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January 31, 2001

Via Hand-Delivery

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

Re: Proposed Commentary on the Fair Credit Reporting Act – Appendix B to 16 CFR Part 600

Dear Secretary Clark:

Countrywide Home Loans, Inc. ("Countrywide") is pleased to submit our comments in connection with the Commission's proposed interpretations ("Proposed Rules") of the provisions of the Fair Credit Reporting Act ("FCRA"), to be published as Appendix B to 16 CFR Part 600. We appreciate the opportunity to comment on the Proposed Rules as we strive to coordinate our compliance with the FCRA, the Gramm-Leach-Bliley Act ("GLBA"), and the privacy regulations that the Commission promulgated under GLBA ("Privacy Regulations").

At Countrywide, we monitor our customer's privacy concerns closely and strive to provide our customers with choice, control and convenience. We are also continually looking for opportunities to meet our customers' needs and optimize their homeownership experience by providing excellent products and services at the right time and price. We conduct extensive market research and carefully develop such product and service offerings to meet our exacting standards and assure that they reach customers most likely to take advantage of such opportunities. However, we also appreciate the need to set standards with respect to the information sharing practices that make these consumer benefits possible when necessary to respond to consumer demands for privacy. In fact, Countrywide has already printed and started delivering a new tri-fold, color privacy brochure, including FCRA and GLBA opt-out notices. We believe this responds to the varying attitudes of our 2.8 million existing customers relative to what level of information sharing is acceptable and what level of sharing is invasive.

We think that the passage of GLBA and the Privacy Regulations has led many financial institutions to respond to these widely varying customer demands in new ways

to meet specific wants and needs of the individual customer. But doing so has also resulted in financial institutions like ours devoting more and more resources to those efforts. Financial institutions such as Countrywide have already invested significant resources in developing and distributing new privacy disclosures to customers in various media to comply with the landmark changes in the law resulting from the passage of GLBA. Time is needed to assess the impact of those efforts and the reactions of consumers. Any further laws or regulations should be carefully tailored so that they do not unwittingly hinder reasonable business practices that the vast majority of our customers would not find invasive. In that light, our comments reflect not only our strong commitment to protecting consumer privacy, but also our desire to avoid Proposed Rules that create still further new rules, increase costs, and disrupt routine business practices that benefit both consumers and businesses.

Definition of "Opt-Out Information"

Countrywide is troubled by the definition of "opt-out information" in Proposed Section 3(k) and the restrictions placed on communicating "opt-out information" among corporate affiliates in Section 4. Specifically, "opt-out information" could be read to include any list or other communication of data that combines transaction or experience information about a consumer with other publicly available information about that consumer. FCRA currently contains no such restrictions and Section 4 does not fairly apply Section 603(d)(2)(A)(iii) to those situations. If Congress had intended this result, they would have included more specific language in GLBA rather than directing in Section 508 that the Commission, Treasury, and Federal functional regulators conduct a study of information sharing practices among financial institutions and their affiliates.

Under the Commission's unnecessary and unduly restrictive definition, affiliated companies could not share basic information about a financial transaction until 30-days after delivery of a privacy notice without first obtaining the consumer's consent. At the same time, many affiliated companies share systems or have invested heavily in interfaces between separate systems so that customer information can be shared or transmitted in a highly secure environment to offer related financial products and services at the time that consumers might want or need them. For example, this would hinder the ability of a mortgage lender to share a list of telephone numbers and names of customers who had applied for a loan along with property zip code, square footage, and year built so that its affiliated insurance agency could tailor a quote for homeowner's insurance. This would likely eliminate conveniences and potential savings that are currently available to many consumers. It would also require mortgage lenders such as Countrywide to develop a series of consents just to offer other closing-related services from affiliates, further complicating the home loan process that is already unduly complex while doing little or nothing to advance the privacy expectations of the average consumer. The result would be that closing service

providers affiliated with mortgage lenders would be forced to pay additional costs in an attempt to reach their market audiences, resulting in higher prices for consumers. Countrywide's experience is that many consumers choose the products and services provided by an affiliate of a company with which it already has a relationship. These consumers expect that the affiliate is already aware of the existing relationship and would be able to easily pull up the consumer's existing records without the consumer having to supply the information again or having to sign a written consent form. The effect of this proposal not only goes beyond consumers' reasonable expectations of privacy, but is also patently unfair for financial holding companies and other affiliated financial services companies that have created a structure to provide quality financial products and services to consumers at greater convenience and lower prices.

Moreover, this new legal requirement would place greater restrictions on a financial institution's ability to share publicly available information with its affiliates than the GLBA places on a financial institution's ability to share with nonaffiliated third parties. In short, Countrywide is deeply concerned that Proposed Sections 3(k) and 4 create new law rather than implementing the requirements of the FCRA and strongly opposes such provisions.

