: Tuesday, December 05, 2000 9:41 AM
To: Gottlieb, Mary H
Subject: FW: Proposed FCRA Regulations-Affiliate Sharing/Dockets 00-20, R-1082, 3064-AC35, 2000-81

-----Original Message-----
From: Ed Mierzwinski [mailto:ed@pirg.org]
Sent: Monday, December 04, 2000 5:17 PM
To: regs.comments@occ.treas.gov; regs.comments@federalreserve.gov; comments@fdic.gov; public.info@ots.treas.gov; ed@pirg.org
Subject: Proposed FCRA Regulations-Affiliate Sharing/Dockets 00-20, R-1082, 3064-AC35, 2000-81

TO: Agencies Below
FR: Ed Mierzwinski, Consumer Program Director, U.S. PIRG (ed@pirg.org)
RE: Comments of USPIRG re proposed Fair Credit Reporting Act regulations on
affiliate sharing

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 41
[Docket No. 00-20]
RIN 1557-AB78

FEDERAL RESERVE SYSTEM
12 CFR Part 222
[Regulation V; Docket No. R-1082]

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 334
RIN 3064-AC35

DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
12 CFR Part 571
[Docket No. 2000-81]
RIN 1550-AB33

The U.S. Public Interest Research Group (PIRG) <http://www.uspirg.org> is the
national lobbying office for state Public Interest Research Groups
<http://www.pirg.org>, non-profit and non-partisan consumer advocacy groups
with
a long-standing interest in the Fair Credit Reporting Act. While our reports
(see eg, "Nowhere To Turn", April 2000, on identity theft
<http://www.pirg.org/calpirg/consumer/privacy/idtheft2000/> and "Mistakes Do
Happen", March 1999 on credit reporting errors
<http://www.pirg.org/reports/consumer/mistakes/index.htm> are highly critical of
credit reporting agencies, and we have constantly sought to strengthen the
FCRA, it remains that, for all its faults, the FCRA is generally based on
enforceable Fair Information Practices (FIPs). When a company seeks to

access a
credit report or a credit reporting agency makes a mistake, consumers have
detailed FIPs-based rights.

The two most glaring exceptions to this framework are the credit-header and
affiliate sharing loopholes. We are encouraged that the FTC, and Congress,
have
taken steps to narrow the credit header loophole. That leaves the affiliate
sharing loophole, which was established not through hearings, testimony and
debate (what is called regular order in Congress), but by demand of the
powerful financial community as its price for accepting the modest new Section
615 and Section 623 duties imposed on them in 1996.

We opposed the affiliate sharing loophole when enacted as part of the 1996
amendments and we continue to oppose it. We believe that the idea of
establishing virtually unregulated databases is contrary to the intent of
Congress when it enacted the FCRA and, further, when it codified the FIPs in
the Privacy Act of 1974. Unfortunately, the Privacy Act only to government
uses
of information.

Nevertheless, the notion of establishing regulations to clarify the vague FCRA
provisions pertaining to affiliate sharing is noteworthy and we commend the
agencies for this small step.

We have comments in four areas:
(1) On the definition of "other" information included in the opt-out.
(2) On the issue of partial opt-outs.
(3) On the need to improve the opt-out disclosure to describe the various uses
of information.
(4) The missing parts of this regulation-- rules pertaining to 615 (b).

(1) Comments on the definition of "other" information included in the opt-out.
(a) Previous agency best practices memos had alluded to information
from
credit reports and information from applications. The regulation posits two
additional sources of "other" information -- verification of consumer
representations and also employment history, including job references.
*** It should be made clearer that these are examples, and that the
consumer's opt-out applies to ALL outside sources of information. Other
sources might include web-site cookies, database enhancements purchased from
3rd parties, information derived from sharing databases with marketing
partners, and information provided by the consumer in response to web site
surveys and/or surveys by the bank's marketing agents that is not part of his
or her experiences or transactions. In addition, suppose a consumer does happen
to write in to the bank to request to opt-out, and provides information

that
the bank did not already have, such as a business address, or a business phone
number-- would that information be subject to the opt-out? In our view, it
should be. We expect that financial institutions will increasingly seek to
obtain excess information from consumers either through websites, marketing
partners or other sources, or followup surveys. All this information, which is
not in any way derived from a consumer's experiences or transactions, should be
subject to the opt-out.

