



GE Card Services
A unit of General Electric
Capital Corporation
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Stamford, CT 0697

March 31, 2000

By Hand Delivery

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th and C Streets, NW
Washington, DC 20551
Docket No. R-1058

Communications Division
Office of the Comptroller
of the Currency
250 E Street, SW
Washington, DC 20219
Docket No. 00-05

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Manager, Dissemination Branch
Information Management &
Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: Docket No. 2000-13

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Proposed Privacy Regulations

To Agency Staff:

This letter provides comments of GE Card Services ("GECS") on the proposed regulations implementing Title V of the Gramm-Leach-Bliley Act ("GLB Act") issued by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Trade Commission (collectively, the "Agencies"). GECS appreciates the opportunity to comment on this very important matter.

GECS is the leading provider of private label credit and card-related financial

services for retailers, manufacturers, corporations, large universities and non-profit organizations and has over \$15 billion in total assets in connection with private label credit card program accounts. Founded in 1932, GECS now works with retail partners representing many industries - department stores, home improvement, specialty retail, home furnishings, electronics, oil and gasoline, healthcare and more.

As you will see, this letter provides a brief overview of the application of the GLB Act and the proposed regulations to private label credit card programs, and then focuses on those provisions of the proposed regulations that most directly impact GECS and its retailer partners.

In enacting the GLB Act, Congress recognized that private label credit card arrangements are unique and raise unusual issues in the context of creating meaningful consumer information privacy protections. As a result, in drafting the GLB Act, Congress created a specific exception to address the unique situation posed by private label credit cards ("PLCC"). Specifically, the text of the GLB Act states:

“[502](e) GENERAL EXCEPTIONS -- Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information --

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with --

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; ...”

There are two key principles underlying the GLB Act's PLCC exception: parity with in-house retailer credit programs, and customer expectations about their information. In including the PLCC exception in the GLB Act, Congress intended to avoid unfairly disadvantaging retailers that choose to have an unaffiliated bank offer credit to the retailer's customers on the retailer's behalf, rather than performing that credit function in-house. To have the law provide otherwise would promote non-economic decisions on the part of retailers (retaining credit functions in-house even where outsourcing is less costly), and increase the costs of credit to consumers. While a limited number of retailers have the resources to offer their customers an in-house credit program, most small and mid-sized companies have no alternative to outsourcing this important feature or forgoing any specially branded card product for their customers.

Congress also recognized that a PLCC cardholder expects the retailer to possess information about her and to use that information to provide the many benefits associated with being a valued customer, the very benefits that incited the cardholder to request the retailer's branded card in the first place. In fact, PLCC cardholders focus almost exclusively on the retailer - not the financial institution. In connection with one of GECS' largest private label programs, approximately 90% of all cardholder inquiries regarding both store transactions and their PLCC credit account initially are made to the

retailer partner, not the financial institution. Also, many PLCC account payments, credit line increase requests and account applications initially occur in-store. When a PLCC cardholder elects to opt out of information sharing on a retailer's PLCC, the cardholder does not expect the opt-out to apply to the retailer's receipt of information (and thereby effectively lose access to direct cardholder services from the retailer as well as to the many benefits of merchandise discounts and other offers for valued customers) – rather, she expects that her opt out applies to third parties unrelated to her PLCC account.

The final Rule should be clarified so that when a PLCC cardholder opts out to protect her privacy, she does not impact the very party with whom she actually has her primary relationship - the retailer. This would harm retailers by constraining retailers' ability to offer coupons and discounts, promotional financing offers, rewards, loyalty programs and the like to their own customers, just because they chose to outsource their credit programs. Likewise, this would harm consumers by eliminating key benefits associated with being a loyal PLCC customer of a retailer, and would increase costs of credit where retailers make non-economic decisions to reject PLCC program outsourcing.

Proposed Private Label Exception Text Inadvertently Narrowed.

The GLB Act provides an exception for disclosures "...with another entity as part of a private label credit card program or other extension of credit on behalf of such entity." The proposed regulations, however, focus this exception on disclosures "[t]o maintain or service the consumer's account with the bank, or with another entity as part of a private label credit card program"

Although perhaps merely grammatical in intention, this provision could be interpreted to limit the intended scope of the private label exception to information used to maintain or service the consumer's account. This interpretation would effectively read the exception out of the Act, since in PLCC programs it is usually the financial institution (or a separate data processor) and not the retailer who maintains and services the PLCC accounts.

Instead, the proposed __.10(a)(3) should be split into two clauses. The revised language, which would be a new __.10(a)(4), would read "(4) to another entity as part of a private label credit card program or another extension of credit on behalf of such entity;". This formulation properly reflects the drafters' recognition that in a PLCC program the private label bank constantly provides information to the retailer on whose behalf the credit is extended because the retailer's ongoing relationship with its customers, the PLCC cardholders, depends entirely upon the ready availability of this information; without this information, the retailer simply cannot meet the needs or satisfy the requests of its customers.

