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December 4, 2000

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
Attn: Docket No. 00-20

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

Ms. Jennifer J. Johnson
Secretary
Board of Governors
of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551
Attn: Docket No. R-1082

Manager, Dissemination Branch
Information Management & Services
Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: Docket No. 2000-81

Re: Joint Notice of Proposed Rule Making: Fair Credit Reporting Regulations

Dear Sirs and Madams:

Citigroup is a financial services holding company with a variety of subsidiaries in the United States, including national banks, state non-member banks, and federal savings associations. This letter is in response to the joint request (the "Joint Notice") from the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation and Office of Thrift Supervision (collectively, "the Agencies") for comment on their proposed Fair Credit Reporting Regulations ("the Proposed Regulations"). 65 Fed. Reg. 63119 (2000).

Overall, we support the Agencies' attempt to harmonize the requirements under the Proposed Regulations with the Agencies' regulations implementing Title V of the Gramm-Leach-Bliley Act (the "GLBA Privacy Rules") and believe that such uniformity, where possible, will benefit consumers. However, in attempting to achieve conformity, the Agencies must be careful to preserve the unique scope and structure of the Fair Credit Reporting Act (the "FCRA"). In this regard, we are mindful that, in enacting the GLBA, Congress expressly stated that the new statute was *not* intended "to modify, limit, or supersede the operation of the Fair Credit Reporting Act." 15 U.S.C. § 6806. Congress further made clear that, in granting the Agencies rulemaking authority, it did not grant them the power to alter the existing structure and scope of the FCRA and that the Agencies had only limited rulemaking

authority to "prescribe such regulations *as necessary to carry out the purposes" of the FCRA*. 15 U.S.C. § 1681s(e)(1) (emphasis added).

Our specific recommendations are as follows:

I. Coordination with the Privacy Rules.

A. Whether Notice is Required.

The Proposed Regulations inappropriately gloss over important differences between the FCRA and GLBA and fail to incorporate important nuances within the FCRA statutory language and existing practice. For example, whereas the GLBA *mandates* the provision of notice with an opportunity to opt out prior to sharing information, under the FCRA, an institution can *elect* whether to provide such a notice or not (although it might run the risk of being deemed a consumer reporting agency if it chooses not to provide notice and if its activities otherwise would make it potentially subject to regulation under the FCRA). In drafting the final regulations, the Agencies should make clear that notices are not required under the FCRA and that existing exceptions and exclusions to the FCRA under the statutory language (including but not limited to 15 U.S.C. Section 1681a(d)) and regulatory interpretations are preserved.

B. When an Institution Becomes a "Consumer Reporting Agency".

Similarly, this Rulemaking should clarify that it deals with the form, content and method of delivery of opt out notices for those institutions that elect to provide notices, but it is not designed to determine when an institution becomes a "consumer reporting agency" absent the provision of an opt out notice. To that end, Proposed Regulation __.4 should be revised to clarify that it is not exclusive -- in other words, under certain circumstances, an institution may share information (other than transaction and experience information) with its affiliates absent the provision of notice and an opt out opportunity without running the risk of being deemed a "consumer reporting agency" under the FCRA. The situations set forth below in Section V are just a few examples of situations where sharing would not, under existing law, pose a significant risk of coverage under the FCRA.

C. Compliance Deadlines.

The final FCRA regulations should *not* incorporate the compliance deadlines set forth within the GLBA regulations but should instead provide that: (A) with regard to existing customers as of July 1, 2001, compliant notices with opt outs should be provided by the earlier of the first annual privacy notice issued under the GLBA regulations or July 1, 2002; and (B) with regard to new customers after July 1, 2001, compliant notices and opt outs should be provided by the earlier of July 1, 2002 or the date by which the first annual privacy notice should be provided to those new customers.

Providing only a few months for institutions to comply under the FCRA, when over a year was provided under the GLBA regulations, is clearly insufficient. To exacerbate the problem, most institutions are already deeply involved in the pre-production process for GLBA notices, and, by the time final regulations are issued under the FCRA, many will likely have finalized their notices and completed production. Synchronizing the compliance deadlines under the FCRA and GLBA could well require the reprinting of millions of notices under an expedited schedule at enormous expense and administrative burden on complying institutions and could endanger their ability to timely comply with either the GLBA or the FCRA regulations. The final FCRA regulations should avoid this wasteful and unnecessary result by incorporating the suggested compliance schedule. Our proposed compliance deadlines would permit institutions to continue to use notices complying with current law for current customers until such time as revised notices can be included within annual GLBA privacy notices, thus avoiding the need for a costly additional mailing.

