Household International, Inc. 2700 Sanders Road
Prospect Heights, IL 60070 Office 847.564.5000

(43)

Household

VIA FACSIMILE 202-906-7755

December 4, 2000

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attn: Docket # 2000-81

Re: Proposed Fair Credit Reporting Regulations (12 C.F.R. Part 571)

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Proposed Fair Credit Reporting Regulations, 12 C.F.R. Part 571 (the "Proposed Rule" or "Proposal"), of the Office of Thrift Supervision ("OTS") implementing the Fair Credit Reporting Act ("FCRA"). Household Bank, f.s.b. ("Household Bank"), respectfully provides comments to the Proposed Rule. Household Bank offers a variety of consumer loan products primarily through channels such as the telephone, internet, and direct mail. At September 30, 2000, Household Bank owned consolidated assets totaling $11.3 billion. As part of Household International, Inc., one of the largest consumer financial services providers in the country, Household Bank's information sharing practices, as currently permitted by the FCRA, allow it to provide its customers with a wide variety of credit and insurance opportunities. Because many customers of Household Bank and its affiliates may be underserved by traditional financial institutions, we believe that such information sharing provides a valuable service to those individuals who choose not to opt out of this system.

We appreciate the effort that the OTS and the other banking agencies have made to streamline the Proposal with the recently promulgated regulations governing bank information sharing with third parties (the "Privacy Rule"). In many cases, such consistency may lead to reduced burden and greater clarity. However, there are also circumstances where adopting additional requirements purely for the sake of consistency may add additional burden not warranted by the underlying statute. In particular, we note that the language of section 603 of the FCRA differs considerably from the privacy sections and detailed requirements of the Gramm-Leach-Bliley Act of 1999 (the "GLB"), as do the consequences of a bank's sharing information with an affiliate versus a third

party. Thus, there may be circumstances where complete consistency between the regulations may be unwarranted from either a legal or policy standpoint. Our specific comments regarding the Proposal are set forth below.

Effective Date.

Household Bank is currently in the process of redesigning a variety of customer forms to comply with the new Privacy Rule and with the new requirements of 12 C.F.R. Part 14, governing bank sales of insurance. New FCRA requirements will likely mandate the redesign and redistribution of such customer forms at a significant cost. For example, in the case of a private label credit card application, all of the new privacy and insurance disclosures must be included on the credit card application, which then must be printed and distributed to merchants before April 1, 2001. In order to meet this deadline, proofs of the application must be completed during December 2000. Cost estimates for such compliance are significant. For this reason, we suggest that the effective date for any new required FCRA disclosures be timed to fall between 12-18 months following the publication of the final rule. This will lessen printing and distribution costs allowing financial institutions to make any requisite forms changes while utilizing existing stock. While this timeframe may appear substantial, please note that Household Bank and the majority of financial institutions affected by any new rule are currently in compliance with the statutory requirements of the FCRA, and thus delayed implementation of the Proposal should not harm any consumer during the implementation period.

571.2 (Examples).

Including examples in the regulation is helpful, so long as the rule also includes language such as that provided by 571.2, specifically, that the examples are not exclusive and that compliance with the examples will constitute compliance with the rule.

571.3 (Definitions).

We are concerned with how the definition of "clear and conspicuous" in 571.3(c) will work with the definition of "clear and conspicuous" in the Privacy Rule, as the disclosures will often be combined. In fact, not combining them may be a more confusing situation, since both relate to consumer privacy. Thus, it would be helpful if the Proposal could state that the notices may be combined and that neither would have to be more "clear and conspicuous" than the other (see, e.g.,

571.3(c)(2)(ii)(E), which suggests that to be clear and conspicuous, each notice could use different typesizes, styles, etc.).

571.5 (Content of opt out notice).

In the creation of new disclosures, we are concerned with the amount of information now required and proposed to be required for various types of consumer loans. As a credit card issuer, most of our disclosures must be contained on a single brochure that is attached to the credit application. Just this year, we are amending our forms to incorporate new Regulation Z disclosures (including required type sizes for certain items of information), the Privacy Rule, and the disclosures regarding insurance sales. The more information forced on a consumer during the credit application process reduces the meaning of that information. Thus, we urge you to consider the realistic benefit provided by any new disclosures to these individuals as you finalize the Proposal.

