Consumer Bankers Association
1000 Wilson Boulevard
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Arlington, VA 22209-3912

October 30, 2006

Re: Survey of Information Sharing Practices With Affiliates

Office of the Comptroller of the Currency
Communications Division
Public Information Room
Mailstop 1—5
Attention 1550—NEW
250 E Street, SW
Washington, DC 20219

Office of Thrift Supervision
Information Collection Comments
Chief Counsel's Office
Attention: 1557—NEW
1700 G Street
Washington, DC

Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave.
Washington, DC 20551

Robert E. Feldman
Executive Secretary
FDIC
550 17th Street
Washington, DC 20429

Federal Trade Commission
Office of the Secretary
Room H—135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

This letter is submitted by the Consumer Bankers Association ("CBA") in response to the Joint Notice and Request for Comment ("Notice") issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration and the Federal Trade Commission (collectively, the "Agencies") in the *Federal Register* of August 31, 2006 on page 51888, entitled "Information Collection Activities:

Proposed Collection ; Comment Request. We have also incorporated into this letter our views on the draft survey ("Survey") published on the Board's web site and referenced in the Notice.

CBA is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, and deposits. CBA was founded in1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation and regulation. CBA members include most of the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets. CBA appreciates the opportunity to offer its comments on this Notice and Survey.

Background

The Fair and Accurate Credit Transactions Act ("FACT Act"), section 214 (e), requires the Agencies to conduct studies of affiliate sharing practices by financial institutions and other creditors or users of consumer reports. The FACT Act requires the Agencies to identify: (i) the purpose for which financial institutions and other creditors and users of consumer reports share consumer information; (ii) the types of information shared by such entities with their affiliates; (iii) the number of choices provided to consumers with respect to the control of such sharing; and (iv) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes that are related to employment or hiring or for the purposes of general publication. The Agencies must also examine affiliate-sharing practices employed for the purposes of making underwriting decisions or credit evaluations of consumers.

Structure and Approach—Response to Question a in the Notice

We believe that the questions, as phrased in the Survey, will produce results that may not be useful. Answers may vary depending upon which affiliate is answering the question or which business line forms the context for the information sharing. Information may be shared with an affiliate for many purposes or may be shared with several affiliates for the same purpose. It may likewise be more responsive to Congressional requirements, as set forth in section 214 (e) of the FACT Act, for the Survey to expand the concept of "purposes" (as, for example, in question #1) attributable to information sharing, to embrace such operational goals as enhancement of efficient underwriting or the curtailment of costs.

The perspective that one should employ in completing the Survey should be made clear. More specifically, it may help respondents to know whether the intent is for the Survey to be completed by a single affiliate or a business line or whether it should cover the practices of an entire commonly controlled group of companies. Further, some definitions would help focus responses. For example, what is an "affiliate" for purposes of the Survey? May we assume that the terms "consumer" has the same meaning as under the Gramm / Leach / Bliley Act. Should "consumers" be distinguished from "customers"? In order to produce meaningful results,

organizations will need instructions as to how affiliates are supposed to complete the survey in a variety of circumstances—if the affiliate responder is a "sharer", is the "consumer" its own customer or is it merely receiving information in a servicing capacity. What is the definition of the term "General Publication Purposes"? May we assume that the "opt-outs" in the Survey refer strictly to those under the Fair Credit Reporting Act and FACT Act, rather than those under other legal requirements, including state law? As with the time frame issue described below, responses need to be completed using the same perspective and definitions across the universe of respondents in order to produce meaningful results. Clarification of these issues will also have a significant effect on the amount of time and number of personnel involved in collecting information to answer the Survey questions, as discussed in response to Question b, below.

Questions do not specify the time frame to be used in answering; i.e., does the Survey envision a snapshot of a particular point in time, or a chronology of practices and forms that have been used over an extended period? Unless this issue is clarified, information submitted will not be uniform, providing only a random sampling of information sharing practices. Further, the chronological approach will be extremely burdensome, requiring a search of corporate archives, while a snap shot will need to identify a common time frame. (See also, "Opt-Outs", below.) Either approach should take into account current market conditions and regulatory changes that could skew results.

