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HSBC

Charles O. Nagele
Senior Vice President, Privacy Director
Office of General Counsel

December 1, 2000

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention: Docket No. 2000-81

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th and C Streets, N.W.
Washington, D.C. 20551
Docket No. R-1082

Communications Division
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219
Attention: Docket Docket No. 00-20

Re: Proposed Regulations to the Fair Credit Reporting Act

Dear Chairman Tanoue, Director Seidman,
Chairman Greenspan and Comptroller Hawke:

HSBC Bank USA appreciates the opportunity to comment on the joint notice of Proposed rulemaking on the Fair Credit Reporting Act ("FCRA") Regulations.

I. Conformity with GLBA.

HSBC supports the agencies' efforts to provide uniform guidance with respect to affiliate information sharing under the FCRA and to conform these guidelines with the privacy disclosures under the Gramm-Leach-Bliley Act (GLBA). However, in

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drafting the regulations it is important to recognize that the FCRA differs significantly from the GLBA in purpose, scope and structure. Attempts to conform the GLBA and FCRA notices should not result in unnecessary compliance burdens.
Providing only a few months for compliance with the FCRA requirements, when over a year was provided for the GLBA notice, is clearly insufficient. Financial institutions who have spent significant time and expense in drafting and producing their GLBA

notices are clearly disadvantaged by the timing of this proposal. Those who have or were prepared to distribute their GLBA notices will be required to reprint millions of notices under an expedited schedule at enormous expense and administrative burden. The goal of conformity does not justify the huge cost of compliance with this abbreviated timeframe. We would support a compliance deadline of the earlier of the first annual privacy notice issued under GLBA or July 1, 2002.

II. Reasonable Opportunity to Opt Out (Proposed Regulation §__.6)

While we agree that a financial institution should provide a reasonable time within which to elect to opt out prior to sharing consumer report information with affiliates, the proposal for a mandatory 30 day waiting period is unduly rigid. If a consumer has expressly chosen not to opt out after receiving the disclosure in connection with a particular transaction, it is reasonable to presume that the consumer is authorizing sharing at that time. The imposition of a lengthy waiting period is contrary to the consumer's wishes and may be to his disadvantage. For example, a consumer who applies for a mortgage loan may want to receive timely information regarding homeowner's insurance and more favorable premiums may be available based on credit report information. The 30-day waiting period will delay the provision of premium information and may require a second credit report pull in order to make the most favorable premium available within the loan closing deadlines.

A rigid 30-day waiting period will also impose significant operational burdens and expense in developing systems to track the 30-day period. There is no requirement for a fixed waiting period in the statute nor is such a lengthy waiting period necessary to carry out the purposes of the FCRA. It may, in fact, delay the availability of useful products and services to consumers.

We would support a more flexible proposal that is tied to the particular consumer transaction.

- Application Disclosures – If a consumer submits application information by any media, is given notice and opportunity to opt out and expressly chooses not to opt out when submitting application information, there is no reason to wait 30 days. It is reasonable to presume that if the consumer elects not to opt out, the institution is being authorized to share the information immediately.

- Telephone Disclosures – The prohibition against oral disclosure is not contained in the statute and creates an unnecessary compliance burden when establishing customer relationships by telephone. A requirement to wait 30 days after mailing a

written disclosure will significantly delay the provision of useful information to the consumer. The GLBA regulations permit financial institutions to send a subsequent written or electronic notice within a reasonable time where a consumer agrees over the telephone to receive the notice at a later time. We would support a similar approach under the FCRA.

- Electronic Communications – The proposal that the consumer acknowledge receipt of an electronic disclosure appears to require consumers to return a mailed or e-mailed form with sensitive identifying information. This requirement would virtually eliminate the viability of an electronic disclosure. We would support a clarification that a "click-stream" response to a request to acknowledge receipt is sufficient.

III. Definition of Clear and Conspicuous (Proposed Regulation §__.3)

While the proposed definition of "clear and conspicuous" is generally consistent with the GLBA privacy regulations, there should be some clarification as to how the standard is applied when the FCRA notice is combined with the GLBA notice. A strict reading of §__.3(c)(2)(ii)(E) regarding forms that combine the FCRA notice with other information, could be taken to mean that the FCRA notice must be more conspicuous than the GLBA disclosures. Since the GLBA regulation contains a similar requirement, it would be impossible to apply this standard to both sets of information.

IV. Definitions of Opt-Out Information (Proposed Regulation §__.3(k)

The new definition of "opt-out" information in proposed Section ___.3(k) fails to reflect all the exclusions from the definition of "consumer report" in the FCRA. The agencies should clarify that the regulations do not modify any existing permissible types of information sharing or any existing exclusions under the FCRA.

The regulations should expressly recognize that financial institutions are able to share information with affiliates through means other than notice and opt-out. These means include express consumer consent, servicing and processing arrangements and fraud control. Each of these are permissible bases for sharing under the FCRA and are recognized in the GLBA regulations.

Another crucial exception is the "joint user exemption" currently recognized by the Federal Trade Commission. This exception permits financial institutions to share information with affiliates for purposes of making joint credit decisions. It should be made clear in the regulations that the notice guidelines are not intended to apply to currently recognized exceptions.

Thank you for allowing us the opportunity to comment on these important issues.

Very truly yours,

Charles O. Nagele