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April 1, 2002

Secretary of the Treasury

To Whom It May Concern:

Thank you for the opportunity to comment on information sharing practices among financial institutions and their affiliates. Below we have provided feedback on the specific questions requested. We also submit for your consideration the following general comments:

First, although we welcome further clarification as to how existing statutes should be interpreted in terms of sharing information among affiliates, we are generally opposed to any additional restrictions placed on financial institutions in the sharing of information, particularly with their affiliates. Both financial institutions and their customers benefit greatly from the free flow of information.

Currently the Fair Credit Reporting Act and the Consumer Privacy regulations make no distinctions between wholly owned subsidiaries of a regulated financial institution and other affiliated parties. The risks associated with sharing information with a wholly owned subsidiary, which is subject to regulatory scrutiny to the same degree as its parent, is significantly less than for a non-regulated affiliate of a holding company. We believe this distinction should be made in any regulations developed to implement the Fair Credit Reporting Act.

Legal forms or ownership are often adopted by companies to better manage risks and to comply with state or other laws/regulations. However, the legal form of entity is a matter of choice by the business organization. Many times the same business services could be provided by one organization rather than separating into separate legal entities. The business decision to operate as separate companies should not impact the ability of the organization to service its customers. For example Commercial Federal has a number of subsidiary companies under the bank that specialize in certain banking/financial services products such as mortgage loans. These same services could be directly provided by the bank, but for purposes of risk management a separate corporate entity was formed. This business decision should not impact the bank's ability to serve the customer.

The Consumer Privacy regulation provides several exceptions allowing information to be shared with non-affiliated third parties regardless of a customer's opt out choice. Those exceptions are not provided in the Fair Credit Reporting Act. This leads to inequities in that there are many reasons that customer information can be shared with a non-affiliated third party, but could not be shared for the same reason with an affiliate. For example, banks are able to share customer information with third parties with whom they have a joint marketing agreement. There is no provision in FCRA allowing banks to share customer information with affiliates for the purposes of jointly marketing financial products. These exceptions should be reflected in any regulations implementing the Fair Credit Reporting Act.

Thank you for this opportunity to comment. If you have any questions or would like any additional information, please call me at 303-932-3023 or e-mail me at JillKennedy@commercialfed.com .

Sincerely,

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1. **Purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties:**

a. What types of information do financial institutions share with affiliates?
1.a. Depending on the purpose, any information obtained about the customer, whether received from the customer, a third party, or from the customer's transactions with us could be shared. This could include name, address, credit record, application information, employment information, transaction information, etc.

b. What types of information do financial institutions share with nonaffiliated third parties?
1.b. Depending on the purpose, any information obtained about the customer, whether from the customer, a third party, or from the customer's transactions with us could be shared. This could include name, address, credit record, application information, employment information, transaction information, etc. Nonaffiliated third parties are often used to provide basic services such as information technology and data processing. As such these vendors often have access under contractual terms to all information. Third parties may also be used for other outsourced services such as production of statements, marketing materials, etc. and therefore have access to all information.

c. Do financial institutions share different types of information with affiliates than with nonaffiliated third parties? If so, please explain the differences in the types of information shared with affiliates and with nonaffiliated third parties.
1.c. Institutions share information with affiliates that will allow them to provide better service to their customers. Information shared with nonaffiliated parties is generally for the purpose of obtaining services to complete the transaction requested. In this case only the minimum amount of information needed to complete the transaction is shared.

d. For what purposes do financial institutions share information with affiliates?
1.d. • To facilitate a transaction the customer requested. For example, a customer may apply for both a construction loan and a permanent loan with two affiliated entities. • To market our products to our customers or those of our affiliates. • To service a transaction initiated by one affiliate but serviced by another. • For institutional risk control and to audit the records of subsidiaries.
Often legal forms are adopted by companies to better manage risks and to comply with state or other laws/regulations. However, the legal form of entity is a matter of choice by the business organization. Many times the same business services could be provided by one organization rather than separating into separate legal entities. The business decision to operate as separate companies should not impact the ability of the organization to service its customers. For example Commercial Federal has a number of subsidiary companies under the bank that specialize in certain banking/financial services products, i.e. mortgage loans. These same services could be directly provided by the bank, but for purposes of risk management a separate corporate entity was formed. This business decision should

not impact the bank's ability to serve the customer.

e. For what purposes do financial institutions share information with nonaffiliated third parties?

