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**BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM
12 CFR Part 222
[Regulation V; Docket No. R-1188]**

Fair Credit Reporting Medical Information Regulations

The Federal Reserve Board on April 6, 2004, voted to seek comment on a proposed rule under the Fair Credit Reporting Act (FCRA) that would create exemptions for obtaining, using, and sharing medical information. The Federal Deposit Insurance Corporation and the National Credit Union Administration have also approved the proposed rule for publication. Action by the Office of the Comptroller of the Currency and Office of Thrift Supervision is pending.

Comments will be accepted up to 30 days after publication in the Federal Register. The comment period will close no sooner than May 17, 2004.

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 2003, the President signed into law the FACT Act, which amends the FCRA. Pub. L. 108-159, 117 Stat. 1952. In general, the FACT Act contains provisions designed to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, and allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. Section 411 of the FACT Act limits the ability of creditors to obtain or use, of consumer reporting agencies to disclose, and of affiliates to share medical information.

Section 411(a) of the FACT Act adds a new section 604(g)(1) to the FCRA to restrict the circumstances under which consumer reporting agencies may furnish consumer reports that contain medical information about consumers. Specifically, under new section 604(g)(1), a consumer reporting agency may not furnish a consumer report that contains medical information about a consumer unless:

(1) the report is furnished in connection with an insurance transaction, and the consumer affirmatively consents to the furnishing of the report;

(2) the report is furnished for employment purposes or in connection with a credit transaction, the information to be furnished is relevant to process or effect the employment or credit transaction, and the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

(3) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devices, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices.

Section 411(c) of the FACT Act revises the definition of “medical information” in section 603(i) to mean information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to the past, present, or future physical, mental, or behavioral health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual. The definition further provides that the term “medical information” does not include the age or gender of a consumer, demographic information about the consumer, including a consumer’s residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

Section 411(a) also amends the FCRA by adding new section 604(g)(2) to prohibit creditors from obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit. Section 604(g)(2) contains two independent prohibitions—a prohibition on obtaining medical information and a prohibition on using medical information. The statute contains no prohibition, however, on obtaining or using medical information other than in connection with a determination of the consumer’s eligibility, or continued eligibility, for credit. Thus, section 604(g)(2) does not prohibit a creditor from obtaining medical information for employment purposes, in connection with a determination of a consumer’s eligibility for an insurance product or through processing payments for a consumer, maintaining a consumer’s account, or performing similar functions. Nevertheless, a creditor that obtains medical information in these circumstances may not use that information in connection with a determination of the consumer’s eligibility, or continued eligibility, for credit. For example, medical information about a consumer obtained and used by a creditor for employment purposes may not subsequently be used in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit. New section 604(g)(5)(A) requires the Agencies to prescribe regulations that permit transactions that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including administrative verification purposes), consistent with congressional intent to restrict the use of medical information for inappropriate purposes.

Section 411(b) of the FACT Act adds a new section 603(d)(3) to the FCRA to restrict the sharing of medical-related information with affiliates if that information meets the definition of “consumer report” in section 603(d)(1) of the FCRA. Specifically, section 603(d)(3) provides that the standard exclusions from the definition of “consumer report” contained in section 603(d)(2)—such as sharing transaction or experience information among affiliates or sharing other eligibility information among affiliates after

notice and an opportunity to opt-out—do not apply if medical-related information is disclosed to an affiliate. Medical-related information includes medical information, as described above, as well as an individualized list or description based on payment transactions for medical products or services, and an aggregate list of identified consumers based on payment transactions for medical products or services.

New section 604(g)(3) provides several exceptions that allow creditors to disclose medical information to affiliates according to the same rules that apply to other non-medical information. In particular, section 604(g)(3) provides that medical-related information that is transaction or experience information or that is subject to the FCRA affiliate sharing opt-out provisions or other standard exclusions in section 603(d)(2) may be shared with an affiliate of the creditor if the information is disclosed to an affiliate:

(1) in connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);

(2) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services (HHS) pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(3) for any purpose referred to under section 1179 of HIPAA;

(4) for any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;
or

(5) as otherwise determined to be necessary and appropriate, by regulation or order, by the Federal Trade Commission (FTC), the Agencies, or an applicable State insurance authority.

Section 604(g)(4), as added by section 411(a)(4) of the FACT Act, also provides that any person that receives medical information from an affiliate pursuant to an exception in section 604(g)(3) or from a consumer reporting agency under section 604(g)(1) must not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

II. Proposed Rule

The rule proposed by the Agencies would do two things. First, the proposed regulations would create exceptions to the general prohibition against obtaining or using medical information in connection with credit eligibility determinations, as required by section 604(g)(5)(A). The Agencies believe the proposed exceptions are necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other

needs (including administrative verification purposes), and are consistent with the congressional intent to restrict the use of medical information for inappropriate purposes. Second, the proposed regulations would, as permitted by section 604(g)(3)(C), create additional exceptions to the special restrictions in section 603(d)(3) on sharing medical-related information with affiliates that the Agencies believe are necessary and appropriate. The proposed regulations are discussed in more detail in the Section-by-Section Analysis below. The Agencies invite comment on all aspects of the proposal.

