

Testimony of
America's Community Bankers
on
The Fair Credit Reporting Act
before the
Subcommittee on Financial Institutions & Consumer Credit
of the
Committee on Financial Services
of the
U.S. House of Representatives
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Introduction

Chairman Bachus, Ranking Member Sanders, and members of the Subcommittee, my name is George Loban. I am co-chairman and president of FSF Financial Corporation and First Federal Bank, a \$560 million stock institution based in Hutchinson, Minnesota. I am testifying today on behalf of America's Community Bankers, where I serve on the Board of Directors and as chairman of the Privacy Issues Subcommittee.

Thank you for this opportunity to testify on the role of the Fair Credit Reporting Act¹ (FCRA) in the credit granting process. The uniform national standards embodied in the FCRA allow community banks and others to make prudent credit decisions quickly and inexpensively wherever a customer may reside or have conducted business. Reauthorizing these standards on a permanent basis is critical to ACB members, our customers, and the economy as a whole.

My testimony will focus on how community banks use credit report information and how the national credit reporting system established by the FCRA promotes a healthy competitive consumer credit marketplace, while protecting consumer information.

ACB Position

America's Community Bankers strongly supports the uniform national standards embodied in Section 624 of the Fair Credit Reporting Act. We urge Congress to reauthorize this year these uniform standards on a permanent basis. ACB also urges that laws regulating information sharing practices not discriminate against financial institutions based on size or corporate structure.

ACB and its members urge Congress to pass legislation to help community banks and their customers combat identity theft, including new laws to strengthen sentencing standards for identity theft crimes and help prosecutors prove identity theft in courts.

ACB believes consumers should have access to a free annual credit report and enhanced ability to correct errors on their credit reports.

The Fair Credit Reporting Act

The FCRA establishes the legal framework for the collection, use, and maintenance of credit reporting data. It is the foundation for the most effective credit reporting system in the world that enables low-cost and rapid access to consumer credit for today's increasingly mobile society. Initially enacted in 1970, the law was significantly amended in 1996. Among the more significant provisions introduced in 1996, Congress preempted the states from enacting any laws or regulations relating to seven key areas until January 1, 2004. The preempted provisions preclude states from enacting any laws or regulations relating to:

- Prescreened credit solicitations;
- Reinvestigations of disputed information;

¹ Pub. L. No. 91-508 (15 USC 1681-1681t)

- Duties of creditors that take adverse actions;
- Prohibited consumer report information;
- Responsibilities of providers of information to credit bureaus;
- Sharing of information among affiliated companies; and
- Consumer disclosure requirements.

The FCRA facilitates the exchange of credit information that allows community banks and other institutions to make effective lending decisions and provide credit to the widest possible array of consumers. The carefully crafted preemption provisions established in 1996 ensure that credit-reporting information available on consumers is consistent from state to state, facilitating a national market for credit and risk management.

This, however, is scheduled to change if Congress does not act by the end of this year to reauthorize the uniform national standards contained in the FCRA. Failure to act could result in a patchwork of conflicting state laws and substantially erode the quality and integrity of our nation's credit reporting system.

More importantly, it could disrupt our entire economy, a system based on sound credit decision-making. This subcommittee has already heard testimony from a vast array of witnesses representing different sectors of the economy that would be adversely affected by a lapse in FCRA preemptions. As someone who has spent over thirty years making daily business decisions based on credit reports, I can tell you first-hand that the impact of not reauthorizing the FCRA has not been exaggerated.

Sharing Information with Affiliates and Third Parties

The FCRA not only preempts states from enacting laws and regulations relating to the sharing of credit report data among affiliates, but also includes sharing of other information. In today's highly competitive financial marketplace, the ability of affiliates to share information is critical to evaluate customer needs and access their qualifications for new offers. The sharing of information among affiliates also enables valuable customer service features such as consolidated statements and single-source customer call centers across product lines. Moreover, the sharing of information among affiliates can help identify financial transactions that might indicate a customer has become the victim of identity theft.

First Federal Bank has three affiliates with which it shares limited customer information among these entities to market financial products to our customers. In addition to First Federal Bank, the FSF Financial Corporation family of companies includes an investment agency, an insurance agency, and a mortgage lending company with customers in over forty states. By sharing limited information among our corporate family, we are able to better understand the total customer relationship and provide our customers with tailored products and customer support.

The Gramm-Leach-Bliley Act² (GLBA) established restrictions and opt out requirements that are primarily directed at information sharing with nonaffiliated third parties. By contrast, the FCRA

² Pub. L. No. 106-102

information sharing restrictions focus solely on information sharing within a corporate structure. Within a corporate structure the organization has more direct control over how information is used and disseminated, and directly bears the legal and reputation risk in the event that consumer information is misused.

America's Community Bankers strongly supports the FCRA's uniform national standards for financial information sharing. There is no better example of why the preservation of uniform national standard is so critically important than my institution. While First Federal has consumer mortgage customers in over forty states, we are by no measure a large financial institution. If we were forced to comply with forty different state legal frameworks, we would have to hire a team of compliance specialists or turn away out-of-state customers.

Also, the inferior quality of credit data drawn from states operating under multiple collection standards would diminish the general availability of credit. The FCRA's uniform national standards allow First Federal to service mortgage customers effectively nationwide, and at lower cost.