II. Reasonable Opportunity to Opt Out (Proposed Regulation § .6); Prohibition Oral Notices (Proposed Regulation § .8).

We support the concept that an institution should provide its consumers with a reasonable time within which to elect to opt out prior to the commencement of information sharing. However, Proposed Regulation § __.6 (particularly when combined with the unnecessary prohibition against oral notices in Proposed Regulation § __.8) is unduly rigid in implying that an institution must wait 30 days after delivering an opt out notice prior to sharing information.

A. Anti-Consumer Effects.

A rigid 30-day waiting period would have the anti-consumer effect of denying consumers information sharing that they may desire at the time when that information may be most valuable to them. The anti-consumer effect of such a bright line waiting period is highlighted in the situation of related products: A consumer who applies for a home mortgage from an institution may want to receive timely information from that institution's insurance affiliate regarding homeowner's insurance, and the value of that information may well be time-dependent. If the affiliate is required to wait 30 days to send the information, the consumer may need to provide application details again to the recommended insurer and may also need to submit to a second drawing of a credit report. As another example, an applicant may want to open a new branch banking relationship, associated credit accounts including overdraft protection and credit cards, and perhaps a back-up second mortgage. These may all be provided by different affiliates. The associated credit reports, besides the expense, may also count negatively for the customer in commonly used credit scoring algorithms. In addition, the repeated need to provide information might well lead to a process that is less secure and more likely to contain errors.

B. Compliance Burdens and Expenses.

Forcing a 30-day waiting period would also impose heavy and unnecessary compliance burdens and expenses on institutions subject to the FCRA. While most institutions already have in place systems that can register a consumer's choice to opt out, they would be forced to implement new systems capable of tracking temporary opt outs for each consumer in order to assure that no sharing takes place during the 30-day period starting on the date an application or disclosure was provided to each individual consumer. (Similar tracking issues might also be presented by rolling opt outs where a consumer provides different information to the institution on different dates.) The implementation of such a complex tracking system would require a massive overhaul of institutions' computer databases and systems, and would require institutions to capture new and cumbersome information (*e.g.*, the date of mailing of an application or disclosure to each individual consumer).

C. Alternative Approach.

In lieu of an automatic 30-day waiting period, the following is proposed:

- *Disclosures in Conjunction with Applications or other Account Opening Processes*: If a consumer: (A) submits application or account opening data (whether in person, by mail, or electronically), (B) is provided notice and an opportunity to opt out on or in conjunction with the application, and (C) in submitting the application data, chooses not to opt out, there is no reason to require the institution to wait 30 days to implement that consumer's choice. The presumption should be that if the consumer chooses not to opt out at the time of applying for the product or service, he or she is choosing to allow the institution to share his or her information, and that the institution can share that information immediately upon receipt of the application. Permitting immediate sharing of the consumer's choice to not opt out will not deprive the consumer of the ability to later change his or her choice; he or she can opt out at any time. In this way, the appropriate balance is struck between facilitating information sharing that may benefit the consumer and providing the consumer ample and ongoing opportunities to opt out.

- *Telephone Disclosures*: Proposed Regulation § __.8(c) contains a blanket prohibition against oral notices. Nothing in the FCRA bars the provision of oral notices, and there is no reason to create a new and burdensome requirement for written or electronic notices, especially where, because the customer establishes the relationship over the phone, it would be most convenient and efficient to provide oral notice. Indeed, because customers can enter many significant transactions over the phone -- including incurring debt, contracting for insurance, and authorizing the execution of a securities trade -- they may find it hard to accept that they cannot receive information regarding affiliate sharing and immediately authorize that sharing in a similar manner. Accordingly, an oral notice (including a description of the consumer's opt out rights)

should, in and of itself, constitute full compliance with the FCRA. As an alternative, oral disclosures should be permitted in the first instance to authorize immediate sharing of information provided that the oral notice is subsequently followed by a written or electronic notice within a reasonable time. The GLBA Regulations contemplate just such delayed notice and permit an institution to provide subsequent written or electronic notice within a reasonable time where a customer agrees over the telephone to enter a customer relationship involving the prompt delivery of a financial product or service and agrees to receive the notice at a later time.