III. Section-by-Section Analysis

Section .1 Purpose, scope, and effective dates

Proposed section __.1(b)(2) describes the institutions covered by the provisions of the regulations of each of the respective agencies.

Section .2 Examples

Proposed section __.2 discusses the scope and effect of the examples included in the proposed regulation.

Section .3 Definitions

Proposed section __.3 contains definitions for the terms “affiliate” (as well as the related terms “company” and “control”), “consumer,” “medical information,” and “you.”

Affiliate

Several FCRA provisions apply to information sharing with persons “related by common ownership or affiliated by corporate control,” “related by common ownership or affiliated by common corporate control,” or “affiliated by common ownership or common corporate control.” E.g., FCRA, sections 603(d)(2), 615(b)(2), and 624(b)(2). Section 2 of the FACT Act defines the term “affiliate” to mean “persons that are related by common ownership or affiliated by corporate control.” Proposed paragraph (b) simplifies these various formulations by defining “affiliate” to mean any company that controls, is controlled by, or is under common control with another company. The proposed definition is identical to the definition of “affiliate” in the GLB Act privacy regulations.¹ Consistent with the definitions in the privacy regulations and the practical application of the FCRA, the proposal uses a definition of “control” that applies exclusively to the control of a “company,” and defines “company” to include any corporation, limited liability company, business trust, general or limited partnership,

¹ For purposes of the proposed regulation, an “affiliate” includes an operating subsidiary of a bank or savings association, and a credit union service organization that is controlled by a federal credit union.

association, or similar organization. See proposed paragraphs (d) (“company”) and (i) (“control”).² The definition of “company” omits some entities that are “persons” under the FCRA—individuals, estates, cooperatives, governments, and government in which “control” could be exercised over individuals, government Agencies, and other persons that do not fit within the definition of “company.”

Medical Information

Under proposed paragraph (k), the term “medical information” means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to (1) the past, present, or future physical, mental, or behavioral health or condition of an individual; (2) the provision of health care to an individual; or (3) the payment for the provision of health care to an individual. The term “medical information” does not include the age or gender of a consumer, demographic information about the consumer, including a consumer’s residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy. The proposal tracks the statutory definition of “medical information.”

Creditors are reminded that other laws, such as the Americans with Disabilities Act, the Fair Housing Act, the Gramm-Leach-Bliley Act, and other parts of the FCRA, may limit or regulate the use, collection, and sharing of consumer information, including medical information. In particular, these and other laws, such as the Equal Credit Opportunity Act, also may prohibit creditors from using certain information that is excluded from the restrictions on obtaining or using medical information, such as age or gender information, in determining eligibility for credit or for other purposes.

Section __.30 Obtaining and using medical information in connection with a determination of eligibility for credit

Section 411(a) of the FACT Act adds a broad new limitation on the ability of creditors to obtain medical information in connection with credit eligibility determinations or to use medical information in connection with credit eligibility determinations. Specifically, new section 604(g)(2) provides, that except as permitted by regulations, a creditor “shall not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit.”

A. General Prohibition on Obtaining or Using Medical Information

Proposed section __.30 contains the rules on obtaining or using medical information in connection with a determination of a consumer’s eligibility, or continued

² For purposes of the proposed regulation, NCUA will presume a federal credit union has a controlling influence over the management or policies of a credit union service organization if it is 67 percent owned by credit unions.

eligibility, for credit. Proposed paragraph (a)(1) incorporates the general rule prohibiting creditors from obtaining or using medical information pertaining to a consumer in connection with any determination of a consumer's eligibility, or continued eligibility, for credit, except as provided in the regulations under subpart D. The consumer's eligibility for credit typically would be determined when an initial decision is made on whether to grant or deny credit to the consumer. A determination of a consumer's continued eligibility for credit may also include decisions whether to terminate an account or adjust a credit limit following an account review.

Proposed paragraph (a)(2) clarifies the definition of certain terms used in subpart D, including "credit" and "creditor." In addition, paragraph (a)(2) provides that the phrase "eligibility, or continued eligibility, for credit" means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered, primarily for personal, family, or household purposes.