Burden of Information Collection—Response to Question b in the Notice

Given the lack of clarity described above, CBA believes that the collection and organization of information to produce responses to the Survey will be quite extensive. Respondents will need to consult many sources in order to ensure all affiliates and business lines are covered. Research to determine historic procedures and forms will, likewise, be extremely time consuming and may produce uneven results. The estimates of the time burden set forth in the Notice are, in our opinion and based upon conversations with our members, very short of the time that compliance and business people estimate will be necessary. Members' estimates of time for completion of the Survey range from two hours for some business lines to one hundred and twenty for others. Clarification of terms, as discussed above, may help to reduce the workload, but there will be numerous personnel necessary to consult across a diversified organization; and the subsequent collation of information to ensure meaningful results will consume far more time than estimated in the Notice.

Quality, Utility and Clarity of Information—Response to Question c in the Notice

As described in greater detail in response to answers a, and b, providing more definitional assistance and perspective for respondents to follow will help improve clarity and usefulness of the information sought. Specifically, definitions of "consumer", "customer", and "affiliate", along with instruction describing who should complete the Survey (e.g., affiliate or holding company), will facilitate its completion. A clarification of how the information collected in the Survey will be used may also aid in respondents' perspective in collating and organizing information.

Reduction of Information Collection Burden—Response to Question d in the Notice

CBA believes that if the terms, purpose and approach, as described above, are clarified, the burden of information collection required in the Notice will be reduced, but certainly not eliminated. Given the complexity and history of information sharing within multi-affiliate companies, we believe that the time required to organize and implement the collection of the information and the collation and preparation of the results will be extensive and will depend upon the clarity of the Notice and Survey as finally promulgated. CBA therefore urges the Agencies to revise and republish the Notice and Survey with new definitions and clarifying instructions.

Opt-Outs and Confidentiality

CBA members have expressed concern that retrieving the source of opt-outs may not be possible and that different methods may be used by different businesses and affiliates within the same holding company. The Survey does not appear to accommodate this very common situation.

Members have also expressed concern regarding the confidentiality of responses, especially pertaining to opt-outs. Confidentiality of responses will be necessary, at a minimum, to prevent the dissemination of proprietary information, but also to ensure the kind of candor necessary to produce reliable results. It appears from the Notice that confidentiality will not be generally provided, but will be considered on a case-by-case basis. We ask the Agencies to reconsider this process and provide confidentiality as a matter of course or where reasonably requested for proprietary or other valid reasons.

In view of the likely use of any information provided to the Congress, aggregation of the information seems to serve the purpose of the Survey. Providing confidentiality should then be acceptable within the context of the intended use of survey information. Without this protection, organizations will be very unlikely to provide freely information they regard as proprietary. While we endorse the bank regulators' decision to make the survey information collection voluntary (and would urge the FTC to do the same), we do not believe the information will be freely provided without the protection of confidentiality.

Employment or Hiring Information

Like several other portions of the Survey, questions on employment or hiring would benefit from additional clarification. It is unclear what "personally identifiable transaction or experience" means in this context, for example. What is the scope of the term "for purposes related to employment"? On its face, it seems to cover all facets of employment, not merely recruiting or hiring, but also promotions bonuses, raises, discipline and termination. The apparent coverage is very broad and accordingly will require very extensive information collection as drafted. The information sought in question #12 of the Survey needs to be narrowed in order to produce meaningful results in a reasonable time frame.

Benefits of Information Sharing

Absent from the Notice is any indication that the many benefits of information sharing will be part of the Survey. For example, consumer information may be shared to enhance customer convenience, offer discounts on bank services, customize solicitations, facilitate transfers between accounts, create greater credit availability, and detect fraud. In addition, the Survey might consider operational efficiencies (e.g., in processing, customer service and corporate structure). Finally, the Survey should determine whether many of the perceived risks that were advanced by those opposed to information sharing among affiliates during the hearings and debates on the FACT Act have materialized. Has there been an increased level of identity theft attributable to affiliate information sharing? Or, in fact, does the FACT Act facilitate fraud detection and enhance protection of confidential consumer information because of its information-sharing provisions?

Conclusion

CBA urges the Agencies to reissue the Notice and Survey taking CBA's comments into account. We question whether the current format can produce meaningful results and are concerned that it will create a significant burden on respondents. Should you have questions relating to this letter, please do not hesitate to contact the undersigned at (703) 276-3869.

Sincerely,

Joseph R. Crouse
Counsel, Legislative & Regulatory Affairs