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December 4, 2000

Via e-mail

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20th and C Street, NW
Washington, DC 20551
Docket No. R-1082
Regs.comments@federalreserve.gov

Communications Division
Office of the Comptroller of the
Currency
250 E Street, SW
Washington, DC 20219
Docket No. 00-20
Regs.comments@occ.treas.gov

Robert E. Feldman, Executive Secretary
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Manager, Dissemination Branch
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Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention Docket No. 2000-81
Public.info@ots.treas.gov

Re: Proposed Fair Credit Reporting Regulations

Ladies and Gentlemen:

The PNC Financial Services Group, Inc. ("PNC"), Pittsburgh, Pennsylvania, appreciates the opportunity to comment to the federal financial institution regulatory agencies ("Agencies") on the proposed regulation implementing provisions of the Fair Credit Reporting Act ("FCRA") that permit institutions to communicate consumer information to their affiliates without incurring obligations of consumer reporting agencies ("Proposal") (65 Fed. Reg. 63,120 (2000)). The Agencies are issuing the Proposal pursuant to their authority under section 506 of the Gramm-Leach-Bliley Act ("GLB").

PNC is one of the largest diversified financial organizations in the United States, with \$69.9 billion in assets as of September 30, 2000. Its major businesses include regional banking, corporate banking, real estate finance, asset-based lending, private banking, asset management and global fund processing services. PNC's full-service subsidiary banks have offices in Delaware, Florida, Indiana, Kentucky, New Jersey, Ohio and Pennsylvania. Through several affiliated companies, PNC engages in retail banking activities nationwide.

This letter responds to the Agencies' specific requests for comment and identifies other issues of concern to PNC.

I REQUEST FOR DELAY IN IMPLEMENTATION OF PROPOSAL

The Agencies state in the Supplementary Information that "to ease compliance and promote consistency" the Agencies are conforming the Proposal and the regulations implementing Title V of the GLB wherever possible. Title V, Section 503(b)(4) of the GLB requires the inclusion of the FCRA affiliate information sharing notice and opt out in the GLB privacy disclosures, which must be made to all customers no later than July 1, 2001.

Like other institutions, since 1996 PNC has made an affiliate sharing disclosure on the basis of the FCRA text only. In preparing the affiliate sharing notice that is included in our GLB privacy disclosure, PNC has used terms describing the categories of information that is shared among PNC affiliated companies, such as information we receive from the consumer and information we receive from unaffiliated third parties, that are set out in the GLB privacy regulations. Since the Proposal introduces the concept of "opt out information" and new "categories" of opt out information, the FCRA disclosure that has been acceptable since 1996 and appropriate for GLB purposes must be revised to meet the requirements of the Proposal.

PNC has already begun distributing GLB disclosures to new customers and expects to mail disclosures to its full customer base over a several week period beginning in late February, 2001. Since we anticipate that the Proposal will not be issued in final form until that time, unless the Proposal's disclosure requirements are changed, we will be faced with sending a revised disclosure almost immediately. We understand that many other institutions are planning a spring mailing so as to be able to staff adequately to process opt out requests and respond to customer calls well in advance of July 1, 2001.

We recommend and respectfully request that if a new FCRA affiliate sharing notice is required by the Proposal, this new format be optional until the 2002 annual privacy disclosure mailings and not be required for new customers until 2002. This will afford financial institutions adequate time to revise their disclosures without incurring significant expense or creating customer confusion by sending virtually the same disclosure twice in a short period of time.

II SECTION-BY-SECTION ANALYSIS OF THE PROPOSAL

To the extent that the Proposal requires a written affiliate sharing notice and opt out, PNC recommends that the terminology used in the notice be as consistent as possible with the GLB opt out. Our detailed comments reflect our basic recommendation.

Section __.1 Purpose and Scope

Proposed paragraph __.1(a) describes the purpose of the regulations and paragraph __.1(b) defines its scope.

PNC Comment:

PNC requests that the Agencies clarify that the Federal Reserve regulations will apply to Bank Holding Companies and all their non-banking affiliates as well as to Financial Services Holding Companies and all their non-banking affiliates. This clarification will permit all institutions within a corporate family to use the same form of notice.

Section __.2 Examples

Section __.2 of the Proposal clarifies that examples in the Proposal and sample notice are not the exclusive means of compliance.

Comment Requested:

The Agencies have solicited comment on whether to include additional or different examples and, more fundamentally, on whether including examples in regulations is appropriate and useful.