1.e. We share with nonaffiliated third parties for all purposes enumerated in the .12, .13, and .14 exceptions to the Consumer Privacy regulation. For example, nonaffiliated third parties are often used to provide basic services such as information technology and data processing. As such these vendors often have access under contractual terms to all information. Third parties may also be used for other outsourced services such as production of statements, marketing materials, etc. and therefore have access to all information.

f. What, if any, limits do financial institutions voluntarily place on the sharing of information with their affiliates and nonaffiliated third parties? Please explain.

1.f.

- We do not share name and address information with our affiliates for marketing purposes if the customer has opted out of affiliate sharing. This is voluntary since we are not sharing any information impacted by the customer's opt out.
- With non-affiliates with whom we work to market financial products, we share only information that is absolutely necessary to complete the project. We also require confidentiality agreements.

g. What, if any, operational limitations prevent or inhibit financial institutions from sharing information with affiliates and nonaffiliated third parties? Please explain.

1.g.

- Customer lists are created from a central file allowing a customer's opt out choice to be honored.
- Training is provided to employees; especially in areas where employees work closely with affiliates

h. For what other purposes would financial institutions like to share information but currently do not? What benefits would financial institutions derive from sharing information for those purposes? What currently prevents or inhibits such sharing of information?

1.h. Since exception .12 of Consumer Privacy allows nonaffiliated parties to jointly share information to market financial products when an acceptable contract in place, affiliates should be allowed the same exception.

Financial institutions share information to better serve the customer's entire financial needs. These may included specialized products offered through an affiliate. Customer needs are indiscriminate of business forms of organization. The customer is best served when all needs can be identified and businesses are free to provide a full range of services, regardless of business form, to satisfy these needs. Current restrictions add unnecessary complexity, confusion and cost to the consumer as businesses attempt to satisfy imposed regulations and restrictions.

2. The extent and adequacy of security protections for such information:

a. Describe the kinds of safeguards that financial institutions have in place to protect the security

of information. Please consider administrative, technical, and physical protections, as well as the protections that financial institutions impose on their third-party service providers.

2.a. Financial institutions have a responsibility to safeguard customer information. There are many different mechanisms (administrative, technical and physical) that need to be in place to achieve this goal. These mechanisms include but are not limited to the following: policy development, governance, information classification, storage safeguards, data ownership, encryption standards, awareness training, risk analysis, risk management (audits, patch updates, vulnerability assessments and service provider arrangements including review of 3rd party provider policies), monitoring, testing, incident response and management reporting. Most of these items are found within comprehensive corporate information security programs.

Customers are the most important asset of any business and as such we go to great lengths to protect this business asset. The financial industry is founded upon customer trust and goodwill. This is sacrosanct in our business and we take the responsibility of maintaining this customer trust seriously.

b. To what extent are the safeguards described above required under existing law, such as the GLBA (see, e.g., 12 CFR 30, Appendix B)?

2.b. All of the aforementioned items are either recommended or required under the existing GLBA law.

c. Do existing statutory and regulatory requirements protect information adequately? Please explain why or why not.

2.c. Statutory and regulatory requirements cannot protect the information. They can only proscribe standards and guidance for doing same. Protection comes from the policies, practices and commitment that organizations and their people apply to their business day in and day out. The risks to information are many and complex. These risks change daily. Organizations must be nimble and proactive in managing these risks. Statutory and regulatory requirements cannot keep pace with the swiftness with which risks and threats emerge and change. Organizations must be adept at managing these risks and changing quickly in response. In some cases statutory and regulatory requirements could actually inhibit an organizations ability to quickly respond to and guard against the changing risk landscape.

d. What, if any, new or revised statutory or regulatory protections would be useful? Please explain.

2.d. The guidelines in their current form leave too much uncertainty for the industry. Interpretations can vary between regulatory agencies and between financial institutions. The differences in interpretation result in additional confusion and costs for financial institutions.

