



STATE OF NORTH DAKOTA
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

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Gary D. Preszler
COMMISSIONER

FEDERAL TRADE COMMISSION
RECEIVED

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GENERAL COUNSEL

Debra A. Valentine, General Counsel
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington DC 20580

Dear Ms. Valentine:

As discussed by telephone recently with Attorney Dorothy Patton, I want to offer additional observations and information to assist the Federal Trade Commission (FTC) in processing North Dakota's petition under 15 U.S.C. 6807. The FTC Rule 16 CFR Part 313.17 provides that the FTC in determining whether state law affords a consumer greater protection shall consult with the "applicable federal functional regulator or other authority." Allow me to assert that state banking regulators are a harmonious fit as that "other authority." State banking regulators can offer valuable assistance to interpret applicable state law and are technical experts for the institutions under the state regulator's oversight. State regulators are also an important element in the equation for ongoing compliance monitoring involving state-chartered financial institutions.

The Conference of State Bank Supervisors (CSBS) March 31, 2000, comment letter on proposed 16 CFR Part 313, also strongly advocated state banking regulators as the "other authority" and suggested FTC establish a consultative protocol as a guidance on state law determination. CSBS recognizes that state supervisors are knowledgeable about the supervisors own state laws and are primarily responsible for enforcement of applicable state laws affecting financial institutions.

Ms. Patton inquired as to the scope of North Dakota's laws on other entities engaged in financial activity. I recently met with North Dakota Insurance Department representatives to review a privacy bill draft the Insurance Department intends to file by December 8, 2000, for introduction before the next North Dakota legislative session. The bill draft applies to insurance companies and consists of medical and financial privacy components. The North Dakota Attorney General's office also intends to file a

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Debra A. Valentine, General Counsel
November 27, 2000
Page 2

privacy bill. As drafted, the Attorney General's bill covers the transfer of financial and medical information by non-financial institutions.

All commercial banks and thrifts in North Dakota are required to maintain FDIC deposit insurance. The only exception is the state-owned Bank of North Dakota. The Bank of North Dakota must comply with Chapter 6-08.1, North Dakota Century Code, and it is my position the Bank must also comply with the FTC privacy Rule. The Bank of North Dakota's customer base is primarily state and local governmental bodies, with a smaller amount of individual, partnership, or corporation deposits. Further, the Bank of North Dakota is also subject to the state's open records law; and the confidentiality policies issued by the State Industrial Commission, the governing body for the Bank of North Dakota.

All North Dakota state and federal credit unions are also required to maintain deposit insurance by the National Credit Union Administration with the sole exception of North Dakota Central Credit Union. North Dakota Central Credit Union was recently approved by the NCUA Board to convert to a federally chartered insured corporate credit union. The consummation date is anticipated in early January.

Finally, I envision a determination that provides that North Dakota financial institutions and any affiliates that are commonly owned or controlled will be required to comply with a combination of the federal laws and rules and state law requiring affirmative customer consent.

As pointed out in my September 12, 2000, letter, I asked for a determination at this time in case legislative amendments to state law become necessary. The North Dakota Legislative session commences January 9, 2000. The final deadline for bill introduction occurs by the third week of January. I respectfully request that a determination be made on the petition prior to mid-January, if at all possible.

I am available to provide further assistance as you review North Dakota's petition.

Sincerely,



Gary D. Preszler
Commissioner

GDP:sr