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Via Facsimile and Electronic Mail

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

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

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

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

Re: Proposed Rule for Fair Credit Reporting Regulations; 12 CFR Parts 41, 222, 334 and 571 (OCC Docket No. 00-20; Board Docket No. R-1082; and OTS Docket No. 2000-81)

Dear Ladies and Gentlemen:

We appreciate this opportunity to submit comments on behalf of one of our clients in response to the joint notice of proposed rulemaking and request for comment issued by the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS") (collectively, the "Agencies"), 65 Fed. Reg. 63,120 (Oct. 20, 2000), regarding the implementation of the affiliate-sharing provisions of section 603 of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* ("FCRA").

We applaud the Agencies' efforts to develop regulations conforming the FCRA with the Agencies' final privacy regulations under the Gramm-Leach-Bliley Act ("GLBA"). Financial

institutions and consumers are both served by uniform privacy regulations. Nevertheless, Congress did not intend to replace the FCRA with GLBA. It expressly stated that nothing in GLBA should "be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act." 15 U.S.C. § 6806(c). There are fundamental differences between the two statutes, and it is crucial for the Agencies to recognize these differences and apply them accordingly.

Most importantly, although GLBA requires mandatory notice and an opt out disclosure in most cases prior to information sharing among *nonaffiliated* third parties, the FCRA notice and opt out provisions permit institutions to voluntarily choose to make such disclosures to consumers in order to remove the information shared from the definition of "consumer report" under the statute. In this way, an institution that shares information with its affiliates can significantly decrease the chance that it will be characterized as a consumer reporting agency under the FCRA.

The opt-out notice, however, is not the only means for an institution to share information with its affiliates without incurring the risk of being deemed a consumer reporting agency. The scope of the proposed rule should be amended to ensure that it does not cover certain types of information sharing that are not covered by the FCRA under current law. We therefore recommend that § __.4 be revised, as discussed in detail below, to limit its scope to communications that would otherwise be covered by the FCRA. Such a change would limit the scope of the rule to information sharing with third parties that would otherwise trigger the applicability of the FCRA, and would clarify that the new rules do not cover information sharing, such as sharing with joint users, that is not covered by the FCRA. See proposed rule section __.4, 65 Fed. Reg. 63122-23 (Oct. 20, 2000).

Comments on the Proposed Rule

I. § __.1 Purpose and scope, § __.3 Definitions, § __.4 Communication of opt out information to affiliates, and § __.5 Contents of opt out notice.

The proposed rule appears to apply to all affiliate sharing of consumer information unless consumers are given the opportunity to "opt out" of the sharing, even if the information sharing would not otherwise be covered by the FCRA. See 65 Fed. Reg. 63122-23, 63129. In addition, the proposal defines "opt out information" as "information that (1) bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, (2) is used or expected to be used or collected for one of the permissible purposes listed in the FCRA, and (3) is not solely transaction or experience information." § __.3(k). While this definition mirrors the definition of a "consumer report" under the FCRA, the actual language in the proposal could be viewed as covering far more information sharing than the statute actually covers.

In the statute, but not in the proposed regulation, the definition of "consumer report" is linked to and limited by the related definition of "consumer reporting agency." Thus, information that satisfies the quoted portions of the definition of a "consumer report" might still not be covered by the FCRA because the person communicating the information is not doing so in a

way that satisfies the definition of "consumer reporting agency" -- for example, the communication might not be to a "third party," or might not occur "regularly." The Agencies can easily avoid this problem by amending these provisions to clarify that the rule only covers information that meets the FCRA definition of a "consumer report" and that is "communicated" by a "consumer reporting agency," as those terms are understood under the FCRA. Moreover, the Agencies should clarify that the regulations do not modify any existing permissible types of information-sharing or any existing exclusions (including without limitation the exclusions set forth at 15 U.S.C. § 1681a(d)) under the existing body of FCRA law.

