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Missouri Bankers Association

December 4, 2000

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
Attention: 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
Attention: Docket No. R-1082

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

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention Docket No. 2000-81

RE: Request for comment on the proposed rule regarding the ability to communicate consumer information to affiliates.

Dear Sir or Madam:

These comments are being submitted on behalf of almost 400 Missouri banks by the Missouri Bankers Association (MBA), a Missouri bank trade association. One behalf of the MBA, the undersigned welcomes the regulatory agencies' invitation to comment on the proposal implementing provisions of the Fair Credit Reporting Act (FCRA) that permit financial institutions to communicate consumer information to their affiliates without being classified as a consumer reporting agency.

While the MBA's bank membership appreciates the fact that the proposal closely resembles the consumer notification and opt out procedures contained in Title V (privacy provisions) of the Gramm-Leach-Bliley Act (GLBA), many of our members are concerned about the timing of this proposed rule. Many of our member financial institutions have already developed their privacy notice and opt out procedures and have begun mailing them to their existing customers. Since GLBA dictates that FCRA opt out notices be included in privacy notices, many financial institutions utilized their existing FCRA opt out notices and included them in their new privacy notices. As a result, these notices will not contain the proposed additional information that will be required in order to be in full compliance with the proposed rule.

The MBA strongly believes that the agencies should delay any final rule until July 1, 2002, or until a financial institution mails its first annual GLBA privacy notice after July 1, 2001. This will prevent financial institutions from having to endure the undue burden and significant added expense of reprinting and re-mailing their privacy notices prior to July 1, 2001.

Mailing notices is a significant cost; one of our larger members suggested a postage/printing/mailing cost of more than $600,000 if the privacy notice was mailed by itself. This financial institution has worked hard to combine the privacy mailing with other mailings to reduce this cost. Changing the FCRA opt out notices in the "middle of the process" will again increase the postage/printing/mailing costs.

The proposal also states that a consumer must be given a reasonable opportunity to opt out of information sharing among affiliates. However, there isn't a clear indication as to whether this opt out requirement applies only to new customer relationships or to both new and existing customer relationships.

The MBA believes that the agencies should publish a final rule that expressly permits financial institutions to continue to share opt out information, regarding existing customers, with their affiliates under their previous notice and opt out procedures, provided those customers had the opportunity to opt out under the financial institution's former notice and opt out procedures.

Financial institutions may treat an opt out direction by a joint consumer as applying to all of the joint consumers or to that particular joint consumer. The proposed rule requires a financial institution to communicate in its opt out notice which one of these policies it will follow. However, many of our members state that there is no guidance on how this fact should be communicated to the consumer. The MBA encourages the agencies to include language in the sample notices in order to properly explain these options to the consumer.

The proposed rule applies to any institution that wants to share consumer information, *other than transaction or experience information*, with its affiliates, but does not want to be considered a consumer reporting agency. The MBA is disappointed with the fact that nowhere within the proposed regulation is there a definition of what constitutes "transaction or experience" information. This is a very important term due to the fact that an opt out notice isn't required if a financial institution shares transaction or experience information with an affiliate. We believe it's important that financial institutions understand what type of information sharing among affiliates doesn't trigger an opt out notice. In addition, we don't think it's safe to assume that everyone knows what it is and what it means.

Over the past few years we have received numerous calls from our membership inquiring about what falls into the "transaction or experience" category. The MBA feels that it will help all financial institutions comply with the final rule if the agencies include a definition of what is considered to be "transaction or experience" information.

Finally, GLBA was amended so that 15 U.S.C. 1681c (a)(4) was eliminated. Prior to 1999 neither the Federal Trade Commission nor any other agency could prescribe FTC rules for commercial banks. In applying FCRA, it is important that the federal bank regulators focus carefully to avoid over regulating depository institutions. Depository institutions are already subject to very detailed regulations and differ greatly from "payday loan companies" and "title loan companies." A shotgun approach that paints all lenders with the same brush serves no one, and increases the regulatory costs for depository institutions.

Thank you for the opportunity to comment on the above proposal. If I can be of additional assistance, please let me know.

Sincerely,

Max Cook
President