3. The potential risks for customer privacy of such sharing of information:

a. What, if any, potential privacy risks does a customer face when a financial institution shares the customer's information with an affiliate?

3.a. We do not believe that customer's face any additional risk than they face when they approach the bank for a service or need in the first place. Affiliates share the same concerns as the institutions about protecting the customer's privacy, and they take any action necessary to ensure this is done.

In addition, the affiliates of our institution are currently regulated by federal regulatory authorities to the same extent the bank is. The business form of organization with respect to affiliates and subsidiaries does not increase this risk.

b. What, if any, potential privacy risks does a customer face when a financial institution shares the customer's information with a nonaffiliated third party?

3.b. There is always the risk that a nonaffiliated third party may not honor and comply with the terms of contracts established for these services or not themselves adequately protect the information. As such they then face risk for contractual non-compliance. As part of the business decision to use third parties, due diligence is performed to gain confidence that they will adhere to the terms of the contracts established.

Nonaffiliated third parties do, however, depend on the institution to survive, and they understand protecting the information they receive is critical to their survival.

4. The potential benefits for financial institutions and affiliates of such sharing of information (specific examples, means of assessment, or evidence of benefits would be useful):

a. In what ways do financial institutions benefit from sharing information with affiliates?

4.a.

- Reduced costs, improved efficiency if customer can provide information once to one entity instead of multiple times to each affiliate.
- Ability to better tailor products to meet customers' needs if we have a complete picture of the customer's relationship with all affiliates.
- Ability to jointly market services and products and to cross sell between affiliates.
- Ability to audit the records of a subsidiary.
- Ability to analyze the full relationship with the customer to predict and control risk from exposure to each client. The bank can monitor performance from many fronts to see if we have a client that is getting into trouble.
- Ability to better serve the customer and fulfill their needs and desires regardless of the business form of organization.

b. In what ways do financial institutions benefit from sharing information with nonaffiliated third parties?

4.b.

- Reduced costs, improved efficiency if information can be shared directly with the third party
- Ability to market our own products more effectively using a third party
- Outsourcing of functions to reduce costs such as mailing of marketing materials or statements, auditing, consulting, etc.
- Institutional risk control
- Protection and prevention of fraud
- Provision of additional or enhanced services to customers through third parties that we aren't able to provide in-house.
- Ability to engage specialists and experts on selected subjects or functions who can often provide a

better service or better leverage resources and provide at a lower net cost or more timely manner. This is ultimately a benefit to the customer.

c. In what ways do affiliates benefit when financial institutions share information with them?

4.c.

- Reduced costs, improved efficiency if customer can provide information once to one entity instead of multiple times to each affiliate.
- Ability to jointly market services and products and to cross sell between affiliates.
- Ability to effectively target customers for services that might be useful to them—don't have to recreate the wheel in terms of gathering customer information—increased efficiency.
- Ability to provide better service to joint customers. More seamless response to customers enhancing the businesses ability to serve the customer timely and efficiently.
- Better overall knowledge of the customer and therefore more tailored services to fit the needs of the customer.

d. In what ways do affiliates benefit from sharing information that they obtain from other affiliates with nonaffiliated third parties?

4.d.

- Reduced costs, improved efficiency if information can be shared directly with the third party
- Ability to market our own products more effectively using a third party
- Outsourcing of functions to reduce costs such as mailing of marketing materials or statements, auditing, consulting, etc.
- Institutional risk control
- To protect against and prevent fraud
- Ability to engage specialists and experts on selected subjects or functions who can often provide a better service or better leverage resources and provide at a lower net cost or more timely manner. This is ultimately a benefit to the customer.

e. What effects would further limitations on such sharing of information have on financial institutions and affiliates?

4.e.

- Multiple changes to regulations result in increased confusion of both employees and consumers. Training becomes more difficult and inadvertent non-compliance becomes more likely.
- Less opportunity to jointly market services and products and to cross-sell between affiliates.
- Hinders ability to effectively build relationships with existing customers—would have to "start all over again" in gathering information with each customer which is inefficient for both the customer and affiliate.
- Ultimately costs are increased, and those costs are passed on to the consumer.
- Institutions will face increased risks if they are not able to see the full picture of the customer's relationship.
- Greater complexity and confusion to the customer
- More opportunity to fail to live up to expectations of government which lowers overall public confidence in the economic system.
- Competitive disadvantage as the economy becomes more global, especially through technology and customers needs can be filled by foreign entities not subject to the same restrictions.

