Education
Finance Council

1155 Fifteenth Street, N.W., Suite 801
Washington, D.C. 20005
202/466-8621 FX: 202/466-8643

ORIGINAL

January 30, 2001

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Secretary Clark:

This letter is submitted in response to the Federal Trade Commission's ("FTC") release of proposed interpretations (the "Proposal") of the Fair Credit Reporting Act ("FCRA") on behalf of the Education Finance Council ("EFC"). EFC represents lenders and secondary market organizations engaged in making, purchasing and servicing student loans for college students and their families pursuant to Title IV of the Higher Education Act of 1965 as amended ("HEA"), as well as private education loans pursuant to various State and Federal consumer credit laws.

We appreciate the opportunity to respond to the FTC's proposed interpretations of the Fair Credit Reporting Act. While we are providing comments to the Proposal, based on the information provided within the "supplementary information" section of the Proposal, we first seek clarification as to the FTC's authority to issue such interpretative rules. The information provided states "[t]he 1996 Amendments specifically prohibited all agencies, including the Commission, from issuing regulations implementing the FCRA. The Gramm-Leach-Bliley Act ("GLBA") repealed this prohibition in November 1999 and added a new section authorizing the Federal banking agencies to jointly prescribe such regulations as necessary to carry out the purposes of the FCRA as to the financial institutions under their jurisdiction. However, the GLBA did not grant such regulatory authority to the Commission." Because the proposed interpretations virtually mirror the proposed regulations put forward by the banking agencies, we are concerned about the scope and applicability of the Proposal.

General Comments:

We do appreciate the FTC's efforts to ease compliance by conforming the FCRA interpretations with the rules put forth by the Gramm-Leach- Bliley Act (GLBA). Consistency between these rules may be beneficial; however, they need not necessarily be identical.

The provisions of the GLBA are very different from the affiliate sharing provisions of the FCRA. GLBA dictates, with some specificity, what must go into the required notices and goes beyond simply notifying the customer and providing an ability to opt out. For example, the GLBA mandates that the privacy notice include the categories of persons to whom information is or may be disclosed, the categories of information that are collected by the institution, and the "policies and practices" with respect to disclosing information to nonaffiliated third parties. It also puts forward certain limitations with respect to the form in which the opt out notice must be delivered. However, the FCRA states that the definition of a consumer report does not apply where affiliates share certain information "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 FCRA does not impose these additional requirements on content of the notice and imposes no limitation on the form in which the notice must be delivered. Had the United States Congress deemed it necessary for FCRA notices to include detail such as that provided for under GLBA, it would have further amended FCRA in Title V of the GLBA. Instead, Congress stated that the GLBA was not intended to modify, limit or supersede the operation of the FCRA. Therefore, we

believe the detail provided for in this proposed interpretation is unnecessary and not supported by the GLBA.

With the clear difference between the GLBA and the FCRA, we believe that it would prove confusing to consumers to superimpose the GLBA requirements on the affiliate sharing provisions. GLBA provides for the sharing of information among affiliates to convey important information to consumers in a concise and easy to understand format.

Information Sharing with Servicing Affiliates

It is crucial to EFC members that the interpretations provided by the FTC clarify that they in no way impact other interpretations of the FCRA which have for many years permitted affiliates (and unaffiliated third parties) to share information that might otherwise be deemed to be a consumer report ("joint user exception"). Additionally, it should be made clear that the FCRA does not apply when an institution shares information with an affiliate who performs services for the institution to effectuate a transaction requested by the consumer (e.g. affiliate A shares "opt-out information" with affiliate B in order to process and complete a credit transaction requested by the consumer).

Effective Date

There are many issues still to consider as the community continues to manage the implementation of the GLBA. It is important that these proposed interpretations not be imposed retroactively. They should be prospective so as not to impede the entities that are currently working diligently to comply with the GLBA. Many institutions have already developed and mailed out required GLBA notices, thereby making it impossible to comply with new FCRA interpretations until there is sufficient time to implement the new rules and update existing notices. We request that the final interpretation not require updated GLBA notices – to reflect new FCRA requirements – any earlier than July 1, 2002.

Thank you for giving EFC the opportunity to comment on the proposed interpretations. We look forward to working with the FTC in an effort to develop rules and procedures that both protect consumers' privacy and preserve benefits made available by affiliate sharing of information covered by the FCRA.

Sincerely,

William D. Hansen
Executive Director

D. Grant Carwile, Esq.
Chair, Legal and Structural Subcommittee