(b) We are concerned that the proposed rule may limit the types and
amounts of information protected by the opt-out. Nothing in the affiliate
sharing exception limits "other" information only to "credit" related
information. The plain language of Section 603 refers to "other" information.
Although Section 615 describes certain duties of persons taking adverse actions
on the basis of such "other" information and describes it as "credit..."
related, Section 603 should guide the rule. The new relationships being carved
out in the marketplace today necessitate that agencies take a broad view of
the
intent of Congress in giving consumers this opt-out right, not a narrow view.
Therefore, we urge the agencies to revisit the language which states:

"Other information" refers to information that is covered by the FCRA
and that is not a report containing information solely as to transactions or
experiences between the consumer and the person making the report. The proposed
regulation uses the term "opt out information" to describe this category of
information."

Other information includes this information, but not inclusively.
Other
information must include all information that is not experience and
transactions information.

(2) On the issue of partial opt-outs.

The agencies seek to establish by rule that the FCRA allows partial
opt-outs on an affiliate-by-affiliate basis. Even presuming, arguendo, that
this is allowed by the FCRA, it is a recipe for disaster. Coupled with the
vague and general opt-out notice requirements, this is an invitation for abuse
by firms seeking to manipulate customer information.

***Each of the four proposed rules includes a one-sentence statement
that partial opt-outs are allowed. Nothing in the background explains the
agencies' reasoning; nothing in the appendix offers a sample partial opt-out;
and, nothing describes that your best choice may be choosing to limit the
sharing of "certain opt-out information" rather than limiting "certain
affiliates" if you desire to be more protective of your privacy. While

it will
be our goal to educate consumers that the best way to protect privacy will be
to opt-out fully, we believe that it is imperative that if instiutions will be
allowed to describe partial information opt-outs, that the institutions be
required to describe how information may be used by institutions. Obviously, we
would also ask that the agencies require instiutions to more specifically name
and describe their affiliates on opt-out notices. Would the name, description
or even the existence of predatory sub-prime affiliates be required to be
disclosed? Would the name, description or even the existence of an over-priced
credit life insurance affiliate be required to be disclosed?

(3) On the need to improve the opt-out disclosure to describe the various uses
of information.

The vague description of partial opt-outs in the proposed regulation is
only part of the problem. Of course, nothing in the proposed regulation
requires institutions to provide any clarity about how they use this
information and why they desire it.

***Financial institutions may seek to share information for the limited
and presumably benign purposes of running joint call centers or updating
mailing lists. They may also seek to share information for marketing purposes,
which many consumers would oppose if they understood it. Worst, they may also
seek to share information for underwriting purposes-- denying credit or
increasing the charge of credit based on information in a shared database
rather than an outside credit report. Will opt-out notices allow consumers to
choose between these "certain uses?" For example--

SAMPLE PARTIAL OPT-OUT

"____ I agree that you can share my information so that the costs of
call centers can be pooled between affiliates and so I only need to call you
once to update my address when I move.

____ I do not agree that affiliates may use my information to make
underwriting decisions about me, (since I do not believe that the FCRA grants
me adequately enforceable dispute rights for affiliated-shared information) .

_____I do not agree that you can use my outside information to market me
products."

When the House Banking Committee debated the affiliate sharing exception
to Section 603 and it was narrowly approved, the specter of credit denials on
the basis of unregulated in-house databases was clearly raised. Nothing in the
proposed rule reflects these concerns or warns consumers about the ways that
this loophole allows institutions (Section 615(b)) to make underwriting
decisions and generally to operate outside the full Fair Information

Practices
rules that would apply if the firms based underwriting, in whole or in part, on
a third-party credit report (615 (a)).

(4) The missing parts of this regulation-- rules pertaining to 615 (b).
*** To clarify, the proposed rule focuses on parts of the problem, but
possibly without explaining the biggest part of the problem. In the context of
affiliate sharing, the proposed rule generally seeks to define "other information" and to describe model opt-out notices, with the flaws noted above.
Why does the proposed regulation fail to require firms to limit, or even
adequately explain, uses of information? Why does the rule fail to clarify the
vague nature of disclosures required under Section 615 (b)? Do the agencies
plan to additional rules pertaining to Section 615 (b), which describes the
limited duties of users of affiliate information in an adverse action context?
For example, do the agencies plan to issue model affiliate sharing adverse
action notices and dispute rules?

Conclusion
U.S. PIRG is pleased that the agencies have proposed to expand the
definition of "other" information but concerned that numerous types of other
information may be missed by the rule. Further, the failure to require institutions to describe how they could use the information to deny credit or
raise the price of credit is an invitation for firms to mislead consumers
about
the purported benefits of information-sharing. Finally, the rule fails to
address the inadequacy of Section 615 (b)'s adverse action provisions.