

THE NATIONAL BUSINESS COALITION ON E-COMMERCE AND PRIVACY

December 4, 2000

DISSEMINATION BRANCH

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VIA MESSENGER

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20051

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Re: Docket No. R-1082

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
Washington DC 20219

Re: Docket No. 00-20

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street NW
Washington DC 20429

✓ Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street NW
Washington, DC 20552

Re: Docket No. 2000-81

Dear Sirs and Madams:

On behalf of the National Business Coalition on E-Commerce and Privacy, we are writing to provide comments to the Agencies on the Fair Credit Reporting Regulations Proposed Rule that would require financial institutions to provide consumers the opportunity to opt out before sharing certain consumer credit information with affiliates.

The National Business Coalition on E-Commerce and Privacy consists of fifteen nationally recognized companies and associations representing diverse economic sectors, including manufacturing, retail,

- AFLAC
- AMERICAN CENTURY INVESTMENTS
- AMERICAN GENERAL FINANCIAL GROUP
- AMVESCAP
- DEERE & COMPANY
- DUPONT
- FIDELITY INVESTMENTS
- FORTIS, INC.
- GENERAL ELECTRIC
- THE HOME DEPOT
- INVESTMENT COMPANY INSTITUTE
- SEAGRAM / UNIVERSAL STUDIOS
- STATE STREET CORPORATION
- VISA U.S.A., INC.

JOHN SCHALL
EXECUTIVE DIRECTOR

601 PENNSYLVANIA AVENUE, N.W.
NORTH BUILDING, 11TH FLOOR
WASHINGTON, DC 20004-2601 USA
202.756.3385
Fax - 202.756.3333
JSCHALL@ALSTON.COM

are committed to customer service and actively use technology and electronic commerce to enhance our ability to deliver goods and services to our customers.

The proposed rule implements changes made to the Fair Credit Reporting Act (FCRA) in 1996 clarifying the right of users of consumer credit information to share transactional and experience information freely among corporate affiliates, but requiring in some cases that consumers be given an opportunity to opt out if affiliates share other types of consumer information.

We wholeheartedly agree with the Agencies' intention to conform the proposed rule to the final regulations implementing the privacy provisions of the Gramm-Leach-Bliley Act (GLB). We remain concerned, however, that the differences between the requirements of FCRA and GLB could lead to consumer confusion and operational challenges unless the timing of the effective date for the regulations provides an adequate implementation phase. We are concerned, too, that the definition for opt out information is too broad. Finally, we are concerned that the proposed rule would prohibit financial institutions from offering additional benefits and services to customers who do not opt out of having their information shared with affiliates.

1. EFFECTIVE DATE

In light of the detailed new disclosures required under the Agencies' proposed rule, it is imperative for the Agencies to clearly specify a reasonable effective date for the rule implementing the affiliate sharing provisions under the FCRA. The Agencies also should provide guidance to financial institutions on how the new requirements interact with the Agencies' final privacy regulations. Many financial institutions are now in the final stages of preparing their GLB privacy notices. If the provisions in the proposed FCRA rule are adopted in the final version with too short of an implementation period, it will force financial institutions to radically alter their existing GLB compliance plans and could require institutions to prepare and distribute additional GLB privacy notices that comply with such a final rule.

For this reason, we believe that the Agencies should provide that the FCRA affiliate sharing opt out notice requirements will be effective at the same time that the first annual GLB privacy notices must be provided by financial institutions. For existing customers who must be provided with a GLB privacy notice, institutions should not be required to change the initial notices provided to those customers to reflect the Agencies' FCRA rule. In addition, for new customers (those who establish relationships with financial institutions on or after July 1, 2001), the FCRA rule should be effective on the earlier of July 1, 2002 or the date by which the first annual notice must be provided for that relationship.

This approach would enable financial institutions to comply with both the GLB Act notice requirements as well as with the new FCRA notice provisions in a manner that minimizes compliance costs and burdens.

2. DEFINITION OF OPT OUT INFORMATION

The proposed rule defines opt out information, in part, as information that bears on creditworthiness and that is not transaction or experience information. The Agencies' proposed rule would grant an opt out right for more types of information and for more types of sharing than provided for under the FCRA. Specifically, the proposed rule would significantly expand the type of information covered beyond the definition of consumer report under the FCRA.

The Agencies should narrow the scope of this definition. Only information that otherwise constitutes a consumer report under the FCRA should be subject to notice and opt out requirements. Under the FCRA, an institution may share application or other information with an affiliate, without providing an opt out notice, where the purpose of the sharing is to enable that affiliate to process or evaluate information on the institution's behalf. In such a case, the sharing of information would not constitute the sharing of a consumer report because there has been no communication of information between the institution and its service providing affiliate within the meaning of the FCRA. Similarly, the Federal Trade Commission has recognized that joint users may share information without providing an opt out notice and without being viewed as a consumer reporting agency, because the information is used by both parties for the same purpose -- for example, to consider a consumer's application for credit. The Agencies should recognize in the final rule that there are many common business practices where information may be shared, without the use of the opt out notice, and without the sharing institution being viewed as a consumer reporting agency.

The Agencies also should recognize and incorporate into the final rule other circumstances where an affiliate can access information of another affiliate without constituting the sharing of consumer reports. For example, the final rule should allow institutions to provide information to an affiliate when a consumer provides consent. This approach would parallel the Agencies' GLB Act privacy regulations and would allow institutions to share, for example, a consumer's application with an affiliated party, if the consumer does not qualify for the product he or she initially applied for. In addition, this would allow a consumer to instruct one affiliate to provide a copy of the application submitted by that consumer to other affiliates so that the consumer can seek additional products from those other affiliates without the burden and inconvenience of completing additional applications for those other affiliates.

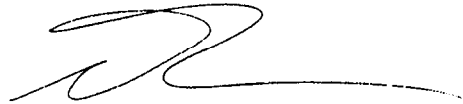
3. PROHIBITION AGAINST DISCRIMINATION

The proposed rule specifically prohibits "discrimination" against consumers who choose to opt out under the FCRA for the sharing of their credit information with affiliates. The regulations specifically state that a bank or thrift may not: (i) deny credit to an applicant who opts out; (ii) vary the terms of credit adversely to an applicant who opts out, such as by providing less favorable pricing terms; or (iii) apply more stringent credit underwriting standards to an applicant who opts out.

The Agencies should make clear that financial institutions can still provide additional benefits and services to customers who decide not to opt out. Financial institutions should be able to reward those customers who allow the sharing of information without being concerned that these offerings may violate Regulation B. By sharing consumer information with affiliates, financial institutions are able to achieve cost savings and efficiencies that accompany the sharing of information. Financial institutions would like to be able to pass such cost savings and efficiencies on to their customers. For example, an institution that uses a consumer report for multiple purposes rather than having to purchase multiple copies of a report, should be able to pass on those cost savings to consumers.

We appreciate the opportunity to comment on the proposed rule, and would be pleased to respond to any questions that you may have.

Sincerely,

A handwritten signature in black ink, appearing to be 'Susan D. Pinder', with a long horizontal flourish extending to the right.

Susan D. Pinder
Chair