

From: Hurwitz, Evelyn S on behalf of Public Info
Sent: Wednesday, December 13, 2000 2:20 PM
To: Gottlieb, Mary H
Subject: FW: Proposed FCRA Regulations-Affiliate Sharing/Dockets 00-20, r-1082 ,3064-AC35, 2000-81

-----Original Message-----

From: Torres, Frank [mailto:TorrFr@consumer.org]
Sent: Wednesday, December 13, 2000 1:36 PM
To: 'reg.comments@occ.treas.gov'; 'regs.comments@federalreserve.gov';
'comments@fdic.gov'; 'public.info@ots.treas.gov'
Subject: Proposed FCRA Regulations-Affiliate Sharing/Dockets 00-20,
r-1082 ;3064-AC35, 2000-81

To: Agencies Below

From: Frank Torres, Legislative Counsel, Consumers Union

Re: Comments of Consumers Union 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

Consumers Union appreciates this opportunity to comment on the agencies' Joint Notice of Proposed Rulemaking to implement the provisions of the Fair Credit Reporting Act (FCRA) that permits institutions to communicate consumer information to their affiliates. Consumers Union has joined in efforts to strengthen the FCRA and to ensure that the FCRA remains founded in enforceable Fair Information Practices. We appreciate the agencies' view that the rule should apply to all institutions, as well as the agencies' incorporation of the protections afforded consumers under the electronic signatures legislation pertaining to electronic opt-out disclosures.

Consumers Union shares the concern of other advocates that the affiliate sharing loophole which currently exists seriously undermines the fundamental framework of the FCRA. Consumers Union opposed the affiliate sharing

loophole when enacted as part of the 1996 amendments to the FCRA.

Congress

did not intend to allow virtually unregulated databases when it enacted the FCRA. Nevertheless, we acknowledge the agencies' clarification of those provisions of the FCRA pertaining to affiliate sharing.

Consumers Union has the following more general comments.

* The rule should make clear that a consumer's opt-out applies to all outside sources of information. It is likely that institutions will increasingly seek to obtain excess information from consumers either through websites, marketing partners or other sources, including follow-up surveys. Thus, the rule should not limit the types and amounts of information included in the consumer's opt-out. The FCRA's affiliate sharing exception does not limit "other" information only to "credit" related information.

* The rule should not allow partial opt-outs. If the rule provides for partial opt-outs, specific and meaningful disclosures must be given. Consumers Union is concerned that partial opt-outs will create confusion and provide a loophole through which institutions will be able to share information even when a consumer has thought they had opted-out. When a consumer decides to partially opt-out for one purpose and does not exercise an opt-out for another purpose, there should be no overlap of information that could then be shared because of the failure to exercise the opt-out in the second instance. In other words, the partial opt-out should not be used to create confusion among consumers, or a loophole to lull the consumers into believing that they had opted-out of certain forms of information sharing, but by failing to opt-out of another category of information sharing that their initial opt-out would have no effect.

* The rule should improve the opt-out disclosure by including a description of the various uses of information. In order to be effective the rule should require that institutions provide clarity about how they use consumer information and why they are collecting it.

We concur with other commenters' suggestions on the form of the disclosures, including the following samples:

"____ 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 you can use my outside information to market me products.

____ I do not agree that affiliates may use my information to make underwriting decisions about me."

* The rule should clarify the disclosures required under section 615(b). That clarification should include model affiliate sharing

adverse
action notices and dispute rules.

The following comments address specific sections of the proposed rule:

Section ____.2 Examples: It is vital that consumers be provided with information in a manner that is crystal clear. While it may make sense to tie privacy notices together, combining notices should not become a vehicle to create consumer confusion about their privacy rights.

Section ____.4 Mergers: The rule should specify that if the privacy policies and practices of the surviving entity are different than the prior policies, then consumers should be provided with a new opt-out and no information should be shared, even among affiliates until the consumers have the ability to exercise their right to opt-out.

Section ____.5 Contents of the Opt-Out Notice: Institutions should be required to tell consumers how long they have to respond to the opt-out notice. Any analysis of burdens should be weighed in favor of the interest of consumer privacy. Fundamentally, we fail to see any additional burdens stemming merely from additional disclosures.

Section ____.7 Reasonable Means of Opting-Out: Consumers should be provided the means to opt-out at the time the notice is given and in the same manner in which the notice is provided. For example, if the notice is provided electronically, the consumer should be provided the means to respond electronically at the time the notice is given.

Section ____.10 Time by Which Opt-Out Must be Honored: The rule should fix a time for institutions to respond to an opt-out. That time period should be the shortest possible. Institutions should be required to develop and publish their procedures for honoring a consumer's opt-out. At a minimum an institution should be required to take immediate action to honor an opt-out request.

In conclusion, Consumers Union appreciates this opportunity to comment on the proposed rule. We commend the agencies for acting quickly to publish the rule and for beginning to apply the rules to the newly evolving marketplace.