

FEDERAL RESERVE BANK OF SAN FRANCISCO
101 MARKET STREET, SAN FRANCISCO, CALIFORNIA

June 30, 2004

**BANKING SUPERVISION AND REGULATION:
FACT ACT FINAL RULE;
PROPER DISPOSAL OF CUSTOMER INFORMATION;
CLEAR AND CONSPICUOUS DISCLOSURES;
AND
COMPLEX STRUCTURED FINANCE ACTIVITIES**

To State Member Banks, Bank
Holding Companies, U.S. Branches
and Agencies of Foreign Banks,
and Others Concerned,
in the Twelfth Federal Reserve District

Amendments to the Fair Credit Reporting Act (Docket R-1187)

The Federal Reserve Board has issued amendments to Regulation V, which implements the Fair Credit Reporting Act (FCRA), which would add model notices for financial institutions to use if they furnish negative information to consumer reporting agencies. The amendments also provide guidance to financial institutions regarding the use of the model notices. The Board is publishing the model notices pursuant to the Fair and Accurate Credit Transactions Act (FACT Act) amendments to the FCRA.

The FACT Act provides that if any financial institution (1) extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency; and (2) furnishes negative information to such an agency regarding credit extended to a customer, the institution must provide a clear and conspicuous notice about furnishing negative information, in writing, to the customer. "Negative information" means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

The FACT Act defines the term "financial institution" to have the same meaning as in the privacy provisions of the Gramm-Leach-Bliley Act. The term "financial institution" includes not only institutions regulated by the Board and other federal banking agencies, but also includes other financial entities, such as merchant creditors that extend credit and report negative information. The Board's model notices can be used by all financial institutions, as defined by the act.

The amendments are effective July 16, 2004.

Agencies Proposed Rules on Disposal of Consumer Information (Docket R-1199)

The federal bank and thrift regulatory agencies today invited public comment on an interagency proposal to require financial institutions to adopt measures for properly disposing of consumer information derived from credit reports.

Current law requires financial institutions to protect customer information by implementing information security programs. The proposed rules would require institutions to make adjustments to their information security programs to properly dispose of the types of consumer information that are not already protected. This would include information from credit reports about a financial institution's employee or about an individual whose application for a product or service is denied.

The agencies' proposal implements section 216 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). While not imposing significant additional burden, the proposed rules would make amendments to include this new statutory requirement in the *Interagency Guidelines Establishing Standards for Safeguarding Customer Information*, which were adopted in 2001. The agencies' proposed rules add a new definition of "consumer information" and a provision to require financial institutions to implement appropriate measures to properly dispose of consumer information.

The proposal would take effect three months after a final rule is adopted.

Comments on the proposed guidance are requested within 45 days of its publication in the Federal Register, which is expected shortly.

Withdrawal of Proposed Revisions (Dockets R-1168, R-1169, R-1170, R-1171)

The Federal Reserve Board has withdrawn proposed revisions to Regulation B (Equal Credit Opportunity), Regulation E (Electronic Fund Transfers), Regulation M (Consumer Leasing), Regulation Z (Truth in Lending), and Regulation DD (Truth in Savings). The proposed revisions, published in December 2003, sought to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations.

The revisions were intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In response to concerns raised by commenters, the Board has determined that this goal should be achieved by developing proposals that focus on improving the effectiveness of individual disclosures rather than the adoption of general definitions and standards applicable across the five regulations. This effort will be undertaken in connection with the Board's periodic review of its regulations; an advance notice of proposed rulemaking is expected to be issued later this year under Regulation Z, focused on disclosures for open-end credit accounts.

Although the December 2003 proposals are withdrawn, they reflect principles that institutions may find useful in creating disclosures that are clear and conspicuous. These approaches will also help inform the Board's review of individual disclosures.

Extension of Public Comment Period for Statement on Complex Structured Finance Activity (OP-1189)

Five federal agencies have extended for 30 days the comment period on the proposed *Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities* published in the *Federal Register* on May 19, 2004. Please see our letter dated May 26, 2004.

In a letter submitted to the five agencies on June 10, eight trade associations representing financial institutions asked the agencies to provide the public with an additional 30-day period to review, analyze, and submit comments on the proposed interagency statement.

The public comment period on the interagency statement will now end July 19, 2004. The scope and comment process for this interagency statement remain as stated in the original *Federal Register* notice of May 19, 2004 and comments should be received on or before July 19, 2004.

Additional Information

All circulars and documents are available on the Internet through the Federal Reserve Bank of San Francisco's Internet site, at <http://www.frbsf.org/banking/letters>.

For additional information about all above matters except for the Statement on Complex Finance activity, please contact our Banking Supervision and Regulation Department at (415) 974-3028.

For questions regarding the Statement on Complex Activity, please contact our Banking Supervision and Regulation Department at (415) 974-3206.

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Attachments:

Docket R-1187

Docket R-1189

Dockets R-1167, R-1168, R-1169, R-1170, R-1171