

COALITION TO IMPLEMENT THE FACT ACT

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

Re: FR 3214e: Federal Register: August 31, 2006 (Volume 71, Number 169) Notices Page 51888-518191

To Whom It May Concern:

This letter is submitted on behalf of the Coalition to Implement the FACT Act ("Coalition") 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 ("FTC") (collectively, "Agencies") in the *Federal Register* on August 31, 2006. Our comments are also based on the draft survey published on the Board's web site ("Draft Survey"), as described in the Notice. The Coalition represents a full range of trade associations and companies that furnish and use consumer information, as well as those who collect and disclose such information. The Coalition appreciates the opportunity to provide comments on the Notice and Draft Survey.

In General

Section 214(e) of the Fair and Accurate Credit Transactions Act ("FACT Act") directs the Agencies jointly to conduct studies of affiliate sharing practices by financial institutions and other creditors or users of consumer reports ("Studies"). The FACT Act requires the Agencies to identify: (i) the purposes 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 the degree to and manner in which consumers exercise such choices; 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 purposes of general publication. The Agencies must also examine affiliate sharing practices employed for the purpose of making underwriting decisions or credit evaluations of consumers.

If the agencies pursue the approach contained in the notice, it is important, that the Agencies obtain the information necessary to understand the primary purpose for affiliate sharing including the benefits provided to consumers as the result of such sharing. This is a critical justification for the exchange of information among affiliates, and should be discussed as part of the Studies.

Format and Content

We commend the Agencies for developing a Draft Survey that, on its face, does not appear to be significantly burdensome for financial institutions and others to answer. It asks concise questions that can elicit relatively simple and straightforward responses. Although we discuss several concerns with the Draft Survey and the Studies below, we urge the Agencies to retain the general format of the Draft Survey to the extent pos-



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sible as part of the Studies.

Having said this, we believe that the Draft Survey is imprecise in some key areas. For example, it is not clear what timeframe the Draft Survey covers. Some could view it as a snapshot of current practices, others could view it as covering some undefined period of time (*e.g.*, practices that have occurred in the past year). The Agencies must also clarify how they expect financial institutions to fill out the survey. It appears that the Draft Survey is intended for a single institution, although some may view the survey as applying to a corporate family of companies.

Perhaps most importantly, the Draft Survey should focus on the underlying purposes for affiliate sharing practices. According to the FACT Act, the Agencies must identify, among other things, the purposes for which financial institutions and others share information with affiliates. We believe the primary purpose for which companies share information with affiliates is to provide benefits to consumers, including providing them with an array of products and services at as low a cost as possible. For example, a bank may have a mortgage lending affiliate, a credit card affiliate, and a broker-dealer affiliate. Each of these affiliates could establish and maintain a data processing unit within their companies. Alternatively, it may be much less expensive and more efficient to have a data processing affiliate handle the data processing for the bank, mortgage lender, credit card issuer, and broker-dealer. By using a data processing affiliate, the net result could be lower operating costs for each financial institution and therefore an ability to offer financial products and services at a lower price in a competitive marketplace.

A review of the Draft Survey suggests that the Agencies would not explore this critical purpose for the sharing of information among affiliates. The Draft Survey focuses on various reasons companies may share information with an affiliate (*e.g.*, billing, research, fraud prevention, etc.), but does not ask respondents to indicate the overarching reason(s) they share information for the purposes they do.

We also request that the Agencies make some modest revisions to the Draft Survey. For example, the Draft Survey does not distinguish between “consumers” and “customers” in many of the questions. Institutions may not have information pertaining to “consumers” (as such term is used in the Gramm-Leach-Bliley Act). We urge the Agencies to clarify their intent. We also note that the Agencies’ implied definition of “general publication” is far broader than the term connotes. An item for “general publication” suggests that it is publicly available or made readily available to anyone seeking to obtain it or purchase it. We do not believe that marketing lists, fraud detection lists, or anti-money laundering lists are materials that are a matter of “general publication”. Indeed, these lists are not generally available, and certainly not for “publication” as such term is commonly understood.

Conducting the Survey

The Agencies have not described how they will select potential respondents to the Draft Survey. Rather, the Notice states that the Agencies “will select the survey panel based on whether the prospective respondent has affiliates with which it can share information, whether the prospective respondent is likely to be a user of consumer reports, and other factors.” This does not provide insight about how respondents will be selected and how results from the Draft Survey will be compiled. For example, it is not clear how the Agencies will attempt to receive responses from a representative sample of companies. It is also not clear how the Agencies would weight responses from companies of various sizes. Would the response from a company with a relatively small, local customer base receive equal weight to a response from a large company with millions of customers across the country? How would the size and customer base of a company affect the analysis of its response in relation to that of a smaller company? These are critical points that should be explained by the Agencies before commenters can provide sufficient responses to the survey methodology, the utility of the information collected, and the accuracy of the information collected.

If the Agencies seek candid responses from a wide variety of institutions, it would also be important for the Agencies to ensure the confidentiality of respondents’ answers. The Notice suggests, however, that confidentiality would be the exception to the rule, *i.e.*, it is only available on a case-by-case basis. We do not

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believe that such an approach will result in an optimal number of responses from industry. Rather, the Agencies should state a presumption that the individual Draft Survey responses represent the confidential trade information of the respondents and protect them accordingly.

The Notice also suggests that the FTC may attempt to use compulsory means to gather information for the Studies from entities subject to its jurisdiction. We do not believe that it would be appropriate for the FTC to compel responses to the Draft Survey. The notice itself provides relatively little information regarding the specifics as to the conduct of the study; in the event that the FTC decides to compel responses, it should republish the notice with far more detail so that it is possible to assess whether the compulsory production of information is appropriate under the Paperwork Reduction Act. Any deficiency we or others describe in the necessity, accuracy, or other qualities of the information collected may be mitigated to a limited degree in the context of burdens on the private sector if responses to the Draft Survey are voluntary. In other words, companies will have the opportunity to decide whether the information requested is necessary, appropriate, etc. and decide to respond accordingly. Yet, if the responses will be compelled and provided under oath, the Agencies have not demonstrated that the information collected will be of any value in relation to even the smallest burdens imposed on private sector respondents. Nor have the Agencies provided sufficient information for the public to provide appropriate comment on the Notice, the Draft Survey, or the Studies. In short, it is not clear to the Coalition that the most basic requirements of the Paperwork Reduction Act have been met.

Sincerely,



Jeffrey A. Tassey
Executive Director