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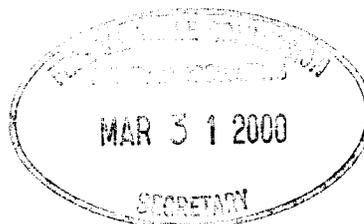
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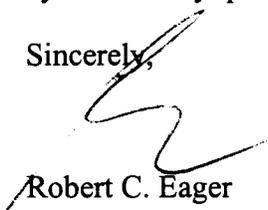
Re: *Privacy of Consumer Financial Information Proposed Rulemaking*

Dear Mr. Clark:

Please find attached one original and five copies of our comments on the Federal Trade Commission's Privacy on Consumer Information Proposed Rulemaking (published in the *Federal Register* at 65 Fed. Reg. 11174, March 1, 2000). The same memorandum was filed with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve, Federal Deposit Insurance Corporation, Office of Thrift Supervision, Securities and Exchange Commission and National Credit Union Administration in response to their respective privacy proposals.

Please contact me at (202)988-8544 if you have any questions relating to our submission.

Sincerely,


Robert C. Eager

RCE/dyj
Attachment(s)

Representative is the construction of the Truth in Lending Act, as discussed in the Staff Commentary to its implementing rules, Regulation Z:

Regulation Z applies to all persons (including branches of foreign banks . . .) that extend consumer credit to residents (including resident aliens) of any state, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation. This will be the case whether or not a particular advance or purchase on the account takes place in the United States and whether or not the extender of credit is chartered or based in the United States or a foreign country. Thus, a U.S. resident's use in Europe of a credit card issued by a bank in the consumer's home town is covered by the regulation. The regulation does not apply to a foreign branch of a U.S. bank when the foreign branch extends credit to a U.S. citizen residing or visiting abroad or to a foreign national abroad.⁷

Federal Reserve Regulations B, E and DD include parallel statements.⁸ The Fair Credit Reporting Act is also parallel because it is administered by the Federal Trade Commission, which has authority only over activities within the United States and its territories and possessions.⁹

E. U.S.-Only Application of Title V

1. To "Customers"

Under Title V, a customer is a consumer with whom the financial institution has a customer relationship. It follows that the United States privacy rules should apply to an account¹⁰ with a United States office of a financial institution, and to the information covered by Title V collected about the customer with that account. If transactions under this account may take place outside the United States (*e.g.*, a credit

⁷ 12 C.F.R. § 226, Supp. 1 § 226.1 .

⁸ 12 C.F.R. § 202, Supp. 1 § 202.1; 12 C.F.R. § 205, Supp. 1 § 205.3; and 12 C.F.R. § 230, Supp. 1 § 230.1.

⁹ 16 C.F.R. § 600, App. § 621.

¹⁰ "Account" is used to refer to all the types of customer relationships that would make an individual a "customer" under Title V.

card transaction), then the application of the Act's privacy rules should apply as if the transaction had occurred in this country. However, if that same customer transfers that account outside the United States (*e.g.*, to a foreign branch), then that consumer's customer relationship would no longer be with a U.S. financial institution and Title V would not apply.

Likewise, if that customer obtains a financial product from an affiliate or subsidiary of that institution abroad, that would not be a United States customer relationship. Title V would not apply to it, even if that customer came into the United States and engaged in transactions in this country permitted to customers from abroad (*e.g.*, using a credit card issued by a non-U.S. institution.)

If, on the other hand, that customer of a financial institution outside the United States later relocated to the United States and became a customer of that same institution in the United States, it would follow that the individual would have become a U.S. customer, and Title V would apply.

2. To "Consumers"

A parallel rule should apply to "consumers." It would be appropriate to apply the Title V protections to those consumers whose contact with the U.S. financial institution would lead to their becoming U.S. "customers." For example, an individual who applies for a financial product and who would become a U.S. customer if the application were accepted would be a consumer with respect to that institution if that application were rejected.

F. A Policy of Clarity and Certainty

A primary objective of the Act is to ensure that the U.S. financial services industry remains competitive in the global marketplace. Underlying this legislation is a recognition by the Congress that U.S. firms do substantial business abroad, that foreign firms are competing in our domestic markets, and that U.S. consumers increasingly avail themselves of financial services abroad, with both U.S. and non-U.S. financial institutions. In this international environment, the Agencies should adopt the policy followed in the other consumer protection provisions cited above and state that Title V does not have extraterritorial effect. Such an express statement would provide clarity and certainty that will benefit both consumers and providers of financial services.