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January 30, 2001

VIA MESSENGER

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

Re: Matter No. P004809 – Proposed Interpretations of the Fair Credit Reporting Act

Dear Sirs and Madams:

On behalf of the National Business Coalition on E-Commerce and Privacy ("Coalition"), we are writing to provide comments to the Federal Trade Commission ("Commission") on the proposed interpretations of the Fair Credit Reporting Act ("FCRA") that seek to clarify the Commission's views on the circumstances in which an institution regulated by the Commission must provide a consumer the opportunity to opt out before sharing certain consumer credit information with affiliates.

The Coalition consists of fifteen nationally recognized companies and associations representing diverse economic sectors, including manufacturing, retail, financial services, and media. Our member companies are committed to customer service and actively use technology and electronic commerce to enhance our ability to deliver goods and services to our customers.

The proposed interpretations relate to changes made to the FCRA in 1996 that clarify the right of users of consumer credit information to share transaction and experience information freely among corporate affiliates, but require in some cases that consumers be given an opportunity to opt out if affiliates share other types of consumer information.

1. GENERAL COMMENTS

The Gramm-Leach-Bliley Act ("GLB") authorized the federal banking agencies to promulgate regulations to implement the FCRA. The

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Commission, however, was not granted such authority. It can be argued that, at the very least, the Commission should defer any further action until the federal banking agencies have issued their final regulations on this matter. Consistency with the final regulations of the banking agencies cannot be achieved until they have finished consideration of this issue. Such consistency is essential to compliance with the FCRA.

We wholeheartedly agree with the Commission's intention to conform the proposed interpretations to the final regulations implementing the privacy provisions of the GLB. And the Coalition supports what seems to be an apparent flexibility provided for in the proposed interpretations that would allow financial institutions to offer additional benefits and services to customers who do not opt out of having their information shared with affiliates. We remain concerned, however, that the differences between the requirements of the FCRA and the GLB could lead to consumer confusion and operational challenges unless the timing of the effective date for the interpretations provides an adequate implementation phase. In addition, we believe it is crucial that any final interpretations conform to the banking agencies' final FCRA affiliate-sharing regulations. We are concerned as well that the definition for opt out information is too broad.

2. EFFECTIVE DATE

In light of the detailed new disclosures that will be necessary under the proposed interpretations, it is imperative that there be a reasonable effective date for any interpretations. The Commission also should provide guidance to financial institutions on how any new interpretations interact with the final privacy regulations. Many institutions are now in the final stages of preparing their GLB privacy notices. If the provisions in the proposed interpretations are adopted in any final version with too short an implementation period, it will force institutions to radically alter their existing GLB compliance plans and could require institutions to prepare and distribute additional GLB privacy notices that comply with such a final interpretations.

For these reasons, we believe that the Commission should provide that any FCRA interpretations will be effective at the same time that the first annual GLB privacy notices must be provided by financial institutions. We have made the same point to the federal banking agencies in a comment to those agencies' proposed FCRA rules. The Coalition is aware that the Commission has stated that it will declare any interpretations effective no earlier than the effective dates of the federal banking agencies' FCRA rules, which does provide for some regulatory consistency across different segments of the financial services industry. However, if the banking agencies choose a date earlier than the date by which the first annual privacy notice must be provided, then Commission-regulated institutions will be locked into the same problematic schedule as insured depository institutions. For existing customers who must be provided with a GLB privacy notice, institutions should not be required to change the initial notices provided to those customers to reflect the Commission's FCRA interpretations. In addition, for new customers (those who establish relationships with financial institutions on or after July 1,

2001), any FCRA interpretations should be effective on the earlier of July 1, 2002 or the date by which the first annual notice must be provided for that relationship.

This approach would enable financial institutions to comply with both the GLB Act notice requirements as well as with the new FCRA notice provisions in a manner that minimizes compliance costs and burdens.

3. DEFINITION OF OPT OUT INFORMATION

The proposed interpretations would define opt out information, in part, as information that bears on creditworthiness and that is not transaction or experience information. The Commission's proposed interpretations would grant an opt out right for more types of information and for more types of sharing than provided for under the FCRA. Specifically, the proposed interpretations would significantly expand the type of information covered beyond the definition of consumer report under the FCRA.

The Commission should narrow the scope of this definition. Only information that is communicated by a consumer reporting agency and that otherwise constitutes a consumer report under the FCRA should be subject to notice and opt out requirements. Under the FCRA, an institution may share application or other information with an affiliate, without providing an opt out notice, where the purpose of the sharing is to enable that affiliate to process or evaluate information on the institution's behalf. In such a case, the sharing of information would not constitute the sharing of a consumer report because there has been no communication of information between the institution and its service providing affiliate within the meaning of the FCRA. Indeed, the Commission has recognized that one party may share information with another party while acting as its agent, and that joint users may share information without providing an opt out notice and without being viewed as a consumer reporting agency, because the information is used by both parties for the same purpose -- for example, to consider a consumer's application for credit. The Commission should recognize in any final interpretation that there are many common business practices where information may be shared, without the use of the opt out notice, and without the sharing institution being viewed as a consumer reporting agency.

The Commission also should recognize and incorporate into any final interpretations other circumstances where an affiliate can access information of another affiliate without constituting the sharing of consumer reports. For example, any final interpretations should allow institutions to provide information to an affiliate when a consumer provides consent. This approach would parallel the Commission's GLB privacy regulations and would allow institutions to share, for example, a consumer's application with an affiliated party, if the consumer does not qualify for the product he or she initially applied for. In addition, this would allow a consumer to instruct one affiliate to provide a copy of the application submitted by that consumer to other affiliates so that the consumer can seek additional products from those other affiliates without the burden and inconvenience of completing additional applications for those other affiliates.

4. DELIVERY OF OPT OUT NOTICE

The Commission's proposed interpretations provide that an institution may deliver the opt out notice electronically. The federal agencies' final privacy regulations, as well as the federal banking agencies' proposed FCRA regulations, also take this approach. The Commission requested comment on how this delivery method should be applied in light of the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"). In light of the fact that the federal banking agencies' proposed FCRA regulations provide that the FCRA opt out notice may be provided electronically, the E-Sign Act is not implicated. The provision in the E-Sign Act relating to the delivery of disclosures applies only if a law requires a notice to be provided to a consumer in writing. Due to the fact that the federal banking agencies' proposed FCRA regulations state that a notice may be provided electronically if certain conditions are met, the E-Sign Act does not come into play. Thus, we do not believe the Commission needs to address the E-Sign Act.

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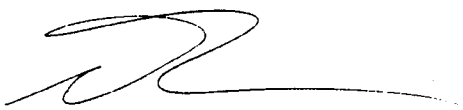
We appreciate the opportunity to comment on the proposed rule, and would be pleased to respond to any questions that you may have.

Sincerely,



Susan D. Pinder
Chair