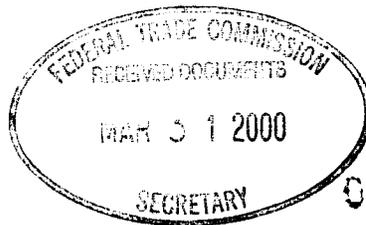


Comerica Incorporated

Comerica Tower at Detroit Center
500 Woodward Ave., MC 3352
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James M. Garavaglia
Senior Vice President



March 30, 2000

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington, D.C. 20551

Robert E. Feldman, Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Docket No. R-1058

Communications Division
Office of the Comptroller of the Currency (OCC)
250 E Street, S.W.
Washington, D.C. 20219
Attention: Docket No. 00-05

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549-0609

File No. S7-6-00

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania, N.W.
Washington, D.C. 20580

Dear Ladies and Gentlemen:

The following comments are provided on behalf of Comerica Incorporated, a \$39 billion bank holding company with subsidiaries that have offices located in the states of California, Florida, Michigan, Ohio and Texas. In addition, Munder Capital Management, a major investment advisory company, is an indirect subsidiary of Comerica Incorporated.

Comerica Incorporated is committed to delivering the highest quality financial services and, as such, strongly supports its customers' expectations of privacy. However, the proposed regulations would impose substantial new legal duties on Comerica. Therefore, the following comments are proposed in the spirit of ensuring that the privacy regulations are as workable and reasonable as possible while also ensuring that they do not go beyond the Gramm-Leach-Bliley Act (the "Act").

PREAMBLE

As Comerica's subsidiaries are subject to different regulatory authorities, it is imperative that the agencies strive for uniformity among the different privacy regulations adopted. Uniformity is integral to the successful implementation of the regulations by financial service providers.

In addition, the Act mandated that the regulations be instituted for all providers of financial services. However, the Federal Trade Commission (the "FTC") has elected to limit the applicability of the FTC regulation to firms "significantly" engaged in financial activities. It is ironic, and unfair, that the FTC proposal would exempt firms with which Comerica competes from the privacy regulation. We urge the FTC to expand the scope of its proposed regulation to confer privacy protections on customers of all firms collecting confidential customer information in order to ensure a level playing field among providers of financial services.

The proposed regulations go beyond the rules contemplated by the Act. We believe there are five examples of this:

- (1) providing that a "consumer" may be someone who does not obtain a service or product;
- (2) including public information within the definition of "nonpublic personal information;"
- (3) including nonfinancial information within the definition of "personal financial information;"
- (4) requiring that the Section 503 notice be given prior to a transaction while the Act only requires it be given at the time of a transaction; and
- (5) requiring that the Section 503 notice cover the integrity of information.

It is without question that privacy rights are protected under the U.S. Constitution. Those rights, however, must be balanced against all other constitutionally protected rights, including the right to free speech. The regulations, as proposed, go beyond what is necessary to protect the privacy rights of the individuals dealing with financial service providers. The proposed regulations confuse the issue of privacy with that of "nuisance" marketing. We encourage you to consider that the individual should make the ultimate decision in determining what is or is not "nuisance" marketing. (In fact, many state and Federal agencies currently sell information on individuals for the purposes of marketing.) We encourage you to consider balancing the right to privacy and the right to free speech when deciding on the final provisions of the regulations.

.1 Purpose and Scope

As per the agencies request we wish to comment that these rules should apply to foreign financial institutions that solicit business in the United States but that do not have an office in the United States.

3 Definitions

(b) (1) Clear and Conspicuous

It is likely that many states will enact privacy laws requiring different and conflicting disclosures and opt in/opt out requirements. As a practical matter, it will be very difficult, if not impossible, for disclosures to be as clear as possible for users of financial services if the disclosures are to be governed by as many as 51 different sets of laws. The agencies should provide that financial service providers will be subject to a single state privacy law, e.g. the law of its home state or as specified in the agreement with the customer.

In addition, the rules do not address a myriad of practical problems that will arise for financial service providers like Comerica with operations in multiple states. Comerica has many customers who are retired and who spend part of the year in Michigan and part of the year in Florida, where Comerica conducts a significant amount of trust business. It is possible and likely that a single customer could have a checking account in both locations, or a checking account in Michigan and a trust account in Florida. How will the law apply if both states pass privacy laws, or if the customer “opts out” in Michigan but not Florida? The agencies need to provide clear, definitive and practical guidance for all such multiple state/multiple account situations.