Health Information Sharing Disclosure as Part of Opt-out Notice

Even though Countrywide supports limits on a financial institution's ability to use medical history and individually identifiable health information, particularly in the context of evaluating credit applications, Countrywide is deeply concerned that Proposed Section 5(d)(4) also creates new law rather than implementing the requirements of the FCRA. Specifically, Proposed Section 5(d)(4)'s reliance on Section 1171(6)(B) of the Social Security Act (42 U.S.C. 1320d(6)(B)) appears to unreasonably expand the definition of individually identifiable health information and unnecessarily require that "health" information be separately disclosed in the FCRA opt-out notice. Before a financial institution could share basic information (such as age and gender) with its insurance affiliate (for such reasonable and non-invasive purposes of tailoring a more specific life insurance quote for a customer), a financial institution would have to amend its policy to add specific illustrative examples. This is particularly troubling for numerous financial institutions such as Countrywide that have already invested significant resources in developing and distributing new privacy disclosures to comply with GLBA. To the extent that age and gender could even be characterized as "health" information, such less sensitive information should at most only require a privacy notice to disclose generally the fact that nonpublic personal information is disclosed to affiliates and offer an opportunity to opt out. Since age and gender are often, if not always, publicly available, eliminating the proposal is more appropriate. The Commission seems to go too far by requiring companies that wish to share age and gender information to provide a separate disclosure, provide illustrative examples, and

identify the categories of affiliates with which that type of less sensitive "health" information is shared. Section 603(d)(2)(A)(iii) of FCRA requires only that an opportunity to opt-out be given before information is shared.

The Commission's apparent attempt to require such a regimen prior to the sharing of such less sensitive "health" information as part of a financial institution's FCRA notice also ignores the fact that other laws and regulations have recently been adopted to address consumers' legitimate concerns with the sharing of sensitive health information. For sensitive health information, the health privacy regulations adopted by the U.S. Department of Health and Human Services ("HHS") already require an opt-in notice. In addition, the National Association of Insurance Commissioners'("NAIC") model rule for GLBA led numerous state insurance commissioners to consider health information-related GLBA disclosures for insurance agents and carriers as part of the implementation of GLBA. It is important to note that the NAIC model regulates any disclosure of nonpublic personal health information, not just sharing of such information with a nonaffiliated third party. Congress has also proposed additional legislation to address health information issues -- a debate that should be outside the context of Section 603(d)(2)(A)(iii) of FCRA.

Seemingly modest changes in information handling requirements can result in serious unintended consequences that would increase costs and reduce choices for consumers. The Commission's adoption of Proposed Section 5(d)(4) creates new law, rather than implementing the requirements of the FCRA, and would have such serious consequences.

Contents of Opt-out Notices

Countrywide is very concerned about potential interpretations of Proposed Section 5(e) and the Sample Notice in Proposed Section 12, and the impact of those interpretations on the required content or format of a financial institution's privacy notices. When the Commission adopted the Privacy Regulations, Section 313.6(a)(7) required the inclusion of FCRA notices as part of a financial institution's GLBA notice. In addition, Sections 313.6(a)(3) and 313.6(c)(3) seem to imply that financial institutions could combine the categories of affiliates and nonaffiliated third parties with which the financial institution shares information. The Privacy Regulations also did not specify that a financial institution must separately state the categories of nonpublic personal information or "opt out information" that a company communicates with affiliates. While we appreciate the time pressures faced by the Commission in adopting the Privacy Regulations following the passage of GLBA, many financial institutions such as Countrywide already printed and started delivering new privacy notices in reliance on the finality of those regulations. In fairness to these institutions, the Commission should clarify that a financial institution need not separately state the

categories of information that a company communicates with affiliates and non-affiliates, so long as the privacy notice is accurate.

In requesting comment on the Proposed Rules, the Commission expressed a view that "a very general notice that an entity may share any consumer information it obtains with any of its affiliates" is insufficient. This is not what Countrywide advocates. Instead, the rule should be that a financial institution's privacy notice satisfies the law if it adequately describes the categories of information that it shares with affiliates and nonaffiliated third parties and the categories of those affiliates and nonaffiliated third parties. Countrywide believes firmly that a final commentary that rigidly prescribes separate statements as to affiliates and nonaffiliated third parties will undermine the Commission's mandate to financial institutions in the Privacy Regulations to keep privacy notices simple and understandable.

