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May 1, 2002

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Pursuant to the Department of Treasury's notice, "Public Comment for Study on Information Sharing Practices Among Financial Institutions and Their Affiliates" published in the Federal Register/Vol. 67, No. 32/Friday, February 15, 2002, pp. 7213-7215, Capital One Financial Corporation respectfully submits the following comments, which consider five of the nine questions posed by Section 508 of the Gramm-Leach-Bliley Act (GLB), in the order that we thought were most relevant to the Department of Treasury's investigation, i.e., 8, 9, 1, 5, 4.

Capital One Financial Corporation, Falls Church, Virginia (together, with all of its subsidiaries and affiliates, "Capital One") is a holding company whose principal subsidiaries, Capital One Bank, Glen Allen, Virginia and Capital One, F.S.B., Falls Church, Virginia, offer consumer lending and deposit products, including credit cards, installment loans, and automobile financing. Capital One also has several non-bank subsidiaries and affiliates that offer products to prospective and existing customers. Capital One had 43.8 million accounts and $45.26 billion in managed loans outstanding, as of December 31, 2001. A Fortune 500 company, Capital One is one of the largest providers of MasterCard and Visa credit cards in the world.

Department of the Treasury Request For Comments

QUESTION: Discuss 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 non-

affiliated third parties? Please explain what effects, both positive and negative, such a requirement would have on financial institutions and on consumers.

ANSWER: Our premise (we have done marketing tests that prove this premise) is that less than 5% of our customers would opt in to information sharing. Further, we presume that this question only pertains to sharing customer information for marketing purposes. Certainly, if a business were required to get express consent from its customers in order to share customer information for normal account management or servicing purposes, then many businesses would be shut down. The following answers assume that we can rely on the Section 14 and 15 exceptions under GLB.

Business Constraints

- We would not be able to offer the diversity of products to people with thin credit files (credit files that contain little or no information)—it would be too risky for us to offer certain products without having access to the customer's favorable transaction and experience information
- We would not be able to tailor products for specific consumers because we would be unaware of credit capacity, buying preferences, and special circumstances, (e.g., offering home equity loans or renter's insurance to the customer who has just moved or owns a house).
- Our cost of doing business would increase
    - Lost business due to not being able to locate potential customers
    - More money being spent to obtain data and lists from outside services and companies
    - More expensive to market to a saturated market, since only those people who have already opted in will be marketed
    - Unnecessary marketing to people who will not be interested in the product (and unhappy people who will be marketed for a product they don't want)
- We would not be able to obtain our current level of cross-sell revenues, which revenues allow us to keep the costs of our credit products competitively low
- Small companies would not have the consumer data to compete with larger companies for all the reasons stated above
- In order to overcome opt-in restrictions on affiliate sharing, we would have to change our holding company system or the legal structure of some affiliates within our holding company system, which would be very complex and expensive; some of our affiliates are separate corporations because they joined us as corporate acquisitions, or they have been created for tax reasons or for licensing purposes
- We would not longer be able to use the enhanced credit data gathered from a customer's multiple business relationships with our affiliates to build credit models, which allow us to make credit decisions for all customers in a fairer and more efficient way
- Without the commercial reasons to have interconnecting databases, we would not build them with the same capacity, sophistication, and complexity, which would harm our efforts to combat fraud, identity theft, and our efforts to assist federal efforts under The USA Patriot Act, OFAC, etc.

Operational Constraints

- In order to accommodate both opt out and opt in requirements (federal and state) we would have to build expensive IT systems and complex processes, with separate codes to capture every affiliate and every consumer. These systems will have more layers of complexity for loading required elements such as state do-not-call lists and the TCPA's do-not-call list onto each system. This approach creates a greater opportunity for quality errors
- Our integrated, corporate-wide account management system, which contains some customer information and which is currently accessible to our affiliates, would be useless if customer information had to be segregated by company

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 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 financial institutions? (Please describe any experience of this approach that you may have had including customer acceptance.)

ANSWER: The financial services marketplace already contains examples of voluntary systems of opt-in consent. There are some financial institutions who have declared that they do not share customer information for marketing purposes, presumably because they believe that there is a competitive advantage in this declaration. The voluntary systems have generally produced responsible behavior.

- We have decided not to collect and share sensitive data (information from children or information about a person's health or medical condition, sexual orientation, income, account number) for marketing purposes, without express consent from the identified person.

- We usually obtain express consent at the application stage of the credit relationship when we share a customer's account information with a co-brand business partner, even though we believe that a customer expects us to share information in that co-brand situation in order to get good credit terms and customer service.