We also urge that laws regulating information sharing practices not discriminate against financial institutions based on size or corporate structure. Many community banks, particularly smaller banks, work with third parties to better serve the needs of our customers to offer financial products. In some cases, these third parties are affiliated institutions (within the same corporate family). In other cases, they are not. In most instances where no affiliation exists, a contractual relationship exists dictating how and what information may be shared.

In regulating the disclosure and opt-out requirements for financial information sharing practices, Title V of the Gramm-Leach-Bliley Act (GLBA) treats certain disclosures of information between a financial institution and a third party identically, regardless of whether the two institutions are affiliated or not. ACB urges that any prospective laws follow suit.

Community Banks and Credit Reporting

Like most community banks, First Federal Bank provides information to each of the three major credit-reporting companies monthly via a data tape produced by our technology service provider. This monthly submission of credit account information contains thousands of activity and status records on all of our customers regardless of their account status. Information found in these credit account records includes key account dates, account balance, payment status, loan type and other basic credit information. This information is passed on without any characterization as to whether such information should adversely affect an individual's credit worthiness or credit score.

With regards to credit scoring, these numbers represent a statistical system used by credit grantors to help assess a credit applicant's creditworthiness. Each of the three major credit-reporting companies has their own proprietary credit-scoring model and credit grantors can only estimate what elements go into determining an individual credit score. While credit scores are a key component for assessing an individual's creditworthiness, they represent only one factor used to determine whether a bank will make a loan. Community banks typically look more

broadly at the applicant's entire credit picture and relationship with the bank, and rely less on a credit score than other lenders.

Information found in credit reports comes from a variety of sources. While bank information may represent a significant percentage of the information collected by the three main credit reporting companies, many other sources of credit reporting data exists. Credit reporting companies also receive information from major retailers, utility companies, and medical companies. Additionally, credit-reporting companies gather information from available public records, such as bankruptcy filings, and court issued property liens.

Most community banks do not obtain credit reports directly from one of the three major credit-reporting companies. Rather the typical community bank will contract with a "reseller" organization that consolidates the contents of all of the three major credit-reporting companies into a single report. This provides an easy to use format that can be used to further assess the credit worthiness of an applicant. For lower risk non-mortgage loans, a bank may choose to review information from only one of the credit reporting companies, which is significantly less expensive than a consolidated report.

Safeguarding Confidential Customer Information

Protecting confidential customer information within community banks has long been an institutionalized part of the culture of bank management. Consideration goes beyond simply protecting information within the walls of the institution, it includes protecting information shared with affiliates and non-affiliated third parties alike. All community banks have in place specific programs focused directly on protecting customer information. These include board approved strategies and policies; training and awareness programs; and an assortment of technology solutions. Provisions within the FCRA establish strict restrictions on who may obtain consumer credit report information and how it may be used.

In addition to the FCRA, the Gramm-Leach-Bliley Act; the Expedited Funds Availability Act, and its implementing regulation—Regulation E³; and the Right to Financial Privacy Act⁴ are examples of federal law designed to protect consumer privacy and restrict unnecessary information sharing. The long history of financial institutions' efforts to protect customer information, along with the legal and regulatory requirements, provides an effective defense system to protect customer information.

Identity Theft

While the U.S. system of credit is clearly the most effective and efficient in the world (due in large part to the national uniformity of information sharing standards), it is not without its glitches. The rising number of identity theft cases is creating enormous hardships on victims and increasing the costs to banks in terms of monetary losses and fraud prevention investments. This continued rise in the number identity theft cases might indicate that something more needs to be done to safeguard information from prospective identity thieves. To that end, ACB urges

³ 15 U.S.C. § 1693

⁴ 12 U.S.C. § 3401-3422

Congress to pass legislation to strengthen sentencing standards for identity theft crimes and make it easier for prosecutors to prove identity theft. We also look forward to working with the Subcommittee on additional legislation to help combat identity theft.

Empowering Consumers to Manage their Credit

Finally, improvements should be made to the credit reporting system itself to help protect consumers from unintended barriers or obstacles to credit. During this year's committee consideration of the regulatory relief bill, Representative Gary Ackermann (D-NY) sponsored an amendment requiring federally insured depository institutions to notify a customer every time it furnishes negative information to a consumer reporting agency. This amendment was withdrawn, but may be offered in the context of the FCRA legislation.

The Ackermann amendment would result in billions of new notices being sent to consumers monthly. This would result in greatly increased costs, not to mention a significant paperwork burden on financial institutions and their customers. ACB and other trade associations opposed the amendment. While we disagreed with Representative Ackermann's proposed solution, we recognize that he may have identified a problem.

The continued integrity of the federal credit reporting system demands that credit reports be as accurate as possible, and ACB is committed to working with Representative Ackermann and other members of Congress toward this goal. ACB supports empowering consumers by providing them access to a free annual credit report and enhancing their ability to correct errors on their credit reports. We recognize that these consumer empowerment tools do not come without some cost to the industry. Nonetheless, we believe these costs will be outweighed by increased consumer trust in the integrity of the system.

Conclusion

Community banks are wholly dependent on the trust of our customers, and this trust represents our most valuable asset. As such, we take extraordinary care to ensure that consumer financial information is safeguarded.

At the same time, community banks depend on our ability to use the information we receive from our customers to deliver the financial services they need.

ACB believes that the twin goals of preserving customer trust and responsibly using customer information are mutually attainable and must be pursued together. We believe that existing federal law strikes the appropriate balance to properly regulate the flow of financial information from a financial institution to affiliates and other third parties.

Again, thank you for this opportunity to testify on behalf of America's Community bankers. I look forward to any questions you may have.