PNC Response:

PNC believes examples are useful so long as the Proposal continues to state that the examples are not the "exclusive" means of compliance.

Section __.3 Definitions

Affiliate

Paragraph __.3(b) of the Proposal defines "affiliate" to refer to multiple types of relationships among companies related or affiliated by common ownership or "control."

Comment Requested:

The Agencies solicit comment on whether the proposed definition of "control" should be expanded to include individuals, governmental entities, or estates.

PNC Response:

PNC believes that such expansion is not necessary.

Clear and Conspicuous

Proposed paragraph ____3(c) defines “clear and conspicuous” to mean a notice must be reasonably understandable and designed to call attention to the nature and significance of the information it contains. This definition is similar to the definition of “clear and conspicuous” in the GLB regulations.

Comment Requested:

The Agencies request comment on whether institutions have any particular concerns about compliance with the FCRA’s “clear and conspicuous” standard when FCRA opt out notices are included with the GLB’s privacy provisions.

PNC Response:

PNC is concerned about the interplay of the two requirements and requests the Agencies to clarify that when the FCRA affiliate sharing notice is included as part of the GLB disclosure, nothing more is required than compliance with the GLB clear and conspicuous standard.

Opt Out Information

The Proposal uses the new term “opt out information” as an alternative to the term “other information” that is used in the FCRA itself. Proposed paragraph ____3(k) defines “opt out information” as information that (i) bears on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; (ii) is used or expected to be used or collected for one of the permissible purposes listed in the FCRA; and (iii) is not solely transaction or experience information. Section ____5(d) gives examples of categories of opt out information.

PNC Comment:

PNC appreciates the Agencies’ effort to give specificity to the FCRA term “other information;” however, in defining opt out information as equivalent to information that would ordinarily constitute a consumer report, the Agencies did not provide certain exclusions from “consumer report,” such as the joint user exception created by the FTC commentary. The Proposal also lacks the GLB disclosure exceptions, such as consent of the consumer or servicing of the consumer’s account. We believe that no opt out notice should be required, for example, in the case of fraud or suspected fraud or where one affiliate: (i) provides account processing for another; (ii) operates a call center for other affiliates; (iii) performs a credit evaluation function for another affiliate; or (iv) provides loan workout or collection services for another affiliate. Similarly, no opt out notice should be necessary where the affiliates are “joint users” of the information, as that concept has been understood for a number of years, for example, to permit a consumer’s application and supporting documentation to be referred at the consumer’s request to an alternative affiliate lender. We also believe that the consumer should be able to consent verbally to affiliate sharing of

opt out information since many financial relationships are established by telephone, and banking transactions are often conducted by telephone.

Section ____ .5 Contents of the Opt Out Notice

Proposed paragraph ____ .5(a) provides that the opt out notice must be “clear and conspicuous” and must accurately explain: (i) the categories of opt out information about the consumer that the institution communicates; (ii) the categories of affiliates to which the institution communicates the information; (iii) the consumer’s ability to opt out; and (iv) the means to do so.

Comment Requested:

The Agencies have invited comment on whether financial institutions should also have to disclose how long a consumer has to respond to the opt out notice before the institution may begin disclosing information about the consumer to its affiliates, as well as the fact that a consumer may opt out at any time; whether the benefits outweigh the burdens and, if so, if the regulation should specify a 30-day waiting period prior to disclosure.

PNC Response:

As the Agencies acknowledge, neither disclosure of a waiting period nor disclosure of the continued right to opt out is required for the GLB third party sharing opt out. Since the affiliate sharing and third party opt outs will often appear in the same document, there should be no more detail required for the affiliate sharing notice and opt out than for third party sharing. The FCRA does not require such a disclosure. Additionally, PNC believes that to disclose both that there is a specific time period and that an opt out may be exercised at any time would be confusing to the consumer. We believe that a 30-day waiting period may not be appropriate or beneficial to the consumer in every case, particularly where a customer relationship is established in person or electronically. Developing a process to track the 30-day period would be very expensive and not provide sufficient consumer benefit to justify the cost.

Proposed paragraph ____ .5(d) explains how an institution can satisfy the requirement that it categorize the opt out information it communicates to affiliates, and paragraph ____ .5(d)(2) gives examples of categories of opt out information, such as information from a consumer’s application, information from a consumer report, information obtained by verifying representations by a consumer, and information provided by another person regarding that person’s relationship with a consumer.

