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WELLS FARGO

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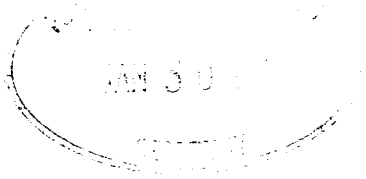


January 24, 2001

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

Re: Fair Credit Reporting Act -- Notice of Proposed Interpretations

Ladies and Gentlemen:

Wells Fargo & Company ("Wells Fargo") welcomes the opportunity to comment on the notice of proposed interpretations regarding the Fair Credit Reporting Act ("FCRA") issued by the Federal Trade Commission (the "Commission"). Wells Fargo is a diversified financial holding company with over 30 subsidiary banks and over 100 additional subsidiaries that provide financial products and services to consumers.

We have strong objections to a number of provisions in the proposed FCRA interpretation. The proposal creates obstacles to affiliate information sharing that are at odds with the efficient conduct of our business and the expectations of our customers. In particular, a 30-day waiting period for affiliate opt-outs would create compliance burdens that would inconvenience our customers and prevent us from efficiently satisfying their needs. In this respect the proposal conflicts with Congressional intent and the understanding of the financial services industry that diversified financial services companies would be allowed, with minimal compliance burden, to internally share information about their customers regardless of their legal structure.

We believe that the expectations of our customers regarding the sharing of information within the Wells Fargo family versus sharing with unrelated third parties are very different. Our customers generally expect that Wells Fargo as a company will seek to maximize its relationship with them by proactively offering a variety of financial products other than the ones that the customer may have applied for. It does not matter to our customers which Wells Fargo legal entity is providing these products. This proposal would make it far more difficult for us to provide services that meet our customers' needs, such as promptly informing them of new products they may qualify for without a separate application, or pre-filling on-line applications for different products that may come from different affiliates.

Our detailed comments on this and other issues are set forth below.

1. **The FCRA interpretation should not define a waiting period for an individual to exercise an opt-out from affiliate information sharing.**

- The FCRA provides that a communication among affiliated companies is not a "consumer report" if "the consumer is given the opportunity" to opt-out. The words "the consumer is given the opportunity" were chosen carefully to set a non-rigid standard that strikes a balance between providing a meaningful opt-out opportunity and at the same time giving diversified financial institutions the flexibility they need to serve customers. Defining this "opportunity" to require a 30-day waiting period before information may be communicated to an affiliate flies in the face of Congress' intent to establish a non-rigid standard.

  In the floor debate regarding the 1996 FCRA amendments, Chairman Leach described the balance intended by this carefully crafted language, stating:

  > I retain reservations about certain provisions [of the Consumer Credit Reporting Reform Act], but on balance the burden relief and fair credit reporting provisions are finely tuned, reducing regulatory costs while retaining credible consumer protections. 104 Cong. Record H12093 (September 28, 1996).

- The proposed interpretation transforms the statutory "opportunity" to opt-out into a "reasonable opportunity" to opt-out which it then defines by example to mean 30 days in all cases. A 30-day waiting period would contradict both the language and purpose of the statute and would impose significant costs on the industry without providing any demonstrable consumer benefit.

- The Commission should not provide any examples of opt-out waiting periods that it deems to be "reasonable." The statute sets the standard. The statutory standard has worked well for both consumers and financial institutions and it should not be amended by interpretation. For example, 30 days is unnecessarily long to exercise an opt-out based on an electronically delivered opt-out notice, or a notice delivered by hand. What is a "reasonable" opportunity to opt out depends on the context.

- While the interpretation describes a 30-day period as only an "example" of a reasonable opt-out waiting period, retention of this "example" in the final interpretation would effectively transform the example into a requirement. Financial institutions would risk regulatory criticism and private litigation if they did not adhere to that time period, if it is set forth in the final interpretation.

- Requiring a 30 day waiting period for affiliate opt-outs will create a significant burden to financial institutions seeking to cross-sell products and services

offered through multiple affiliates. Significant work will be necessary to alter data systems to hold opt-out information for a longer period before sharing it with affiliates, and to train staff regarding different requirements.

- There is no evidence that the absence of a mandated waiting period under the FCRA has adversely affected consumers since the affiliate opt-out provisions became effective in 1997. We do not believe that the costs to institutions of having to change business practices are justified by any consumer benefits from a 30-day opt-out waiting period. The Commission is responding to perceived consumer concerns about affiliate information sharing which are not supported by evidence from more than three years' experience under the amended FCRA. Although Wells Fargo has provided millions of opt-out notices under the FCRA, we have had no customer complaints about the length of the opt-out waiting periods we have provided.

- The proposed interpretation inappropriately imports the same 30-day opt-out period set forth in the GLB privacy regulations dealing with the sharing of information with *unaffiliated* third parties. The FCRA affiliate-sharing provisions and the GLB restrictions on third party information sharing are based on quite different policy considerations. Consumer expectations regarding the sharing of information within an affiliated family of companies versus sharing with unrelated third parties are very different. Furthermore, Congress specifically directed in Section 506 of GLB that except with respect to agency rulemaking and examination authority, "nothing [in the GLB] shall be construed to modify, limit or supercede the operation of the Fair Credit Reporting Act...." The privacy provisions of the GLB are more complex and restrictive because Congress recognized that sharing of information with nonaffiliated third parties is more likely to be a threat to privacy and more likely to be objectionable to consumers than sharing of information among affiliates. The proposed FCRA interpretation does not reflect this intentionally different approach.

