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Household

VIA AIRBORNE

January 30, 2001

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

Re: Proposed Interpretations of the Fair Credit Reporting Act (12 C.F.R. Part 600)

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Proposed Interpretations of the Fair Credit Reporting Act ("FCRA")(the "Proposal"). Household Finance Corporation and its affiliate, Beneficial Corporation (together, "Household") operate over 1400 loan offices in 46 states, serving approximately 3.4 million loan customers. As part of Household International, Inc., one of the largest consumer financial services providers in the country, Household's information sharing practices, as currently permitted by the FCRA, allow it to provide its customers with a wide variety of credit and insurance opportunities. Because many customers of Household and its affiliates may be underserved by traditional financial institutions, we believe that such information sharing can provide valuable services and cost savings to those individuals who choose not to opt out of this system.

We appreciate the effort that the Federal Trade Commission ("FTC") has made to streamline the Proposal with the recently promulgated regulations governing information sharing with third parties (the "Privacy Rule"). In many cases, such consistency may lead to reduced burden and greater clarity. However, there are also circumstances where adopting additional requirements purely for the sake of consistency may add additional burden not warranted by the underlying statute. In particular, we note that the language of section 603 of the FCRA differs considerably from the privacy sections and detailed requirements of the Gramm-Leach-Bliley Act of 1999 (the "GLB"), as do the consequences of a lender sharing information with an affiliate versus a third party. Thus, complete consistency between the regulations is unwarranted from both a legal or policy standpoint. Our specific comments regarding the Proposal are set forth below.

Effective Date.

Household is currently in the process of redesigning a variety of customer forms to comply with the new Privacy Rule. Significant new FCRA requirements will likely mandate the redesign and redistribution of such customer forms at a potentially substantial cost. For this reason, we suggest that the effective date for any new required FCRA disclosures be timed to fall 12-18 months following the publication of the final interpretations. This will lessen printing and distribution costs allowing companies to make any requisite forms changes while utilizing existing stock. While this timeframe may appear substantial, please note that Household and the majority of institutions affected by any new interpretations are currently in compliance with the statutory requirements of the FCRA, and thus delayed implementation of the Proposal should not harm any consumer during the implementation period.

Section 2 (Examples).

Including examples in the Proposal is helpful, so long as any final version also includes language such as that provided by Section 2, specifically, that the examples are not exclusive and that compliance with the examples will constitute compliance with the final interpretations.

Section 3 (Definitions).

We are concerned with how the definition of "clear and conspicuous" in subsection (c) will work with the definition of "clear and conspicuous" in the Privacy Rule, as the disclosures will often be combined. In fact, not combining them may create a more confusing situation for consumers, since both relate to consumer privacy. Thus, it would be helpful if the Proposal could state that the notices may be combined and that neither would have to be more "clear and conspicuous" than the other (see, e.g., subsection (c)(2)(ii)(E), which suggests that to be clear and conspicuous, each notice could use different typesizes, styles, etc.).

Section 5 (Contents of opt out notice).

In the creation of new mandatory disclosures, we are concerned with the amount of information already required and now proposed to be required for various types of consumer loans. As a provider of both secured and unsecured consumer loans, the volume of information that we must currently provide to consumers is often overwhelming. The more information forced on any individual during the credit application process reduces the meaning of that information. Thus, we strongly urge you to consider the realistic benefit provided by any new disclosures to consumers as you finalize the Proposal.

While it is clear that consumers must be advised of their opt-out rights under the FCRA if sharing with affiliates is to occur, this section, which is copied almost verbatim from the Privacy Rule (which, in turn, is taken from section 503 of the GLB), goes so far beyond the provisions of the FCRA that it should be stricken in its entirety. The language of the FCRA, the situations it covers, and the possible harm that could result from noncompliance with the statute differ so completely from those of Title V of the GLB that the burden created by section 5 of the Proposal is simply unwarranted. There is no legislative history that would support expansion of the FCRA notices to the detail required for section 503 of the GLB. Rather, section 506(c) of the GLB states clearly that nothing in GLB Title V "shall be construed to modify, limit, or supersede the operation of the [FCRA]." Nor does the supplemental information in the Proposal explain why these significant new requirements have been added or what benefit they arguably provide to consumers.