- *Electronic Communications*: As drafted, the Proposed Regulations could be read to require burdensome customer acknowledgments -- either by U.S. mail or e-mail -- of receipt of electronic communications. If read in this manner, the Proposed Regulations could require a customer who wants the immediate benefit of information-sharing among affiliates to send a mailed or e-mailed form with sensitive data such as her account number(s) and tax ID number. The potential harm and added burden to consumers could well outweigh any potential benefit to the customer from such a requirement. To avoid this illogical result, the final regulations should clarify that in requiring a consumer to acknowledge receipt of electronic communications (*see, e.g.*, Proposed Regulation § __.6(b)(3)), a consumer's appropriate electronic response to a properly worded inquiry regarding receipt is sufficient. The use of electronic customer acknowledgments is common practice under the E-Sign legislation and should be equally permitted under the FCRA. This is also more secure and less likely to introduce errors.

III. Time by Which an Opt Out Must Be Honored (Proposed Regulation § .10).

The Joint Notice asks whether institutions should be required to implement opt outs within a specified number of days and proposes 30 days as an appropriate time period. We believe that the Proposed Regulation, as drafted, which contains a flexible standard requiring implementation "as soon as reasonably practicable," is the more appropriate approach. In enacting the GLBA Privacy Rules, the Agencies considered, and rejected, a similar proposal to set a bright line rule regarding implementation, and the reasons motivating that decision are equally applicable here -- namely, that differing institutions have differing compliance capabilities and that any bright line standard will be outdated by technological advances.

IV. Revocation of a Customer's Election to Opt Out (Proposed Regulation § .11).

Proposed Regulation § __.11 places the burden on customers of submitting a written or electronic revocation in order for the revocation to be effective. Such a requirement is not called for within the FCRA and is, in fact, inconsistent with the structure of the Proposed Regulations. Instead, a customer should be permitted to communicate his or her revocation orally and that revocation should take effect immediately. The Proposed Regulations are inconsistent in that they allow a customer to opt out orally (*see* Proposed Regulation §

__.7(b)(4)) but do not permit that same customer to withdraw that opt out election in the same manner. There is no reason for this distinction, and a customer should not be forced to go through the effort of sending a written or electronic revocation for his or her choice to be deemed effective. To the extent the Agencies are concerned with accurately registering and tracking a customer's revocation, that same concern exists with regard to the customer's initial opt out election and can, in any event, be dealt with by requiring an institution to keep an accurate record of the customer's elections -- whether an initial opt out choice or subsequent revocation.

V. Applicability of Opt Out Rules to Certain Types of Information-Sharing.

The Proposed Regulations blur the definition of "opt out information" and inappropriately eliminate permissible uses of information under the FCRA. A few examples (*i.e.*, servicing/agency arrangements, joint users, consumer consent, and fraud control) are listed below, but there are other uses not discussed below, and the Agencies should make clear that the regulations do *not* modify any existing permissible types of information-sharing or any existing exclusions (including without limitation the exclusions set forth in 15 U.S.C. Section 1681a(d)) under the existing body of FCRA law.

A. Servicing/Agency Arrangements.

The Proposed Regulations should be revised to make clear that information shared with an affiliate under an agency relationship to service or process a consumer's accounts or transactions is not subject to the opt out rules. Such agency arrangements are common in the banking industry where various functions (such as, for example, account opening, account servicing, loan origination and loan processing) may be placed organizationally in nonbank affiliates within a holding company structure. As currently drafted, the Regulations may place institutions in the untenable position of being required to provide an opt out to the types of information sharing that are essential to provide consumers with the products and services they request.

The notice and opt out provisions in the FCRA apply only to information that, but for the provision of notice and an opportunity to opt out of information sharing, would constitute a "consumer report" as defined within the statute. Information that an institution shares with its affiliates under an agency relationship in order to service or process a consumer's accounts or transactions, however, is *not* a "consumer report" under the FCRA irrespective of the notice and opt out provisions and therefore may not be included within the definition of "opt out information" under the Proposed Regulations.

The Proposed Regulations may not modify the scope of the FCRA and must therefore contain a similar limitation in the definition of "opt out information." However, the definition of opt out information in the Proposed Regulations eliminates the essential concept that, for a "consumer report" to be regulated by FCRA, the report must be sent to a third

party. The Federal Trade Commission ("FTC") has stated that when an institution shares a consumer report with its affiliate for a permissible purpose, the institution does not become a consumer reporting agency. 16 C.F.R. Part 600 at ¶ 604(3)(E)-(6A). In other words, if an institution shares information *with its affiliate-agent* for a permissible purpose under the statute and does not share that information with third parties, that information does not come within the statutory definition of a "consumer report." The statute specifies that a "consumer report" is "any written, oral, or other communication of any information *by a consumer reporting agency*" bearing on any of the seven statutory criteria (*e.g.*, a consumer's credit worthiness) which is used or expected to be used or collected in whole or in part to establish a consumer's eligibility for personal, family, or household credit or insurance, employment purposes, or any other permissible purpose under the statute. 15 U.S.C. § 1681a(d)(1) (emphasis added). In turn, a "consumer reporting agency" is defined as "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports *to third parties* . . . ." 15 U.S.C. § 1681a(f) (emphasis added).