2. **The FCRA interpretation should expressly recognize that an individual may consent to the sharing of opt-out information by a financial institution with its affiliates.**

- Any final FCRA interpretation should acknowledge the well-established regulatory interpretations of the FCRA that allow opt-out information to be shared with the consent or at the direction of a consumer. For example, the FTC Staff Commentary to the FCRA states that "if a lender forwards consumer reports to...another creditor for use in considering a consumer's loan application at the consumer's request, the lender does not become a consumer reporting agency by virtue of such action." 16 CFR Part 600 (Appendix). Furthermore, the Office of the Comptroller of the Currency has interpreted the

FCRA to permit a credit application to be transmitted to another entity at the direction of an applicant, without causing the application transmitter to be treated as a consumer reporting agency, based on the conclusion that the mere transmission of application information does not involve the "assembling or evaluating" of credit information. See OCC Interpretive Letter No. 474 (March 15, 1989).

- The GLB privacy regulations allow a consumer to consent to the sharing of nonpublic personal information with third parties for any purpose. The FCRA interpretation should not be more restrictive. Information sharing with affiliates should not be more difficult than information sharing with third parties.

- No particular form of consent should be required, consistent with the GLB consent provision.

- We recommend that the Commission adopt language substantially as follows in the proposed definition of "consumer report" at Section 3(g):

  The term [consumer report] does not include:
  (...) Any communication of opt-out information about a consumer with the consent or at the direction of the consumer.

3. **The content requirements for the FCRA opt out disclosure should conform to the FCRA instead of to the GLB privacy regulations.**

- In order to exclude the communication of opt out information from the definition of "consumer report," the proposed FCRA interpretation requires lengthy disclosures based on the requirements of the GLB privacy provisions. However, the FCRA requires only that it be "clearly and conspicuously disclosed to the consumer that the [opt-out] information may be communicated among [corporate affiliates] and that the consumer be given the opportunity, before the information is initially communicated, to direct that the information not be communicated among [such affiliates]." By using the GLB requirements instead of the simpler FCRA requirements, the proposed interpretation fails to give preference to information sharing among affiliates as intended by Congress.

- The Commission should change the final interpretation to provide for a more flexible approach to FCRA disclosures. Specifically, the interpretation should not require that an FCRA opt-out disclosure describe either information types or affiliate types in terms of "categories" that mimic the GLB approach. While many institutions may choose to combine FCRA and GLB disclosures and explain affiliate information sharing in terms similar to third party information sharing, some may choose to provide FCRA disclosures at different times. In

either case, institutions should only be required to disclose that certain information about them may be disclosed to corporate affiliates unless they opt out of that disclosure. To avoid receiving unintended opt-outs, institutions will have a strong incentive to accurately describe the nature of the information that is subject to the opt-out.

- If the Commission retains the requirement for "categorizing" information, the final interpretation needs to make it clear that the particular categories set forth in the interpretation (relating to the sources of "opt out" information) are only examples and that institutions are not required to follow these examples. The FCRA proposal lists information categories that are different than those which appear in the GLB privacy regulation. If the Commission does not allow a more flexible approach in drafting disclosures, combined GLB-FCRA disclosures will be overly confusing to consumers if the disclosures have to use different information categories when explaining the difference between affiliate information sharing and third party information sharing.

- We recommend that the Commission revise Section 5 of the interpretation to read as follows:

  (a) *In general.* An opt-out notice must be clear and conspicuous, and must accurately explain:
  (1) That you communicate opt out information to your affiliates, providing a few examples of opt out information;
  (2) The consumer's ability to opt out; and
  (3) A reasonable means for the consumer to opt out.

  (b) *Examples of opt out information.* Examples of opt out information include a consumer's:
  (1) Income;
  (2) Credit score or credit history with others;
  (3) Open lines of credit with others;
  (4) Employment history with others;
  (5) Marital status; and
  (6) Medical history.

  (c) *Medical history information.* If you communicate or reserve the right to communicate individually identifiable health information (as described in section 1171(6)(B) of the Social Security Act (42 U.S.C. 1320d(6)(b)), you must provide an example of that information.

4. **The FCRA opt out disclosures should not have to be in writing in all cases.**

- When the FCRA opt out disclosure is made as part of a financial institution's privacy disclosure as required by the GLB, that statute requires the disclosure to be made in writing or in electronic form or other form permitted by the privacy regulations. While the FCRA opt out disclosure must be given as a part of the privacy disclosure at the time of establishing a customer relationship and not less than annually during the continuation of the customer relationship, neither the FCRA nor the GLB require that the privacy notice be the only place where the opt out disclosure is given. When a financial institution provides the FCRA opt out disclosures outside of the GLB privacy disclosure, they should not have to be in writing. This would allow a financial institution to provide the FCRA opt out disclosures by telephone before a customer relationship is established, followed by written disclosures at the time a customer relationship is established.

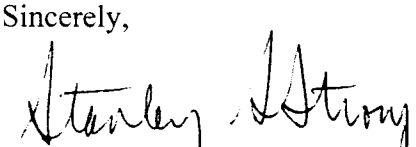
- Under the FCRA, the affiliate opt out disclosures must be made "clearly and conspicuously," but there is no requirement in the FCRA that they be made in writing. The interpretation should preserve the flexibility allowed by the FCRA and provide that the opt out disclosure may be made in any clear and conspicuous manner except when a particular method of disclosure is required by section 503 of the GLB. The definition of "clear and conspicuous" should also be changed so that it does not assume the disclosure will be made in writing.

5. **The effective date of the FCRA interpretation should be deferred until after the July 1, 2001 mandatory compliance date of the GLB privacy regulations.**

- The proposed interpretation does not provide for an effective date. Any effective date should be delayed until after July 1, 2001. Financial institutions need sufficient time to alter business practices to comply with any new requirements imposed by the interpretation.

We would be pleased to supplement or clarify the above comments. Please contact the undersigned at (415) 396-6019 or John D. Wright, Assistant General Counsel, at (415) 396-4226.

Sincerely,



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