Delayed Effective Date for Any Final Rules Affecting Content or Format of Financial Institutions' Privacy and Opt-out Notices

Countrywide strongly urges the Commission to delay the effective date or full compliance date of the Proposed Rules to enable financial institutions to comply with any provisions that would vary the format or content of the opt-out notice from the notice required under GLBA. As explained above, financial institutions such as Countrywide have already invested significant resources in developing and distributing new privacy disclosures to customers in various media to comply with the landmark changes in the law resulting from the passage of GLBA. Countrywide, for example, has already printed and begun the process of delivering its new tri-fold privacy brochure, including FCRA and GLBA opt-out notices, to its more than 2.8 million existing customers. Countrywide would experience significant additional costs if it were required to revise this policy, reprint it, and deliver it to all 2.8 million customers prior to the 2002 calendar year. In light of the compliance burdens that have already been thrust on the financial services industry in the past year, Countrywide feels that a full compliance date allowing financial institutions to comply with any new notice content or format requirements any time during the 2002 calendar year would be far more appropriate.

Reasonable Opportunity to Opt-out

Countrywide is concerned with the Commission's Proposed Section 6(b) regarding examples of reasonable opt-out periods for different means of delivery. The Commission specifies "at least 30 days" as the example of a reasonable period of time to opt out for each different means of notice delivery. This 30-day period would apply regardless of whether a financial institution delivers a privacy notice in person, by mail, or electronically after obtaining consent to do so, or whether the consumer acknowledges having received or even reviewed the notice. Meanwhile, Section 603(d)(2)(A)(iii) does not require a 30-day period and requires only that the consumer be given an opportunity to opt-out before the time that the information is communicated among affiliates.

Countrywide strongly believes that the period that is deemed reasonable should vary depending on the method of notice delivery and other factors such as the methods of opt-out and how quickly the financial institution processes opt-out requests. If a financial institution delivers a notice in person rather than by mail, the financial institution should be able to shorten the reasonable period of time for the consumer to opt out. If a financial institution delivers a notice by express mail as opposed to first or third class mail, the period should be shortened. The methods by which a consumer may opt out should be another relevant factor in determining whether a consumer was given a reasonable opportunity to exercise this choice before the information is communicated. For example, if a financial institution uses an automated toll-free number or web site screen instead of a mail-in reply form to receive opt-outs, the financial institution should be able to shorten the reasonable period of time for the consumer to opt-out. In that case, there is no need to allot extra time for the financial institution to receive and process the mail-in reply forms. Or, if a financial institution designates check-off boxes in a prominent position on forms that are signed by the consumer and the consumer returns the signed forms to the financial institution unchecked, the financial institution should be able to share information immediately after the unchecked forms are returned.

While Countrywide appreciates that the Commission may have difficulty in crafting specific examples of shorter reasonable opt-out periods, the final Commentary should not expand the current FCRA requirements by specifying an inflexible, 30-day, bright-line rule. Instead, the Commission's final rule should allow financial institutions flexibility in structuring reasonable opt-out procedures.

Electronic Delivery of Privacy Notice

The Commission invited comment on how Section 603(d)(2)(A)(iii) of the FCRA, relating to the delivery of opt out notices by companies to consumers, should be applied to electronic communications in light of the Electronic Signatures in Global and National Commerce Act ("E-Sign"). Currently, under the GLBA, a consumer must already consent to receive privacy and opt-out notices electronically. Privacy Regulations, § 313.9(a). The Privacy Regulations retained, "as an example of one way to comply with the rule, the posting of a notice on a web site and requiring a consumer to acknowledge receipt of the notice as a step in the process of obtaining a financial product or service. See § 313.9(b)(1)(iii)." Supplementary Information to 16 CFR Part 313, p. 70. Privacy Regulations § 313.9(e)(2)(iii) also sets forth an appropriate example of electronic retention or accessibility when it provides that you may "make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site." In adopting the Privacy Regulations, the Commission agreed that "it is appropriate to require only that the current privacy policy be made available to someone seeking to obtain it after having received the initial notice, and has revised the final rule accordingly in § 313.9(e)(2)(iii)." Supplementary Information to 16 CFR Part 313, p. 72. Countrywide favors this approach in GLBA and the Commission's apparent efforts to adopt the same regulatory framework for delivery of FCRA opt-out notices.

In the future, some mortgage lenders will certainly deliver privacy notices electronically along with other disclosures such as the initial Truth-In-Lending disclosure and Good Faith Estimate after satisfying E-Sign's consent provisions. On the other hand, E-Sign requires a burdensome twelve-part consent form prior to delivery of electronic disclosures. E-Sign's consent provision is more appropriately suited to address fears about electronic delivery of disclosures about the operative terms of individual financial transactions (such as rate, points, and closing costs in a mortgage transaction). E-Sign's consent provisions are less clearly needed in the case of company-wide policies and practices which are available as a link to the home page of most financial institutions' web sites at any time. Meanwhile, Proposed Section 8 recognizes that, for a consumer who conducts transactions electronically, posting a privacy notice on a web site and requiring the consumer to acknowledge receipt is sufficient. In short, financial institutions should have the flexibility to satisfy obligations under GLBA and FCRA through different, reasonable methods of delivery such as those described in the Proposed Rule.