These ambiguities are more than theoretical. They can well be the basis of private causes of action¹ against Comerica for having failed to provide “clear and conspicuous” disclosures in violation of the final regulations. Again, we believe the focus of the Act is protection of an individual’s privacy, not increased legal processes.

(e)(1) Consumer

The precise meaning of an individual’s “legal representative” needs to be clarified. This term can be construed as a reference to the executor/executrix or administrator/administrix of the individual’s estate or a reference to an individual’s conservator or guardian or agent.

(e)(2) Examples of Consumer

The Act defines “consumer” as one who “obtains a product or service.” However, the first example covers persons who apply for a financial service, but do not obtain such service. Therefore, we ask that the regulations be modified such that they are not more expansive than the Act.

¹ Without doubt, private causes of action will be asserted through various state acts other than these regulations directly.

Comerica's issue with this example goes beyond legal theory. Once a consumer (as defined) opts out, Comerica must forever monitor any information coming into its system to ascertain whether any "opt out" consumers are included to ensure that their information is not shared. While the balance of costs and benefits may suggest that this makes sense for actual customers, it makes no economic sense in the case of individuals who do not obtain a service from Comerica. An example of the inordinate burden would be a situation in which Comerica purchases a prospective customer list from a third party, as long as 10 years after the regulations go into effect. Before this information can be shared with a marketing firm, Comerica will be required to perform a cross check of all of the prospective customers on that list against a data base of all individuals who applied for financial services over the previous 10 years, but who never obtained the service and who opted out.

Example (v) is somewhat confusing and appears to be misplaced. It covers individuals who have loans from a financial service provider, which would appear to fall within the regulations' definition of "customer" and perhaps would be more appropriately placed under that definition.

(h) Customer

Examples (ii) (A) and (C) regarding the lack of a continuing relationship should be included under the definition of "consumer."

Example (ii)(B) raises an interesting problem that should be addressed by the regulations. The example properly states that there is no continuing relationship in the situation where a financial institution sells a loan along with the servicing rights. However, we request that all loans be treated the same when servicing is sold regardless of asset ownership.

For example, under the proposed regulations, in a situation in which a financial service provider sells the servicing rights but still "owns" the loan asset, the customer relationship would continue and the financial institution would have an ongoing duty to provide annual disclosures to the borrower. However, since the servicing is in the hands of a third party, the financial service provider would have considerable difficulty and expense in trying to provide the disclosures if the servicer does not cooperate. In essence, the servicer would be in a position to place the financial service provider in violation of the regulations by simply refusing to undertake the expense of providing the disclosure. This potential is becoming greater every day as mortgage and credit card servicing is consolidated throughout the industry.

Additionally, one very important clarification that needs to be made in the definition of "customer," "consumer" or both is that financial service providers have no responsibility to provide notices or opt out rights to trust beneficiaries, be they pension fund beneficiaries, 401(k) trust beneficiaries, or beneficiaries of personal or testamentary trusts. The beneficiary has nothing to do with the selection of the financial institution for any of these services. Thus, to the extent the agencies wish to promote a Regulation Z-type

regime (“shopping disclosure”) of ensuring that decision makers are informed about the financial service providers privacy policies before deciding to do business with the financial service provider, no useful purpose is served by requiring financial service providers to treat beneficiaries as “consumers” or “customers.” We believe the fiduciary duties required by these trusts should address any privacy concerns.

(k)(2) Financial Service

The regulations provide that the data or information collected relative to the potential of providing a financial service is in and of itself a financial service. This is illogical and a misinterpretation of the Act.

Alternative A vs. Alternative B

(n) Nonpublic Personal Information

Alternative A permits the use of information only if it is actually obtained from a public source and Alternative B permits the use of information if it could have been obtained from a public source. Not only do we strongly favor Alternative B, with modifications and clarifications, we also believe that the Act provides only for Alternative B.

Regardless of Alternative A or B, the definition is extremely unclear and should be simplified as follows: nonpublic personal information, such as net worth, account balances, is information that must be attached to either name, address or phone number to be identifiable. In other words, name, address or phone number by themselves or as an aggregate should not rise to the definition of nonpublic personal information.

Another example of confusion related to this definition is the specific invitation for comment on whether the definition of “nonpublic information” would cover information about a consumer that contains no indicator of a consumer’s identity. We fail to see what conceivable privacy interest any individual has in blocking the sharing of aggregated data or any kind of data in which he or she cannot be identified.

The source of the information (e.g., a telephone book or an application) does not bear on whether it is public and the regulations go beyond the Act in so providing. The Act does not provide that the fact of a customer relationship is per se private. It is illogical to provide that publicly available information in a phone book is nonpublic; it is equally inappropriate to categorize an address and phone number as financial information.