If the FTC chooses to maintain this section in the final interpretations, it should not require (i) notice of how long a consumer has to respond to the opt out notice, (ii) the fact that the consumer can opt out at any time (which could appear to contradict the previous item), or (iii) a statement of a required 30-day waiting period in every instance before a financial institution will share information with its affiliates. Again, we question the utility of the volume of information being presented on loan documents, and we strongly object to a required 30-day waiting period, as discussed below.

Finally, if this section is to be part of the final version of the interpretations, we would support the inclusion of language to the effect that financial institutions may allow consumers to opt out of sharing with respect to only certain information or certain affiliates.

Section 6 (Reasonable opportunity to opt out).

The Proposal's inclusion of specific timeframes for opting out is not appropriate. The suggested minimum 30-day period would effectively prevent financial institutions from sharing information until that period ran out – even if the consumer was sincerely and immediately interested in a product offered by an affiliate. While we agree generally that the definition of a "reasonable period" will differ according to the method in which an individual receives an opt-out notice, we do not think that a mandatory waiting period that could disadvantage consumers was intended by the drafters of the FCRA. A possible way to address this situation would be to include language that provides that if a consumer returns an application without opting out, the company may share that individual's information as of the time the application is received (unless and until the individual subsequently opts out). In addition, the final version could provide that a company could share information regarding a consumer who specifically consents to such sharing, and that such consent (including revocation of a previous opt out) may be provided orally.

This section also raises concerns by requiring that an individual acknowledge receipt of an opt out notice if that notice was sent by electronic means. This requirement is unnecessary, is beyond the mandate of the FCRA, and could raise considerable tracking burdens. Thus, it should be eliminated. Specifically, it would affect consumers who choose to utilize the Internet for a financial transaction or who have specifically directed that an institution contact them at a specific electronic address. It seems to imply that such electronic means of communication are somehow less reliable than other written forms of communication. There is no support in the Proposal for this proposition, and we are aware of none. In fact, because of the compliance burdens raised by the necessity of tracking the status of which consumers have acknowledged receipt of the notice, it would actually discourage this type of electronic communication, even if consumers have expressed a preference for it. Thus, we suggest that you modify the Proposal to be consistent with other consumer disclosure provisions including the Privacy Rule, and rules implementing the Equal Credit Opportunity Act and the Truth in Lending Act, by removing this requirement of acknowledgement.

Section 7 (Reasonable means of opting out).

The FCRA requires that an individual be "given the opportunity" to direct that information not be shared with an affiliate. This statutory language has been interpreted in the Proposal to provide that requiring a consumer to write a letter does not give a consumer the opportunity to provide such direction (subsection (c)). The preamble to the Proposal gives no indication of why this common operational method, successfully used by a wide variety of companies and their customers for a number of years, should now be rendered illegal. Household interacts with millions of consumers on a continuous basis. Our experience is that most of these consumers are adept at letter writing, which remains a common method of communication. Many have written to us over the years to exercise an opt out. For a large number of companies, this means may be more cost efficient than developing specific forms, post cards, or the implementation of a toll-free line. At the same time, we do not agree that it places an inappropriate burden on consumers. Thus, we recommend that this example of a method that "is not reasonably convenient" be stricken from the Proposal.

Section 8 (Delivery of opt out notices).