The notice and opt out provisions of the FCRA are part of a statutory exclusion from the definition of "consumer report," permitting some sharing with affiliates of consumer information without imposing "consumer reporting agency" obligations. These FCRA opt-out provisions however, do not impose any obligations. They are merely exceptions to the definition of a "consumer report." Under the FCRA, if information does not otherwise constitute a "consumer report," or the institution would not otherwise become a "consumer reporting agency" by "communicating" the information, the notice and opt out provisions are unnecessary and inapplicable. 15 U.S.C. § 1681a(d)(2)(A)(iii). The new regulations should explicitly state that it does not cover information sharing that is not otherwise covered by the FCRA. This letter discusses below a few types of such information sharing that might inadvertently be covered if the regulations are not so amended -- such as sharing with joint users or agents, sharing pursuant to a consumer's express consent, or sharing for fraud control purposes.

Joint Users and Agents. The Federal Trade Commission ("FTC") and its Staff have long recognized that the FCRA was not intended to regulate the sharing of credit-related information between two entities that are joint users of that information or where one acts as an agent on behalf of the other. The FTC has interpreted joint users to include:

> Entities that share consumer reports with others that are jointly involved in decisions for which there are permissible purposes to obtain the reports ....An agent or employee that obtains consumer reports does not become a consumer reporting agency by sharing such reports with its principal or employer in connection with the purposes for which the reports were initially obtained.

16 C.F.R. § 600, Comment § 603(f)--8.[1/]

1/ Although the joint user and agent exceptions have not been the subject of any published judicial rulings we have been able to identify, the staff Commentary has been given considerable deference by courts in other respects. See, Estiverne v. Saks Fifth Avenue, 9 F.3d 1171, 1173 (5th Cir. 1993); Dotzler v. Perot, 914 F. Supp. 328, 331 (E.D. Mo. 1996); Yonter v. Aetna Finance Co., 777 F. Supp. 490, 491 (E.D. La. 1991) (all citing Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984)).

Although it contains separate sections on "joint user" and "agent," the Commentary suggests that agents are a type of joint user. Therefore, and for brevity, this letter will at times refer to both exceptions as the "joint user exception."

Similarly, the FTC has stated that an agent and principal may share a consumer report obtained and used by both for a shared "permissible purpose" without either becoming a consumer reporting agency.[2]

In addition, the FTC Staff has issued numerous opinion letters restating and reaffirming the joint user exception.[3] Most recently, the FTC staff explained in a November 20, 1998, letter that the joint user exception "treats entities as 'joint users' when both parties are considering the same loan application and both have a permissible purpose."[4]

In March 1994, the Federal Financial Institutions Examination Council ("FFIEC") on behalf of all federal bank regulators issued "Questions and Answers About the Fair Credit Reporting Act: The Financial Institution as a Consumer Reporting Agency."[5] This issuance again confirms that a financial institution does not become a consumer reporting agency by sharing consumer report information with a joint user involved in the same transaction:

> Q: Does a financial institution become a consumer reporting agency by transmitting information obtained from outside sources to another party involved in the same transaction?
>
> A: No. The financial institution would not become a consumer reporting agency since it is a joint user of the same information with the other party involved in the same transaction....

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[2] A party with a 'permissible purpose' may obtain a consumer report on behalf of his principal, where he is involved in the decision that gives rise to the permissible purpose. Such involvement may include the agent's making a decision (or taking action) for the principal, or assisting the principal in making the decision (e.g., by evaluating information). In these circumstances, the agent is acting on behalf of the principal. In some cases, the agent and principal are referred to as 'joint users.' 16 C.F.R. § 600, Comment § 604(3)(E)--6(A).

[3] See FTC Staff Opinion Letter by Jack E. Kahn, Division of Special Projects, May 6, 1971 (because student loans are guaranteed partially by the state and federal government, the state government, federal government and bank are joint extenders of credit); Staff Opinion Letter by Robert W. Russell, FTC Division of Special Statutes, September 27, 1973 (subsidiary may furnish credit information to parent without becoming consumer reporting agency when both are parties to the same transaction); FTC Staff Opinion Letter by Clarke W. Brinckerhoff, Division of Credit Practices, December 30, 1988 (landlord may forward applicant's credit information to state agency subsidizing housing unit because the agency is "participating in the decision"); and FTC Staff Opinion Letter by David G. Grimes, Jr., Division of Credit Practices, June 9, 1993 (dealer who provides loan applications and summaries to electronic loan matching company is joint user).