Finally, we need to know how the regulations wish financial service providers to deal with unpublished telephone numbers and addresses. Do the regulations suggest we monitor this distinction? If so, this distinction will be almost impossible for financial service providers to monitor depending on the source of the information. Therefore, we encourage a practical approach in the use and coverage of name, address and phone numbers.

(o) Personally Identifiable Financial Information

We are concerned that the definition of this term is broader than the Act permits by stating that Personally Identifiable Financial Information includes identification of a customer who has been a customer of a financial service provider. While the burden of identifying a present customer may be limited, the burden of tracking all past customers some years after the customer relationship has been terminated will be extremely onerous. We ask that this definition be clarified such that it is not more expansive than permitted by the Act.

In addition, the regulations need to make it clear whether or not data such as age, income and car ownership are also defined as non-public personal information. Lifestyle information like this can be obtained from public sources, but the information as provided on an account/application may be more accurate.

Further, the agencies need to clarify whether or not financial service providers can use an individual's information for modeling purposes even though the individual has opted out and we would be excluded from passing that information on to a third party for marketing solicitation.

.4 Initial Notice

As a practical matter, it may be very difficult for some financial service providers to provide notices before action is taken by the customer, the timing of which a financial service provider does not control. We prefer a rule that permits the initial notice be sent out, in the case of loans, with the coupon book. If the agencies insist that initial notice be provided to persons not obtaining a service from the financial service provider, we would urge that the rule permit, in the case of loan applications, the notice to be sent with the Regulation B adverse action notice.

Additionally, giving a consumer thirty (30) days to opt out after receipt of the initial notice renders the marketing lead of little value. A more realistic approach would be an abbreviated initial disclosure with an immediate opt out question which must be addressed prior to completing the transaction. This would preserve the disclosure and opt out requirements and yet not eliminate the economic value of the information for either the financial services provider or the consumer.

The customer relationship examples regarding financial, economic or investment advisory services where an individual never acts upon a plan for those services need to be clarified. Technically, this individual is not yet a customer; however, it appears that annual notice requirements may be imposed. At minimum, the customer termination rules should address this issue.

(c) When the Financial Service Provider Establishes a Customer Relationship

It is confusing for the regulations to define "customer relationship" in one place and then have a provision under "Initial Notice" explaining when a financial service provider establishes a customer relationship. At a minimum, these examples should also be included in the definition section of the regulations so as to have a uniform interpretation of customer relationship.

Further, safe deposit box rentals should be treated like ATM transactions, i.e., as one-time non-ongoing transactions, giving rise to "consumer" status rather than "customer" status. This would then result in the provision of an initial notice only if the financial institution wished to share the information. We believe this approach is consistent with the policy goals of the Act and regulations, and, as a practical matter, would be absolutely essential to spare extraordinary costs. At many financial service providers, safe deposit box rentals are not centrally administered, but rather, are managed at the branch level. Accordingly, it would be virtually impossible to administer properly and at reasonable cost a system in which initial notices and annual notices are provided to every safe deposit box key holder.

Another example that needs clarification is when a person applies for a loan, is approved, but never opens the account. This would be typical for indirect lending arrangements where a financial service provider would approve the credit but not purchase the ultimate extension of credit. Do we need to monitor indirect loan applicants as customers or consumers?

Since so many issues arise due to the regulations' expansion of the Act to include non-customers-consumers it is again strongly urged that the regulations be solely dedicated to active customers receiving a service or product.

(d) How to Provide Notice

We believe that it is absolutely clear from the proposed regulations that a single form of disclosure could be used by every holding company's subsidiary, regardless of which regulatory agency governs it or the status of the subsidiary. This point is so important to multi-bank holding companies such as Comerica that we urge the agencies to expressly so provide in the regulations.

We also urge, in the case of joint accounts and other accounts with multiple owners, that the final regulations require notice only to a single account holder, i.e., the account holder to whom statements are normally mailed. Nonetheless, systems constraints at various financial service providers suggest that, if one owner of an account opts out, the financial service provider should have the flexibility to opt out the entire account.

As discussed previously, the issue of trust beneficiaries, 401(k) beneficiaries and pension beneficiaries needs to be addressed in a manner that does not require notice, as no useful purpose is served by requiring

financial service providers to treat beneficiaries as “consumers” or “customers.” We believe the fiduciary duties required by these trusts should address any privacy concerns.

The proposed regulations provide for an exception to allow subsequent delivery of notice. We believe that the regulations should provide examples.