- We have requested express consent to use customer information obtained in a credit relationship for purposes of sharing with a non-profit organization that wants to solicit such customers for donation to their cause.

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

ANSWER: Requiring opt-out consent for affiliate sharing is better than opt-in, but still troublesome for the reasons discussed above in subsection a. The proper inquiry is whether customers should be permitted to opt out of *marketing*, not sharing of data. For all the reasons described above, it is important for financial institutions to be able to share data among their affiliates, but we think consumers should have a right to opt out of receiving marketing to them that is based on information sharing.

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

ANSWER: Opt-in statutes should not include contact information, i.e., name, address, and telephone number, within the scope of the data to which the opt-in applies. Some proposed legislation has suggested that opt-in could be required only for (i) certain types of data, (e.g., "sensitive" data), (ii) data collected through certain channels (e.g., Internet data), or (iii) for marketing (e.g., the FTC's proposed national do-not-call registry for telemarketing, or e-mail marketing).

QUESTION: 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?*

ANSWER: If a financial institution were required to allow customized usage decisions by each of its customers, we would have 50 million different sets of "use instructions" (one for each customer), housed in a separate database that must be integrated into the other 200 databases pertaining to our customers. We would need to have a process to ask the questions, tabulate and compile the answers into an accessible database; we would have to train our customer service representatives and our marketing analysts how to access and use the database; we would need to audit and retrain regularly. The complexity and cost would be very high. Moreover, if states enact similar legislation, the burden (and opportunity for mistakes) would be worse, and we would have to comply in every state with the rules derived from the most restrictive of the states. The only "use" distinction that would not cause operational chaos for a business would be to statutorily limit a customer's choice to determine whether or not information about her could be shared with business partners for marketing purposes. This would allow us to treat such a request as a do-not-solicit request.

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

ANSWER: see above

c. *Please describe any experience you may have had of this approach*

ANSWER: Our experiences have been complex and expensive

- One of our affiliates has different levels of Internet do-not-solicit choices for its customers. For example, someone is able to opt out of receiving some types of e-mail offers, but can elect to continue to receive other types. Some problems include
  - difficulty migrating into larger centralized table (3 months just to handle IT integration)
  - marketing flexibility limited outside internet solicitations, because their e-mail choices are not easily translated into telemarketing or direct mail choices
- We are in the process of adding functionality to permit non-customer (consumer) GLB opt-out
- We are modifying the channels through which we can receive e-mails from non-customers expressing their do-not-solicit choices.

QUESTION: Purposes of sharing of confidential customer information with affiliates or with nonaffiliated third parties:

a. *What types of information do financial institutions share with affiliates?*

ANSWER:

- Transaction and experience information about how an account performs
- Previous offers made to a customer by different affiliates
- Name, address, phone number- contact information
- Credit information after FCRA suppression

b. *What types of information do financial institutions share with non-affiliated third parties?*

- Contact information
- Approve/decline for partnership program
- Amount spent in co-brand business partner's retail store

c. *Do financial institutions share different types of information with affiliates than with non-affiliated third parties? If so, please explain the differences in the types of information shared with affiliates and with non-affiliated third parties*

ANSWER: We do not share credit data with third parties (prohibited by the FCRA); we do not share competitive data with other financial institutions; we do not share PII with nonaffiliated third parties until we have checked our GLB suppression table and our do-not-solicit table; and we do not share credit data with affiliates until we have checked our FCRA suppression table.

d. *For what purposes do financial institutions share information with affiliates?*

ANSWER:

- For targeted marketing (different life-stages prescription drug benefits, lifestyles, renter's insurance)
- In order to make offers to people with no or thin credit history; for example, we may decline them for an unsecured card in one affiliate, but offer them a secured card through another affiliate
- Screening for OFAC. Since Bank and Thrift card customers reside on one system, we are able to link up the accounts when we screen for OFAC. This ensures that we are able to locate all related accounts in the screening process. If information wasn't permitted to be shared between affiliates, this screening would be more difficult since the accounts may not be able to reside on one system and may not be linked.
- Trending analysis
- Credit modeling
- Forecasting the number of accounts for purposes of staffing, inventory and servicing

e. *For what purposes do financial institutions share information with non-affiliated third parties?*

ANSWER: We share with vendors for customer service and account maintenance; with business partners for marketing; and with regulators and other official sources for compliance and law enforcement.