Although FTC Staff Opinion Letters do not receive the same degree of deference as the Commentary, they do provide guidance on the FCRA and, presumably on the staff's enforcement policies. These letters "are intended only to clarify the FCRA and are advisory in nature. These opinions may nonetheless offer helpful guidance to the courts." Fischl v. General Motors Acceptance Corp., 708 F.2d 143, 149 (emphasis added) (citing Watts v. Key Dodge Sales, Inc., 707 F.2d 847 (5th Cir. 1983)).

[4] Letter from Helen G. Foster, Attorney, FTC, to Linda J. Throne, Bodman, Longley & Dahling, (Nov. 20, 1998).

[5] Federal Reserve Regulatory Service 6-1606, Question 19 (March, 1994).

The 1996 FCRA Amendments. The 1996, amendments specifically *exempted* information sharing between affiliates from the scope of the FCRA in certain circumstances.[6] After the affiliate sharing amendments were introduced in Congress, the Office of the Comptroller of the Currency reiterated the application of the joint user exception to banks. In a joint agency statement, the FTC and OCC explained that the exception applied when banks entered into agreements to refer to a finance company all of the bank's rejected applications for automobile finance installment credit. Using language very similar to that in the FTC Commentary, the letter explained that "if a lender forwards consumer reports to ... parties whose approval is needed before it grants credit, or to another 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 such action." FTC & OCC Joint Agency Response Letter by Ronald G. Isaac, June 11, 1996.

The amendments did not explicitly address or otherwise make any change in the status of the joint user/agent exception. This exception was well settled by 1996, and Congress could have chosen to legislate in this area, but it did not. Moreover, the FTC Staff clearly has determined that the joint user exception still exists because the Staff issued a letter (discussed above) applying the exception in 1998, two years after the amendments. There is no reason to read into the affiliate information sharing amendments an unstated congressional intent to reverse the well-settled regulatory position on joint users, which logically should apply equally whether the joint users are affiliated with each other or are not so affiliated.[7]

Congress did not intend to provide an opt out opportunity for information sharing with affiliates who are joint users or agents because such information sharing was never covered by the FCRA in the first place under this well-settled regulatory position, and no further statutory exemption was needed. The amendments were instead only intended to address information sharing with affiliates who are not joint users or agents. It was in this area that legislative action was needed to permit sharing to take place. To view the 1996 amendments as effecting a partial repeal of the joint user exception -- for affiliates only -- would lead to the odd conclusion that Congress gave consumers the power to bar an institution from information sharing with affiliated joint users only, without any power to bar such sharing with *unaffiliated* joint users, where the risk to privacy would presumably be greater since the *unaffiliated* companies would have not had even indirect relationships with the consumers about whom they were acquiring information.

This conclusion also finds no support in the policies underlying the FCRA or the legislative history of the 1996 amendments. The House of Representatives Report on the 1996 legislation states that the amendment "excludes from the definition of 'consumer report'

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[6] Under prior law, sharing consumer reports with an affiliate could make the sharer a consumer reporting agency under the FCRA. 15 U.S.C. § 1681s (1994).

[7] The Supreme Court has held that "when the statute giving rise to the longstanding interpretation [by an agency] has been reenacted without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is one intended by Congress.'" Federal Deposit Insurance Corp. v. Philadelphia Gear Corp., 476 U.S. 426, 437 (1986) (quoting "NLRB v. Bell Aerospace, 416 U.S. 267, 275 (1974)). See also Zenith Radio Corp. v. United States, 437 U.S. 443, 457 (1978).

information from a consumer report which is shared among affiliates *for the purpose of solicitations for credit transactions not initiated by the consumer*."[8] While Congress ultimately enacted the somewhat differently worded Senate version of the bill, there is no suggestion that its purpose was any broader or different from that of the House version. Thus, the evidence suggests that Congress intended the affiliate-sharing opt-out provision to permit consumers to prevent the sharing of their information for the purpose of cross-selling other products to consumers that the consumers had not requested. This is quite different from allowing consumers to opt-out of efficiency creating sharing arrangements among affiliates who share information systems or offer joint products of benefit to their joint customers.

Regulatory Burden. These numerous statements from the FTC and the banking regulators stretching back nearly thirty years have clearly established the joint user exception. Understandably, numerous financial institutions have relied upon this longstanding and settled regulatory view across a wide variety of industries. Millions of routine financial transactions are processed safely and efficiently today because financial institutions rely upon the joint user exception to share information with their affiliated service providers.