This section, which is copied almost verbatim from the Privacy Rule (which, in turn, is taken from section 503 of the GLB), goes so far beyond the provisions of the FCRA that it should be stricken in its entirety. The language of the FCRA, the situations it covers, the possible harm that could result from noncompliance with the statute differ so completely from those of Title V of the GLB that the regulatory burden created by section 571.5 of the Proposal is simply unwarranted. There is no legislative history that would support expansion of the FCRA notices to the detail required for section 503 of the GLB, and while the GLB did amend the FCRA to allow for the current rulemaking, it did not provide for additional, heightened standards to be included in such rulemaking. Nor does the supplemental information in the proposal explain why these significant new requirements have been added.

If this section is maintained in the final rule, we believe that it should not require (i) notice of how long a consumer has to respond to the opt out notice, (ii) the fact that the consumer can opt out at any time, and (iii) a statement of a required 30-day waiting period in every instance before a financial institution will share information with its affiliates. Again, we question the utility of the volume of information being presented on loan documents, and we object to a required 30-day waiting period, as discussed below.

Finally, if this section is to be part of the final rule, we would support the inclusion of language to the effect that financial institutions may allow consumers to opt out of sharing with respect to only certain information or certain affiliates.

571.6 (Reasonable opportunity to opt out).

We do not believe that the Proposal's specific timeframes for opting out are appropriate. The suggested minimum 30-day periods would effectively prevent financial institutions from sharing information until that period ran out – even if the consumer was sincerely and immediately interested in a product offered by the bank's affiliate. While we agree generally that the definition of a "reasonable period" will differ according to the method in which an individual receives an opt-out notice, we do not think that a mandatory waiting period that could disadvantage consumers was intended by the drafters of the FCRA. A possible way to address this situation would be to include language that provides that if a consumer returns an application without opting out, the financial institution may share that individual's information as of the time the application is received (unless and until the individual subsequently opts out). In addition, the final rule could provide that a financial institution could share information regarding a consumer who specifically consents to such sharing.

An additional concern is raised by the requirement that an individual acknowledge receipt of the opt out notice if that notice was sent by electronic means. This requirement seems unnecessary, is beyond the mandate of the FCRA, and could raise considerable tracking burdens. Thus, we suggest that it be eliminated. Specifically, it would affect consumers who choose to utilize the Internet for a financial transaction or who have specifically directed that an institution contact them at a specific electronic address. It seems to imply that such electronic means of communication are somehow less reliable than other written forms of communication. There is no support in the Proposal for this proposition, and we are aware of none. In fact, because of the compliance burdens raised by the necessity of tracking the status of which consumers have acknowledged receipt of the notice, it would actually discourage this type of electronic communication, even if consumers have expressed a preference for it. Thus, we suggest that you modify the Proposal to be consistent with other consumer disclosure provisions including the Privacy Rule, and rules implementing the Equal Credit Opportunity Act and the Truth in Lending Act, by removing this requirement of acknowledgement.

571.7 (Reasonable means of opting out).

The FCRA requires that an individual be "given the opportunity" to direct that information not be shared with a bank's affiliate. This statutory language has been interpreted in the Proposal to provide that requiring a consumer to write a

letter is not sufficient opportunity to provide such direction (571.7(c)). The preamble to the Proposal gives no indication of why this common operational method, successfully used by a wide variety of financial institutions and their customers for a number of years, should now be rendered illegal. Household Bank interacts with millions of consumers on a continuous basis. Our experience is that most of these consumers are adept at letter writing, which remains a common method of communication. Many have written to us over the years to exercise an opt out. For some banks, this means may be more cost efficient than developing specific forms, post cards, or the implementation of a toll-free line. At the same time, we do not agree that it places an inappropriate burden on consumers. Thus, we recommend that this example of a method that "is not reasonably convenient" be stricken from the Proposal.

571.8 (Delivery of opt out notices).

