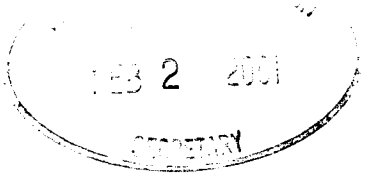
SALLIE MAE
11600 Sallie Mae Drive
Reston, Virginia 20193
703-810-3000
MARK L. HELEEN
Assistant General Counsel
Telephone: 703-810-7677
Facsimile: 703-810-7586
E-Mail: mark.l.heleen@slma.com



OVERNIGHT DELIVERY

January 31, 2001

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

RE: "Joint Notice of Proposed Rulemaking re: Fair Credit Reporting Act"
- Comment of USA Education, Inc.

Dear Sirs and Madams:

This letter is submitted on behalf of USA Education, Inc. and its subsidiaries, including the Student Loan Marketing Association (collectively "Sallie Mae") in response to the notice of proposed interpretations (the "Proposed Interpretations") of the Fair Credit Reporting Act (the "FCRA") published by the Federal Trade Commission (the "FTC") at 65 Fed. Reg. 80802.

Sallie Mae is the nation's largest provider of education financing and largest holder of loans under the Federal Family Education Loan Program (the "FFELP"), a federally sponsored education loan program. We own or manage approximately $72 billion of federally insured student loans. We operate principally through 2 subsidiaries: the Student Loan Marketing Association, a government sponsored enterprise, which acts as a secondary market for FFELP loans, and Sallie Mae Servicing Corporation which is the nation's largest servicer of FFELP loans with nearly 6.4 million accounts. Under the Student Loan Marketing Association Reorganization Act of 1996, the Student Loan Marketing Association will be dissolved on or before September 30, 2008.

To help more students and families plan and pay for college, Sallie Mae actively partners with many of the nation's leading lenders, schools and guarantor agencies. In many of these circumstances, we share information with these institutions, our affiliates and our business partners. We may share this information in our capacity as a loan disbursement provider, an application service provider or a loan servicer.

At the same time, we recognize the legitimate concerns of consumers about information contained in credit reports and how that information is used and distributed. That is why Sallie Mae supports the Proposed Interpretations. We also believe that the FTC has attempted to balance the legitimate privacy concerns of the public with the need for companies to operate efficiently.

We agree with many of the concepts embodied in the Proposed Interpretations and we urge the FTC to adopt the Proposed Interpretations in final form ("Final Interpretations") using much of the same structure presented in the Proposed Interpretations. Our comments are intended to reflect our desire for Final Interpretations which provide consumers with meaningful disclosure of an institution's affiliate sharing practices while accurately reflecting the provisions of the FCRA and preserving effective industry practices that have proven beneficial to consumers, in general and students, in particular.

In General

Coordination with Privacy Rules

Sallie Mae applauds the FTC for its desire to ease compliance with the Proposed Interpretations by making it consistent with their own rule implementing applicable portions of Title V of the Gramm-Leach-Bliley Act (the "GLBA") (the "Privacy Rules"). In our view, an appropriate level of consistency between the two rules may facilitate compliance and produce more meaningful disclosures for consumers. We do not believe, however, that the Proposed Interpretations should mirror the Privacy Rules in every respect.

The privacy provisions of the GLBA are vastly different from the affiliate sharing provisions of the FCRA. The GLBA goes well beyond a simple notice and opt out requirement and explicitly dictates the information which must be included in the required notice.

For example, Section 503 of the GLBA mandates that the GLBA privacy notices must 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. In addition, Section 502 of the GLBA sets forth certain limitations with respect to the form in which the opt out notice must be delivered.

None of these provisions are included in FCRA's statutory language. Instead, the FCRA unambiguously states that the definition of 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" to opt out before the information is initially shared. The statutory language of the FCRA sets forth absolutely no additional requirements with respect to the content of the notice and imposes no limitation on the form in which the notice must be delivered. We believe that, based on the plain language of the FCRA, much of the detail required in the Proposed Interpretations is not and cannot be justified. Simply put, if the simple language set forth in the FCRA were deemed to provide sufficient basis for all of the content in the Proposed Interpretations, then much of the language Congress included in the GLBA would have been entirely unnecessary.

