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BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

"THE FAIR CREDIT REPORTING ACT:
HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY"

JUNE 4, 2003

Good morning Chairman Bachus, Congressman Sanders, and Members of the Subcommittee. My name is Clint Walker, and I am the Chief Administrative Officer and General Counsel of Juniper Bank. Juniper Bank is a young and growing bank focused on issuing credit cards to U.S. consumers. I appreciate the invitation to appear before you today to discuss how the Fair Credit Reporting Act (FCRA) affects our bank and functions for the benefit of consumers and the economy.

In general, the FCRA has provided the legal framework that has been instrumental in shaping an extremely efficient credit reporting system that supports millions of credit decisions in the United States each year. Consumers receive direct benefits from this system in the form of lower credit costs, more choices for credit, and greater convenience. These benefits to consumers are largely the result of a competitive marketplace which has thrived under the framework established by the FCRA. The benefits of consumer credit to the economy are many, not the least of which is the increased ability of consumers to make purchases as a result of less expensive and more convenient credit made more widely available than ever before.

It is my pleasure to provide the Subcommittee with a more in-depth analysis of how the FCRA plays a crucial role in allowing lenders to serve customers better, and by extension, plays an important role in today's national economy.

Prescreening

Consumer Benefits

The FCRA governs an important underwriting and marketing tool known as "prescreening." Prescreening is a process under which a creditor may provide firm offers of credit to consumers who meet certain established underwriting criteria. For example, Juniper Bank has developed a credit card product specifically designed for customers of Midwest Express which will allow those customers to receive frequent flier miles from Midwest Express each time they use the Midwest Express Juniper card. Although we want to be sure that customers of Midwest Express are aware of this opportunity, it would not be efficient for us to mail an offer to every individual who flies Midwest Express because not everyone who flies

Midwest Express will meet our underwriting criteria. In addition, our experience tells us that consumers do not want to receive offers for credit for which they do not qualify. The FCRA enables us to address these issues by providing a list of Midwest Express customers to a credit bureau with instructions to determine which customers on that list meet the underwriting criteria we use for this product. Once we receive a list of qualified consumers back from the credit bureau, we send all of those consumers a firm offer of credit. Firm offers of credit often take the form of the "preapproved" offers that people receive in the mail. If the individual responds by requesting the credit, we must, under the FCRA, honor the offer so long as the individual continues to meet the underwriting criteria for the offer. Under the FCRA, each of our prescreened mailings must also include instructions as to how the consumer can "opt out" of receiving prescreened offers in the future. Today, a consumer can opt out of prescreened lists from the three main credit bureaus simply by calling a single toll-free number.

Thanks to the national uniformity established under the FCRA, the prescreening process permitted under the FCRA is the same across the country. This allows lenders to develop and market products on a nationwide basis. If different states had different prescreening rules, or prohibited prescreening, it is undeniable that consumers would not enjoy the same competitive benefits they enjoy today. A brief review of recent history may be helpful to explain the consumer benefits of prescreening consumers nationwide. According to one recent study by Michael Staten and Fred Cate, in 1990, more than 70% of credit card balances were being charged more than an 18% annual interest rate.[1] However, a wave of competition developed in the early 1990s as a result of prescreening. Credit card issuers such as Citibank, First USA, American Express, Household, and MBNA used prescreening to compete for customers across the country, which fostered competition among all credit card issuers and lowered costs for consumers. By 1993, only 34% of credit card balances were being charged more than 18% interest. Of course, most of us can recall being charged an annual fee for a basic credit card. Today, consumers can choose from dozens of basic credit cards that have no annual fee—another benefit which has resulted from the increased competition for customers through prescreening.

Juniper Bank is a perfect example of the importance of prescreening. Indeed, it is prescreening that has enabled us to enter the market and compete nationwide with the giants of the industry. We started our business not even three years ago, in late 2000. Although our bank is made up of executives with extensive and proven track records, it takes more than know-how to make a bank successful. A bank, like any other commercial entity, needs to obtain and retain customers if it is going to succeed. Juniper Bank has developed credit card programs that we think consumers will like, including partnership programs with Frontier Airlines, Air Tran, Midwest Express, and several others to be announced in the near future. But unless we can make qualified consumers aware of our products, they will not have the opportunity to take advantage of them. In this regard, the ability to prescreen was absolutely necessary for us to enter the credit card market and continues to be essential to making our products available. Compared to most credit card issuers, we are small—but in less than three years, Juniper Bank has over 700,000 account holders, and we expect to have close to 1,000,000 by the end of this year. Our ability to

[1] Michael E. Staten and Fred H. Cate, "The Adverse Impact of Opt-In Privacy Rules on Consumers: A Case Study of Retail Credit".

compete would be significantly undermined if the national uniformity established by the FCRA for prescreening were allowed to expire.