The paragraph also clarifies that the phrase "eligibility, or continued eligibility, for credit" does not include the consumer's qualification or fitness to be offered employment, insurance products, or other non-credit products or services. Similarly, "eligibility, or continued eligibility, for credit" does not include a determination of whether the provisions of a debt cancellation contract, debt suspension agreement, credit insurance product, or similar forbearance practice or program are triggered. A forbearance practice or program may include circumstances in which a creditor allows a consumer to skip one or more scheduled payments because the consumer is hospitalized for a medical condition. For example, if a consumer is hospitalized on an emergency basis and is temporarily unable to pay his mortgage, the consumer's daughter may contact the consumer's mortgage lender by telephone, inform the lender of the consumer's medical condition, and request that the lender allow the deferral of one or more payments to accommodate the consumer's particular circumstances. The creditor's use of the medical information provided by the consumer's daughter to defer one or more mortgage payments to accommodate the consumer's particular circumstances would constitute a forbearance that is beyond the scope of the prohibition.

Comment is requested on whether it is more appropriate to grant an exception to permit creditors to obtain and use medical information in connection with debt cancellation, debt suspension, or credit insurance products or practices, rather than issuing an interpretation that obtaining information necessary to trigger coverage under these products falls outside any determination of eligibility, or continued eligibility, for credit. In addition, comment is solicited on whether a separate exception for accommodating the particular medical condition or circumstances of the consumer should be created in lieu of or in addition to the interpretation that eligibility, or continued eligibility, for credit does not include forbearance.

The proposed regulation also provides that the term "eligibility, or continued eligibility, for credit" does not include authorizing, processing, or documenting a payment or transaction on behalf of a consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit. Finally,

the term “eligibility, or continued eligibility, for credit” does not include maintaining or servicing a consumer’s account in a manner that does not involve a determination of the consumer’s eligibility, or continued eligibility, for credit.

The Agencies note that section 604(g)(2) contains two distinct prohibitions—one on obtaining medical information and one on using medical information. Nothing in the statute prohibits a creditor from obtaining medical information if the information is not obtained in connection with a determination of the consumer’s eligibility, or continued eligibility, for credit. Thus, there is no prohibition, for example, on a creditor obtaining medical information through authorizing, processing, or documenting a payment or transaction on behalf of the consumer, or managing or servicing the consumer’s account. Nevertheless, a creditor that has obtained medical information in these circumstances may not use that information in connection with a determination of the consumer’s eligibility, or continued eligibility, for credit, unless permitted by an exception provided in the regulations. However, there is no prohibition in section 411 of the FACT Act on a person that is a creditor from obtaining or using medical information for an employment purpose or in connection with a determination of the consumer’s eligibility for an insurance product.

B. Receiving Unsolicited Medical Information

Creditors may receive unsolicited medical information without specifically asking for such information. This may occur, for example, when a consumer informs the loan officer that she needs a loan to pay for treatment for a particular medical condition, or when a consumer, in response to a general request on a credit application for information about outstanding debts, lists debts owed to hospitals and doctors for medical services. The Agencies do not believe that a creditor violates the prohibition on obtaining medical information when the creditor does not specifically ask for or request such information, yet the consumer or other person provides that information to the creditor. However, because the statutory prohibition on obtaining medical information could be interpreted broadly to cover circumstances in which medical information is obtained by a creditor without asking for it, the Agencies have proposed a rule of construction to make clear that a creditor does not violate the prohibition on obtaining medical information if the creditor receives unsolicited medical information.

Proposed paragraph (b) contains this rule of construction for receiving unsolicited medical information. Under proposed paragraph (b)(1), a creditor does not obtain medical information for purposes of proposed paragraph (a)(1) if it receives medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit without specifically requesting medical information, and does not use that information in determining whether to extend credit to the consumer and the terms on which credit is offered or continued. Paragraph (b)(2) provides examples for guidance. The Agencies seek comment on the appropriateness of this rule of construction and on whether this provision should be drafted as an exception to the general prohibition, rather than as a rule of construction.

C. Financial Information Exception for Obtaining and Using Medical Information

As noted above, new section 604(g)(5)(A) of the Act gives the Agencies the authority to prescribe regulations, after notice and opportunity for comment, to permit creditors to obtain and use medical information in connection with determinations of credit eligibility that the Agencies determine to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including actions necessary for administrative verification purposes), consistent with the intent of the statute to restrict the use of medical information for inappropriate purposes. Applying this standard, the Agencies believe it is necessary and appropriate to permit creditors to obtain and use medical information in a number of circumstances.

Proposed sections ___.30(c)-(d) contain exceptions to the general prohibition on creditors obtaining or using medical information. Proposed paragraph (c) contains the first exception, and provides that a creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as the following three elements are met. First, the information must relate to debts, expenses, income, benefits, collateral, or the purpose of the loan, including the use of proceeds. Second, the creditor must use the information in a manner and to an extent no less favorable than it would use comparable information that is not medical information in a credit transaction. Third, the creditor must not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination of credit eligibility. This three-part test strikes a balance between permitting creditors to obtain and use certain medical information about consumers when necessary and appropriate to satisfy prudent underwriting criteria and to ensure that credit is extended in a safe and sound manner, while restricting the use of medical information for inappropriate purposes.

