July 11, 2005

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: RIN No. 3064-AC81

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1188

Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Attention: Docket No. 05-10
RIN No. 1557-AC85

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: Docket No. 2005-16
RIN No.: 1550-AB88

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314
Attention: 12 CFR Part 717

Re: Fair Credit Reporting Act Medical Information Regulations; Interim Final Rules

Ladies and Gentlemen:

The National Automobile Dealers Association ("NADA") and the Alliance of Automobile Manufacturers, Inc. (the "Alliance") appreciate the opportunity to comment on the Medical Information Regulations - Interim Final Rules promulgated by your Agencies under the Fair Credit Reporting Act ("FCRA"), as amended by Section 411 of

the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act").[1] NADA and the Alliance support the Agencies' expansion of the medical financial exceptions to cover all creditors including those that are not subject to the direct administrative enforcement authority of one of the Agencies.

Background

NADA and the Alliance are nonprofit trade associations. NADA represents approximately 20,000 franchised automobile and truck dealers that sell new and used vehicles and engage in service, repair and parts sales. The members of the Alliance include nine car and light truck manufacturers: BMW Group, DaimlerChrysler Corporation, Ford Motor Company, General Motors Corporation, Mazda North American Operations, Mitsubishi Motors North America, Inc., Porsche Cars North America, Inc., Toyota Motor North America, Inc, and Volkswagen of America, Inc.

Auto dealers offer their consumers the convenience of financing the purchase or lease of vehicles at the dealership.[2] For most vehicle purchases, the dealer is the consumer's originating creditor. Working with the consumer, the dealer sets the amount financed, annual percentage rate, finance charge, number of payments and other credit terms.[3]

After originating the credit that enables the consumer to buy a vehicle, the dealer frequently sells or assigns the retail installment sales contract to a third party. Several financing sources such as banks, credit unions and non-bank finance companies (including the captive finance companies) typically compete to purchase these retail installment contracts. Consumers directly benefit from the vast array of financing options available at dealerships.

In order to respond to a consumer's request for credit, the dealer has the consumer complete a credit application and obtains the consumer's credit report and credit score. In some instances, the credit report may disclose medical information. In other instances, the consumer may reveal medical information to the dealer either on the application or during discussions with dealer personnel. Dealers, therefore, may receive medical information even if they do not specifically request it.

In addition, dealers may receive medical information indirectly when inquiring about financial issues. For example, in offering a certain monthly payment amount, a dealer will consider a consumer's total debt payments, including medical debts. In deciding which finance source will likely buy a particular contract, a dealer will also consider a

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[1] 15 U.S.C. § 1681c(g). The Interim Final Rule was published for comment at 70 Fed. Reg. 33958 (June 10, 2005).

[2] Consumers finance 92% of the new vehicle purchases, primarily with credit extended by automobile dealerships. This statistic is derived from the Department of Commerce data and data compiled by CNW Marketing Research, Inc., which is found at *www.cnwbyweb.net* .

[3] In setting these terms, the dealer also considers the "buy rate" at which an assignee agrees to purchase the contract, as well as the assignee's requirements for purchase (such as minimum down payment amount).

consumer's total debt obligation, again including medical debts. These considerations are essential for the dealer because, for example, a bank is likely to require a lower debt-to-income ratio than would a sub-prime creditor (or sales finance company). Similarly, before a finance source purchases a retail installment contract from the dealer, the source also considers the consumer's credit report, credit score and medical debts to determine the consumer's credit capacity and credit-worthiness.

Separate Interim Final Rule

In response to numerous comments, the Agencies issued a new, separate Interim Final Rule, which expands the applicability of the medical exceptions to all creditors that are subject to the prohibition on obtaining and using medical information under FACT Act § 411. The separate rule, which will be codified in Part 232 of the Federal Reserve Board's rules, will apply to all creditors, except for those subject to the jurisdiction of one of the Agencies and covered by one of the other five substantively identical rules.[4]

Authority for Separate Rule

NADA and the Alliance believe that the Agencies have the authority and the mandate to create medical information use exceptions that will apply to all creditors, including auto dealers and finance companies. The Agencies' authority is derived from Section 411 of the FACT Act, which requires them to issue rules that will "permit transactions" that might otherwise be precluded by the general prohibition on the use of medical information.[5] Section 411 provides that the transactions should be permitted if they "are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs … [and] to restrict the use of medical information for inappropriate purposes."[6] Section 411 does not restrict the benefit of the exceptions to a particular type of creditor or solely to those entities under the jurisdiction of one of the Agencies.[7]

This interpretation, based upon the plain language of Section 411, is supported by the other FACT Act rulemaking provisions. In some instances where Congress intended to limit a federal agency's rule-making authority to cover only those entities within the agency's jurisdiction, it did so explicitly.[8] In Section 411, Congress imposed no such

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[4] *See* proposed § 232.1(a).
[5] FCRA § 604(g)(5)(A); 15 USC § 1681b(g)(5)(A).
[6] *Id.*
[7] FCRA § 604(g) applies to all creditors within the FCRA definition. It is not limited to bank and federal credit union creditors.
[8] *See, e.g.*, FCRA § 615(e) (Federal banking agencies, the National Credit Union Administration, and the Commission directed to prescribe red flag guidelines and regulations "with respect to the entities that are subject to their respective enforcement authority under Section 621"); §605(h) (Federal banking agencies, the National Credit Union Administration, and the Commission directed to "jointly, with respect to the entities that are subject to their respective enforcement authority under Section 621," prescribe regulations regarding receipt of address discrepancy notice); §621(e) (Federal banking agencies required to jointly prescribe such regulations as necessary to carry out the purposes of the Act and the Board of Governors to

limitation. Instead, Congress made clear that the exceptions should apply broadly to all credit transactions.[9] Accordingly, the Agencies, including the Federal Reserve Board, have acted within the scope of their authority in creating a separate rule applicable to all creditors, including auto dealers and finance companies that would otherwise be subject to the prohibition but ineligible for the exceptions.

