

Fair Credit Reporting Regulations on Communication of Consumer Information Among Affiliated Institutions

Agencies: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS).

Action: Joint notice of proposed rulemaking; Update

Summary: The OCC, Board, FDIC, and OTS (the "Agencies") have published for comment proposed regulations implementing the provisions of the Fair Credit Reporting Act ("FCRA") that permit institutions to communicate consumer information to their affiliates (affiliate information sharing) without incurring the obligations of consumer reporting agencies. Many of the comments have raised concerns about how this rulemaking would affect compliance with the final regulations implementing the privacy provisions of the Gramm-Leach-Bliley Act ("GLBA"). The final FCRA rule will not apply to privacy notices that an institution will have sent prior to January 1, 2002, or prior to the effective date of a final FCRA rule, whichever is later. The Agencies advise financial institutions to prepare their privacy notices in accordance with the privacy regulations and the FCRA without delaying compliance until publication of the final FCRA rule, and provide an update on the status of the rulemaking.

For further information contact:

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Board: Jane J. Gell, Managing Counsel, Division of Consumer and Community Affairs, (202) 452-3667; or Thomas E. Scanlon, Senior Attorney, Legal Division (202) 452-3594, Board of Governors of the Federal Reserve System, 20th and C streets, NW, Washington, DC 20051.

FDIC: James K. Baebel, Assistant Director, Compliance Policy, Division of Compliance and Consumer Affairs, (202) 942-3086, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Paul Robin, Assistant Chief Counsel, (202) 906-6648 or Christine Harrington, Counsel (Banking and Finance), (202) 906-7957, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

Supplementary Information:

Background

On June 1, 2000, the Agencies jointly published final regulations implementing provisions of the GLBA regarding the privacy of consumer financial information (the "privacy regulations") (65 Fed. Reg. 35162). The privacy regulations require that financial institutions deliver initial privacy notices to their existing customers no later than July 1, 2001. To meet the July 1, 2001, deadline, many institutions are currently designing, printing, and preparing to distribute their initial privacy notices.

Since 1997, the FCRA has permitted an institution to disclose certain consumer information to its affiliates, without incurring the obligations of consumer reporting agencies, if it first provides the consumer with a notice regarding the disclosure and an opportunity to opt out. The privacy regulations require an institution to include a FCRA notice, if applicable, within its privacy notice.

On October 20, 2000, the Agencies published for comment proposed regulations implementing the FCRA affiliate information-sharing provisions (the "October FCRA Proposal") (65 Fed. Reg. 63120). The October FCRA Proposal addressed, among other matters, the form, content, and means of delivery of FCRA opt out notices.

A number of financial institutions have expressed concern that if the FCRA opt out notices included in their initial privacy notices are inconsistent with final FCRA regulations, then they may be required to revise and reissue their privacy notices. As a result, some financial institutions may consider delaying the preparation and delivery of privacy notices until very close to July 1, 2001. Other financial institutions that already have delivered their privacy notices are concerned that they may have to revise and redeliver their notices.

Update

To allow financial institutions to plan for and meet the requirements of the privacy regulations, the Agencies provide this update on the October FCRA Proposal. The Agencies are actively considering all of the comments submitted by the public regarding the October FCRA Proposal. Among other things, the Agencies are considering whether it is appropriate in light of suggestions and new issues raised by commenters to request comment on a revised proposed rule or whether to proceed to issue a final rule. In either event, the Agencies do not contemplate that a final FCRA rule will be adopted in time for institutions to adhere to the rule's requirements and deliver their privacy notices before July 1, 2001. Accordingly, the Agencies encourage institutions to deliver their privacy notices well in advance of the July 1 deadline when possible.

The Agencies will also carefully consider and address the request of commenters to the October FCRA Proposal that the Agencies delay the effective date of the final FCRA rule to permit financial institutions adequate time to comply with the final rule and the privacy regulations. Under no circumstances, however, will the final FCRA rule apply to privacy notices under the GLBA that an institution will have sent prior to January 1, 2002, or prior to the effective date of a final FCRA rule, whichever is later.

Dated: March 13, 2001

By the Office of Thrift Supervision

/s/

Ellen Seidman
Director