Many bank holding company groups house minimal operations in the bank and choose instead to have costs flow through the holding company and to conduct operations through non-bank servicing and processing affiliates. For example, often the persons who work at a bank are actually employees of a holding company parent, and they may provide services to the bank by contract. Within multi-bank holding company structures, banks' data processing resources are also often centralized so that consumer applications are decisioned and processed, and the loan serviced, by an affiliate. If the joint user exception were abolished by regulatory action now, these groups would not be able to effect millions of the routine consumer transactions without first engaging in an extraordinarily costly and unnecessary restructuring of their operations and/or corporate structures.

Risk Management. It is critical for financial institutions to have the flexibility to share certain types of consumer information with their affiliates that provide services to the bank, as an agent or joint-user, in order for the bank to operate in a safe and sound manner. The ability of banks to continue to share application information and other information with such affiliates and service providers is absolutely necessary for the bank to engage in proper risk management. If the final rule requires that institutions allow customers to "opt out" of *this type* of information sharing, many financial institutions will be unable to serve the opt out customers under the banks' and their affiliates' current corporate structures or could only do so by placing a higher degree of risk on their capital structure and ultimately on the deposit insurance funds. Financial institution families typically place certain functions, such as underwriting or servicing, in a single affiliated service provider because a single service provider can better focus on and develop expertise in the relevant processing service, and can thus more efficiently serve all of the affiliated financial institutions. Without the joint-user exception, each affiliated financial institution will be forced to pull these operations back within the institution itself, thereby losing all the benefits of the current structure. For example, many banks must share application information with an underwriting affiliate in order to adequately assess the credit risk associated

[8] H.R. Rep. No. 103-486 at 28 (emphasis added).

with a consumer. Banks also separate functions in this manner to achieve greater efficiency and risk management.

Sharing information among affiliates relevant to actual or potential fraud is also an important tool in fulfilling the institutions' safety and soundness obligations. To minimize the risk of actual or potential fraud, affiliates may share databases, reports, or other information beyond mere transaction or experience information regarding consumers in an attempt to prevent future fraudulent transactions. The draft regulations could be read to require that consumers be provided notice and an opportunity to opt out of this information sharing. Subjecting this type of information sharing to an opt out right, however, would benefit those who engage in fraudulent transactions to the detriment of not only the institutions engaging in the sharing but also the institutions' lawful consumers.

Regulators have long permitted the sharing of information between joint users because it does not raise the same privacy concerns as other types of information sharing. Agents and joint users are limited to sharing information in order to meet a particular consumer request, for a particular permissible purpose, and are best considered as a single entity providing a single service. Sharing information for joint use in connection with a single consumer transaction is quite different from sharing the information with a third party for unrelated purposes, such as the third party's cross-selling efforts. Unlike cross-selling, the consumer has implicitly consented to the use of his private information for an identified purpose, and the fact that more than one legal entity becomes involved in effecting the requested transaction or service does not materially increase the risk to the consumer's privacy.

Although the proposed rule does not explicitly address the joint user or agent concepts, given their importance, the Agencies should ensure that the final rule and its explanatory materials do not inadvertently case doubt on the exception's continued legitimacy by limiting the scope of the final rule to communications that would otherwise trigger the applicability of the FCRA.

Express Consent. A consumer should be empowered to authorize that his or her personal information be immediately shared among affiliated institutions -- either as a blanket authorization of all information sharing among affiliates or as a limited authorization permitting targeted disclosure of information to particular affiliates. In other words, if a consumer elects to submit a single application and desires that application and any associated credit reports to be shared among affiliates, sharing of that information among the affiliates should be deemed outside the scope of the FCRA because there is no provision of information to a "third party."

Marital Status. The proposed rule also expands the information covered beyond the FCRA by including marital status as "consumer report" information. See § __.5(d)(3)(v). This ignores years of FTC guidance explicitly recognizing that "to the extent they only provide information regarding name, address and phone number, marital status, home ownership, and number of children, are not 'consumer reports,'" in part because such information "does not reflect on credit standing, credit worthiness or any of the other factors." 16 C.F.R. pt. 600, Comment § 603(d)--5(B). By expanding the scope of "consumer report" to include marital status, the Agencies are creating different -- and tougher -- FCRA standards for banks than for

other institutions (namely traditional consumer reporting agencies, which were the very institutions the FCRA was enacted to regulate). Furthermore, by ignoring FTC regulations that have evolved over thirty years, the Agencies are creating an inconsistent and confusing regulatory scheme in which certain information sharing is a "consumer report" for banks, but not for other entities.