Time to Honor an Opt Out

Countrywide believes that the "as soon as reasonably practicable" standard in Proposed Section 10 is somewhat ambiguous. However, we also believe that requiring a fixed number of days to comply is also too inflexible to accommodate differences in companies' systems and processes. To clarify this ambiguity, it would be helpful to financial institutions' compliance efforts under both GLBA and FCRA if the Commission would add examples of the meaning of "as soon as reasonably practicable" as a new Section 10(b). In Countrywide's experience, the precise amount of time required to comply with an opt-out election will depend on a number of factors including how the customer communicates the opt-out election and whether the customer's information has already been lawfully shared with affiliates or other nonaffiliated third parties. In some cases, an opt-out election may be effective in as little as several business days or as much as a few weeks. To address these differences in processing time and in the market place, adding examples of the meaning of "as soon as reasonably practicable" as a new Section 10(b) would be very helpful.

Duration of an Opt Out

Proposed Section 11 specifies that an opt-out remains effective until revoked by the consumer in writing or electronically, as long as the consumer continues to have a relationship with the company. Countrywide commends the Commission for specifically addressing this issue. Countrywide also believes that the Commission should clarify two points.

First, a financial institution's privacy policies, or customers' attitudes toward what level of information sharing is acceptable and what level of sharing is invasive, may change in the period between terminating the first relationship and establishing the new relationship. The following clause should be added in the second sentence of Proposed Section 11:

> If the consumer's relationship with the company terminates, the opt out will continue to apply to this information *unless and until the consumer establishes a new relationship with the company and a new notice and opportunity to opt out is provided.*

Clarifying the second sentence of Proposed Section 11 in this manner would help account for changes in company policy or customer attitudes.

Second, Countrywide is somewhat troubled by the implications of the first sentence of Proposed Section 11. In connection with an isolated transaction or a specific product or service offer, a consumer who has opted out may request or consent

to a financial institution sharing with an affiliate in that limited instance. This type of isolated request or consent to share may become more commonplace after financial institutions are able to assess the impact of GLBA compliance efforts and the reactions of consumers. The Commission should clarify that a consumer who has opted out may request or consent orally to an isolated instance of sharing, so long as the company maintains a record the request or consent.

Notice Retention or Accessibility

The Commission invited comment on Proposed Section 8(d) which would require a company to provide an FCRA notice that the consumer may retain or obtain at a later time. Countrywide believes that this is a proper interpretation of the statutory requirement that the right to opt out must be clearly disclosed to the consumer. Countrywide believes that the examples are appropriate and sufficient for guidance as to what companies must do to ensure that the consumer can retain the notice, or obtain it at a later time. Countrywide believes that the FCRA and GLBA should be interpreted consistently so that both laws are satisfied when a financial institution delivers a combined GLBA and FCRA opt-out notice as required or implicitly authorized by the Privacy Regulations. Countrywide does not see how Proposed Section 8(d) is inconsistent with or more burdensome than GLBA.

Mergers and Acquisitions

Countrywide supports the Commission's comments in the preamble to the Proposed Rules clarifying the impact of a merger or acquisition on the need to provide new GLBA/FCRA notices. Countrywide finds it helpful to know that a surviving entity will not be required to provide new GLBA/FCRA disclosures as long as the acquired or merged entity's GLBA/FCRA notices "accurately reflect the policies and practices" of the surviving entity. However, since Countrywide opposes Proposed Section 4, Countrywide urges the Commission to address this situation in a separate section of the final commentary.

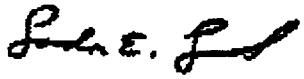
Notices for Joint Relationships

Proposed Section 8(f) sets out a range of appropriate methods for delivery of opt-out notices and processing of opt-out elections in those situations where two or more consumers jointly obtain a product or service from a company. Countrywide commends the Commission for specifically addressing the issue of joint relationships and believes Proposed Section 8(f) fairly applies Section 603(d)(2)(A)(iii) to those circumstances.

Conclusion

We hope that our comments will help in crafting a final version of the Commission's Proposed Rules that strikes the right balance between protecting consumer privacy rights and preserving the clear consumer benefits that result from the free flow of information in our economy.

Sincerely,



Sandor E. Samuels

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