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*American Council on Consumer Awareness, Inc.*

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December 1, 2000

Re: Joint notice of proposed rulemaking  
Federal Register / Vol. 65, No. 204 / Friday, October 20, 2000  
Proposed Rules

Office of the Comptroller of the Currency Attention: Docket No. 0020 912 CFR Part 41)  
regs.comments@occ.treas.gov  
(Fax number [202] 874-5274) 250 E Street, SW., Washington, D.C. 20219

Ms. Jennifer J. Johnson, Secretary ~ Re: Docket No. R-1082 12 CFR Part 222  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> & C Streets, NW., Washington, D.C. 20551  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Mr. Robert E. Feldman, Executive Secretary ~ Attention: Comments/OES  
Federal Deposit Insurance Corporation  
[www.fdic.gov](http://www.fdic.gov) (and) [comments@fdic.gov](mailto:comments@fdic.gov)  
(Fax number [202] 898-3838) 550 17<sup>th</sup> Street, NW., Washington, D.C. 20429

✓ Department of The Treasury ~ Attention Docket No. 2000-81  
Manager, Dissemination Branch  
Information Management and Services Division  
Office of Thrift Supervision  
(Fax number [202] 906-6956) 1700 G Street, NW, Washington, DC

And others to whom it may concern.

Ladies and Gentlemen,

The following comments pertain to proposed regulations implementing the provisions of the Fair Credit Reporting Act (FCRA):

The referenced proposals refer essentially to "opt out" of information sharing by financial affiliates by broadening the justifications for such sharing and thus further diminishing an individuals rights to prevent such distribution by imposing various time constraints and procedures with which the consumer must first become familiar to prevent abuses associated with such uncontrolled distribution of his confidential information.

Rarely is the consumer aware of any his "opt out" rights until long after he has sustained the unwarranted consequence of such distribution. Such consequences include identity theft, credit file misinformation or misinterpreted information, loss of employment or insurance and denial of medical care among many others.

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Indeed, by far, the majority of complaints to the Federal Trade Commission refer to alleged abuses of the FCRA clearly attest to this problem. Legitimate discrediting information is far more valuable to a potential creditor than a larger amount creditworthy information. It is for this reason the focus of the credit reporting industry is to obtain as much discrediting information as possible for the protection of their clients. Thus, factually distorted information frequently becomes extremely harmful.

For example the J.C. Penney Company in the past disclosed credit card applications denied in the same format as accounts they had canceled for lack of proper payment. Obviously such reporting appeared to subsequent creditors as adverse information

The FCRA was conceived in the mid 1960s when there was no control what-so-ever of credit files. The Act was designed primarily to protect privacy while providing an efficient means of determining individual credit worthiness. The Act failed to accomplish this because it failed to define the intent of the individual to initiate a credit transaction by his signature or at least knowledge thereof to initiate a transaction.

Despite the FCRA, the massive number of credit file abuses virtually denied any consumer protection because no government agency was large enough to assist the large number of abused consumers and complaints to such agencies were and still are generally ignored. The consumers become frustrated and pay substantial unwarranted charges under the threat of having their credit file tarnished.

Insurance double-billing practices, fraudulent billing, failure to credit for returned merchandise, unwarranted legal costs and many other abuses are actually protected by the broadening and thus further complicating the FCRA.

The FCRA initially attempted to protect privacy by clearly defining "Permissible purposes of consumer reports" [§1618b FRCA § 604] i.e. A) Credit transaction, B) employment, C) insurance underwriting, D) eligibility for license or benefit and E) evaluation of current credit risk.

It should be noted that each of the above involved initiation of some effort by the consumer to allow credit file access, generally an application for credit bearing his signature allowing the investigation of and the sharing of his creditworthiness information.

In 1996 at the urging of the credit reporting industry the FCRA was amended by adding *Permissible purpose item (F)*: "...a legitimate business need for the information." By failing to clearly define "legitimate business need", the privacy intent of the FCRA was destroyed completely.

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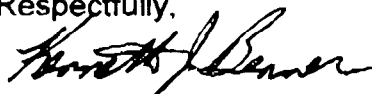
For example stalkers can now obtain the unlisted phone numbers and addresses of their victims, credit card thieves can obtain the amount of available remaining credit on a stolen credit card, identity thieves can determine the established credit limits for their victims and in a recent discovery by this organization: collection agencies can and do access thousands of credit files to determine outstanding bills in their efforts to solicit business. In one such case these reports were discovered in dumpsters and blowing around a city dump-ground.

On the rare occasions when such *violations of FCRA intent* are discovered the defense become an undefined "permissible legitimate need" and criminal prosecution almost invariably becomes futile.

**What is needed, is not further complication of the FCRA by broadening or further complicating "opt out rights" but a simplification of definition, intent and an adequate means to enforce its violations.**

The undersigned is prepared is prepared to assist in this effort, to testify to any extent necessary and provide substantial additional examples of FCRA abuses upon request.

Respectfully,



Kenneth J. Benner, President