

31

December 1, 2000

Via Federal Express

Ms. Jennifer J. Johnson
Secretary, Board of Governors
of the Federal Reserve System
20th and C Streets, N.W.
Washington, DC 20551

**Re: Docket No. R-1082
Comments to Proposed Rule, 12 C.F.R. Part 222 (Regulation V)
Fair Credit Reporting Regulations**

2000 DEC -4 A 11:07
INSURANCE AGENTS OF AMERICA

Dear Secretary Johnson:

On behalf of the Independent Insurance Agents of America (“IIAA”), the National Association of Insurance and Financial Advisors (“NAIFA”) (formerly “NALU”), and the National Association of Professional Insurance Agents (“PIA”) (collectively “Insurance Agents”),¹ we submit these comments to the Board of Governors of the Federal Reserve System (“Board”) in response to the proposed regulations issued jointly by the Board, the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”) and the Office of Thrift Supervision (“OTS”) (collectively the “Agencies”),² implementing the provisions of the Fair Credit Reporting Act (“FCRA”).

With one exception, discussed in more detail below, the Insurance Agents support the proposed rules and believe they adhere to the requirements set forth in the FCRA. Following are the Insurance Agents’ comments with respect to their only objection –

¹ IIAA, NAIFA, and PIA are non-profit trade associations that represent over one million (1,000,000) insurance agents and their employees throughout the United States. Their members are agents who work at all levels of the insurance market and sell a full range of insurance products, including annuities.

² Citations herein are to the specific regulations proposed by the Board as part 222 to chapter II, title 12 of the Code of Federal Regulations (“CFR”). See 65 Fed. Reg. 63,120, 63,131 (Oct. 20, 2000). These comments also apply fully to the substantively identical Proposed Rules promulgated by the OCC, FDIC and OTS, and we have sent copies of these comments to each of those Agencies.

which is simply a request for clarification in the enumerated categories of opt-out information – and their comments regarding the interplay between these proposed rules and other federal regulations.

1. The Final Rule Should Include Express Language Regarding Insurance Information Submitted in Conjunction with a Credit Application

The proposed regulations authorize institutions to communicate among their affiliates two categories of consumer information: (1) “transaction or experience information,” which may be communicated to affiliates without restrictions; and (2) “opt-out information,” which may be communicated to affiliates provided that certain conditions are met. Neither the statute nor the proposed regulations define transaction or experience information, but the regulations clarify the difference between such information and “opt-out information” by giving examples of opt-out information.³

Opt-out information includes information submitted to or acquired by a bank in connection with an individual’s credit eligibility. Although the proposed regulations do not say so expressly, presumably, this includes insurance information submitted in conjunction with a credit application, such as information indicating that collateral is insured. The overall structure of the regulations and other express language therein suggest that a customer must be provided with an opt-out before insurance information submitted in conjunction with credit applications may be shared with affiliates. An express example to that effect, however, is not included in the regulations. To promote greater clarity and certainty, the Insurance Agents urge the Agencies to include as an express example of opt-out information insurance information submitted in conjunction with a consumer’s credit application.

2. The Final Rule Should Be Consistent with the Federal Electronic Signatures Act

The Insurance Agents support the Agencies in striving to ensure that the rules governing communications between an institution and a consumer in an electronic medium are consistent with the Electronic Signatures in Global and National Commerce Act (“E-SIGN”), Pub. L. 106-229.⁴

The proposed rules provide that an institution must deliver an opt-out notice so that each consumer can reasonably be expected to receive actual notice.⁵ An institution may give notice in writing or, if the consumer agrees, electronically.⁶ Specifically with respect to electronic notice, the proposed rules provide that an institution may reasonably

³ See 65 Fed. Reg. at 63,133 (to be codified at 12 C.F.R. § 222.5(d)(3)).

⁴ The Agencies have specifically sought comments on compliance with E-SIGN. See 65 Fed. Reg. at 63,124.

⁵ See 65 Fed. Reg. 63,133 (to be codified at 12 C.F.R. § 222.8(a)).

⁶ See 65 Fed. Reg. 63,133 (to be codified at 12 C.F.R. § 222.8(b)).

expect that a consumer receives actual notice if its electronic notice is directed only at consumers who conduct transactions electronically, and the consumer acknowledges receipt of the notice as a necessary step to obtaining the particular product or service.⁷

As the Agencies correctly recognize, E-SIGN provides that an electronic record may satisfy the legal requirement that consumer disclosures be in writing if the consumer affirmatively consents to electronic disclosure and certain other specific requirements are met. Such specific requirements include, *inter alia*, providing the consumer with a clear and conspicuous statement describing how the consumer may obtain a paper copy of an electronic record, and providing the consumer with a statement of the hardware and software requirements for access to and retention of electronic records.⁸

Although the proposed rules do not run afoul of E-SIGN, they do not expressly enumerate all of E-SIGN's requirements for consumer disclosures. The Insurance Agents support any changes that the Agencies make in the final rule to promote greater consistency with E-SIGN, whether that includes making the delivery of opt-out notices provision in the final rule more specific, adding another provision expressly including E-SIGN's requirements, or adding a provision that incorporates E-SIGN's requirements by reference.

3. The Final Rule Should Be Consistent with the Gramm-Leach-Bliley Privacy Regulations

Similarly, the Insurance Agents support any attempt by the Agencies to promote consistency between these regulations and Gramm-Leach-Bliley privacy regulations. That said, the Insurance Agents do not have any specific concerns about simultaneous compliance with these proposed rules and the privacy regulations.

The Agencies have solicited comments regarding the FCRA's clear and conspicuous standard, specifically asking whether there is any concern about compliance with the FCRA standard when FCRA opt-out notices are provided with privacy notices.⁹ Like the privacy regulations, the proposed rules require that a notice be "clear and conspicuous." Unlike the privacy regulations, however, the proposed FCRA regulations offer a detailed list of examples of what constitutes "reasonably understandable" and "designed to call attention."¹⁰ The Insurance Agents do not believe that this heightened degree of specificity renders these regulations inconsistent with the privacy regulations or affects the disclosures required by those laws in any way.

⁷ See 65 Fed. Reg. at 63,133 (to be codified at 12 C.F.R. § 222.8(b)(1)(iii)). Compare § 222.8(b)(2)(ii) (a bank may not reasonably expect that a consumer will receive actual notice if it sends the notice via electronic mail to a consumer who does not obtain a product or service from the bank electronically).

⁸ See E-SIGN § 101(c)(1)(B)(iv) and (C)(i).

⁹ See 65 Fed. Reg. at 63,122.

¹⁰ See 65 Fed. Reg. at 63,131 (to be codified at 12 C.F.R. § 222.3(c)(2)(i), (ii)).

Collier Shannon Scott

The Agencies also have invited comment on the requirement that an FCRA notice specify how long a consumer has to respond to the opt-out notice before an institution may begin disclosing information to its affiliates, and the requirement that it specify that a consumer may opt-out at any time. These disclosures are not required in the privacy regulations.¹¹ Again, the Insurance Agents do not believe that this heightened degree of specificity conflicts with the privacy regulations or affects the disclosures required by those laws in any way.

We hope that these comments are helpful. We would be pleased to submit additional information or clarification as necessary.

Sincerely,

A handwritten signature in cursive script that reads "Christy Hallam DeSanctis". The signature is written in black ink and is positioned above the typed name.

Scott A. Sinder
Christy Hallam DeSanctis
Counsel for the Insurance Agents

¹¹ See 65 Fed. Reg. at 63,123.