The GLBA Privacy Rules permit sharing information with non-affiliate agents with only the minimal disclosure that the institution "disclose[s] nonpublic personal information to third parties as permitted by law." GLBA Privacy Rules at Appendix A. No opt-out right exists for such sharing under GLBA. There is no reason to require institutions to provide an opt out for the same type of information sharing when done between affiliates.

B. Joint Users.

Similarly, the final regulations should clarify that the joint user exception under existing FCRA law continues to be fully applicable under the final regulations. Specifically, the FTC has stated that joint users acting pursuant to a single consumer request may jointly use a single body of information provided by the consumer without providing an opt out opportunity and without the danger of becoming a consumer reporting agency. 16 C.F.R. § 600, Comment 603(f)--8. For example, if a lender forwards a consumer report to another affiliated creditor for use in considering a consumer's loan application at the consumer's request, the lender does not become a consumer reporting agency by virtue of that action.

C. Consumer Consent.

Where a consumer drawings requests or consents to information-sharing between affiliates, that consumer's choice should be given immediate effect, and the institution should be permitted to share information according to the consumer's direction, whether expressed broadly (*e.g.*, permitting sharing of all information with all affiliates with regard to products and services that may be of interest to the consumer) or narrowly (*e.g.*, permitting sharing of a specific type of information with a specific affiliate for a specific purpose). For example, a consumer's request that his or her information be provided to affiliates to determine his or

her eligibility for products and services offered by those affiliates should be honored. To do so alleviates the burden on the consumer of filling out multiple applications and consenting to multiple credit report drawings with the attendant dangers and pitfalls described above. Under the language of the FCRA, no provision of information from one affiliate to another (the "third party") takes place in such situations as long as the consumer's consent indicates an intention that all information is being supplied to all the affiliates with respect to products of interest to the consumer.

D. Fraud Control.

It is desirable from both a consumer and an institutional perspective to permit the immediate sharing of information for fraud control purposes and to exempt information shared for this purpose from the scope of "opt out information." Such information-sharing is in the best interests of consumers and protects them from the possibility of identity theft and repeated fraudulent transactions under their names.

This exemption should extend not only to transaction and experience information (*e.g.*, that a specific transaction was denied) but also to the underlying information that led to the decision to deny the transaction. Without the full spectrum of information available, affiliates may fail to prevent certain actual or potential fraudulent transactions that could otherwise be avoided.

In recognition of the importance of this type of information transfer, the GLBA regulations exempt from the scope of their notice and opt out requirements the disclosure of information to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability. There is no reason to restrict the similar use of information among affiliates.

For important reasons connected with the obligation to assure the safety and soundness of their lending operations, affiliated lenders often share fraud control information under agency or joint-user procedures designed to prevent applicability of FCRA opt-out procedures. They thus make immediately available to any affiliated lender any information from any source, whether or not it meets the definition of "transaction" or "experience" information, if that information might help prevent consummation of a transaction with a borrower suspected of fraud. For example, two national banks owned by the same bank holding company may desire to share use of a database collecting information regarding potentially fraudulent transactions, or they may share with each other statutorily-required Suspicious Activity Reports. Yet, because these databases and reports may contain not only transaction and experience information but may also contain other information relevant to detecting actual or potential fraud, the Proposed Regulations could be construed to prevent the sharing of this type of information. This problem is particularly acute where the affiliate companies are engaged in the same line of business, such as two national credit card banks. To allow potentially fraudulent borrowers to prevent the sharing of this and other types of fraud-control information among affiliated lenders by invoking FCRA opt-out rights would subject

affiliated lenders to risks that far exceed those faced by other lenders, who do not face any potential opt-out rights before obtaining similar information from unaffiliated entities that either sell fraud-control systems or provide similar information on a cooperative basis.

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Citigroup appreciates this opportunity to comment on the Joint Notice. If you have any further questions or if we can provide any additional information, please do not hesitate to call me at 212/559-2938 or my colleague, Jeffrey Watiker, at 212/559-1864.

Very truly yours,

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cc: Jeffrey A. Watiker
Viola Spain