WACHOVIA

Wachovia Corporation
100 North Main Street
Winston-Salem, North Carolina 27150

ORIGINAL

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's affiliate information-sharing provisions

Dear Sir or Madam:

This letter is submitted on behalf of Wachovia Corporation and its subsidiary companies, including Wachovia Bank, National Association, The First National Bank of Atlanta-Delaware doing business as Wachovia Bank Card Services, and Atlantic Savings Bank, FSB (hereafter collectively referred to as "Wachovia").[1]

Wachovia appreciates the opportunity to comment upon proposed Federal Trade Commission (FTC) interpretations of the information-sharing provisions of the Fair Credit Reporting Act (FCRA). We applaud the FTC's efforts to conform its interpretations with the Gramm-Leach-Bliley Act (GLBA) privacy regulations where appropriate. We also commend the FTC's efforts to make the interpretations parallel (where possible and

[1] Wachovia Corporation is an interstate financial holding company with dual headquarters in Atlanta, Georgia and Winston-Salem, North Carolina, serving regional, national and international markets. Its member companies offer personal, corporate, trust and institutional financial services. Wachovia Bank, National Association, the principal subsidiary of Wachovia Corporation, has 668 offices and about 1,300 ATMs in Florida, Georgia, North Carolina, South Carolina and Virginia.

practical) with the proposed information-sharing regulations issued October 20, 2000 by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency and Office of Thrift Supervision (hereafter collectively referred to as the "Banking Agencies").

Wachovia believes the proposed information-sharing rules promulgated by the Banking Agencies and the parallel FTC interpretations reach too far, and diminish the consumer and industry benefits Congress provided in the long-sought 1996 FCRA reforms. Wachovia explained its concerns and recommended alternatives in a comment letter filed with the Banking Agencies on December 4, 2000. Wachovia offers that comment letter (attached hereto and incorporated by reference) and its recommendations to the FTC.

It is our understanding that the Banking Agencies recently indicated their intent to:

- Offer additional information-sharing proposals and not publish their final rules until the fourth quarter of this year;
- Reassess the definition of "consumer report" and the proposed requirement for a 30-day waiting period for sharing data; and
- "Grandfather" the initial privacy notices that depository institutions must deliver prior to the July 1, 2001 GLBA privacy effective date -- through issuing a statement that these institutions will not be required to modify those notices to address any affiliate-sharing issues raised in the Banking Agencies' proposed rules.

Such actions by the Banking Agencies would be welcomed by Wachovia and others in the financial services industry for two principal reasons. First, the timing of the proposed information-sharing rules and effective date of any final rules posed a severe problem due to GLBA privacy notice requirements. Second, a required 30-day waiting period and the lack of a mechanism to immediately "opt in" potentially prevent consumers from maximum benefits of affiliate sharing.

We urge the FTC to join in these actions.

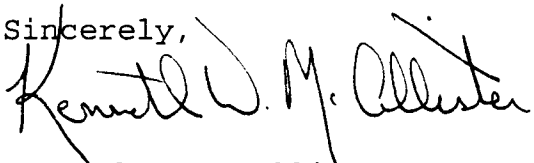
In connection with the effective date for final information-sharing rules, such rules should become effective at least 12 to 18 months after final issuance in order to provide timely printing/mailing cycles for annual notices.

Finally, we emphasize the need for a revised definition of "opt-out information" -- narrowing it, as explained in our

accompanying letter, through a fraud control exclusion, a consent exception, and a "joint user" exclusion. Without a "joint user exclusion," effective consumer benefits for processing applications, making joint credit decisions and utilizing centralized customer service units may be negated.

Thank you for the opportunity to offer comments concerning these important interpretations. Wachovia recognizes that it is not an easy task to develop rules in simple and plain language that balance regulatory burden with consumer protection and provide uniform regulatory application. We commend the FTC and the Banking Agencies for their efforts.

Sincerely,



Kenneth W. McAllister
Senior Executive Vice President and
General Counsel

Attachment

Wachovia Corporation
100 North Main Street
Winston-Salem, North Carolina 27150

WACHOVIA

DELIVERED BY ELECTRONIC AND REGULAR MAIL

December 4, 2000

Communications Division
Office of the Comptroller of the Currency
250 E Street SW, Third Floor
Washington, D C 20219
Docket No. 00-20

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, D C 20551
Docket No. R-1082

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D C 20429
Attention: Comments/OES

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20551
Attention Docket No. 2000-81

Re: Proposed regulations to implement the Fair Credit Reporting Act's affiliate information-sharing provisions

Ladies and Gentlemen:

This letter is submitted on behalf of Wachovia Corporation and its subsidiary companies, including Wachovia Bank, National Association, The First National Bank of Atlanta-Delaware doing business as Wachovia Bank Card Services, and Atlantic Savings

Bank, FSB (hereafter collectively referred to as "Wachovia").[1] Wachovia appreciates the opportunity to comment upon proposed rules to implement the information-sharing provisions of the Fair Credit Reporting Act (FCRA), issued jointly by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC) and Office of Thrift Supervision (OTS) (collectively, "the Agencies").

