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THE DIME SAVINGS BANK
OF NEW YORK, FSB

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November 30, 2000

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COMMUNICATIONS SECTION

Via Fedex

Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, N.W.,
Washington, DC 20552

Re: Fair Credit Reporting Act Regulations on Affiliate Information Sharing
65 FR 63121 (October 20, 2000); RIN 1550-AB33
Attention Docket No. 2000-81

Dear Sir or Madam:

The Dime Savings Bank of New York, FSB (the "Dime") wishes to offer the following comments on the proposed Fair Credit Reporting Act Regulations governing the sharing of information among affiliates (the "Proposed Rule").

Dime is a \$25 billion federal savings bank serving customers and businesses through 127 branches in the New York City metropolitan area. Dime also provides consumer financial services and mortgage banking services throughout the United States both directly and through our mortgage banking subsidiary (North American Mortgage Company), our broker dealer subsidiary (Dime Securities, Inc.) and our various insurance agency subsidiaries (Dime Agency, Inc.; Dime NJ Agency, Inc.; and the insurance agency subsidiaries of North American Mortgage Insurance Services, Inc.).

Within the Dime family of companies we recognize that protecting the privacy of our customers is one of the ways we demonstrate that our customer relationship is important to us. Dime also is committed to providing our customers with the best service possible. To do that, we sometimes share information within the Dime family of companies to provide financial products and services that our customers have asked for or to keep them informed about the many financial services, products, and benefits available to them as a Dime customer. Consequently, we are very much aware of the need to balance our customers' privacy concerns with their interest in managing their finances most effectively.

In order to inform our customers of the way in which we strike this balance, Dime intends to begin providing our existing customers with copies of our privacy notice in mailings early in 2001. This mass mailing will be made in advance of the July 1, 2001 mandatory compliance date required by the regulations on Privacy of Consumer Financial Information (the "Consumer Privacy Regulation"), to be codified in Part 573 of the Regulations of the Office of Thrift Supervision ("OTS"). This notice will provide our customers with information on our information sharing policies and practices and will provide them with the opportunity to "opt out" of the sharing of information by Dime with both our affiliates and non-affiliated third parties. Although the Proposed Rule addresses information sharing by Dime and its affiliates, we are particularly sensitive to the impact that the Proposed Rule may have if it is adopted in final form with requirements that are inconsistent with the requirements of the Consumer Privacy Regulation.

We commend the OTS and the other Federal financial institution regulatory agencies (collectively, the "Agencies") on their efforts, embodied in the Proposed Rule, to attempt to coordinate the requirements of the Fair Credit Reporting Act with the Consumer Privacy Regulation. We also applaud the announcement that the Agencies intend to issue an Advanced Notice of Proposed Rulemaking and revised "Questions and Answers" regarding Fair Credit Reporting Act issues other than information sharing. We hope that this guidance will bring financial institutions such as the Dime up to date insights into the Fair Credit Reporting Act that are lacking in the Federal Trade Commission's Official Staff Commentary.

Definitions

We are disappointed that the Agencies have not taken this opportunity to further define, and seek public comment on, many of the ambiguous words and phrases that are essential to the operation of the Proposed Rule. For example, the preamble to the Proposed Rule notes that "The proposal tracks the statutory language referring to 'transaction or experience information' but does not define that term." An understanding of this phrase is essential to determining the information that is not subject to the opt-out requirements and that can be freely shared by a financial institution with its affiliates without the institution becoming a credit reporting agency.

Furthermore, in § 571.5(d)(2) of the Proposed Rule, examples of "opt out information" are provided. Such opt out categories include, for example, information from a consumer's application. This, and perhaps other examples, may appear to cover information regarding loans or deposit accounts that a consumer has with the financial institution to which it submitted the application, merely because such information can be obtained from the consumer's application. Categorizing such information as "opt out information" by virtue of appearing on an application would be inconsistent with the more accurate classification of such information as transactional or experiential. It would also severely complicate and restrict the ability of a financial institution to rely on transaction or experience information in its own records due to the risk that such information might become tainted because it is included in an application. We suggest that the Proposed Rule be revised to clarify that

information regarding a financial institution's transaction or experience with a consumer does not become "opt out information" by virtue of also being contained in a document listed in § 571.5(d)(2) of the Proposed Regulation.

Content of Opt Out Notice

Under § 571.5 of the Proposed Rule, specific content requirements for the opt out notice concerning affiliate information sharing are prescribed. Among other provisions, this section requires that the opt out notice accurately explain "the categories of opt out information about the consumer that you communicate to your affiliates, and the categories of affiliates to which you communicate the information." In addition, a sample notice is provided reflecting these content requirements.

Prior to the issuance of the Proposed Rule, such content requirements did not exist in connection with the affiliate information sharing opt out notice. Neither the 1996 amendments to the Fair Credit Reporting Act nor the Consumer Privacy Regulation contained such requirements.

In the "section-by-section analysis" of preamble to the Consumer Privacy Regulation concerning the effective date, the Agencies stated (65 Fed. Reg. 35185):

"Financial institutions are encouraged to provide disclosures as soon as practicable. ...Depending on the readiness of an institution to process opt out elections, institutions might wish to consider including the privacy and opt out notices in the same mailing as is used to provide tax information to consumers in the first quarter of 2001 to increase the likelihood that a consumer will not mistake the notices for an unwanted solicitation."

As noted above, Dime is well along in its privacy compliance efforts, including the development of a privacy notice which addresses a customer's opt out rights. Based on the timing of when our initial privacy mailing to existing customers is scheduled to begin, our privacy notice will need to move into the mass production stage prior to the date by which this Proposed Rule is likely to be finalized and adopted. Rather than delay the mailing due to the inconsistency between the content requirements of the Proposed Rule and the existing Consumer Privacy Regulation, we respectfully request that the content requirements of the opt out notice of the Proposed Rule be made optional until the first required annual mailing of the privacy and opt out notices required by § 573.5 of the Consumer Privacy Regulation in 2002.

Time by Which Opt Out Request Must be Honored

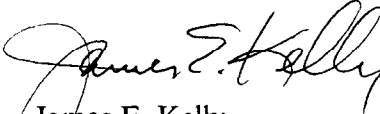
Under § 571.10 of the Proposed Rule, if an institution provides a consumer with an opt out notice, and the consumer opts out, the institution must comply as soon as reasonably practicable after receiving the consumer's direction. Comment was solicited on whether the Agencies should establish

a fixed number of days – for example, 30 days – that would be deemed a “reasonably practicable” period of time for complying with a consumer’s opt out direction.

The amount of time required to make customer opt out elections effective may vary widely from institution to institution depending on the processes which are available to effectuate such opt out choices and the complexity of their affiliate arrangements. For example, if a marketing database is used as the system to reflect opt out elections, a sizable period of time may be required to effectuate the elections as a result of the processing time required to update the actual database. Additionally, if a fixed number of days is established which may be deemed reasonable to banks in general, it may result in some institutions, which have the capacity to process the elections quite quickly, taking advantage of the allowable time period to take longer than necessary to make the opt out elections effective. Therefore, since the amount of processing time will vary among institutions, we suggest that a fixed number of days not be prescribed. Rather, we encourage the continued use of the language contained in the Proposed Rule (i.e., “as soon as reasonably practicable”).

The Dime appreciates this opportunity to comment on the Proposed Rule. If you have any questions regarding this comment letter, please feel free to contact me at (212) 326-6104.

Very truly yours,


James E. Kelly