

**Testimony of**  
**Independent Community Bankers of America**  
**on**  
**“The Role of FCRA in the Credit Granting Process”**  
**before the**  
**Subcommittee on Financial Institutions**  
**and Consumer Credit**  
**of the**  
**Financial Services Committee**  
**of the**  
**United States House of Representatives**

**June 12, 2003**

**C.R. (Rusty) Cloutier**  
**President**  
**MidSouth National Bank**  
**Lafayette, Louisiana**

**and**

**Chairman**  
**Independent Community Bankers of America**  
**Washington, DC**

Mr. Chairman, Ranking member Sanders, and members of the Committee, my name is Rusty Cloutier. I am Chairman of the Independent Community Bankers of America (“ICBA”)<sup>1</sup>, and President of MidSouth National Bank, a \$400 million community bank located in Lafayette, Louisiana. I am pleased to appear today on behalf of the Independent Community Bankers of America to share with you our views on the reauthorization of certain provisions of the Fair Credit Reporting Act (“FCRA”), and The Role of FCRA in the Credit Granting Process.

Community banks have been, and will continue to be, strong guardians of the security and confidentiality of the financial information of their customers. ICBA believes safeguarding customer information is central to maintaining public trust and key to long-term customer retention. Community banks recognize that consumers are concerned about the security of their personal, financial information, especially as technology revolutionizes data collection and retention, and as the incidence of identity theft increases. Accordingly, as a matter of good business practice, and as required by the Gramm-Leach-Bliley Act (“GLBA”), community banks have implemented and upgraded security measures to ensure customer information is properly secured.

## **REAUTHORIZATION OF FCRA PREEMPTION PROVISIONS**

ICBA supports the FCRA uniform national standards that will expire on January 1, 2004, and we strongly urge the Committee to support reauthorizing, or making permanent these provisions. Within the specific context of the FCRA, federal preemption of state laws is essential to ensure consistent, uniform standards. FCRA is an important tool in promoting economic growth, and our credit reporting system plays an important role in the economy. Uniform credit reporting standards also ensure the availability of credit, especially to low and moderate-income borrowers, and helps to maintain the viability of the nation’s credit system.

The current law provides for strong consumer benefits, the most important of which are the federal standards that promote fair and accurate credit reporting. If Congress fails to amend FCRA to renew the uniform standards, the current system will be undercut by the enactment of a myriad of state laws with potentially conflicting standards. This will not only result in increased costs to the industry, but it will have a significant impact on a bank’s ability to evaluate the credit-worthiness of its customers.

---

<sup>1</sup> ICBA is the primary voice for the nation’s community banks, representing some 4,600 institutions with 17,000 locations nationwide. Community banks are independently owned and operated and are characterized by attention to customer service, lower fees and small business, agricultural and consumer lending. ICBA’s members hold more than \$526 billion in insured deposits, \$643 billion in assets and more than \$402 billion in loans for consumers, small businesses and farms. For more information visit [www.icba.org](http://www.icba.org).

We live in a very mobile society with many consumers often moving frequently, and living in several different cities and states over relatively short periods of time. Additionally, community banks may serve customers in neighboring states, and some allow consumers to apply for credit cards or loans over the Internet. Community banks want clear, consistent policies that allow us to offer choices to our customers.

Currently under FCRA, because we are governed by uniform, national standards, a bank does not have to consider a customer's state or states of residence when reviewing his or her credit report in order to understand what, where, when and how the information was reported. The information in my credit report is reported based on the same federal standards as the information in yours. Community banks rely heavily on the accuracy of this information when making credit decisions. Without federal preemption, and uniform, national standards, information such as loan delinquency, and borrower information reported by the lender to the credit bureau, would be determined by the state. Therefore, a borrower from Louisiana may have a credit report based on different standards, and containing different information, than the credit report of a borrower from Alabama or Mississippi. Further, if the borrower lived in several different states over a period of years, he or she will have a credit report with information reported based on the standards of each of those states. This has the potential to be overwhelming for both the bank and the consumer, and would lead to credit determinations based on state of residence.

The ability of a community bank to serve customers in another state would be negatively affected. We may be forced to charge different prices or charge higher rates. Customers moving into the state would require additional investigation of their credit history to compare it to the standards of their new home state. None of this bodes well for the consumer or the bank. Uniform national standards prevent such confusion and inequalities.

The history of community banking in this country and its success is predicated on the extension of credit. Our current system of extending and granting credit is fair and efficient. In this age of information technology, consumers have grown accustomed to the availability of quick, low-cost credit. The imposition of stricter consumer protections, on a state-by-state basis, will ultimately be to the detriment of the consumer. Banks will be faced with increased marketing costs as a result of compliance with disparate state laws in marketing its products to consumers. Consumers may experience delays in credit decisions, thus impairing access to affordable credit quickly. And banks may lose opportunities to extend consumer credit. Reauthorization of the FCRA uniform provisions will inure to the benefit of consumers as well as community banks.