The first element of the test identifies certain types of information, specifically debts, expenses, income, benefits, collateral, or the purpose of the loan, that a creditor ordinarily would obtain and evaluate in connection with making a prudent credit decision, regardless of whether that information is medical or non-medical information. A creditor should not be prohibited from obtaining or using information about a debt, for example, in connection with making a credit decision, just because that debt happens to be for medical products or services.

The second element of the test provides that the creditor must use the medical information in a manner and to an extent no less favorable than it would use comparable, non-medical information in a credit transaction. For example, a creditor may deny credit to the consumer because the consumer owes a debt to a hospital if the creditor would have denied credit to the consumer if the consumer had owed the same amount of debt with the same payment history to a retailer. Nothing in the rule prevents the creditor from treating information about medical debts (or expenses or income) more favorably than non-medical debts.

The third element of the test provides that the creditor may not take the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis into account as part of any determination of the consumer's eligibility, or continued eligibility, for credit. For example, the consumer may owe a debt to a hospital or other facility that specializes in treating a potentially terminal disease. While the creditor may evaluate the debt to the hospital or facility in the same manner and to the same extent as it would evaluate any non-medical debt, the creditor may not take into account the consumer's individual physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in determining the consumer's eligibility, or continued eligibility for credit, or the terms under which credit will be offered or continued.

The Agencies seek comment on the financial information exception outlined in paragraph (c)(1). In particular, the Agencies seek comment on whether each of the three parts of the exception is necessary and whether the three parts together strike the right balance between permitting creditors to obtain and use medical information where necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including actions necessary for administrative verification purposes) and restricting the use of medical information for inappropriate purposes.

Proposed paragraph (c)(2) provides several examples of when creditors generally may obtain and use medical information under the financial information exception in proposed paragraph (c)(1). These examples in proposed paragraph (c)(2) are not exclusive. The Agencies seek comment on all of the examples in proposed paragraph (c)(2), including whether any of the examples should be amended or deleted, or whether additional examples should be provided.

Proposed paragraph (c)(2)(i) provides examples of the circumstances in which medical information would relate to debts, expenses, income, benefits, collateral, or the purpose of the loan, including the use of proceeds. A creditor would, for example, be able to obtain and use medical information about—

- The dollar amount, repayment terms, repayment history, and similar information regarding medical debts that is used to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;
- The value, condition, and lien status of a medical device that is used as collateral to secure a loan;
- The dollar amount and continued eligibility for disability income or benefits related to health or a medical condition that is relied on as a source of repayment; or
- The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to a transaction involving the consolidation of medical debts.

The Agencies propose to include five additional examples to illustrate uses of medical information consistent and inconsistent with the financial information exception. Proposed paragraph (c)(2)(ii) provides examples of uses of medical information that are consistent with the exception. The first example involves a consumer who includes two

\$20,000 debts on an application for credit—one debt to a hospital and the other to a retailer. The creditor contacts the hospital and the retailer in order to verify the amount and payment status of the debts and learns that both are more than 90 days past due. Any two debts of this size that are past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor decides to deny the application on the basis of the consumer's poor repayment history on outstanding debts. Under these circumstances, the creditor obtains and uses information about medical debts the same way it uses information about non-medical debts. Accordingly, the creditor has used medical information in a manner consistent with the exception.

In the second example, a consumer indicates on an application for a \$200,000 mortgage loan that she receives \$15,000 in long-term disability income each year from her former employer and has no other income. Annual income of \$15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. In this example, the creditor analyzes the long-term disability income, which is medical information, the same way it would analyze any other income information of a potential borrower.

The third example in proposed paragraph (c)(2)(ii) involves a consumer who includes on an application for a \$10,000 home equity loan that he has a \$50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan, and learns that the debt is current and that the applicant meets the income requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

Proposed paragraph (c)(2)(iii) provides two examples of uses of medical information that are inconsistent with the exception. The first example involves a consumer who includes on an application for \$25,000 of credit information about a \$50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a home furnishing retailer, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

In the second example in proposed paragraph (c)(2)(iii), a consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The creditor has used

medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

D. Specific Exceptions for Obtaining and Using Medical Information

Proposed paragraph (d) contains specific exceptions to the general prohibition to allow creditors to obtain and use medical information for a limited number of particular purposes. The Agencies request comment on whether each of these specific exceptions is necessary and appropriate and, if so, whether they are properly defined.

Proposed paragraph (d)(1)(i) provides that a creditor may obtain and use medical information to determine whether the use of a power of attorney or legal representative is necessary and appropriate. This exception would permit a creditor to verify, in connection with a credit eligibility determination, that the exercise of a power of attorney or legal representative is triggered by the consumer's medical condition.

