Comment #: 38

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SUBMITTED ELECTRONICALLY TO regs.comments@federalreserve.gov
Jennifer J. Johnson, Secretary,
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

SUBMITTED ELECTRONICALLY @ http://www.regulations.gov
Donald S. Clark, Secretary
Federal Trade Commission
Room H-159 (Annex K)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: FACT Act Affiliate Marketing Rule, FTC Matter No. R411006 and FRB Docket No. R-1203

Ladies and Gentlemen:

Countrywide Financial Corporation ("Countrywide") appreciates the opportunity to comment on the proposed rule on Affiliate Use of Information for Marketing ("Proposed Rule") issued by the Board of Governors of the Federal Reserve System's ("FRB") and the Affiliate Marketing Rule issued by the Federal Trade Commission ("FTC") as required by Section 214 of the Fair and Accurate Transactions Act of 2003 ("Act"). As a bank holding company, Countrywide provides mortgage banking and diversified financial services in domestic and international markets through its family of affiliated companies. Since 1969, Countrywide has helped millions of American families realize the dream of home ownership.

At Countrywide, we monitor our customer's privacy concerns closely and strive to provide our customers with choice, control and convenience. First and foremost, we are continually looking for opportunities to meet our customers' financial needs and optimize their homeownership experience by providing information from Countrywide affiliates about related financial products or

services at the time that they are most likely to want or need them. The many details involved in purchasing a home can seem overwhelming, particularly for first-time buyers. In addition, the closing process sometimes moves quickly at the request of the seller or buyer – with the escrow period lasting no more than thirty days. These customers particularly welcome the option of choosing mortgage-related settlement services from affiliates of a trusted source. In that light, our comments seek more carefully tailored privacy regulations to reflect the fact that many customers expect information sharing among affiliates and to avoid unwittingly increasing costs and disrupting routine business practices that benefit both consumers and businesses.

General Comments

We applaud and strongly support the FRB's and FTC's inclusion of provisions in the Proposed Rule allowing consolidated notices (Sections 222.27 and 680.27, respectively), allowing a single opt-out notice for joint relationships (Sections 222.24(d) and 680.24(d)), providing flexibility for companies to deliver notices through agents or affiliates (Sections 222.20(a)(2) and 680.20(a)(2)), and applying the new restrictions on use of eligibility information by affiliates prospectively to information received after the mandatory compliance date (Sections 222.20(e) and 680.20(e)). We also believe that the definition of preexisting business relationship in Sections 222.3(m) and 680.3(i), drawing from the Telemarketing Sales Rule, is helpful to financial institutions in complying with the Act and is also consistent with consumer expectations. These provisions are all important to financial institutions in complying with the Act in a cost-effective way and with due regard to consumers' privacy rights, including the goal of comprehensible notices.

The Need for a Later Compliance Date

The FRB and FTC have requested comment on whether there is any need to delay the compliance date beyond the effective date to permit financial institutions to incorporate the affiliate marketing notice into the annual privacy notices mandated by the Gramm-Leach-Bliley Act ("GLB Notices"). As it stands, the effective date of the Proposed Rule is likely to be March 4, 2005. This does not provide companies with adequate time to implement new system requirements and then undertake the effort to consolidate and deliver the new notice with the initial and annual GLB Notices. Countrywide believes that it is critically important that the final regulations extend the mandatory compliance date at least eighteen (18) months, and preferably twenty-four (24) months, after the final regulations are published.

Many affiliated companies share systems or have invested heavily in interfaces between separate systems so that customer information, including transaction and experience information, can be shared or transmitted in a highly secure environment to offer related financial products and services at the time that consumers might want or need them. Countrywide's experience is that many consumers choose the products and services provided by an affiliate of a company with which it already has a relationship. These consumers expect that the affiliate is already aware of the existing relationship and would be able to easily pull up the consumer's existing records without the consumer having to supply the information again or having to sign a written consent form. Because financial institutions set up systems to respond to customers in this way, we estimate that it will take a large financial services enterprise such as ours up to twelve (12) months to build or adapt systems capable of temporarily blocking the sharing of transaction and experience information during the reasonable opt-out period, allowing such sharing when one of the exceptions applies, and accepting and correctly processing this new consumer opt-out after the opt-out period ends. Only after systems work is complete does it become possible to deliver the new affiliate marketing notice with the GLB Notices.

After systems are functioning properly, additional time is needed to combine the new affiliate opt-out notice with the initial and annual GLB Notices or other disclosures. At Countrywide, we deliver initial GLB Notices in a variety of formats depending on how a consumer's relationship begins. This is true despite the fact that Countrywide generally applies the same privacy policies across the family of companies and attempts to deliver a joint notice covering all commonly branded affiliates. For example, we use different forms of notice for consumers who obtain a loan through a mortgage broker or whose loan or servicing is purchased in the secondary market. In addition, Countrywide varies the text and graphic elements in notices depending on which affiliate a consumer obtains a financial product or service from (e.g., different text for a bank customer obtaining a certificate of deposit than an insurance agency customer obtaining auto or life insurance coverage). These variations in the notice language help the consumer to understand why he or she is receiving the notice. The task of consolidating the new affiliate marketing opt out language into these various forms of initial and annual GLB Notices, which contribute to the consumer's understanding of his or her rights, is time consuming.