One of the examples provided in (5) (i)(D) suggests that, in an isolated transaction with a consumer, such as an ATM transaction, notice should be posted on the ATM screen, which is onerous and inconvenient to both the consumer and financial service provider. We have heard from industry experts that to be “fully” compliant with the regulations, it is estimated that the initial notice may approach 30 pages. If that is the case, requiring that the notice be posted on an ATM screen (this for a person who, by definition, would not have an ongoing relationship with the financial service provider) would appear to be substantial “overkill”. We would urge that, in isolated transactions, such as ATM transactions, an abbreviated form of notice should be permitted along with an opt out; perhaps along the lines of the ATM fee disclosure required by the new law. In addition, we assume that this option would provide for the ability of the financial service provider to deny the transaction if the customer chose to opt out. An abbreviated disclosure also would address any security issues with a consumer using an ATM for a significant period of time and reading a complex disclosure and inadvertently becoming prey for criminals. The opt out provision for ATM transactions needs to be significantly modified if not eliminated all together. It is, quite frankly, specious.

A practical problem with which we have had to deal when we previously sent out privacy principles to our customers was whether we had any further need to deal with customers for whom our mailings were returned by the Post Office. Of course, that was under an era in which we had no legal duty to send such notices. We recommend that the regulations be clarified such that any obligation on the part of the financial service providers to send initial or annual notices would be met by mailing to the address appearing on its records. There should be no further obligation to track down customers whose addresses are not kept current by the customer.

.5 Annual Notice to Customers Required

We believe that the regulations go beyond the statutory intent by requiring the annual notice to carry an opt out right. The Act only requires opt out to be given once. However, the proposed regulations require an opt out right which not only goes beyond the Act but also beyond the Fair Credit Reporting Act (the “FCRA”), which must also be described in the annual notice.

While this section does provide that no annual notice to terminated customers is required, it does not address the potential need to monitor these former customers as consumers for an extended period of time. We ask that the regulations specifically address the time period for monitoring compliance with previous opt out by consumers and former customers. Otherwise, it is possible under the proposed regulations that

financial service providers will feel obligated to undertake unlimited monitoring. This potential requirement is not only beyond the statutory intent but could also result in undue burden.

We understand that the SEC may have specific requirements as to when a customer is no longer considered a customer for other purposes. Needless to say, it is necessary for this requirement and the regulations to be consistent.

A financial service provider should be permitted to provide its privacy policy on its Web site as long as the customer is an Internet user and has been informed that the policy is located on the site.

In addition, an opt out should sunset after seven (7) years in the same manner as contract causes of action, which typically have a statute of limitations of up to seven (7) years.

_.6 Information to be Included in Initial and Annual Notices of Privacy Policies and Practices

The use of categories, while appearing as a practical way of disclosing the best information to the individual, will actually result in a notice so cumbersome that it will be rendered unusable by the individual. It is our recommendation that the agencies remedy this issue by developing model forms for initial and annual notice, as has happened in other areas of consumer law. Otherwise at this point, it appears that many in the industry are unclear as to the level of specificity the regulators expect.

The regulations require financial service providers to disclose policies and practices concerning not only confidentiality and security of information but also integrity of information. Integrity could be interpreted as a duty to ascertain the accuracy or correctness of the initial information. While integrity of information is very important, it is clearly not part of the Act and thus we ask that it not be included in the regulations.

We also believe that the effect of the annual opt out notice requirement will be to create a de facto annual opt out right from affiliate sharing under the FCRA even though that is clearly not required by the FCRA. FCRA, of course, only requires a one-time notice to opt out, but the effect of the proposed regulations will be to make it annual.

The ability to describe categories before we use them sounds helpful but in reality gives very little assistance. Especially in light of rapidly changing technology, it is difficult to predict what opportunities will exist in the future. A good example of this is the escalating use of "screen scraping" or account aggregation.

The requirement regarding who within a financial institution has access to nonpublic information should be addressed by existing internal policies covering employee access to information and notification of that fact should satisfy the requirement.

The disclosure of measures to protect against threats and hazards may disclose information to “third parties” who are always searching for ways in which to conduct fraud. We ask that you review this requirement as to its practical value to the individual.

_.7 Limitation on Disclosure of Nonpublic Personal Information About Consumers to Nonaffiliated Third Parties

It is important that the final regulations take into account systems problems regarding effectuating an opt out request once it has been received from a consumer/customer. Most financial service providers will not be able to respond immediately to such a request if, for example, a list has already been prepared but not delivered to the third party. A potential solution would be to determine proper opt out based on when we develop the list for the third party and not when they use it.