II. § __.6 Reasonable opportunity to opt out

Under the proposed rule, a bank must provide a consumer with a "reasonable opportunity to opt out" and provides examples of a "reasonable period of time" as 30 days. § __.6, 65 Fed. Reg. 63129. The rule should reflect an understanding that a "reasonable" length of time for an opt-out varies based upon the particular form of the disclosure notice. While mail notices could require 30 days to be "reasonable," disclosures made in person or electronically provide a consumer with a reasonable opportunity to opt out long before the passage of 30 days.

In addition, this rule imposes a nearly impossible burden on financial institutions, particularly in light of the aforementioned failure to confine the notice and opt out requirements to communications covered by the FCRA. If the Agencies prohibit financial institutions from sharing information with joint users and agents in response to a consumer's request for service, and must wait 30 days before sharing information when they do provide an opt out, then financial institutions will either have to wait 30 days to service a client or will have to consolidate all consumer functions performed by third parties (including affiliates). Neither option is desirable or readily available. Given the fact that so many financial institutions are structured around affiliated institutions specializing in particular functions, the proposed rule would require financial institutions to bear the near-impossible regulatory burden of abandoning their corporate structure and centralizing all consumer functions.

It is inefficient to require institutions to consolidate all consumer services or to wait 30 days before servicing a consumer. The costs of this consolidation are considerable and could affect an institution's safety and soundness. Also, if an institution does not or cannot immediately consolidate its corporate structure, it will be unable to service individuals who opt out and thus will require the institution to discriminate against individuals who exercise their right to privacy. This consequence, however, is directly contradicted by § __.12 which prohibits banks from discriminating against a consumer who exercises her opt out rights.

In addition, a bright-line 30-day hold on information sharing would negatively impact both covered institutions and their consumers. Institutions would be forced to implement burdensome and costly compliance mechanisms capable of discerning when each individual consumer was sent notice and an opt out disclosure (specific data that many institutions, especially those that engage the services of mailing houses, do not capture on an individualized basis), blocking information sharing with regard to that consumer for 30 days, and then registering the consumer's actual choice with regard to information sharing. Modifying existing compliance systems in this way would result in added confusion, burden, and cost at little to no consumer benefit. From the consumer perspective, automatic information blackout could prevent consumers from receiving information that they want when they need it. For example, a consumer that applies for a home mortgage may desire information from the mortgage lender's

insurance affiliate regarding homeowners' insurance. To force that consumer to go through the added time and burden of submitting a separate application to the affiliate, especially where the value of the information sought likely decreases over time, would be a detriment, not a benefit, to consumers.

III. Electronic Acknowledgments

The proposed requirement that consumers who conduct transactions electronically "acknowledge receipt of the notice as a necessary step to obtaining a particular product or service" should be removed. § __.8(b)(iii). The potential harm and added burden to consumers from such a requirement would outweigh any potential benefit to the customer. The proposed rule provides an example for electronic opt-out notices, which suggests that financial institutions must obtain acknowledgements from customers of the receipt of such electronic notices. If such an acknowledgement requirement is read into the regulations, the regulations could be construed to require a consumer who would like to have her information shared to go through the burdensome and potentially unsecure process of sending personal information through the U.S. postal system or over the Internet via e-mail. The Agencies should not require financial institutions to obtain acknowledgements from consumers that they have received such notices. This requirement is entirely outside the scope of the FCRA, creates an unnecessary burden on the consumer and the institution, and is inconsistent with the recently-enacted E-SIGN law.

Not only would such a requirement be overly burdensome to financial institutions, the FCRA does not provide the Agencies with authority to require such acknowledgments. This is not uncommon. Other consumer financial protection laws and regulations that require delivery of information (for example, Regulations B, E, and Z) also do not require acknowledgements from consumers to meet the requirement for the delivery of individual notices or disclosures under those regulations. Such acknowledgments should not be added to the FCRA.