We are quite pleased with our ability to achieve the results we have accomplished in less than three years. But Juniper Bank is not the only one competing for consumers on a nationwide basis. Many other successful entities, such as MBNA, Capital One, Chase, and Citibank, for example, have been able either to enter the market or expand their presence in the market as a result of prescreening on a nationwide basis. It should be obvious, but more market participants means more competition and choices for consumers—which leads to lower prices for consumers. Without prescreening on a nationwide basis, consumer choice in the credit card market would be limited, and credit cards would likely have interest rates and fees higher than today.

Prescreening is Critical to Underwriting

Lower interest rates, no annual fees, and more credit options are obvious consumer benefits derived from the prescreening process. However, there are other significant benefits related to prescreening that have attracted less attention but are just as important. For example, accounts obtained through prescreening have a loss rate of approximately one-fourth to one-half of those associated with accounts obtained through other means. Furthermore, fraud losses on prescreened accounts are approximately one-seventh of those associated with accounts obtained through other means. This is, in part, because prescreening allows banks to more carefully and efficiently target offers through use of their underwriting criteria. Although beneficial to consumers, prescreening is not just about marketing better products to consumers. It also allows banks to control their risk by targeting those individuals that meet certain credit standards. In this regard, prescreening is fundamental to Juniper's credit underwriting process. Prescreening begins with finding consumers who meet our underwriting criteria, and ends with the verification that the applicants still meet those criteria. Having information about the consumer at two points in time greatly increases the predictability of risk involving these consumers.

Furthermore, prescreening lowers risks for other reasons as well. For example, there is always more risk when the consumer approaches the bank, as opposed to when the bank solicits the consumer, due to adverse selection. The lower loss rates directly derived from prescreening result in less risk to the bank, and facilitate lower costs to consumers.

The fact is that for a small start-up bank like Juniper, one that needs to grow to a certain size in order to become profitable, the lower incidence of credit loss and greater predictability afforded by prescreening are essential. State laws restricting our ability to prescreen would make it difficult, if not impossible, to offer Juniper cards in that state and would place us at a competitive disadvantage vis-à-vis our larger competitors.

Contents of Credit Reports

The contents of a consumer report are also largely standardized as a result of the national uniformity provisions of the FCRA. The FCRA establishes the time frames during which information becomes "obsolete" and can no longer be included in a consumer report. Generally, adverse items of information that are older than seven years cannot be reported in a credit report (although the time frame expands to ten years for bankruptcy information). The FCRA preempts

state laws with respect to any subject matter relating to information contained in credit reports. This means that, as a general matter, someone's credit report will look the same, regardless of whether they live in Alabama, Vermont, California, or even Delaware.

Let me take a moment to explain why it is important for us to know that the contents of a credit report are uniform across the country. Underwriting credit is a business of evaluating and managing the risk of consumer default. In an effort to evaluate the likelihood of a consumer repaying a debt, the most useful piece of information we can obtain is a credit report. The credit report gives us a snapshot look at the consumer's complete repayment history over the past seven years (at least), and allows us to evaluate the likelihood that the consumer will repay a debt to Juniper. Because the FCRA establishes uniform rules for the contents of a credit report, we have a high degree of confidence that the credit report is complete and up-to-date.

The quality and completeness of the information in credit reports enables us to evaluate the credit risk posed by each consumer more accurately. In addition, the information can help us price the credit according to the risk. In this regard, the more accurately we can assess an applicant's risk, the more accurately we can price the product. This enables us to offer lower prices (*e.g.* interest rates, fees, etc.) and to make credit more widely available. On the other hand, if credit report information were less reliable or complete, we would have to increase our prices or reduce availability to compensate for the unknown risks. Let me give you an example. John Doe applies for a Juniper card. Juniper does not know John Doe, but can obtain John Doe's credit report in order to determine whether to extend credit to him and at what price. John Doe's credit report indicates that he has a solid credit history. Juniper has confidence that the credit report presents a complete picture of John Doe, and therefore Juniper will be able to make a loan to him at favorable rates.

The importance of ensuring the consistency of credit report information is perhaps best illustrated with an alternative example. This time, assume that the FCRA's national uniformity provisions are allowed to expire and John Doe lives in a state that prohibits information more than three years old from being reported. The state has also determined that being less than 90 days late on a payment is not relevant, and therefore does not allow late payments of 30 or 60 days to be reported in a credit report. As a result of the state law, Juniper does not know the complete picture of John Doe's financial history. We would not know, for example, whether John Doe has any delinquencies or bankruptcies that are older than three years. We also would not know if John Doe has any delinquencies of 30 or 60 days, regardless of how old. This lack of information is significant. Although John Doe's credit history may in fact be perfect, Juniper would have to evaluate the application with the understanding that it does not know certain information. In these instances, Juniper may decide to not grant John Doe credit. Alternatively, Juniper may decide to lend to John Doe, but at a higher price in order to account for the additional risk that would exist as a result of the decrease in the quality of the credit report information available on John Doe. In fact, such a law would hurt residents of that state.