Again, the FCRA requires that an individual be "given the opportunity" to direct that information not be shared with a bank's affiliate. Unlike the privacy provisions of the GLB, the FCRA contains no requirement that notice of such opportunity must be in writing. This flexibility contained in the FCRA allows banks that are conducting loan transactions by telephone to give consumers the opportunity to consent to information sharing while they are on the line. The Proposal would take this opportunity away, restricting consumer choice. The Proposal gives no support for this new reading of the FCRA that would have the effect of disadvantaging both financial institutions and consumers, and we are aware of none. Thus, it should be eliminated.

571.10 (Time by which opt out must be honored).

This section provides that a bank must comply with a consumer's opt out direction "as soon as reasonably practicable after the bank receives it." This language reasonably interprets the statutory requirements and should be maintained. Because of the variety of financial institutions, their communication methods and technological capability that would be covered by rule, specific time frames should not be included in any final version of the rule.

571.11 (Duration of opt out).

This section provides that a consumer's opt out direction will remain in effect until the consumer revokes it in writing. Similar to our comments regarding proposed section 571.8, this written requirement has been unnecessarily created without statutory basis, to the disadvantage of both banks and consumers. This section

could delay transactions requested by a consumer over the telephone if (i) that consumer had previously opted out in writing and (ii) that consumer now desired to initiate a transaction that requires (or would be accelerated by) affiliate information sharing. As a result, we recommend removal of the requirement that revocation of an opt out direction must be in writing.

571.12 (Prohibition against discrimination).

Section 571.12, prohibiting discrimination against a consumer who is a credit applicant if the consumer opts out of the communication of "opt out information" to affiliates, is unnecessary and inappropriate in a regulation promulgated under the FCRA. The supplementary information acknowledges that this proposed section is a "reminder" of Equal Credit Opportunity Act ("ECOA") requirements, an unusual and, we suggest, insufficient rationale for promulgating a new federal rule. The ECOA requirements are separate and distinct provisions that are contained in a law under which the OTS does not have specific rulemaking authority. As Congress has not included any anti-discrimination requirements within the FCRA or within the rulemaking authority granted to the OTS under the FCRA or the GLB, this section should be deleted.

As an additional note, we are concerned that the proposed section could have negative and unintended consequences. We caution that the broad Regulation B definitions of "discriminate against an applicant" and "applicant" should not be reflexively applied to consumers who opt out of affiliate sharing. For example, Regulation B's prohibition against treating certain credit applicants less favorably than others is not necessarily appropriate in the FCRA context with respect to additional products or services that might be offered by a bank or its affiliates.[1] For example, proposed section 571.12(b)(2) could be interpreted to prevent a bank's affiliates from making additional products or services available to the bank's customers with pricing features that are not available to the general public, if customers who had opted out of affiliate sharing could not receive such offers. In other words, the proposal could deprive all customers of a benefit simply because that benefit could not legally be offered to customers who had chosen not to receive such benefits. We submit that this result was not intended by Congress when it granted rulemaking authority to the OTS under the FCRA.

---

[1] On this point, we note the recent reluctance of the Board of Governors of the Federal Reserve System to apply Regulation B to preselection criteria, which could include whether an individual is a customer of an affiliate. See 69 F.R. 44,582; 44,584 (August 16, 1999).

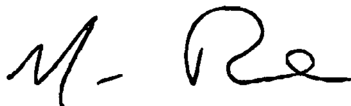
Sample Notice

While sample notices can be helpful in implementing requirements such as those set forth in the Proposed Rule, we are concerned about the length of the sample notice currently included in the Proposal. As discussed above, we do not believe that a notice of such detail is required or can be justified by the plain language and intent of the FCRA affiliate sharing provisions. If the Agencies decide to include a sample notice in the final rule, it should be shortened substantially to avoid consumer confusion and to simplify its integration with the sample clauses set forth under the Privacy Rule.

* * *

We appreciate the opportunity to comment on this Proposal.

Sincerely,



Martha Pampel
Senior Counsel
Federal Regulatory Coordination
(847) 564-7941