Moreover, although E-SIGN requires that consumers consent in a particular manner before an entity can provide the consumers with required disclosures electronically, the statute does <u>not</u> require the consumers to provide post-disclosure acknowledgement of receipt. To the contrary, E-SIGN specifically provides that such electronic disclosures (which are type of "record" that may be provided electronically under the statute) may not be denied legal effect simply because they are in electronic form, and that regulators may not impose restrictions on the use of such electronic records that impose unreasonable costs or that are more burdensome than the regulations on the use of comparable paper records. Nor may regulators "add to" E-SIGN's requirements. E-SIGN § 104(b)(2). Particularly in the absence of authority under the FCRA to impose such acknowledgment requirements, it seems clear that E-SIGN does not permit them to be imposed here.

If this provision is not removed the final regulations should clarify, at the very least, that in requiring a consumer to acknowledge receipt of electronic communications (*see, e.g.*, § _.6(b)(3)), a consumer's "click-stream" acknowledgement of receipt is sufficient, as is common under the E-SIGN law.

IV. Effective Date

We respectfully recommend that the proposed FCRA regulations not be effective until such time as an institution distributes its first annual privacy notice or distributes a revised privacy notice for reasons unrelated to FCRA. Because most institutions are currently finalizing their notices for the GLBA, it would avoid considerable consumer confusion, administrative expense and burden to simply synchronize the compliance deadlines for the FCRA with the ongoing annual compliance schedule under the GLBA. Otherwise, institutions that have already completed their GLBA notice production process would be forced to either reprint all of their notices on a rush basis in order to meet the July 1, 2001 deadline with the attendant administrative burden and expense, or send separate GLBA and FCRA notices at double the cost of a single mailing and at the risk of consumer confusion.

To avoid these and other pitfalls of adopting the GLBA compliance deadlines, the FCRA regulations should create a separate compliance schedule tailored to provide institutions sufficient time to comply with the FCRA notice and opt out provisions while synchronizing the FCRA deadlines with the GLBA schedule for annual notices. Specifically, the compliance deadline with regard to existing customers as of July 1, 2001, should be either the date of the first annual privacy notice issued under the GLBA regulations or July 1, 2002, whichever occurs earlier. With regard to new customers after July 1, 2001, the compliance deadline should be July 1, 2002. Allowing institutions to continue to use the initial GLBA notices that they are already in the process of creating and including the revised FCRA disclosures in their first annual GLBA notices or by July 1, 2002 would avoid the considerable costs and confusion caused by multiple mailings.

V. Prohibition Against Discrimination

The proposed FCRA rule indicates that if a consumer is an applicant for credit, the financial institution must not discriminate against the consumer if the consumer opts out of the institution's information sharing with affiliates. The Agencies should make it clear in the final FCRA rule that financial institutions can still provide additional benefits, such as special credit offers and other credit services, to customers who decide not to opt-out. Financial institutions should be able to reward those customers who allow the sharing of information without being concerned that the granting of such additional benefits may somehow violate the Equal Credit Opportunity Act ("ECOA") and Regulation B.

In addition, the sharing of information is an integral part of certain credit programs, and an institution should not be viewed as violating the ECOA if a consumer does not qualify for a particular account because he or she decides not to allow the sharing of information which is an element of that type of account. For example, cobranded credit card programs may provide points or other rewards to consumers who use such cards and may contemplate the offering of coupons or early notice of sales or new product offerings by that co-brand partner whose name appears on the card. Under such a program, information is shared to implement the very elements of the program. If a consumer chooses to opt out of such sharing, the institution should be able to offer a non-cobranded card that does not involve such information sharing.

Furthermore, by sharing consumer information with affiliates, financial institutions are able to achieve, and pass on to customers, cost savings and efficiencies that accompany the

sharing of information. For example, an institution that uses a consumer report for multiple purposes rather than having to purchase multiple copies of a report, or affiliated financial institutions that are able to share information and thus combine several accounts on to a single statement or into a single envelope, should be able to pass on the resulting cost savings to consumers. The final FCRA rule should make clear that passing on cost savings to those consumers who allow information to be shared does not violate the ECOA and Regulation B.

We thank the agencies for the opportunity to share our views on this issue. If any of our comments require clarification or expansion, please do not hesitate to contact me at the above number, Franca Harris Gutierrez at (202) 663-6557, or David A. Luigs (202) 663-6451.

Sincerely,

Russell J. Bruemmer