Consent To Information Sharing Is Implicit In Private Label Relationship, And Should Be Acknowledged.

The GLB Act provides, and the proposed regulation incorporates, an exception to the notice and opt-out requirements for disclosures made with the consent of the consumer. In no situation is the expectation and consent of consumers for a “third party” to have access to their credit account information greater than in the PLCC context.

The final Rule should make clear, by way of example, that a PLCC cardholder consents to the disclosure of information to a retailer as a fundamental part of the PLCC relationship, and that the disclosure of this information is essential to the ongoing operation of this relationship. PLCC relationships are essentially three party relationships, pursuant to which each participating consumer obtains an integrated bundle of products from both the financial institution and the retailer. Because the free flow of information between the financial institution and the retailer is integral to delivering the benefits a consumer expects from a PLCC program (e.g., promotional discounts, rebate points, reward and loyalty programs, merchandise discounts, targeted product and service offers), a consumer’s choice to participate in a PLCC relationship should be expressly recognized as including choice for disclosure of the information that is essential to the daily operation of this three-way relationship.

Structuring Opt-Out on a Retailer-by-Retailer Basis Should Be Permitted.

The proposed regulation permits a financial institution to establish its privacy policy on either a customer or product basis, as long as each customer receives a notice that is accurate as to that customer and/or product.

The final Rule should make it clear that a financial institution may provide its PLCC customers with separate notices and opt-out opportunities for each of its PLCC programs. A financial institution operating PLCC programs typically has relationships with many different retailer partners, and consumers often have more than one PLCC administered by a single financial institution. As most PLCC customers focus on their relationship with the retailer partner, rather than on their relationship with the financial institution itself, a global notice and opt-out opportunity from a financial institution would likely confuse consumers expecting to receive individual notices from each retailer with whom he or she has a relationship.

Prohibition on Communication of Account Numbers for Marketing Purposes Unintentionally Broad.

Section 504(b) of the GLB Act provides the regulators with the authority to grant additional exceptions to Section 502(d) that are consistent with the purposes of the GLB Act.

In the PLCC context, the account number is the key customer identifier, and both the financial institution and the retailer are appropriately in possession of and use the number at all times. For example, in several of GECS' retailer programs, cardholders can (and do) make PLCC credit account payments in-store and, as indicated above, many PLCC credit account inquires are first directed at the retailer. It is essential that the retailer partner has access to account numbers to ensure the proper crediting of these payments and prompt response to these PLCC cardholder questions. Likewise, when a court order or subpoena is issued in connection with a domestic relations or other dispute, the retailer is often required to provide information regarding past charging activity which is accessible only through use of an account number and transaction records maintained by the retailer. If a customer wishes to make a purchase in-store and does not have his or her card, upon proper identification the retailer will disclose the account number to the cardholder. Account numbers also are used by retailers to track purchases of goods that are subject to a government-issued recall. In other situations, the retailer may use the account number as a club membership number to ensure the proper crediting of rewards and other membership benefits.

The prohibition on sharing account numbers is intended to address situations where the recipient of the account number does not have another legitimate business need for such information, other than for marketing purposes. The final Rule should make it clear, by way of example, additional exception or otherwise, that Section 502(d) does not prohibit a financial institution from providing account numbers to its retailer partners in connection with PLCC programs. The ready access to such account numbers is essential to the operation of such PLCC programs and Congress simply did not intend to so interfere with long-standing private label relationships.

In addition, the final Rule should make it clear that the sharing of account numbers by a financial institution with its own service provider is not prohibited by section 502(d) if the provider performs marketing services in addition to its other duties. For example, if a financial institution engages a third party to prepare and mail its monthly billing statements, the fact that the monthly billing statements include marketing inserts should not render the transfer of the account numbers to be "for use in ... marketing".

The Determination By The Agencies That Annual Notices Do Not Have To Be Sent To Credit Card Customers Who Do Not Receive Statements Is Essential.

The proposed regulations state that a financial institution is not required to send the annual Section 503 privacy notice to a customer with whom the institution no longer has a continuing relationship. For example, in connection with open-end credit accounts where statements and notices are no longer sent, the institution is no longer considered to have a continuing relationship with the consumer, giving rise to the annual notice requirement.

We applaud the Agencies for this position and the final Rule should retain this

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example. Without this bright-line test, financial institutions would face substantial uncertainty regarding whether private label credit card accounts, which often are kept available for cardholder use despite a year or more of inactivity, would need to be closed to avoid the annual notice requirement.

Also, it should be clarified that the term "notices" in the above example does not include collection notices sent to charged-off accounts. Otherwise, financial institutions will be required to go through the elaborate and expensive process of providing annual notices to consumers in connection with charged-off accounts, the costs for which will ultimately be borne by the customers in good standing.

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We appreciate the opportunity to comment on the proposed regulations, as well as the obvious effort that went into drafting them. If you have any questions or comments, please do not hesitate to call me at 203/357-6980.

Sincerely yours,



Laura E. B. Dawson
Senior Counsel, E-Business
GE Card Services