The ability to consolidate the new affiliate notices with GLB Notices also allows financial institutions to comply with the Act in a cost-effective manner.

Countrywide estimates that not being able to consolidate these notices with our annual GLB Notices would alone add a minimum of $660,000 to our first year compliance costs. In addition, if the mandatory compliance date is not extended until at least the end of the year in 2005, certain companies are potentially prejudiced, based arbitrarily on when they happened to have set the mail schedule for delivery of their annual GLB Notices. Companies that send annual GLB Notices late in the calendar year will not have adequate time to complete the drafting, printing and delivery process between September and year end and would be forced to separately mail the new affiliate marketing notice or send consolidated notices on a new schedule, at significant additional expense.

Given the mandate of the Act to enable notice consolidation, we therefore recommend that the mandatory compliance date be set no earlier than twenty-four (24) months after final regulations are published. We note that this recommendation is generally consistent with the initial compliance period allowed for the GLB Notices. Assuming final regulations are published on September 4, 2004, for example, we would recommend a mandatory compliance date of September 1, 2006.

Reasonable Opportunity to Opt-out

Countrywide is very concerned with the FRB's and FTC's Proposed Sections 222.22(b) and 680.22(b) regarding examples of reasonable opt-out periods. The FRB and the FTC specify "at least 30 days" as the example of a reasonable period of time to opt out for each different means of notice delivery. This 30-day period would apply regardless of whether a financial institution delivers a privacy notice in person, by mail, or electronically after obtaining consent to do so, or whether the consumer acknowledges having received or even reviewed the notice. Meanwhile, Section 603(d)(2)(A)(iii) of the Act does not require a 30-day period and requires only that the consumer be given an opportunity to opt-out before the time that the information is communicated among affiliates.

Countrywide strongly believes that the period that is deemed reasonable should vary depending on the method of notice delivery and other factors such as the methods of opt-out and how quickly the financial institution processes opt-out requests. If a financial institution delivers a notice in person rather than by mail, the financial institution should be able to shorten the reasonable period of time for the consumer to opt out. If a financial institution delivers a notice by express mail as opposed to first or third class mail, the period should be shortened. The methods by which a consumer may opt out should be another

relevant factor in determining whether a consumer was given a reasonable opportunity to exercise this choice before the information is communicated. For example, if a financial institution uses an automated toll-free number or web site screen instead of a mail-in reply form to receive opt-outs, the financial institution should be able to shorten the reasonable period of time for the consumer to opt-out. In that case, there is no need to allot extra time for the financial institution to receive and process the mail-in reply forms. Or, if a financial institution designates check-off boxes in a prominent position on forms that are signed by the consumer and the consumer returns the signed forms to the financial institution unchecked, the financial institution should be able to share information immediately after the unchecked forms are returned.

While Countrywide appreciates that the FRB and FTC may have difficulty in crafting specific examples of shorter reasonable opt-out periods, the final Rule should not expand the current FCRA requirements by specifying an inflexible, 30-day, bright-line rule. Instead, the FRB's and FTC's final rule should allow financial institutions flexibility in giving consumers a reasonable opportunity to opt-out.

Definition of Eligibility Information

We respectfully request the FRB and FTC to provide examples of what "eligibility information" would include and not include within the meaning of Sections 222.3(j) and 680.3(g) of the Proposed Rule. For example, it would be helpful to clarify that contact information and the fact of an application for credit are not "eligibility information" and that affiliates are free to share such information without regard to the notice and opt-out provisions. An example of information that is strictly used in determining the price for financial services, and not eligibility, would also be helpful. Mortgage lenders such as Countrywide routinely share a list of telephone numbers and names of customers who have applied for a loan along with property zip code, square footage, and year built so that an affiliated insurance agency can tailor a quote for homeowner's insurance. Failure to clearly permit such sharing could lead mortgage lenders such as Countrywide, in an effort to avoid costly litigation over the meaning of the final regulation and the Act, to develop a series of consents just to offer other closing-related services from affiliates, further complicating the home loan process that is already unduly complex while doing little or nothing to advance the privacy expectations of the average consumer.

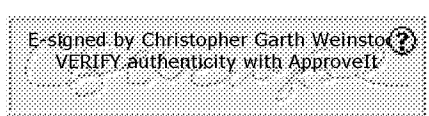
Model Notice Forms

The FRB and FTC request comment on the proposed model notices. We believe that optional paragraph 3 of Model Form A-1 should be revised, or an another alternative paragraph added, to provide financial institutions with guidance on how to clearly disclose to consumers that the opt-out may not limit sharing of contact information and other information not meeting the definition of a "consumer report." Unfortunately, because of the limited time allowed for comment on this and other rulemaking under the Act, Countrywide has not yet developed any language to accomplish this goal. We would be glad to work with the FRB and FTC to do so prior to issuance of the final regulations.

Conclusion

We think the FRB's and FTC's Proposed Rule is a good starting point for implementing Section 214 of the Act. However, we also believe that additional refinement is needed on the issues described above. We hope that our comments will be helpful in crafting a final version of the Proposed Rule that strikes the right balance between protecting consumer privacy rights and preserving the clear consumer benefits that result from free and secure flow of information among affiliates.

Sincerely,



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