

Privacy Rights Clearinghouse

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By E-mail: regs.comments@federalreserve.gov

Docket Number R-1082

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

RE:: Comments on Proposed Regulations Regarding Information Sharing with
Affiliates under the FCRA. Docket Number R-1082

Dear Ms. Johnson:

The Privacy Rights Clearinghouse (PRC) is a nonprofit consumer information and advocacy program based in San Diego, California. The PRC was established in 1992, and since that time, the PRC has counseled thousands of consumers on a variety of privacy-related issues. Privacy topics include identity theft, credit reporting, telemarketing, "junk" mail, Internet privacy, medical records, and workplace issues. The PRC's work at this time is particularly focused on the rights of consumers to protect confidential financial and other personal information.

The PRC appreciates the opportunity to comment on the proposal cited above by the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (the Agencies). We offer the following as suggestions of how the Agencies might use their discretion to improve consumer protections within the framework of the Fair Credit Reporting Act:

Should Financial Institutions Disclose How Long a Customer Has to Respond to an Opt-Out Notice before the Institution May Begin Disclosing Information about That Consumer to Its Affiliates?

Yes, and the time period should be specified by regulation rather than left to the discretion of each financial institution. The PRC urges the Agencies to adopt a 60-day response time rather than the 30-day limit that has been incorporated into regulations implementing the privacy provisions of the Gramm-Leach-Bliley Act (GLB).

In the event the Agencies determine that 30 days is an adequate time for a consumer to respond, the 30-day period should allow a five-day grace period for the notice to reach the consumer as well as a five-day period for the opt-out election to reach the financial institution. Otherwise, if a consumer is given 30 days to respond and does not receive the notice before five days after it was mailed and then must return the opt-out notice so that it reaches the financial institution before 30 days have elapsed, the consumer's time to respond is effectively only 20 days.

Unless the consumer is given notice of a specified time that the financial institution will disclose information to an affiliate, the consumer has no way of knowing whether information may have already been disclosed by the time he or she receives the notice. Nor does the consumer know whether he or she has one, ten, twenty, sixty or any other number of days to respond.

Furthermore, without a time specified before disclosure to affiliates can occur, there is no way to measure whether a financial institution is in compliance with the notice requirements of the FCRA. No specified standard of compliance leaves the financial institution, government auditors and the consumer in the dark as to exactly what constitutes adequate notice under the FCRA, essentially nullifying any enforcement provisions of the Act. The FCRA gives consumers two basic rights with regard to affiliate sharing: (1) the right to notice and (2) the right to opt-out. Consumers' rights and the financial institution's concurrent obligations under the FCRA can only be satisfied by a specified time period to return the opt-out notice.

Should Financial Institutions Inform Consumers That They Can Opt-Out at Any Time?

Yes. The purpose of the notice is to inform consumers of their rights under the FCRA. A notice that fails to inform consumers of all their rights is inadequate notice and does not provide a reasonable opportunity for the consumer to opt-out. We note that most consumers do not have access to the text of laws such as the FCRA that so significantly affect them. Rather, the consumer's primary source of knowledge about their rights to prevent sharing of information comes from the notice financial institutions are required to provide.

Would the Benefits of Additional Disclosures Outweigh the Burdens?

Adequate notice and a reasonable opportunity to opt-out can only be accomplished by disclosure of a specified time for returning opt-out notices and disclosure of the fact that consumers have the right to opt-out. These are "benefits" provided to consumers by the FCRA. The burden of these additional disclosures could only be minimal, since the notice will no doubt come on a standardized form sent to all the financial institution's customers. Inclusion of a few simple words at the time the form is designed would accomplish the goal of adequate notice and reasonable opportunity.

Disclosure of Medical Data -- Are the Examples of Categories and Items of Opt-Out Information Appropriate and Should Additional or Different Examples be Used?

The Agencies are correct in stating that medical data are especially sensitive for many consumers. We also agree with the Agencies determination that "if [medical data] are among the opt-out information that an institution communicates to its affiliates, the institution satisfies the requirement to categorize that information only if it includes examples of medical data that it intends to share."

Accordingly, we suggest that the examples of "medical history" included under paragraph (d)(3) be expanded to give specific examples of the kinds of information that may be included in "medical history," such as serious illnesses, periods of hospitalization for treatment of physical or mental illness, periods of disability and medications taken. Consumers should also be given additional notice that: "Failure to opt-out of sharing of medical data may result in adverse decisions regarding credit or insurance."

Additional Notices Needed

We note that consumers may have additional rights with regard particularly to the sharing of medical data under state law. Consumers should be alerted to this fact in the FCRA notice. Moreover, to prevent confusion between the limited opt-out rights under the FCRA and the opt-out provisions of the G-L-B Act, the distinctions should be stated clearly with examples of the kinds of information that may apply to each Act. Otherwise, consumers may be led to believe that an opt-out in response to the FCRA notice is also an opt-out under G-L-B.

Again, the PRC appreciates the opportunity to provide the above comments in support of consumers' rights to privacy of confidential personal information.

Sincerely,

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