Scope of Interim Final Rule

The Interim Final Rule will apply to all "creditors," as the term is defined in Section 702 of the Equal Credit Opportunity Act.[10] This is appropriate because the FACT Act's prohibitions apply to all creditors under the same expansive definition.[11]

In drafting the Interim Final Rule, the Agencies recognized that many creditors, like auto dealers and auto finance companies, have a legitimate need to obtain medical financial information to make sound credit decisions. The Agencies also understood that there would be serious and unintended consequences for consumers if the prohibitions in Section 411 applied to some creditors but the exceptions did not. For example, if auto dealers and auto finance companies were prohibited from considering medical financial information, consumers would lose convenient and competitive financing options offered by dealers. In many instances, dealers have been able to extend credit when a bank would have required a lower debt-to-income ratio that the consumer could not satisfy. Dealers have also been able to assess, based upon a consumer's credit information that may include medical financial information, whether a finance company will take assignment of retail installment contracts thereby permitting the dealer to extend credit to larger numbers of consumers. This ability would be compromised if dealers and finance companies could not consider all pertinent financial information that could include medical information.

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prescribe regulations consistent with such joint regulations with respect to bank holding companies and affiliates of such holding companies, and the Board of the National Credit Union Administration given authority to prescribe such regulations as necessary to carry out the purposes of the Act); § 623(e)(1)(B) (Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities subject to their respective enforcement authority under Section 621, and in coordination as described in paragraph (2)(A), directed to prescribe regulations regarding accuracy guidelines); §628(a)(1) (Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities subject to their respective enforcement authority under Section 621 directed to issue final regulations with respect to disposal of records); § 214(b) (requiring the Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities subject to their respective enforcement authority under Section 621, to prescribe regulations to implement Section 624 of the Fair Credit Reporting Act).

[9] This is similar to the Congressional delegation of authority to the Federal Reserve Board to promulgate regulations that implement the Equal Credit Opportunity Act (12 CFR Part 202), Truth in Lending Act (12 CFR Part 226) and Consumer Leasing Act (12 CFR Part 213), among others. In each case the Board's regulations apply to many entities that are not within the Board's regulatory or enforcement jurisdiction.

[10] *See* 15 U.S.C. § 1691a.

[11] 15 U.S.C. § 1681a(r)(5) and 1681g(b)(2).

The separate rule authorizes creditors to obtain and use medical financial information to determine eligibility or continued eligibility for credit to the same extent as other financial institutions.[12] NADA and the Alliance support the Interim Final Rule and believe that it will permit auto dealers and finance companies to assess credit risks and enable them to continue to provide financing options that might otherwise be unavailable to consumers. NADA and the Alliance also support the examples provided and believe them to be helpful in distinguishing between permissible and impermissible uses of medical financial information.[13]

NADA and the Alliance agree that approval of the Interim Final Rule is essential to ensuring that credit is available to consumers on the most competitive terms.

Other Sections

NADA and the Alliance note that the separate rule does not contain provisions relating to Sections 604(g)(3) and 604(g)(4) of the FCRA. We assume the Agencies did not include these provisions in the separate rule because the FTC's comment letter on the proposed rule stated that it has rulemaking authority with respect to the affiliate sharing provisions of Section 604(g)(3) and the Agencies rules under FCRA Section 604(g)(4) restate the statutory provision. While the Agencies' rules include exceptions for affiliate sharing of medical information that are in addition to those specifically stated in the FCRA, the purposes set forth in those provisions are permitted under Section 502(e) of the Gramm Leach Bliley Act (Public Law 106-102) and, therefore, already permitted under FCRA Section 604(g)(3)(B). However, to eliminate any confusion that could result if the Agencies' rules differ from the separate rule, NADA and the Alliance suggest that the FTC promulgate rules identical to the Agencies' rules under Sections 604(g)(3) and 604(g)(4).

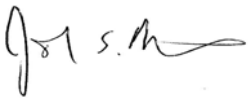
Conclusion

NADA and the Alliance urge the Agencies to adopt the Interim Final Rule. Congress vested the Agencies with the authority to issue the separate rule extending the benefit of the medical financial exceptions to all creditors. The Interim Final Rule will benefit consumers by expanding the exceptions to cover all creditors thereby enabling dealers and non-bank auto finance companies to offer consumers the choice and convenience of competitive financing.

[12] *See* proposed § 232.3(a).
[13] *See* proposed § 232.3(b).

NADA and the Alliance appreciate the Agencies' consideration of these comments. If the drafters of these regulations have any questions, please contact Paul Metrey at 703-821-7040 or John Whatley at 202-326-5584.

Sincerely yours,



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