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July 23, 2004

Office of the Comptroller of the Currency
250 E Street, SW
Public Reference Room, Mailstop 1-5
Washington, DC 20219
Docket No. 04-13

Robert E. Feldman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AC77

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve
20th and Constitution Ave., NW
Washington, DC 20551
Docket No. R-1199

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
No. 2004-26

To Whom It May Concern:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the proposed regulations for disposal of consumer information under Section 216 of the Fair and Accurate Credit Transactions Act of 2003.

Background

As required by the Fair and Accurate Credit Transactions Act (FACTA), the federal bank regulators propose to amend current guidelines for safeguarding customer information. Currently, rules under the Gramm-Leach-Bliley Act require banks to maintain written policies and procedures to ensure the security and confidentiality of customer information, including proper disposal. FACTA, designed to protect consumers from identity theft and other fraud, requires the agencies to issue a rule on proper disposal of consumer records as well.

First, the proposal defines consumer information as any record about an individual, whether in paper, electronic or other form, that is a consumer report or derived from a consumer report and that is maintained or otherwise possessed by or on

¹ ICBA represents the largest constituency of community banks in the nation and is dedicated exclusively to protecting the interests of the community banking industry. We aggregate the power of our members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

behalf of the financial institution for a business purpose. The proposed definition would also include a compilation of such records. It would not include information that cannot be directly tied to a specific consumer, such as compiled statistical analysis.

Second, the proposed regulation would add a new objective for the “proper disposal” of consumer information, requiring banks to dispose consumer information in a manner consistent with the disposal of customer information and to contractually require its service providers to develop appropriate measures for the proper disposal of this information. The Agencies propose banks would be given one year after the rule is finalized to comply with this part of the rule.

Customer versus Consumer Information

As surmised by the banking agencies, most community banks dispose of customer and consumer information in the same manner and do not distinguish between the two. Furthermore, as required by existing regulatory guidelines, community banks have established procedures to dispose of paper and electronic files. Often, community banks employ the services of a third party vendor to ensure proper disposal of obsolete records. However, since community banks already dispose of consumer information in the same way they dispose of customer information, the new regulation as a practical matter, will impose little additional burden.

Proper Disposal

The proposal states that banks should design a security program that “ensures the proper disposal of consumer information in a manner consistent with the disposal of customer information.” The ICBA encourages the agencies to further clarify the term “proper disposal.” Disposal of paper documents and records is relatively easy to define. Disposal could consist of shredding, burning or any other method of destruction of paper records. However, what constitutes the proper disposal of electronic records is much more difficult to define. The FFIEC Handbook has some information on disposal of electronic documentation, which would be helpful to cross reference in this rule. It is important that it be not left to individual examiners to assess what meets the standard and whether or not disposal has been carried out to meet the regulatory requirements.

Additionally, ICBA believes community banks can modify existing agreements with document disposal providers within the proposed one-year time frame.

Thank you for the opportunity to comment. If you need additional information or have any questions, please contact me by phone at 202-659-8111 or by e-mail at katie.bragan@icba.org.

Sincerely,



Katherine Bragan
Associate Director of Accounting and
Lending Policy