Need for Delayed Effective Date and Other Concerns -- Overview

Wachovia's foremost concern is that the *timing of the proposed regulations presents critical compliance and cost issues which Wachovia believes warrant an immediate, joint Agency announcement of a final rule effective date no earlier than (1) 12 to 18 months from issuance or (2) when institutions must distribute their annual privacy notices in 2002.*

Wachovia applauds the Agencies' efforts to conform the FCRA information-sharing regulation with the Gramm-Leach-Bliley Act (GLBA) privacy regulations where appropriate. At the same time, we are concerned that in several ways the proposed rules reach too far, diluting the consumer and industry benefits that Congress provided in the long-sought 1996 FCRA reforms.

These and other issues are discussed below.

Information-Sharing Background

Historically, the Federal Trade Commission and other regulatory and enforcement agencies interpreted the FCRA to treat members of the same holding company family as if they were unrelated third parties. Therefore, affiliates generally could not communicate non-experience customer data across entity lines without becoming

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subject to FCRA's "consumer reporting agency" restrictions and requirements.

In 1996, Congress passed sweeping FCRA amendments that created significant cross-marketing and risk-control opportunities, benefiting both financial institutions and their customers. Balancing privacy concerns and efficiencies, the revisions reduced legal impediments to sharing non-experience customer information among company affiliates -- as long as customers were allowed to opt-out of the process.

Among the specific benefits were:

- Products and services that were more tailored to specific customer needs, because companies could "know" their customers better;

- A simplified customer experience and decreased operating expense -- through such things as (1) collecting credit information once and then sharing it between affiliates, (2) consolidated underwriting, (3) consolidated customer service, (4) eliminating duplicate marketing efforts by affiliates of the same company, sometimes where an individual already was a customer of one or both affiliates;

- Better risk control through shared customer credit and performance information;

- Improved competitive balance for multi-affiliate companies, compared to ones that operated through a single legal entity with departments and divisions.

Discussion of Wachovia's Concerns

1. Problematic Timing Warrants Delayed Effective Date

Timing of the proposed FCRA rules is causing difficulties, because it may affect the financial industry's printing and distribution of initial privacy notices under GLBA privacy regulations. Those regulations require that an institution's initial privacy notices also must include its FCRA information-sharing opt-out disclosure. If, as Agency spokesmen have indicated, the final FCRA information-sharing rules are not published until approximately February 2001 at best, then:

- Companies which are now engaged in the final stages of preparations for sending their GLBA/FCRA notices along with other annual customer mailings or quarterly statements risk not meeting requirements of the new regulation, therefore having to reprint and-or remail.[2]

- Companies that wait on final regulations risk not having enough time to develop and mail complying notices to customers by June 2001 and thus being unable to comply with the July 1, 2001 GLBA privacy deadline.

To alleviate the timing problems, Wachovia recommends an effective date for final FCRA information-sharing regulations (1) at least 12 to 18 months from issuance or (2) when institutions must distribute their annual privacy notices in 2002. The latter alternative would synchronize FCRA notices and GLBA privacy disclosure timing and provide flexibility for institutions that may have complicated statement stuffing/insert schedules during 2002.

Wachovia urges the Agencies jointly to announce this delayed effective date as soon as possible, so companies can complete planning, preparing for notice printing and distribution, training, procedures development, and other activities related to implementation of the GLBA privacy regulations.

2. Reasonable Opportunity to Opt Out and Possibility of Immediate Sharing

The proposal's Section ___.6 states that financial institutions must give consumers a "reasonable" period of time following delivery of opt-out notices for them to opt out of affiliate information-sharing. All of the related examples suggest "at least 30 days" as a reasonable period. Wachovia is pleased that the Agencies specifically asked about other time periods and welcomes this opportunity to address other possibilities.

We believe that 30 days is too-long a waiting period for all the methods of delivering data-sharing explanations and opt-out notices - hand, mail and electronic. Wachovia believes that most

[2] To contain costs, many companies, including Wachovia, planned to insert their GLBA/FCRA notice with other normal mailings. While some of those mailings are sent monthly, others are mailed only annually, early in the year; still others are mailed only quarterly, and to meet the GLBA compliance deadline, companies must catch the ones tied to year-end or first-quarter cut-offs. Second-quarter cut-off statements would be too late. This means that many companies are printing or are in the final stages of preparing their disclosures now.

consumers decide their preferences about information-sharing at or very close to the time that explanations and opt-out notices are offered, and that long periods of time are unlikely to affect that choice. More importantly, requiring a lengthy waiting period may greatly reduce or negate many of the product, service and efficiency information-sharing benefits that Congress' intended both for consumers and financial institutions. The regulation should allow flexibility, based upon delivery methods and other circumstances.