Conversely, had Congress intended FCRA notices to be as detailed as those required under the GLBA, they would have further amended the FCRA in Title V of the GLBA. Instead, Congress expressly limited its comments to the plain language that the GLBA was not intended "to modify, limit, or supersede the operation of the Fair Credit Reporting Act." Since Congress chose not to "modify, limit, or supersede the operation" of the FCRA, it is our hope that the FTC will refrain from doing so as well.

Preserving Consumer Benefits

It is widely accepted that consumers can benefit when affiliated entities are permitted to share among themselves information that can be used to improve the services, offerings, pricing options and other choices made available to those consumers. Indeed, it was these types of consumer benefits that, to a large extent, provided the justification for the financial modernization enacted as part of the GLBA. At the same

time, it is also widely recognized that consumers' privacy interests are implicated when affiliates share information about them.

The affiliate sharing provisions of the FCRA are designed to balance between these potentially competing interests. We believe the plain language of the FCRA affiliate-sharing provisions strikes an appropriate balance. We are concerned, however, that the Proposed Interpretations may substantially upset this balance by departing from the plain language of the FCRA and may inadvertently restrict consumer choice as a result.

We believe that this issue can be adequately addressed through three clarifications.

- The Final Interpretations should clarify that the affiliate sharing notice and opportunity to opt out may be disclosed on or with documents such as applications or signature cards. If the consumer submits the application or completes the signature card and chooses not to opt out at that time, the affiliates must be permitted to share the information unless and until the consumer subsequently opts out.

- The Final Interpretations should clarify that affiliates may share among themselves information on a consumer who has received the affiliate sharing notice and has consented to the sharing. In this regard, a consumer who has consented to the sharing has unambiguously indicated an intent not to opt out at that time and the sharing must be permitted without any mandated waiting period until the consumer revokes the consent *(e.g.* by opting out at a later date). We believe that this approach is entirely consistent with the language and intent of the FCRA affiliate sharing provisions.

- The Final Interpretations should clarify that it does not in any way impact other interpretations of the FCRA which for many years have permitted affiliates (and unaffiliated third parties) to share information that might otherwise be deemed to be a consumer report.

-

Other Comments.

Examples

We applaud the FTC for including several helpful examples in the Proposed Interpretations and we urge the FTC to include examples in the Final Interpretations. The use of examples has proven helpful to institutions in developing compliance programs for the Privacy Rules. We believe examples will serve the same purpose for institutions attempting to comply with the Final Interpretations. We also urge the FTC to retain in the Final Interpretations the clarification that the examples are not exclusive and that compliance with an example or use of a sample notice, constitutes compliance with the Final Interpretations itself. These are important clarifications that should be included in the Final Interpretations.

Contents of the Opt Out Notice

The Proposed Interpretations would mandate that the FCRA opt out notices must disclose: (i) the categories of opt out information about the consumer that institution communicates; (ii) the categories of affiliates to which the institution communicates the information; (iii) the consumer's ability to opt out; and (iv) the means to do so. As noted above, the plain language of the FCRA simply does not require this level of detail. Accordingly, we urge the FTC to revise the Proposed Interpretations to more closely adhere to the plain language of the FCRA.

The Proposed Interpretations also specifically permits institutions to reserve the right either to communicate new categories of information, or to communicate to new categories of affiliates, in the future. If, notwithstanding the plain language of the FCRA, the FTC decide to require that the affiliate sharing notice include information about categories of information and/or categories of affiliates, this provision should be retained in the Final Interpretations. This clarification would be particularly important in view of the frequency with which corporate affiliations can change in the existing marketplace. The FTC also should retain in the Final Interpretations the clarification that institutions may craft the opt out notice to allow consumers to selectively opt out of different information programs.

We urge the FTC to refrain from including any requirement that financial institutions should be required to disclose: (i) how long a consumer has to respond to the opt out notice before the institution may begin disclosing information about that consumer to its affiliates; and (ii) the fact that a consumer can opt out at any time. As noted above, the FCRA affiliate sharing notice is intended to provide a clear and conspicuous, but concise and simple, disclosure about affiliate sharing. Based on the plain language of the FCRA, the most essential components of that notice are the fact that affiliates will share information about the consumer and how the consumer may opt out of that sharing. These two key components should be conveyed as clearly as possible and additional language such as timeframes for opting out should be avoided.