Under proposed paragraph (d)(1)(ii), a creditor may also use medical information to comply with applicable requirements of local, state, or federal laws. For example, some state laws may require creditors to consider medical information in certain circumstances to protect populations that may be vulnerable to financial abuse by caregivers. This exception would permit creditors to obtain and use medical information to comply with those laws.

Proposed paragraph (d)(1)(iii) provides that a creditor may also obtain and use medical information to the extent such information is included in a consumer report from a consumer reporting agency in accordance with section 604(g)(1)(B) of the FCRA, and is used for the purpose for which the consumer provided specific written consent. As noted above, section 411 of the FACT Act prevents consumer reporting agencies from furnishing consumer reports containing medical information, except under specified circumstances. Consumer reports must be furnished with coding that blocks the identity of the provider of medical information and the nature of the services, products, or devices, unless a consumer provides a consumer reporting agency with specific written consent to furnish a report to a creditor containing uncoded medical information. This exception clarifies that a creditor may obtain uncoded medical information from a consumer reporting agency in accordance with section 604(g)(1)(B) of the FCRA, and use that information for the purpose for which the consumer provided specific written consent.

The Agencies have not proposed a separate exception for obtaining and using consumer reports in accordance with section 604(g)(1)(C) of the FCRA, which relates to consumer reports containing coded medical information. The Agencies do not believe that it is necessary to propose a separate exception.

The Agencies have considered three options that would allow creditors to obtain and use consumer reports containing the information described in section 604(g)(1) of the FCRA. The Agencies have considered whether the definition of “medical information” may be interpreted in a manner that would exclude the coded information that may be furnished under section 604(g)(1)(C) of the Act. This approach would permit all creditors to obtain consumer reports with coded information (but not consumer reports with uncoded medical information furnished under section 604(g)(1)(B)) and use that information in connection with a determination of the consumer’s eligibility, or continued eligibility, for credit, even in the absence of an exception in the regulations. This approach is based on a statutory interpretation that such coded information would not relate to the physical, mental, or behavioral health of the consumer, and thus, is not medical information.

The Agencies also have considered whether section 604(g) or other provisions of the FCRA may be interpreted in such a manner that no exception would be necessary to permit creditors to obtain and use medical information in consumer reports furnished by consumer reporting agencies in accordance with section 604(g)(1). For example, the Agencies have considered whether the broad prohibition in section 604(g)(2) on obtaining and using medical information in credit eligibility determinations may be construed as being qualified by the specific provisions in section 604(g)(1) that authorize consumer reporting agencies to furnish consumer reports containing medical information under certain limited circumstances. This possible interpretation would be based on the Agencies’ observation that (1) it is unlikely that Congress would permit consumer reporting agencies to furnish consumer reports containing medical information in connection with credit transactions without permitting creditors to obtain and use these reports, and (2) in these circumstances, Congress may well have provided the consumer protections it deemed necessary by specifying the limitations under which consumer reporting agencies could furnish reports containing medical information.

The Agencies also have considered whether creditors who intend to obtain and use this coded medical information would be able to do so in accordance with the financial information exception in section __.30(c) of the proposed regulations. Coded medical information relates to medical debts, and the creditor may use debt information in making credit eligibility determinations in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information. In addition, because the medical information is coded as prescribed in the FCRA, it would not provide the creditor with specific information regarding the consumer’s health, condition, history, type of treatment, or prognosis (which may not be taken into account under the financial information exception in proposed section __.30(c)(1)(iii)).

The Agencies also note that the rule of construction in section __.30(b) of the proposed regulations would enable creditors to receive consumer reports containing coded medical information without violating the limit on “obtaining” medical information prescribed by section 604(g)(2) of the FCRA, so long as they do not use that medical information in making credit eligibility determinations.

The Agencies specifically request comment on the most appropriate way in which to deal with information contained in consumer reports, and related matters. In particular, comment is requested on these three approaches.

A creditor may also obtain and use medical information for purposes of fraud prevention and detection under proposed paragraph (d)(1)(iv). Comment is solicited as to whether and to what extent it is necessary for creditors to obtain and use medical information for purposes of fraud prevention and detection in connection with the determination of a consumer's credit eligibility and whether the exception could be narrowed to prevent the unnecessary use of medical information without compromising legitimate fraud prevention and detection programs.

Proposed paragraph (d)(1)(v) provides that a creditor may obtain and use medical information in the case of credit for the purpose of financing medical products or services to determine and verify the medical purpose of a loan and the use of proceeds. Certain creditors have established specialized loan programs that finance specific medical procedures, such as vision correction surgery, but not others. In such cases, the creditor may need to obtain and use medical information in connection with determining whether the purpose of the loan is within the scope of the creditor's established loan program. Proposed paragraph (d)(2) provides examples of this exception. The Agencies invite comment on whether the medical purpose financing exception strikes the appropriate balance between satisfying the legitimate needs of medical finance creditors and the intent of Congress to limit the use of medical information in credit eligibility determinations.

