

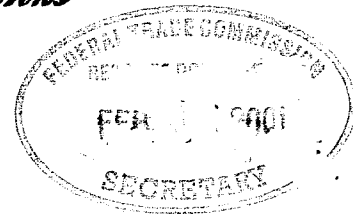


The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

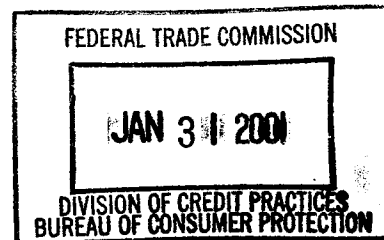


ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

THOMAS J. CURRY
COMMISSIONER

January 31, 2001



Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Proposed Interpretations of the Fair Credit Reporting Act

Dear Sir/Madam:

This letter is written in response to the Federal Trade Commission's ("Commission") request for comments on proposed interpretations of the provisions of the Fair Credit Reporting Act (FCRA) that permit companies to communicate consumer information to their affiliates without incurring the obligations of consumer reporting agencies. The proposed interpretations of the FCRA issued by the Federal Trade Commission are substantially similar to proposed regulations issued by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the Federal Deposit Insurance Corporation. The final interpretations, when implemented will be added as Appendix B to 16 CFR Part 600 following the "Commentary on the FCRA."

The Massachusetts Division of Banks ("Division") commends the Commission for taking steps to provide guidance in this area. While the Division generally supports the proposed interpretations, we would like to offer the following comments.

Application of the exclusion – mergers and acquisitions

The Commission is seeking comment on whether or not the interpretation under proposed section 4, that, in a merger or acquisition situation, the surviving company does not need to provide new notices if notices given previously to customers accurately reflect the policies and practices of the surviving entity, properly reflects Section 603(d)(2)(A)(iii) of the FCRA. This section states that the term "consumer report" does not include "communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons." The Division believes that this interpretation

Federal Trade Commission
Page 2
January 31, 2001

properly reflects the noted section of the FCRA. However, for clarification this point should be specified in the text of section 4.

Contents of opt out notice

The Commission is seeking comment on whether the categories of affiliates as well as the examples provided are appropriate and sufficient and whether or not the interpretations emphasize that the Commission views a very general notice as insufficient. Section 5(a) of the proposed interpretations note that an opt out notice must be clear and conspicuous. It outlines several key areas that must be explained and notes that an entity satisfies the requirements for the content of the opt out notice if it provides examples of categories of information that a company communicates; examples of information within a category; and examples of categories of affiliates. This section does not specify that the Commission considers a general notice insufficient. Some entities may decide to issue a general notice in order to cover a potential or future affiliation, change in type of information, etc. The Commission should specify that it considers a general notice insufficient.

The Commission is also seeking comment on whether or not an FCRA notice should state a specific time period for how long a consumer has to respond to the opt out notice before the company may begin disclosing information as well as the fact that a consumer can opt out at any time. These disclosures are not required in the privacy regulations. Setting a time period would facilitate a consumer's decision on whether or not to opt out. Further, disclosing that a consumer can opt out at any time would help to alleviate any confusion a consumer may have regarding their rights under FCRA. For example, a consumer who does not opt out right away may be under the mistaken belief that they can only opt out within a certain time period or only once a year. Including such disclosures would be helpful to the consumer.

Reasonable opportunity to opt out

The Commission asks whether it is clear from Section 6(b) that a consumer must agree to receive notices electronically before a company can provide notices in that manner? This section provides examples of reasonable time periods for delivery of notices in person, by mail and by electronic means. It cites a 30-day period for all instances. However, the Division notes that some consumer groups have advocated for a longer period of time (e.g. 60 days). In light of the concerns raised by these consumer groups, the Commission may want to consider whether a longer period is warranted. Also, it is not clear in this section that a consumer must agree to receive notices electronically before they can be delivered in this manner. Language should be added to this section that states a consumer must expressly agree to receive notices electronically before they can be delivered in this manner pursuant to the procedures adopted in the federal electronic signatures act "Pub. L. 106-229."

Reasonable methods of exercising opt out opportunity

Section 7 of the proposed interpretations states that a company must provide a reasonable convenient method for the consumer to opt out. This section also provides examples of reasonable and unreasonable methods of opting out when notices are provided in person, by mail, or by electronic means. The

Federal Trade Commission

Page 3

January 31, 2001

examples provided of both reasonable and unreasonable means appear appropriate. However, requiring a consumer to appear in person as the only means of opting out could be considered unreasonable if other alternatives are not provided. The Division recommends that this be noted in the interpretations.

Delivery of opt out notice

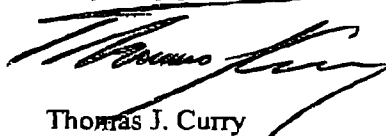
This section discusses delivery of the opt out notice (in person, by mail, electronically) and seeks comment on how the delivery of opt out notices should be applied electronically. Again, delivering the notice electronically should not be a problem provided the consumer affirmatively accepts to receive this notice electronically pursuant to the procedures adopted in the federal electronic signatures act "Pub. L. 106-229."

Time by which opt out must be honored

The Commission is seeking comment on whether a general time standard (e.g. as soon as reasonably practical) or a fixed number of days should be established on when an opt out must be honored. The Division believes that setting a general time standard is subjective as "reasonably practical" can mean different times to different institutions (e.g. reasonable could mean 5 days for one institution and 30 days for another). In order to ensure that a consumer's request is handled in a timely manner the Division recommends that the Commission consider establishing a fixed number of days for compliance.

Thank you for the opportunity to comment on this proposal. Should you have any questions, please feel free to contact me at (617) 956-1500, extension 510 or Bonita M. Irving, Deputy Commissioner for Community Reinvestment and Outreach at extension 561.

Very truly yours,



Thomas J. Curry
Commissioner of Banks



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

THOMAS J. CURRY
COMMISSIONER

FAX TRANSMITTAL COVER SHEET

TO FAX NUMBER: (202) 326-2558

FROM FAX NUMBER: (617) 956-1598

OF PAGES 4 (including cover sheet)

DATE: 1/31/00 TIME: 4:40pm

TO: Secretary

COMPANY: Federal Trade Commission

FROM: Bonita Irving
DIVISION OF BANKS

TELEPHONE NUMBER: (617) 956-1500 x 561

SPECIAL INSTRUCTIONS:
Re: Proposed interpretations of the FCRA

ACKNOWLEDGMENT REQUIRED: VERBAL WRITTEN NONE

CALL: (617) 956-1500 at the above extension if there is a problem with this transmission.

CONFIDENTIALITY NOTICE: The documents accompanying this telecopy transmission may contain information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.

S:\MIS\Manage\Adminsup\memos\1999\FAX1598fm.DOC