Reasonable Opportunity to Opt Out

As noted above, the Proposed Interpretations suggest a blanket example of 30 days as appropriate in order to provide consumers a "reasonable opportunity to opt out." For the reasons discussed above, we urge the FTC to delete this example and instead clarify that: (i) a financial institution may share information among affiliates if the opt out notice is provided on an application or signature card submitted by the consumer and the consumer did not opt out; (ii) affiliates may share information among themselves if the consumer has consented to such sharing; and (iii) the Final Interpretations do not affect other interpretations of the FCRA that do not involve the affiliate sharing provisions.

Delivery of Opt Out Notices

The Proposed Interpretations require that the opt out notice must be delivered so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically. We agree with the general standard requiring delivery so that each consumer *reasonably be expected* (emphasis added) to receive actual notice. We note, however, that unlike the GLBA, the FCRA does not explicitly require that the affiliate sharing notice be furnished in writing. This is an important distinction which we believe was intended to provide sufficient flexibility to allow the affiliate sharing notice to be furnished in any type of communication, including orally during telephone communications. In this regard, the only restrictions imposed on the affiliate sharing notice are that it must be furnished "clearly and conspicuously...before the time the information is initially communicated" among affiliates.

It is important that the flexibility established by the plain language of the FCRA be preserved in the Final Interpretations. Accordingly, we urge the FTC to modify the Proposed Interpretations to permit oral disclosures of the FCRA opt out notice. This will preserve the flexibility necessary to provide many types of products requiring or enhanced by affiliate information sharing and ensure that financial institutions can implement the wishes of consumers who may apply for financial products over the phone, such as when a consumer initiates an application for a federally insured student loan by telephone and at the same time requests information about whether the consumer may qualify for a home equity line of credit offered by an affiliate.

Revised Opt Out Notice

The Proposed Interpretations states that an institution must provide a revised opt out notice to a consumer if it plans to communicate opt out information to its affiliates about the consumer other than as described in a previous notice. It appears that the FTC intends this approach to be consistent with the Privacy Rules. The Proposed Interpretations, however, does not include any of the clarifications set forth in the Privacy Rules. For example, unlike the Privacy Rules, the Proposed Interpretations does not clarify that the revised notice is not required where information is shared with a new entity so long as that entity was adequately described in the earlier notice. In order to avoid any inference that the revised opt out notice requirement under the Proposed Interpretations is different than that of the Privacy Rules, we urge that the same clarifications set forth in the Privacy Rules be included in the Final Interpretations.

Time by Which Opt Out Must Be Honored

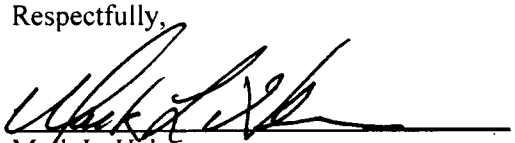
The Proposed Interpretations note that an institution must comply with a consumer's opt out "as soon as reasonably practicable" after it is received by the institution. We believe that the FTC should refrain from providing examples of what would be deemed to be "reasonably practicable." There may be instances when the opt out could be processed in a period of time less than 30 days. On the other hand, in many instances, it may require more than 30 days to effectuate an opt out completely and a 30-day example would create inappropriate potential for litigation and liability in those circumstances. Therefore, we urge the FTC to refrain from defining "reasonably practicable."

Duration of Opt Out

The FTC propose that an opt out is effective until a consumer revokes it in writing. We agree that an opt out should be effective until revoked by the consumer. However, we urge the FTC to delete the requirement that revocation must be in writing. There certainly will be instances when a consumer is requesting an additional product by telephone or via the internet that would require the institution to share information with, or obtain information from, an affiliate, but where the consumer has previously opted-out. If that consumer is not permitted to revoke his opt out orally or via the internet, that consumer may have to wait several days for the product he or she requested in order that the consumer may revoke the opt out in writing and we may process that revocation. This would result in needless delay for the consumer. We do not believe that such a result was intended and we urge the FTC to delete the requirement that opt out revocations must be in writing.

We appreciate this opportunity to comment on the Proposed Interpretations. If you have any questions concerning this letter or if you would like additional information, please do not hesitate to contact me at 703-810-5016.

Respectfully,



Mark L. Heleen
Associate General Counsel