5. **The potential benefits for customers of such sharing of information (specific examples, means of assessment, or evidence of benefits would be useful):**

a. In what ways does a customer benefit from the sharing of such information by a financial institution with its affiliates?
5.a. • Customers can experience reduced cost and improved efficiency. Customers can provide information only once instead of multiple times when they are applying for multiple products from different affiliates. The financial institution and its affiliates could obtain only one credit report to be used for both purposes. When information sharing is restricted, customers may have to pay for two separate credit reports. • Customers benefit from having bankers who are knowledgeable about their financial situation and can recommend products that fit their needs. • The customer can obtain full exposure to services thereby getting our best service and rates.

b. In what ways does a customer benefit from the sharing of such information by a financial institution with nonaffiliated third parties?
5.b. • Sharing with nonaffiliated third parties ,is often essential to conduct the transaction the customer has requested. • When financial institutions experience improved efficiencies and reduced costs, the costs the consumer pays for the product or service can also be reduced. • Financial institutions can assist consumers in dealing with third parties in some cases. For example, in assisting the consumer to clear paid judgments on a title report, the burden is take off of the consumer. • Customers can be educated about services that may be helpful to them that they might otherwise not be exposed to.

c. In what ways does a customer benefit when affiliates share information they obtained from other affiliates with nonaffiliated third parties?
5.c. • Improved efficiencies in carrying out the customer's requests result when information can flow freely. • Improved customer service, for example in resolving customer disputes. Information may come from one entity, but be communicated to a nonaffiliated third party by an affiliate. • Customers can be educated about services that may be helpful to them that they might otherwise not be exposed to.

d. What, if any, alternatives are there to achieve the same or similar benefits for customers without such sharing of such information?
5.d. There are very few, if any, reasonable alternatives. Without the ability to share information with affiliates, every transaction would have to be treated as a new transaction. The customer might be required to repeat the same information several times. This would create an extreme inconvenience to the customer, and would add a tremendous amount of time and cost to doing business.

e. What effects, positive or negative, would further limitations on the sharing of such information

have on customers?
5.e. The effects of adding further limitations would be negative. Further limitations would add cost and inconvenience to the service the customer receives. In addition if every financial institution had to duplicate the services currently provided by third parties it would drive up costs to consumers and in many cases would eliminate services currently available to customers.

6. **The adequacy of existing laws to protect customer privacy:**

a. Do existing privacy laws, such as GLBA privacy regulations and the Fair Credit Reporting Act (FCRA), adequately protect the privacy of a customer's information? Please explain why or why not.
6.a. There is currently a discrepancy between consumer expectations as to what the GLBA provided in terms of privacy protection and what actually accomplished. This discrepancy should not be resolved by further legislation, but by allowing financial institutions latitude in crafting their privacy policies and in communicating those policies to their customers. Current laws created confusion and complexity. Created situation where the expectation and perception of the public was raised but the law did not adequately meet or fulfill the perceived purpose and expectation. The current regulations added significant cost without a benefit to the consumer.

b. What, if any, new or revised statutory or regulatory protections would be useful to protect customer privacy? Please explain.
6.b.Less regulation would be appropriate. The customer has the freedom and the power to speak with their wallet. The exercise of customer choice based upon how they are served and whether companies live up to customer expectations is the most powerful force in protecting customer privacy. The regulations are addressing extreme situations that only apply to a small percentage of institutions. Rather than deal with these situations, regulations have been created that impact the entire financial institution population, and is often the case it actually hurts rather than helps the consumer. Government effort would be best focused on educating the public and the consumer about how to better exercise their right to choose and the power they have every time they write a check or make a purchase.

7. **The adequacy of financial institution privacy policy and privacy rights disclosure under existing law:**

a. Have financial institution privacy notices been adequate in light of existing requirements? Please explain why or why not.
7.a. Yes, the majority of the notices met the existing requirements. However, the notices, particularly when the model language from the regulation was used, generally did not adequately explain to customers what effect opting out would have.