Proposed paragraph (d)(1)(vi) provides that a creditor may obtain and use medical information if the consumer or the consumer's legal representative requests in writing, on a separate document signed by the consumer or the consumer's legal representative, that the creditor use specific medical information for a specific purpose in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances. The signed, written request must describe the specific medical information that the consumer requests the creditor to use and the specific purpose for which the information will be used. This exception is designed to accommodate the particular medical condition or circumstances of the individual consumer and is not intended to allow creditors to obtain consent on a routine basis or as a part of loan applications or documentation. This exception would not be met by a form that contains a pre-printed description of various types of medical information and the uses to which it might be put. Instead, it contemplates an individualized process in which the consumer informs the creditor about the specific medical information that the consumer would like the creditor to use and for what purpose. Proposed paragraph (d)(3) provides examples of this consumer request exception.

The Agencies seek comment on the need for a broader exception to permit creditors to make a "medical accommodation" where individual circumstances may warrant such an accommodation. The Agencies note that forbearance practices and programs, as discussed in the explanation of paragraph (a)(2) above, would permit

creditors to take into account a consumer's medical condition to defer scheduled payments or take certain other actions on existing accounts as a medical accommodation to the consumer. Comment is requested on whether forbearance plus the consumer request exception provides sufficient flexibility to provide medical accommodations to consumers.

The Agencies also request comment on whether the procedural aspects of the consumer request exception (i.e., the request must be in writing, on a separate form signed by the consumer or the consumer's legal representative) would unnecessarily hinder the ability of a creditor to make a medical accommodation where a consumer's medical condition and financial circumstances may justify such an accommodation, or whether these procedures are necessary to protect consumers.

The Agencies seek comment on whether there is a need to establish an exception for consumer consent whereby a creditor could request that a consumer consent to the specific use of the consumer's medical information. If so, the Agencies request specific comment on when this exception might be used and how the exception should be fashioned to ensure appropriate consumer protection.

Finally, proposed paragraph (d)(1)(vii) provides that a creditor may obtain and use medical information as otherwise permitted by order of the appropriate agency.

E. Limits on Redisclosure

Proposed paragraph (e) incorporates the statutory provision regarding the limits on redisclosure of medical information. This paragraph provides that a person that receives medical information about a consumer from a consumer reporting agency or an affiliate is prohibited from disclosing that information to any other person, except as necessary to carry out the purposes for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

F. Request for Comment

The Agencies solicit comment on each of the proposed provisions of section __.30. Specifically, the Agencies request comment as to whether each of the proposed exceptions is, in fact, necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including actions necessary for administrative verification purposes), and consistent with the intent of Congress to restrict the use of medical information for inappropriate purposes. Comment is also requested on the examples used in this section and whether additional or different examples should be included.

The Agencies also invite comment on whether any additional or different exceptions should be included in the final regulation. Commenters that recommend additional or different exceptions should explain why the exception is necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other

needs, and is consistent with the intent of Congress to restrict the use of medical information for inappropriate purposes.

Section ____ .31 Sharing medical information with affiliates

Section ____ .31(a) provides that the standard exclusions from the definition of “consumer report” contained in section 603(d)(2) of the Act—including the exclusions for sharing transaction or experience information among affiliates or sharing other eligibility information among affiliates after notice and an opportunity to opt-out—do not apply if medical information, an individualized list or description based on payment transactions for medical products or services, or an aggregate list or description based on payment transactions for medical products or services is disclosed to an affiliate.

Paragraph (b) provides that the special restrictions on sharing the information outlined in paragraph (a) with affiliates do not apply, and the standard exclusions from the definition of consumer report remain in effect, if the information is disclosed to an affiliate in certain circumstances. Paragraph (b) incorporates the four statutory exceptions from section 604(g)(3)(A) and (B) of the Act.

The first exception is when the information described in paragraph (a) is shared with an affiliate in connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003). The second exception is when the information described in paragraph (a) is shared with an affiliate for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services (HHS) pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The third exception is when the information described in paragraph (a) is shared with an affiliate for any purpose referred to under section 1179 of HIPAA. Section 1179 of HIPAA provides that to the extent that an entity is engaged in activities of a financial institution or is engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling or collecting payments for a financial institution, the HIPAA standards and requirements do not apply to the entity with respect to such activities. Section 1179 also provides as an example of a use or disclosure of information not covered by that statute, the use or disclosure of information for “authorizing, processing, clearing, settling, billing, transferring, reconciling, or collection, a payment for, or related to, health care premiums or health care.” For purposes of this rulemaking, the phrase “purposes referred to under section 1179” means, at a minimum, authorizing, processing, clearing, settling, billing, transferring, reconciling or collecting payments.

