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M E M O R A N D U M

October 20, 2000

To Our Clients and Friends

Re: Proposed Agency Privacy Rules Under the Fair Credit Reporting Act

Summary

The Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation and Office of Thrift Supervision have today proposed a rule that requires financial institutions that share information with affiliates to make substantial disclosures to consumers under the Fair Credit Reporting Act (the "FCRA"). Financial institutions will also be required to provide consumers with an opportunity to opt-out if they intend to share certain information with affiliates.

The proposed FCRA rule imposes requirements that are similar to those established by the privacy rules the agencies adopted last June under the Gramm-Leach-Bliley Act (the "GLB Act"). However, the proposed rule prohibits a financial institution from discriminating against a consumer who is an applicant for credit if the consumer chooses to opt out from information sharing with affiliates.

The comment period ends December 4, 2000.

The GLB Act and the FCRA

Under the FCRA, a financial institution is permitted to disclose customer information to its affiliates. If the information relates to the institution's experience and transactions with customers, the institution may share it with affiliates without notifying its customers. However, if the information relates to other types of information, such as income, marital status or credit score, a financial institution is required to provide the customer with a notice of the proposed disclosure and an

opportunity to opt out from such disclosure. Until now, financial institutions were free to determine when and in what form to make such disclosures.

The GLB Act amended the FCRA to permit the federal agencies to adopt rules to implement the FCRA. In addition, the privacy provisions of the GLB Act require financial institutions to include in their initial and annual privacy notices to consumers and customers any disclosures that the financial institution is required to make under the FCRA if the financial institution intends to share information with affiliates.

The Proposed Rule

The proposed FCRA rule represents an effort by the agencies to conform the requirements of the FCRA with the rules the agencies adopted to implement the privacy provisions of the GLB Act. Under the proposed rule, a financial institution would be required to include in disclosures it makes to consumers and customers the fact that it shares information with affiliates which is not experience and transaction information. Such notice must be “clear and conspicuous.” Further, the notice must also contain the categories of information the institution discloses to affiliates and the categories of affiliates to which the information is communicated. A financial institution must inform consumers of the ability to opt out from such disclosures and provide them with a reasonable opportunity and means to opt out.

The proposed rule suggests that a reasonable opportunity to opt out means providing the consumer with 30 days’ prior notice before the disclosure is made. Providing a reasonable means to opt out means providing a form that can be sent back to the institution or providing a toll-free telephone number for consumers to use. It is not reasonable to require consumers to write a letter to the institution.

As indicated above, the proposed FCRA rule provides that a financial institution may not discriminate against a consumer who is an applicant for credit on the basis that the consumer chooses to opt out from affiliate information sharing.

Conclusion

If a financial institution shares information, other than experience and transaction information, with its affiliates, it may be required to make substantial changes to its current FCRA disclosures. In addition, depending upon the effective date of the proposed rule, financial institutions that already have developed privacy statements under the GLB Act may be required to revise them to incorporate the disclosures required under the FCRA.

If you have any questions, please call Gil Schwartz, Bob Ballen or Tom Fox at 202-776-0700. The proposed rule appears in today’s *Federal Register* at page 63120.