## **IDENTITY THEFT**

As the nation's fastest growing crime, identity theft resulted in at least \$1 billion in losses to banks last year. FCRA plays a major role in fighting identity theft.

Therefore, it is essential that the current nationwide uniformity for reporting consumer credit information is maintained.

ICBA strongly supports measures to thwart identity theft, and to mitigate its impact on customers and banks alike. Strengthening criminal penalties for identity theft, easier consumer access to review their credit reports and correct errors when they occur, appropriate restrictions on who can access information in credit reports, greater consumer awareness of ways to guard their own information and otherwise reduce the risk of identity theft, and better support and assistance for identity theft victims, are all measures that can help reduce the incidence of identity theft, and make it easier for victims to avoid or repair the damage that can result.

ICBA would support measures to allow consumers to obtain a copy of their credit report free of charge annually. The benefit to a community bank in having a customer who has been able to review his credit report at least annually, outweighs the costs associated with lost opportunities for the bank to extend credit due to inaccurate or incorrect credit file information, or identity theft that may take several months to correct. Customers should not have to be faced with a denial of credit before they are able to receive a free credit report. It is in the best interests of everyone to facilitate and encourage consumers to regularly review their credit report.

## **INFORMATION SHARING**

### *Uniform Notices*

The ICBA strongly urges the Committee to maintain an appropriate balance between the critical protection of consumer financial privacy, and the legitimate information sharing needs of community banks to ensure that our customers have access to essential financial products and services. GLBA provisions on consumer financial privacy are the most comprehensive, complex privacy protections ever enacted into Federal law. Privacy notices have followed the mandate of the statute, and its implementing regulations, but have oftentimes proven confusing to consumers. ICBA would welcome development of a form of notice that would be more understandable to consumers and more effective in communicating how consumers can exercise their information sharing options.

### *Third Party Exceptions*

ICBA and its members believe it is critically important to preserve the exceptions in GLBA that permit information sharing with third parties, when necessary, for routine, legitimate purposes. Such exceptions include outsourcing to third parties that perform functions on behalf of the bank, routine processing and servicing of accounts and transactions such as ordering checks, for asset securitization or secondary market sales, and for compliance with the USA PATRIOT Act. Information sharing based on national

standards will allow community banks to offer consumers greater access to low cost credit quickly.

### *Joint Agreements*

As the Committee considers the information sharing issue in the context of FCRA reauthorization, it is important to understand that community banks want to avoid additional restrictions on information sharing, like a consumer “opt-in” requirement, because information sharing is essential to how we deliver products and services to our customers. The use of outsourcing, joint agreements, and joint ventures with trusted, long-term partners, is vital to our ability compete, and to offer a full array of financial products and services to adequately serve the needs of our customers, especially those located in rural areas.

The joint agreement business model employed by community banks to deliver financial products and services is analogous to the affiliate model for large banks, and should, therefore, be treated the same. Joint arrangements with other financial institutions should be treated in the same manner as affiliate relationships in order to allow community bank customers a competitive alternative to the products and services available at larger financial institutions. Disparate treatment of information sharing between affiliates, on one hand, and between financial institution joint agreement partners on the other, would unfairly discriminate against community banks because of their relative size and corporate structure.

### *Opt-In Opt-Out*

It is important that the FCRA affiliate sharing language is protected from state regulations. ICBA believes that a consumer “opt-in” option that is being considered in certain states would be detrimental to community banks and their customers. Thus far, the number of consumers *opting out* of having their information shared with affiliates and third parties has been very low, representing 5% or fewer of customers. Therefore, it is likely that opt-in rates will be similarly low. If only 5% of a community bank’s customers opt-in to having their information shared with the third parties that deliver that bank’s products and services, marketing of those products will be severely hampered.

Opt-in policies would cost us millions of dollars in redesigning and explaining the terms to customers, and in retraining our employees. Customers would be adversely affected as well. Opt-in will result in customers not hearing about new products and services, or their bank not being able to develop and offer the products and services that most meet their needs. The marketing and delivery of products and services will be less efficient, the costs of those services will increase, and customers will be faced with fewer choices and greater inconveniences.

## **CONCLUSION**

FCRA and the nation's credit reporting system help ensure that consumers can easily access competitively priced credit. The reliability of credit information maintained by credit bureaus is critical to this goal. Accurate and complete credit reports can also help prevent identity theft by providing a means to verify a consumer's identity or raise a red flag that additional verification steps should be taken before extending credit or opening an account. FCRA provides for a uniform system throughout the United States by preempting potentially conflicting state laws that could thwart the system's effectiveness in providing rapid access to accurate information. The ICBA strongly urges the Committee to support the permanent reauthorization of the uniform national provisions that will sunset on January 1, 2004.

Thank you for the opportunity to appear before you today. ICBA looks forward to working with you, and at the appropriate time, I will be glad to answer any questions you or members of the Committee may have.