In fact, some consumers may see and desire the immediate benefits of information-sharing. Wachovia supports regulation that provides a way for customers to exercise this choice at once. For example, a customer applying for a home purchase loan at a company's mortgage affiliate might want application and credit bureau information passed to the company's bank for same-day home equity loan/line qualification. When a consumer is purchasing one service, that may be the best time to determine and satisfy his or her need for products offered by other affiliates.

Wachovia requests that the Agencies authorize an express consent or "opt-in" choice for consumers who are willing to give knowing/specific authorization. In addition, Wachovia supports allowing institutions to share information immediately if a consumer has received and returned an application or similar document -- paper or electronic -- with a clear opt-out mechanism that has not been exercised. Both of these measures benefit the consumers while providing the necessary material to make informed decisions and supporting the purpose of the FCRA.

3. Delivery of Opt-Out Notices

Wachovia strongly opposes the Section ___.8 requirement that notices can be provided only in writing or, if the consumer agrees, electronically -- in effect, prohibiting oral provision. We believe this is overly burdensome to financial institutions and consumers -- especially given consumers' habitual use of the telephone to conduct many kinds of transactions, many of which are much more complicated and sensitive than deciding about the sharing of information internally within a family of companies. It also is inconsistent with Congress' 1996 reformed statute that allows consumers to exercise an opt-out decision orally. The final rule should allow the notice to be provided in the same manner as other concurrent transactions -- that is, if loan or deposit applications are being handled orally, information-sharing notice could be provided orally, too.

Alternatively, the rule should authorize initial oral notice as long as the consumer is informed that he or she may request a written, retainable copy that the institution would provide within a reasonable time.

Wachovia appreciates the Agencies' inclusion and we support retention of the ability to provide a single opt-out notice for joint consumers. We recommend a clarification that mailing to the address of and naming only the top-listed or primary joint consumer is sufficient. This would be consistent with Regulation B and GLBA. This affects product offerings such as loans, insurance policies, and deposit accounts where numerous parties may be involved.

Regarding electronic notice, Wachovia is unclear as to whether the proposed regulations require a separate agreement to receive the opt-out material, or whether a general agreement to receive information electronically will suffice. While we believe the latter is sufficient, we think the Agencies' proposal can be construed to require first, a separate agreement to receive opt-out communications electronically, and then, an additional acknowledgement step, which may not be compatible with the financial institution's web design. Wachovia urges that the Agencies clarify the regulations to provide conformity with E-sign. Specifically, we suggest that the regulations:

- Permit opt-out notice delivery within any agreement that the customer has agreed to receive electronically. Thus, if a customer agrees to receive a specific online banking or other financial service, the opt-out notices can be inserted into these agreements, provided the notices are made conspicuous as described by the regulation.

- Provide for acknowledgement using the click-box method or any other method that complies with the E-sign provisions.

4. Opt-out Acknowledgements

An example in the current Section ___.8 may be construed to require consumer electronic acknowledgement of opt-out notices. Requiring consumers to acknowledge receipt of opt-out material via any delivery method -- hand, mail or electronic -- would be overly burdensome. Also, it would be inconsistent with the opt-out rules in the GLBA privacy regulations, with FCRA itself, and with disclosure provisions in other consumer protection rules, such as Regulations B, E and Z.

5. Prohibition Against Discrimination

Wachovia recommends revising Section _____.12(a) to allow financial institutions legally to pass along information-sharing cost savings to customers who do not opt-out. As pointed out in "Information-Sharing Background" above, affiliate data-sharing can result in efficiencies and cost-savings that the institution should be able to pass on to customers through special products/services or other benefits, without violating the Equal Credit Opportunity Act's Regulation B. We think that categorizing such passed-through savings as discrimination under Regulation B denies consumers the opportunity to realize benefits associated with data-sharing -- an adverse effect that runs counter to some of Congress' purposes in the 1996 amendments.

6. Duration of "Opt-out" - Possible Oral Revocation

The proposed rules' Section ___.11 says that a consumer's opt-out continues to apply until he or she revokes it in writing or electronically. This reaches beyond the FCRA, which does not contain such an in-writing requirement, and the regulations should be revised to allow oral revocation, both in person and by telephone. Consistency and logic say that if consumers are allowed to opt-out orally, they should be allowed to opt back in or revoke in the same way. Oral revocation is more convenient for all parties, but especially for the consumer. Today's consumers habitually conduct many kinds of and more sensitive business transactions by phone, rather than in writing; there is no overriding reason why revocation should be treated differently. If opt-out and revocation processes vary (the first, by telephone; the latter, in writing), then this additional process must be explained and a mailing address provided to consumers -- a new disclosure requirement which it may be too late to include in many companies' early-printed notices. (See "No. 1 Problematic Timing Warrants Delayed Effective Date" above.)