Again, the FCRA requires that an individual be "given the opportunity" to direct that information not be shared with affiliates. Unlike the privacy provisions of the GLB, the FCRA contains no requirement that notice of such opportunity must be in writing. This flexibility contained in the FCRA allows lenders that are conducting loan transactions by telephone to give consumers the opportunity to consent to information sharing while they are on the line. By doing so, the consumer may benefit from not having to provide personal information over the telephone, or by qualifying for certain products more easily. The Proposal would take these opportunities away with its requirement that all notices must be delivered in writing. Such a mandate would restrict consumer choice, convenience, and fraud control. The Proposal gives no support for this new reading of the FCRA that would have the effect of disadvantaging both financial institutions and consumers, and we are aware of none. Thus, it should be eliminated.

Section 10 (Time by which opt out must be honored).

This section provides that a company must comply with a consumer's opt out direction "as soon as reasonably practicable after the bank receives it." This language reasonably interprets the statutory requirements and should be maintained. Because of the variety of companies, their communication methods and technological capability that would be covered by the interpretations, specific time frames should not be included in any final version of the Proposal.

Section 11 (Duration of opt out).

This section provides that a consumer's opt out direction will remain in effect until the consumer revokes it in writing. Similar to our comments regarding proposed section 8, this written requirement has been unnecessarily created without statutory basis, to the disadvantage of both lenders and consumers. This section could delay transactions requested by a consumer over the telephone if (i) that consumer had previously opted out in writing and (ii) that consumer now desired to initiate a transaction that requires (or would be accelerated by) affiliate information sharing. Thus, the requirement that revocation of an opt out direction must be in writing should be eliminated.

Sample Notice

While sample notices can be helpful in implementing requirements such as those set forth in the Proposal, we are concerned about the length of the sample notice provided. As discussed previously, we do not believe that a notice of such detail is required or can be justified by the plain language and intent of the FCRA affiliate sharing provisions. If the FTC decides to include a sample notice in the final interpretations, it should be shortened substantially to avoid consumer confusion and to simplify its integration with the sample clauses set forth under the Privacy Rule.

Costs and Benefits of the Proposal

The FTC asks in paragraph "L" of the preliminary information for comments regarding costs and benefits to consumers and affected companies resulting from the proposed interpretations. First, as it requires substantial new disclosures, forms and procedures for affected companies, the Proposal will increase the costs to companies subject to the proposed interpretations. Any incremental informational value the disclosures will have for consumers cannot outweigh the costs that it will impose. Lenders like Household are already subject to copious disclosure requirements that are costly to produce in a timely and accurate fashion. As anyone who has ever attended a mortgage closing can attest to, each additional disclosure or notice required simply reduces the chance that any of the information provided will be reviewed and fully understood. Thus, we urge that some realistic prioritization be incorporated into any administrative process that affects required disclosures for consumer lending. We agree that consumers should be notified that their lender may share certain information with its affiliates. However, the FCRA should be interpreted to allow this notice in a brief, succinct paragraph that does not detract from other significant information provided to a loan applicant or borrower. Flexibility in the description should be permitted, due to the wide variety of companies that will be affected by any FTC interpretations. As an example of this concept, Household plans to include in its privacy notice (as revised for purposes of the Privacy Rule) a paragraph in a format similar to the following:

> **How We Share Information with Other Household Companies**
>
> From time to time, for general business purposes such as fraud control, or when we think it may benefit you, we do share certain information with companies within the Household family. These companies all provide financial services such as loans and insurance. The information we share might come from your application, for instance your name, social security number, assets and income. Also, the information we share could include your credit bureau reports, your transactions with us or other Household companies, your Internet usage, your account balance, or your payment history.

In our privacy statement, this paragraph will be followed by clear and concise opt out instructions. We believe this type of disclosure will capture the spirit and intent of the FCRA, without imposing unnecessary new burdens.

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Our goal is to continue our 122-year history of efficient delivery of financial products to a wide variety of consumers. Affiliate sharing helps us to deliver those products while providing benefits, cost savings, and convenience to our customers.

We appreciate the opportunity to comment on this Proposal.

Sincerely,

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