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Regulations and Legislation Division
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

ATTN: Study on GLBA Information Sharing

Dear Sir/Madam:

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, in response to the Secretary of the Treasury's request for public comment on a variety of privacy issues. The Gramm-Leach-Bliley Act of 1999 (GLBA) mandated a study of information sharing practices among financial institutions and their affiliates. On February 15, 2002, the Department of the Treasury published a request for comments pursuant to that mandate.

Purposes for the sharing of member information with affiliates or with nonaffiliated third parties

Most credit unions that have affiliates, or credit union service organizations (CUSOs), share member information with them. Credit unions share member information based solely on the credit union's own transactions and experiences with their CUSOs. Credit unions share information with their CUSOs to enable the CUSO to market its products and services for the benefit of its members, and to complete transactions that the member initiates.

Credit unions also share member information with nonaffiliated third parties. Almost all credit unions share information only within the exceptions at 12 C.F.R. §§ 716.13, 14, and 15. Credit unions can share member information bearing on a member's creditworthiness with nonaffiliated third parties, but do not share this type of information with affiliates. Credit unions may share credit information with affiliates if they either comply with the duties imposed on credit reporting agencies by the Fair Credit Reporting Act or offer the member the ability to opt out of such sharing. Credit unions may also share member information outside the Part 716 exceptions if they offer the member the ability to opt out of such sharing. Credit unions have long placed a high premium on member trust and the confidentiality that member trust requires. Indeed, standard federal credit union bylaws have historically restricted the sharing of member information.

Extent and adequacy of security protections for such information

Credit unions have implemented information security programs as required by recent changes to Part 748 of NCUA's Rules and Regulations. These existing requirements satisfactorily protect the security of member information while offering credit unions the flexibility to implement programs that best fit their individual security needs. Additional protections are not necessary.

Potential risks for member privacy in sharing of information

While the potential exists for an affiliate to misuse information, the degree of risk is minimal, and the consequences of such misuse are severe since the member's trust is a prerequisite to an ongoing positive relationship. The degree of risk of misuse by a nonaffiliated third party is *perhaps greater, but even that risk is minimized when a credit union exercises appropriate due diligence in its relationships with third parties.*

Potential benefits for credit unions and affiliates of such sharing of information

Credit unions benefit from sharing information because their member/owners benefit. Sharing permits credit unions and CUSOs to transact member business more expeditiously. Information sharing promotes operational efficiency for credit unions and their CUSOs. Information sharing also enables the credit union to outsource many of its processes (e.g., mailings, form printing, credit card processing, electronic bill payment services, mortgage servicing, etc.), which permits credit unions to devote more of their resources to the development of new products and services.

CUSOs sometimes use transactional and experiential member information, provided by their credit unions, to market products and services more efficiently. Credit unions and CUSOs both use member information to determine those members who will most likely want or need the products and services offered.

Potential benefits for members of such sharing of information

The credit union member is the ultimate beneficiary of information sharing. Credit unions are able to process transactions for members more efficiently, fulfill member requests, comply with various federal, state, and local laws, and take action to prevent fraud. Credit unions are also able to offer members additional financial products and services by sharing information under joint marketing agreements while ensuring through those agreements that member information is only used for permissible purposes. The financial gains from these marketing efforts that accrue to a credit union are returned to its members in the form of higher dividends and lower rates.

Adequacy of existing laws to protect consumer privacy

Existing privacy laws adequately protect the privacy of member information, and new protections would not materially enhance the protection of member privacy. Members receive disclosures informing them of credit union sharing practices. The law also requires credit unions to allow members to opt out of information sharing outside the exceptions.

However, credit unions and members alike would benefit from a change in the Relation to State Law provision of the regulation. Compliance with a hodgepodge of state privacy laws is burdensome and expensive for credit unions, and these costs are ultimately borne by the member. One uniform privacy standard would cure this problem.

Adequacy of credit union privacy policy and privacy rights disclosure under existing law

Credit union privacy notices adequately inform members of their credit unions' sharing practices. Credit unions have received few member complaints about privacy issues. New requirements are not necessary.

Feasibility of different approaches, including opt-out and opt-in, to permit members to direct that their information not be shared with affiliates and nonaffiliated third parties

While it might be technically feasible for a member to opt-in to information sharing with a credit union's CUSO, member service could be adversely impacted if the opt-in method is required. For example, a CUSO would have to delay the delivery of information about special offers and other promotions until the member gives the credit union permission to share his or her information. In addition, the costs to administer an opt-in program would only add to the costs of financial products and services. Ultimately, these costs would be borne by the entire membership.

Credit union members should be able to instruct financial institutions not to share their non-public personal information with nonaffiliated third parties when the sharing is for purposes other than those listed in the exceptions in Part 716 of NCUA's Rules and Regulations. However, it is not practicable to permit a member to opt-out or opt-in to sharing with nonaffiliated third parties for purposes listed in the exceptions in Part 716. Financial institutions share information with numerous nonaffiliated third parties for many different purposes, including processing transactions, mailing statements, complying with a member's request, complying with the law, and preventing fraud. A requirement to request and obtain a member's permission for such sharing would slow delivery of many important services, including statement delivery, automated teller machine card distribution, and check printing.

An opt-in program is significantly more onerous and confusing for both consumers and financial institutions than an opt-out program. In addition, the costs to administer an opt-in program would only add to the costs of financial products and services for members.

Therefore, we do not believe an opt-in program is a better alternative to an opt-out program. However, regulations should specify that if a financial institution voluntarily provides an opt-in program for customers or members, it should not also be required to provide an opt-out program.

Voluntary opt-ins could be applied to various marketing strategies that currently require an opt-out. A provision allowing an opt-in program instead of a required opt-out program would have no impact on most credit unions, as most do not engage in sharing activities that require an opt-out.

While it might be technically feasible to permit members to opt-out generally of information sharing with affiliates, such an approach has serious drawbacks that outweigh any benefit to the member. A credit union's CUSO is typically established to provide financial products and services that the credit union does not offer. It is important to inform members of all financial products and services offered by their credit unions. Also, administering a formal opt-out program for affiliate sharing will add to the costs of delivering products and services. Such costs will ultimately be passed on to credit union members in the form of lower dividends and higher interest rates on loans.

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

Extensive customization of systems to accommodate the different sharing preferences of members could be very costly in terms of programming and administration. These costs would be absorbed by the membership and likely result in lower dividends and/or higher prices for financial products and services. Therefore, NAFCU does not support regulations that require extensive customization to accommodate individual sharing preferences.

NAFCU would like to thank you for this opportunity to participate in this study of information sharing practices among financial institutions and their affiliates. Should you have any questions or require additional information, please call me or Rob Byrer, NAFCU's Regulatory Compliance Counsel, at (703) 522-4770 or (877) 623-2887, ext. 278.

Sincerely,



Fred R. Becker, Jr.
President / CEO

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