



June 15, 2004

Federal Trade Commission
Office of the Secretary
Room 159-H
Annex H
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Disposal of Consumer Report Information and Records
R-411007
69 FR 213888 (April 20, 2004)

Dear Sir or Madam:

America's Community Bankers ("ACB")¹ is pleased to comment on the Federal Trade Commission's ("Commission") proposal regarding the proper disposal of consumer information pursuant to section 628 of the Fair Credit Reporting Act (FCRA), as amended by section 216 of the Fair and Accurate Credit Transactions Act of 2003 (FACTA).

ACB Position

ACB members have an outstanding record of protecting the confidentiality and security of customer information. Because consumer trust is one of the cornerstones of a community bank's business relationships, these institutions will continue to protect the confidentiality of consumer information as part of their business practices. Community banks compete with non-banks that offer similar products in today's fast moving and increasingly competitive financial marketplace; the trust they have earned provides them with a key competitive edge.

ACB generally supports the proposal, which permits affected businesses flexibility to adopt a program that best fits its business and operations based on its size and the complexity of its information sharing arrangements. ACB has additional specific comments and suggested changes to the proposal.

¹ America's Community Bankers represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

Background

Section 628 of the FCRA requires the Commission, Federal banking agencies, the National Credit Union Administration (“NCUA”) and the Securities Exchange Commission to promulgate regulations requiring any person that maintains or possesses consumer information, or any compilation of consumer information, derived from consumer reports to properly dispose of any such information or compilation. The statute requires the regulations of the various agencies be consistent and comparable. And, the regulations must be consistent with the regulations and guidelines of the agencies governing the safeguarding of customer information, issued pursuant to section 501(b) of the Gramm-Leach-Bliley Act.²

Consumer Information

The proposal³ defines “consumer information” to be any record about an individual, whether in paper, electronic, or other form, that is a consumer report or derived from a consumer report. The Commission does not, in the proposed regulation, define “derived from a consumer report.” In the supplementary information, the Commission explains that phrase would “cover all of the information about a consumer that is taken from a consumer report, including information that results in whole or in part from manipulation of information from a consumer report or information from a consumer report that has been combined with other types of information.”⁴

Under this definition, non-sensitive information, such as names and addresses of consumers, derived from consumer reports could be considered consumer information. The Commission consistently has interpreted the FCRA to exclude from the definition of “consumer report” lists of names and addresses of consumers with no further classification of the consumers.⁵ ACB believes that it is important that this interpretation be maintained for purposes of section 628 of FCRA, to insure consistent compliance standards for all provisions in the FCRA.

Disposal of Information

The proposal defines “disposing” or “disposal” to include: the discarding or abandonment of consumer information and the sale, donation, or transfer of any medium, including computer equipment, upon which computer information is stored.⁶ ACB suggests that the Commission make clear in the regulation that “disposal” does not include the sale, donation, or transfer of consumer information. Such a clarification would prevent a disruption of current information sharing arrangements.

² Pub. L. No. 106-102., Title V, Section 501(b) (November 12, 1999).

³ 69 Fed. Reg. 21392 (April 20, 2004).

⁴ 69 Fed. Reg. 21389 (April 20, 2004).

⁵ 16 CFR Part 600, Appendix—Commentary on the Fair Credit Reporting Act.

⁶ 69 Fed. Reg. 21392 (April 20, 2004).

Proper Disposal of Consumer Information

The proposal requires any person who maintains consumer information for a business purpose to dispose of such information properly by taking “reasonable measures” to protect against unauthorized access to or use of the information in connection with its disposal.⁷ ACB appreciates the Commission’s willingness to follow a reasonableness standard that would allow affected businesses to take into account their own circumstances and the sensitivity of the consumer information in their possession.

The Commission notes in the Supplementary Information to the rule that an entity subject to both the proposed rule and the Commission’s *Standards for Safeguarding Customer Information*⁸ (“Safeguard Rule”) could comply with both rules by incorporating its “consumer information” disposal measures into its broader information security program required by the Safeguard Rule. We urge the Commission to expressly permit this method of compliance within the final regulation itself. This approach assures businesses subject to both regulations that compliance can be achieved by one integrated safeguard policy. Additionally, this approach would be consistent with the approach taken by the federal banking agencies⁹ and the NCUA¹⁰ and fulfills the statutory requirement that new regulations be consistent with the Safeguard rule.

Conclusion

ACB appreciates the opportunity to comment on this important matter and supports the Commission in its efforts to promulgate effective standards for safeguarding consumer information. We stand ready to work with the Commission as it completes this regulation. Should you have any questions, please contact the undersigned at 202-857-3121 or via e-mail at cbahin@acbankers.org, or Rob Drozdowski at 202-857-3148 or via e-mail at rdrozdowski@acbankers.org.

Sincerely,



Charlotte M. Bahin
Senior Vice President
Regulatory Affairs

⁷ 69 Fed. Reg. 21392 (April 20, 2004).

⁸ 16 CFR Part 314.

⁹ 69 Fed. Reg. 31913 (June 8, 2004).

¹⁰ 69 Fed. Reg. 30601 (May 28, 2004).