Paragraph ____ .5(d)(3) provides examples of opt out information within each category. Proposed paragraph ____ .5(e) explains how to categorize affiliates.

Comment Requested:

The Agencies request comment as to the appropriateness of the examples of categories and items of opt out information, and whether additional or different

examples should be used. The Agencies also request comment on the extent to which the categories of information in proposed _____.5(d)(2) can be treated as consistent with section _____.6(c)(2) of the GLB regulations.

PNC Response:

Section _____.6(c)(2) of the GLB regulations requires financial institutions to identify "categories" of nonpublic, personal information they disclose. These categories are information from the consumer, information about the consumer's transactions with affiliates, information about transactions with third parties, and information from consumer reporting agencies. PNC recommends that the categories of "opt out information" be as close to the GLB categories of disclosed information as possible. Since the FCRA opt out notice will generally appear as part of the GLB privacy disclosure, introducing new categories of information for the FCRA opt out will be confusing to the consumer. We believe that a simple explanation that the consumer may request that affiliated companies not share information the consumer provides, such as in an application, or that the institution receives from third parties, such as, credit reporting agencies or other creditors, should be sufficient. We also suggest that the disclosure explain that *affiliated companies may continue to share transaction and experience information*, for example, information about the consumer's accounts, such as balances, overdrafts and payment history. We strongly recommend that institutions be permitted to use the same categories and examples for both the GLB and FCRA notices, particularly since the FCRA itself does not categorize information.

Section _____.7 Reasonable Means of Opting Out

Proposed _____.7 provides examples of reasonable means for a consumer to opt out. Such examples include a toll-free telephone number, a reply form included with a notice, and an electronic opt out if the consumer agrees to electronic delivery of information.

PNC Comment:

PNC agrees that the examples given are reasonable opt out methods and, since they are the same as the GLB third party opt out means, there should be little consumer confusion. PNC does recommend, however, that the consumer should be permitted to rescind his/her opt out as easily. Thus, a consumer who customarily "banks by phone" and uses a toll-free number to opt out should also be able to rescind the opt out by telephone.

Section _____.8 Delivery of Opt Out Notices

Proposed paragraph _____.8(a) provides that an institution must deliver an opt out notice so that each consumer can reasonably be expected to receive actual notice. An institution may give notice in writing, or if the consumer agrees, electronically.

Comment Requested:

The Agencies invite comment on whether and how the proposed rules governing communications between a financial institution and a consumer via an electronic medium should be modified in the light of the "Electronic Signatures in Global and National Commerce Act" ("E-Sign Act")(15 US.C. § 7001).

PNC Response:

PNC recommends that any reference to electronic delivery of this disclosure be deleted from the Proposal altogether, since the subject of electronic delivery of any consumer disclosure should be controlled by the recently enacted E-Sign Act. If the Agencies are unwilling to delete the subject of electronic delivery from the Proposal, they should consider modifying several sections, as discussed below, in order to remove potential inconsistencies between the Proposal and the E-Sign Act.

The E-Sign Act covers transactions in which a statute, regulation or other rule of law requires that information relating to that transaction be provided or made available to a consumer in writing. In such cases, information (including all types of consumer disclosures) may be given in electronic form if the consumer affirmatively consents after being provided with required details about the subject of the consent. A reference within the Proposal to delivery, in writing, of the FCRA disclosure, would incorporate the substantial requirements of the E-Sign Act.

The E-Sign Act provides detailed instructions to financial institutions desiring to deliver disclosures electronically, including the contents of a consent form, retention of the disclosure, and what financial institutions must tell consumers about the withdrawal of consent or updating of electronic addresses. This detail is not found in the Proposal, which raises the question as to whether the Agencies intend that this particular disclosure would be subject to the E-Sign Act. If so, does the Proposal's requirement that the consumer "acknowledge receipt" effectively mean that the consumer must "affirmatively consent" to receipt of electronic disclosures, the requirement found in the E-Sign Act? If the provisions regarding electronic delivery are retained, we suggest that the terminology be made consistent with the terms already set forth in the E-Sign Act.