Customer expectations as to what the law would do versus what the law required were not aligned. As a result customer mailboxes were filled with meaningless pieces of paper from the customer's perspective, even though the disclosures and notices complied with the requirements.

b. What, if any, new or revised requirements would improve how financial institutions describe their privacy policies and practices and inform customers about their privacy rights? Please explain how any of these new or revised requirements would improve financial institutions' notices.

7.b. Because the model language of the regulation was so poorly received by consumers and because the customer information sharing policies of financial institutions vary so significantly, the regulations should provide the highest degree of latitude to banks to use their own language to communicate with customers without risking compliance violations for not using the model language.

Institutions should also be required to provide notice only when accounts are opened. The annual re-sending of notices to existing customers is extremely costly to financial institutions and provides little benefit to the customer.

8. The feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that such information not be shared with affiliates and nonaffiliated third parties:

a. Is it feasible to require financial institutions to obtain customers' consent (opt in) before sharing information with affiliates in some or all circumstances? With nonaffiliated third parties? Please explain what effects, both positive and negative, such a requirement would have on financial institutions and on consumers.

8.a. At this point it would not be feasible to require financial institutions to obtain a customer's opt in either for affiliate or nonaffiliate sharing. Each bank has already provided its entire customer population the opportunity to opt out. Some have chosen to do so, but the majority have not. If we were to now be required to contact each existing customer to obtain their opt in, it would create a significant level of customer confusion. In addition, customers who do want to have information shared would mistakenly believe that they were receiving another annual mailing of the privacy notice and would not be likely to realize that it required an opt in.

The customer already has the option and discretion to opt-out anytime they choose through their wallet. They can take their business to whomever they choose whenever if they perceive their needs and expectations are not being met. This is the most powerful form of opt-out that they will ever have.

b. Under what circumstances would it be appropriate to permit, but not require, financial institutions to obtain customers' consent (opt in) before sharing information with affiliates as an alternative to a required opt out in some or all circumstances? With nonaffiliated third parties? What effects, both positive and negative, would such a voluntary opt in have on customers and on financial institutions? (Please describe any experience of this approach that you may have had, including consumer acceptance.)

8.b. Having the option to obtain the customer's consent before sharing information with affiliates or nonaffiliates would be beneficial. Currently, we obtain the customer's written consent in some cases so that information can be shared with an affiliate before the customer has had 30 days from receipt of the consumer privacy notice to opt out. We do this for example, to approve our customer for both a construction loan and permanent financing, or to approve the customer for a credit card once they are approved for a mortgage loan. The same procedure could be done for sharing with a nonaffiliated third party, giving the customer an opportunity to consent to the sharing.

c. Is it feasible to require financial institutions to permit customers to opt out generally of having their information shared with affiliates? Please explain what effects, both positive and negative, such a requirement would have on consumers and on financial institutions.

8.c. It is not feasible to allow customers to opt out of all information sharing with affiliates. This would greatly hinder a financial institution's ability to serve the customer's entire portfolio of financial needs. It would cause delays and ultimately be more difficult for a customer to go through the approval process.

d. What, if any, other methods would permit customers to direct that information not be shared with affiliates or nonaffiliated third parties? Please explain their benefits and drawbacks for customers and for financial institutions of each method identified.

8.d. They can take their business elsewhere if they are concerned. This is the most powerful method they have .

9. The feasibility of restricting sharing of such information for specific uses or of permitting customers to direct the uses for which such information may be shared:

a. Describe the circumstances under which or the extent to which customers may be able to restrict the sharing of information by financial institutions for specific uses or to direct the uses for which such information may be shared?

9.a. We offer a "Do not solicit" option for customers which restricts the sharing of their information with third parties for marketing purposes.

We also permit customers to provide affirmative consent to share information with an affiliate for circumstances where the customer has not been provided a full 30 day opt out period.

b. What effects, both positive and negative, would such a policy have on financial institutions and on consumers?

9.b. Requiring institutions to allow the customer to customize the use of their information would significantly increase the costs associated with tracking a customer's choices, and would add to training costs and complexity.