7. Definition of "Opt-out Information"

Wachovia believes that the proposed definition of "opt-out information" in Section ___.3(k)of the regulations is too broad. Wachovia suggests a narrowed definition that reflects the FCRA Section 603(d)(2) definition of "consumer report" by adding the exclusions in that section, including particularly the 603(d)(2)(B) consent exception. This is another area in which the Agencies could conform these regulations to their GLBA

privacy regulations, which contain a consent exception. Also, this will ensure that only information constituting a "consumer report" would be subject to the opt-out notice and related requirements.

Further, Wachovia recommends revision of proposed Section ___.3(k) to include fraud control and agency relationships to service or process a consumer's accounts or transactions. The "joint user" exemption is important for consumers and financial institutions to benefit from time and effort efficiencies and cost reductions which Congress intended in its 1996 FCRA reforms. Without it, effective methods of processing applications, making joint credit decisions, using centralized customer service units, and providing consolidated operations/data processing may be negated. We recommend that the Agencies look to the "joint user" exemption used by the Federal Trade Commission.[3]

8. Opt-Out Notice Content

The Agencies invited comment as to whether financial institutions should disclose how long a consumer has to respond to the opt-out notice before the institution may begin sharing affected information with affiliates. Wachovia believes such a time limit should not be required/disclosed. Since a consumer has an ongoing right to opt out, setting and disclosing a fixed time period might confuse consumers about their continuing rights. Also, such a requirement would be inconsistent with GLBA privacy regulations and therefore work against the Agencies' laudable attempts at conformance.

Wachovia supports the Agencies' retention in:

- Section ____.5(b), that institutions' notices can contain language reserving the right to communicate certain types of information in the future. In conformance with GLBA privacy regulations, this gives us the flexibility for changing future practices without the costs of additional notification and tracking procedures.

- Section ___.5(c), that consumers can be provided with partial opt-out, covering only certain information or affiliates. This allows institutions to serve customers' needs with tailored opt-outs matching individual preferences.

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[3] FTC Staff Opinion Letter on "joint users" from Foster, Division of Financial Practices Attorney, to Thorne - November 20, 1998

Wachovia suggests removal of marital status from the Section ___.5(d)(3) examples of information that can be shared, since under ECOA/Regulation B marital status cannot be used in credit considerations.

9. Purpose and Scope

As currently written, coverage of Section ___.1(2) is unclear. Each Agency speaks to covering banks (or savings associations) and their branches; none speaks to covering non-bank (non-savings association) entities. Also, the Board's coverage of bank and financial holding companies and their subsidiaries needs to be specifically stated, similar to that provided in the GLBA regulations, to ensure that bank and financial holding companies are not subjected to confusing and duplicative regulatory opinions and enforcement actions by multiple federal agencies.

10. Web Pages and "Clear and Conspicuous" Definition

Wachovia recognizes the Agencies' concern with clarity regarding notices posted on a website. However, we submit that the website design requirements are so detailed and broad as to expose a financial institution to "artistic interpretation risk." We do not believe that it is necessary to design special assistive elements to encourage a consumer to scroll through a page. Indeed, it may be very difficult to determine where to place such cues, as browsers may differ as to the image delivered, and screen sizes and delivery fonts will vary the position of the message.

Likewise, requiring financial institutions to assure that other elements on the page do not detract from the opt-out message suggests that the impact of graphics, color or sound are viewed and interpreted uniformly by all consumers.

Wachovia recommends that the details concerning web page design be removed from Section ___.3(c)(iii), and that only (iii)(A) remain as a standard for web design of the opt-out notices.

11. Examples

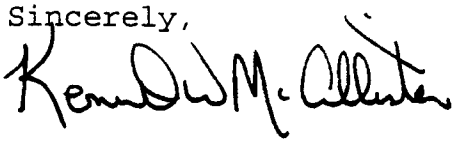
Wachovia supports the use of examples in the final rule, as long as the rule retains a statement that the examples are illustrative, and not the exclusive ways to comply, and it

continues to say that compliance with an example/sample notice constitutes compliance with the regulation.

Conclusion

Again, Wachovia appreciates the opportunity to offer comments concerning these important rules. Wachovia recognizes that it is not an easy task to develop rules in simple and plain language that balance regulatory burden with consumer protection. We commend the Agencies for their efforts.

Sincerely,



Kenneth W. McAllister
Senior Executive Vice President and
General Counsel