Additionally, the Proposal creates an inconsistency with the E-Sign Act by suggesting, at proposed section __.8(b)(2)(ii) that a bank may not reasonably expect that a consumer will receive actual notice if it sends the notice via electronic mail to a consumer who does not obtain a product or service from the bank electronically. This provision may be construed to be in direct contradiction to the E-Sign Act, which, although requiring that a customer must either consent or confirm consent to receive electronic disclosures electronically, does not require that the transaction which is the subject of the disclosures be transacted

electronically. For example, under the E-Sign Act, a consumer who applies via telephone for a home equity loan may be asked during that application if he/she would like to receive disclosures electronically. If he/she agrees, under the E-Sign Act the customer could then be driven through a process whereby he/she confirms that consent through electronic means. Once that electronic confirmation of consent is received, the customer could then receive the required disclosures electronically. The Proposal would not appear to permit this type of hybrid transaction. Would this FCRA disclosure have to be treated differently than any other consumer disclosure? This distinction would cause operational problems for financial institutions choosing electronic delivery to reduce processing and mailing costs, and appears to defeat the purpose of the E-Sign Act of creating a uniform procedure for delivery of electronic disclosures. This requirement also raises additional questions about the meaning of the phrase "obtain a product or service from the bank electronically." Would the entire transaction have to be completed electronically, i.e., the loan be consummated electronically? Or, would an electronic application satisfy this requirement?

For these reasons, we respectfully request that the Agencies either delete from the Proposal any reference to electronic delivery of disclosures or consider generally incorporating by reference the requirements of the E-Sign Act. In the event that this is not acceptable, we request that the Agencies conform the language of the Proposal to track closely the language and requirements of the E-Sign Act.

Proposed paragraph __.8(c) states that oral notice is insufficient. Proposed paragraph __.8(f) sets out the options for disclosure in the case of joint accounts.

PNC Comments:

PNC believes that the Proposal should permit the affiliate sharing notice to be made orally, since many accounts are opened by telephone. The FCRA does not require a written notice, and an oral disclosure should be sufficient for the consumer to decide during the conversation whether he/she wishes to exercise an opt out right.

With respect to joint accounts, PNC requests that the Agencies clarify that just as either joint account holder may opt out for both account holders, either joint account holder may rescind an opt out on behalf of both account holders. This is consistent with other rules relating to the authority of one joint account holder to act for another.

Section __.10 Time by Which Opt Out Must be Honored

Proposed Section __.10 explains that if a consumer chooses to opt out, the institution must comply "as soon as reasonably practicable" after receiving the consumer's opt out direction.

Comment Requested:

The Agencies have solicited comment on whether the Agencies should establish a fixed number of days – for example, 30 days – that would be deemed a “reasonably practicable” period of time for complying with a consumer’s opt out directions.

PNC Response:

PNC recommends that the Agencies not establish a fixed period of time for processing an opt out direction. A reasonable processing time may depend on the size of the institution and its technical sophistication, or that of its third party processor. We believe an institution should be permitted to tell a consumer that it will process an opt out direction as soon as reasonably practicable and at the same time point out to the consumer that the consumer may receive a solicitation on the basis of information shared prior to receipt and processing of the opt out direction.

Section __.11 Duration of the Opt Out

Proposed section __.11 provides that an opt out continues to apply to the information and affiliates described in the applicable notice until revoked by the consumer in writing or, if the consumer agrees, so long as the consumer continues to have a relationship with the institution, and thereafter, as to information provided prior to termination.

PNC Comment:

As stated in our comments on Section __.7, PNC believes a consumer should be able to rescind an opt out direction as easily as he/she gave it. Specifically, PNC recommends that an oral opt out revocation be permitted.

Section __.12 Prohibition Against Discrimination

Section __.12 of the Proposal provides that if a consumer is an applicant for credit, a financial institution may not discriminate against the consumer if the consumer opts out of affiliate information sharing.

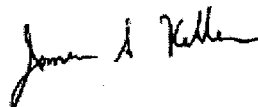
PNC Comment:

PNC requests the Agencies to clarify that the prohibition applies only in credit transactions and that practices such as providing additional benefits to persons who do not opt out would not be considered discriminatory. Financial institutions should be permitted to pass on to consumers cost savings resulting from the ability to share information (for example, by not having to obtain multiple credit reports on the same consumer) even if this results in more favorable pricing for consumers who permit their information to be shared.

CONCLUSION

PNC expresses its appreciation for this opportunity to comment on the proposed regulations. We hope our comments will be helpful to the Agencies in formulating the final regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "James S. Keller". The signature is written in a cursive style with a long, sweeping underline.

James S. Keller