The fourth exception is when the information described in paragraph (a) is shared with an affiliate for any purpose described in section 502(e) of the GLB Act. The Agencies note that some of the purposes described in section 502(e) of the GLB Act may be germane to the sharing of information among affiliates—for example, sharing with the

consent of the consumer, for fraud prevention purposes, or as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer—while other purposes described in section 502(e) are not—for example, sharing information with law enforcement or regulatory authorities.

In addition to the statutory exceptions, paragraph (b) also contains two additional exceptions that the Agencies believe are necessary and appropriate. Paragraph (b)(5) provides that the special restrictions on sharing the information described in paragraph (a) with affiliates do not apply, and the standard exclusions from the definition of consumer report remain in effect, if the information is disclosed to an affiliate in connection with a determination of the consumer’s eligibility, or continued eligibility, for credit consistent with section ____.30 of this subpart. The Agencies believe it is necessary and appropriate to allow an affiliate to share medical information with another affiliate that obtains or uses it consistent with section ____.30.

Paragraph (b)(6) provides that the special restrictions on sharing medical-related information with affiliates do not apply if otherwise permitted by order of the appropriate agency. This exception incorporates the authority delegated to the Agencies by Congress to create exceptions through orders.

The Agencies note that prohibitions on obtaining or using medical information in section ____.30 operate independent of the exceptions that permit the sharing of that information among affiliates in accordance with the provisions of section 603(d)(2) of the Act. For example, if a mortgage lender has obtained and used medical information in accordance with one of the exceptions in section ____.30(c) or (d), the mortgage lender may share that information with its credit card affiliate without becoming a consumer reporting agency if one of the exceptions in section ____.31(b) applies. However, the credit card affiliate may not obtain or use that information in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit, unless consistent with section ____.30.

The Agencies invite comment on the exceptions included in proposed section ____.31(b). Specifically, comment is solicited on whether additional or different exceptions are necessary and appropriate.

Additional Issues

The statute provides that the final rules shall take effect on the later of 90 days after the rules are issued in final form, or the date specified in the regulations. Comment is requested on whether an effective date of 90 days after the final rules are issued is appropriate or whether a different effective date should be established.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, Title 12, Chapter II, of the Code of Federal Regulations is proposed to be amended by revising part 222 to read as follows:

PART 222 -- FAIR CREDIT REPORTING (REGULATION V)

1. The authority citation for part 222 is amended to read as follows:

Authority: 15 U.S.C. 1681b and 1681s; Secs. 3 and 217, Pub. L. 108-159, 117 Stat. 1952.

2. In Subpart A to Part 222, the following amendments are made:
 - a. Section 222.1 is revised by adding a new paragraph (b).
 - b. Section 222.2 is added.
 - c. Section 222.3 is added.
3. A new Subpart D is added to Part 222.

Subpart A -- General Provisions

§ 222.1 Purpose, scope, and effective dates

* * * * *

(b) Scope.

(1) [Reserved]

(2) Institutions covered.

(i) Except as otherwise provided in paragraph (b)(2), these regulations apply to banks that are members of the Federal Reserve System (other than national banks), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq., and 611 et seq.), and bank holding companies and affiliates of such holding companies.

(ii) [Reserved]

(iii) Section 222.30(a)-(d) of this part applies to persons listed in paragraph (b)(2)(i) of this section that are creditors.

(iv) Section 222.31 of this part applies to banks that are members of the Federal Reserve System (other than national banks), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq., and 611 et seq.).

* * * * *

§ 222.2 Examples

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 222.3 Definitions

As used in this part, unless the context requires otherwise:

- (a) Act means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).
- (b) Affiliate means any company that controls, is controlled by, or is under common control with another company.
- (c) [Reserved]
- (d) Company means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.
- (e) Consumer means an individual.
- (f) [Reserved]
- (g) [Reserved]
- (h) [Reserved]
- (i) Control of a company means:
 - (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
 - (2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or
 - (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the Board determines.
- (j) [Reserved]
- (k) Medical information means:
 - (1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—
 - (i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

- (ii) The provision of health care to an individual; or
- (iii) The payment for the provision of health care to an individual.
- (2) The term does not include:
 - (i) The age or gender of a consumer;
 - (ii) Demographic information about the consumer, including a consumer's residence address or e-mail address; or
 - (iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(l) [Reserved]

(m) [Reserved]

(n) [Reserved]

(o) You means member banks of the Federal Reserve System (other than national banks), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq., and 611 et seq.), and bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies).