It may seem counterintuitive, but the customers with less-than-perfect credit histories may suffer the most if states are permitted to restrict the contents of consumer reports. For example, assume Jane Doe applies for credit. She has been delinquent on a payment by 90 days once (two years ago). Jane Doe applies for credit from a bank. If the bank can see the full credit file, as currently ensured under the FCRA, it can evaluate her application with confidence and

perhaps extend her credit despite the isolated 90-day delinquency. If a state law were to prohibit the reporting of 30- and 60-day delinquencies, as described above, it may be another story. In this instance, the bank would see the 90-day delinquency, but not have any idea how many 30- to 60-day delinquencies Jane Doe has. While a bank today may be willing to lend to someone that has a 90-day delinquency so long as there are not other risk factors on the file, the bank may not be willing to lend to that same person if the states impede the ability of the bank to see the full credit file. In essence, the current law allows banks the opportunity to see whether one or two late payments are aberrations in otherwise good credit histories. State laws limiting the information that can be reported by a credit bureau would rob those consumers on the margin of the ability to demonstrate their true capacity to repay debt.

Furnisher Obligations

In addition to being a user of credit reports, Juniper furnishes information to credit bureaus. Indeed, card issuers like Juniper supply much of the information included in credit reports. In fact, when examining a credit report, we at Juniper find that the most useful, up-to-date information in the report typically has come from card issuers.

We report information about our accountholders regularly to the three nationwide credit bureaus, TransUnion, Experian, and Equifax. Generally, we report information indicating that the consumer has an account with Juniper, the line of credit and current balance on that account, and whether the consumer is delinquent on any payments. We also report when consumers close their accounts with us.

Furnishers have certain obligations under the FCRA, and these obligations are the same across the country as a result of the uniform standards established by the FCRA. For example, a furnisher may not provide information to a credit bureau if the furnisher knows or consciously avoids knowing that the information is inaccurate. If a furnisher determines that information it has reported to a credit bureau is not complete or accurate, the furnisher must promptly notify the bureau and provide any information necessary to make the information complete and accurate. Furthermore, if a consumer disputes the accuracy of information with a furnisher, the furnisher may not provide the information to the credit bureau without a notice that the accuracy is disputed. These accuracy obligations may be enforced by the federal banking agencies, the Federal Trade Commission, and by state Attorneys General.

These obligations were established in 1996 in an effort to address concerns about the accuracy of information received by credit bureaus. The furnisher obligations were carefully crafted to balance between the need for furnishers to provide accurate information to credit bureaus and recognition of the fact that furnishing information to credit bureaus is completely voluntary. In particular, Congress recognized that imposing unreasonable liability or risk of litigation on furnishers could have a chilling effect on the flow of the information that is the lifeblood of the credit reporting system. As part of the delicate balance struck on this issue, the FCRA precludes the states from imposing different standards.

It is important that this delicate balance be preserved. If a state were free to impose stricter liability standards on furnishers and/or allowed class action lawsuits with respect to the furnishing of information to credit bureaus, Juniper and others would be forced to re-evaluate the

practice of furnishing information to credit bureaus with respect to consumers in that state. Indeed, many furnishers may have no choice but to stop furnishing information on consumers in that state rather than face the cost of litigation for an activity which does not produce revenue.

Affiliate Sharing Provisions

Finally, we believe that the national uniformity established with respect to the ability of affiliated entities to share information also must be preserved. In this regard, although Juniper Bank currently does not share information with affiliates, we may do so in the future and believe that the benefits of affiliate sharing should be preserved. For example, information shared among affiliates today can be important in addressing identity theft, controlling credit risks, and in identifying products and opportunities that may be beneficial to consumers. The availability of these benefits would be significantly undermined if states were free to impose their own restrictions on affiliate sharing activities.

Conclusion

The benefits to consumers associated with uniform standards established under the FCRA are clear. As a result of the market that has developed under the uniform framework of the FCRA, consumers benefit from the increased competition fostered by nationwide prescreening. In addition, lenders are able to price risk relatively accurately as a result of the uniform standards pertaining to the contents of credit reports and furnisher obligations, which further lowers costs for consumers. In sum, the national standards in the FCRA enable access to a multitude of credit choices at lower costs than ever before.

Thank you again for the opportunity to appear before this Subcommittee. I would be pleased to answer any questions you may have.