- At point of sale to know whether or not to deliver goods and services
- To print statements, solicitations
- To perform list appending
- To attach/detach credit information as needed
- To run suppressions
- To perform telemarketing or other marketing on behalf of Capital One
- To inform them who in their customer base has obtained a financial product
- To establish a rewards program between their company and Capital One (We have to let the Virginia College Savings Plan people know what 529 account to link with a Capital One credit card so cash rewards can be placed in the 529 account)
- To fulfill on a rewards program- Hospice Card, College One, Christian Children's Fund
- To emboss credit cards

f. *What, if any, limits do financial institutions voluntarily place on their sharing of information with affiliates and with non-affiliated third parties?*

ANSWER:

- Our Do Not Solicit policy for e-mail and direct mail is voluntary (outbound telemarketing not seen as voluntary because of TCPA and state do-not-call lists); By not soliciting in these channels, we are restricting the flow of information to some affiliates
- "No Hassle" credit card product is voluntary, in which we promise no telemarketing—this feature also restricts the sharing of information

- We offer an opt in for having name and address shared with a non-profit when someone enrolls in several products associated with non-profit groups. This allows the non-profit to know who is donating to their programs through the use of their Capital One card.

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

ANSWER: See above.

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

ANSWER:

- We would like to be able to provide a nonaffiliated third party with a customer's account number for billing purposes after the consumer has indicated her desire to accept the product (i.e., when the "marketing" is over). In the majority of cases, the third parties are acting as merchants and need the number in order to ensure that they can bill the account and deliver a product. The use of our internal Direct Bill system, which provides these third party merchants with a cross-referenced number which is matched back at Capital One, is lengthy, costly and has the potential for error. There is additional time and cost setting up a program to run through Direct Bill due to coding requirements. Eliminating this GLB requirement (Regulation P, section 12) would place nonaffiliated third parties with whom Capital One does marketing offers in the same position as the point of sale merchants who also have a complete account number at the time of billing. In addition, we would have the potential to attract a wider variety of partners since it would be easier to handle their billing. We would hold these partners accountable for not misusing our customers' account numbers. In fact, we have discouraged our customers from giving their account numbers to telemarketers who call them (as has the FTC), but the current rule almost requires this approach.
- In limited circumstances, we would like to be able to reveal to nonaffiliated third parties that an individual is one of our customers. For example, when a third party calls to make a payment on an account and has the account number, it is very cumbersome that we cannot reveal to the third party that the person has an account with us.

QUESTION: The potential benefits for customers of sharing 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?*

ANSWER:

- Targeted offers for different life events such as renter's insurance, Home Equity Line of Credit
- Offers for people with no or thin credit such as guarantor card, Hispanic LOB products, secured card
- Faster service since currently can use affiliates rather than vendors for servicing-for example, mail correspondence, account questions
- See answers above

b. *In what ways does a customer benefit from the sharing of such information by a financial institution with non-affiliated third parties?*

ANSWER:

- Many of the service provider functions that allow for higher quality of faster response/turn around time would be jeopardized if information sharing between nonaffiliated third parties were restricted. Examples include, embossing cards, handling phone inquiries, printing and mailing statements, and processing escheat payments.
- Some products are premised on sharing customer data such as our credit card on behalf of the Virginia College Savings Plan program, which allows a percentage of card purchases be donated to a 529 college savings account, or our Miles One Program, which allows the cardholder to earn airline miles with domestic airline partners.
- Other examples of beneficial sharing include point of sale applications where a customer can have furniture delivered once the third party knows they have been approved for a loan.
- Retail card customers can receive special offers from the retail stores such as notices of sales or coupons.

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

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

ANSWER:

- Access to information at little or no cost
- Access to credit information without having to make a firm offer of credit
- Access to account performance information
- Learnings from previous tests done by affiliates so as to not repeat mistakes

All of these activities allow us to offer more products at a lower cost and a lower risk to customers.

b. *In what ways do financial institutions benefit from sharing information from non-affiliated third parties?*

ANSWER:

- Shorter turn around time for services
- Lower costs
- Greater flexibility

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

ANSWER:

- Can generate a larger marketable population
- Can target offers
- All same benefits as (a)

d. *In what ways do affiliates benefit from sharing information that they obtain from other affiliates with non-affiliated third parties?*

ANSWER:

- Faster turn around time
- Cheaper products because at cheaper cost for Capital One
- Example: if one affiliate solicits another affiliate's customers, the first affiliate sends suppression and mail files to an outside vendor for suppressing and printing

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

ANSWER:

- Greater cost to do business
- Longer processing times
- Lower customer service satisfaction
- Fewer products to offer for marketing

Thank you for allowing us the opportunity to comment on the Proposal. We look forward to working with the Department of Treasury as further opportunities for comment and participation arise. If you have any questions about our comments, please do not hesitate to contact us.

Respectfully submitted,

/s/ Vance C. Gudmundsen

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