* * * * *

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Medical Information

§ 222.30 Obtaining or using medical information in connection with a determination of eligibility for credit

(a) General prohibition on obtaining or using medical information. (1) In general. A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this subpart.

(2) Definitions as used in this subpart. (i) Eligibility, or continued eligibility, for credit means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered, primarily for personal, family, or household purposes. The term does not include:

(A) The consumer's qualification or fitness to be offered employment, insurance products, or other non-credit products or services;

(B) Any determination of whether the provisions of a debt cancellation contract, debt suspension agreement, credit insurance product, or similar forbearance practice or program are triggered;

(C) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(D) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(ii) Creditor has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) Credit has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(b) Rule of construction for receiving unsolicited medical information. (1) In general. A creditor does not obtain medical information for purposes of paragraph (a)(1) of this section if it—

(i) Receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information; and

(ii) Does not use that information in determining whether to extend or continue to extend credit to the consumer and the terms on which credit is offered or continued.

(2) Examples of receiving unsolicited medical information. A creditor receives unsolicited medical information if, for example:

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer has a particular medical condition and does not use that information in determining whether to extend credit to the consumer or the terms on which credit is offered.

(ii) In conversation with the loan officer, the consumer informs the creditor that the consumer has a particular medical condition, and the creditor does not use that information in determining whether to extend credit to the consumer or the terms on which credit is offered.

(c) Financial information exception for obtaining and using medical information. (1) In general. A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:

(i) The information relates to debts, expenses, income, benefits, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(2) Examples. (i) Examples of information related to debts, expenses, income, benefits, collateral, or the purpose of the loan. Paragraph (c)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts that is used to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that is used as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income or benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to a transaction involving the consolidation of medical debts.

(ii) Examples of uses of medical information consistent with the exception. (A) A consumer includes on an application for credit information about two \$20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(B) A consumer indicates on an application for a \$200,000 mortgage loan that she receives \$15,000 in long-term disability income each year from her former employer and has no other income. Annual income of \$15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a \$10,000 home equity loan that he has a \$50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current and that the applicant meets the income requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii) Examples of uses of medical information inconsistent with the exception. (A) A consumer applies for \$25,000 of credit and includes on the application information about a \$50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a home furnishing retailer, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the

medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

(d) Specific exceptions for obtaining and using medical information. (1) In general. A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit—

(i) To determine whether the use of a power of attorney or legal representative is necessary and appropriate;

(ii) To comply with applicable requirements of local, state, or federal laws;

(iii) To the extent such information is included in a consumer report from a consumer reporting agency, in accordance with 15 USC 1681b(g)(1)(B), and is used for the purpose(s) for which the consumer provided specific written consent;

(iv) For purposes of fraud prevention and detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) If the consumer or the consumer's legal representative requests in writing, on a separate form signed by the consumer or the consumer's legal representative that the creditor use specific medical information for a specific purpose in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances. The signed written request must describe the specific medical information that the consumer requests the creditor to use and the specific purpose for which the information will be used; or

(vii) As otherwise permitted by order of the Board.

(2) Examples of determining the medical purpose of the loan or the use of proceeds. (i) If a consumer applies for \$10,000 of credit for the purpose of financing vision correction surgery, the creditor may confirm the consumer's medical eligibility to undergo that procedure with the surgeon. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer's application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for \$10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is \$5,000, the creditor may use that medical information to offer the consumer only \$5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer

requesting \$10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(3) Examples of obtaining and using medical information at the request of the consumer. Consistent with safe and sound practices, and after obtaining from the consumer a signed, written document that describes the specific medical information that the consumer requests the creditor to use and the specific purpose for which the information will be used, the creditor may obtain and use the specific medical information for the specific purpose specified in the request:

(i) If a consumer applies for a loan and requests that the creditor consider the consumer's medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer's willingness and ability to repay the requested loan.

(ii) If a consumer applies for a loan and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan from liquidation of assets, the creditor may evaluate the application using the sale of assets as the primary source of repayment.

(e) Limits on redisclosure of information. If you receive medical information about a consumer from a consumer reporting agency or your affiliate, you must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

§ 222.31 Sharing medical information with affiliates

(a) In general. The exclusions from the term "consumer report" in section 603(d)(2) of the Act that allow the sharing of information with affiliates do not apply to a person described in § 222.1(b)(2)(iv) of this part if that person communicates to an affiliate—

- (1) Medical information;
- (2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or
- (3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(b) Exceptions. A person described in § 222.1(b)(2)(iv) of this part may rely on the exclusions from the term "consumer report" in section 603(d)(2) of the Act to communicate the information in paragraph (a) to an affiliate—

- (1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and

Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);

(2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(3) For any purpose referred to in section 1179 of HIPAA;

(4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;

(5) In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § 222.30 of this part; or

(6) As otherwise permitted by order of the Board.