The proposed regulations seem to require that a financial service provider maintain a record of a consumer’s/former customer’s opt out indefinitely and honor it indefinitely. As discussed previously, that means every list of prospective clients will have to be reviewed to remove the name of consumers/former customers who opted out years ago. This burden becomes an impossibility when changes to names, addresses and phone numbers are considered. This not only goes beyond the intent of the Act, but it also goes beyond any reasonable expectation of privacy a consumer/former customer would ever have. An opt out should sunset after seven (7) years in the same manner as contract causes of action, which typically have a statute of limitations of up to seven (7) years.

_.8 Form and Method of Providing Opt Out Notice to Consumers

As discussed previously, opt out notices, in the case of joint and multi-owner accounts, should only be required to be mailed to the primary account holder at the last known address for the account in our records.

The timing requirement for change in terms should permit the notification to go only to those customers affected immediately and all other customers could then be notified in the next annual notice mailing. This would allow the customers who are affected to be promptly notified without the organization incurring an additional mailing beyond the annual notice to the entire customer base. This is a critical financial issue and needs to be addressed practically and clearly by the regulation.

The manner in which the sections regarding continuing right to opt out and duration of opt out give us pause as to the practicality of maintaining information forever for reasons discussed previously. It is necessary for there to be a sunset provision in the regulations to permit reasonable and practical maintenance of opt out information.

_.9 Exceptions to Opt Out Requirements for Service Providers and Joint Marketing

The regulations need to exempt the thousands of service contracts currently in force that may not have been drafted with the specific foresight that the regulations were forthcoming and which therefore may not provide for the specific maintenance of confidentiality and limitation upon use of information required in

subsections (a)(2)(i) and (ii). The regulations should apply prospectively to new service contracts, but should grandfather existing contracts. Otherwise, there could be major service disruptions on the effective date of the regulations.

_.10 Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions

Sub-section (b)(2) also needs to be explicitly clarified by further example in that when a securities broker purchases mutual fund shares for a customer, it is "necessary to effect, administer, or enforce a transaction" for the broker to provide nonpublic personal information about the customer to the mutual fund.

_.11 Other Exceptions to Notice and Opt Out Requirements

We recommend that the final regulations expressly mention the filing of Suspicious Activity Reports (SARs) in good faith. This addition would protect financial service providers against lawsuits by the subjects of such reports from asserting that the filing of SARs violates the Act or the regulations.

It should be clarified that the consent in subsection (a)(1) should not have to be written and may even be negative consent, i.e., silence in response to an offer of an opportunity to withhold consent. It should also be provided that consent may be in a positive or negative form to give financial service providers and customers maximum flexibility in all situations.

_.12 Limits on Disclosure and Re-Use of Information

The proposals invite comments on specifically whether the rules should require financial service providers to develop policies and procedures to ensure that third parties comply with limits on re-disclosure. It is impractical for financial service providers to assume the role of governmental enforcement. This type of unfunded mandate would harm the party who is compliant (e.g. the financial service providers) and provide virtually no incentive for the third party to comply. To be successful, it is necessary for the law to impose restrictions on the third parties and provide for enforcement through the various governmental agencies.

_.13 Limits on Sharing of Account Number Information for Marketing Purposes

The proposed regulations merely restate the statutory prohibition. We believe that the statutory prohibition needs considerable clarification and we propose a number of fixes that restrict the prohibition to only the most appropriate cases:

One obvious such fix, probably the easiest, would be, using the authority given in section 504(b) of the Act, to permit account number sharing with customer consent. It is paternalistic to prohibit a customer from consenting to share this information, yet that is what the Act and proposed regulations do.

Another fix would be to construe and define the term "use" as narrowly as possible, i.e., actual possession by the persons making the telephone calls or placing the marketing letters in the mail, so that practical and reasonable uses of the account numbers can occur, e.g., for billing purposes after a sale has been made.

We would have no problem whatsoever in conditioning that any such sharing of the account number be encrypted. However, we have a major problem with the Act and the proposed regulations purporting to prohibit our transferring account numbers to bill a customer after a third-party marketer has made a sale to such customer, all on some theory that the billing is part of the marketing effort.

Finally, another option would be for the regulations to apply this prohibition only to those cases when a non-financial marketing effort is contemplated. It is assumed that the joint marketing agreement exception would address financial service offerings and permit account number sharing in joint marketing agreement situations. Otherwise, smaller financial service providers will be at a disadvantage in providing financial services to the public because of the inability to address a individual's request internally without the use of service providers. Larger financial institutions have internal operations which would not be impacted by the use of the account number because they can choose to perform all of the process internally.

_.14 Protection of Fair Credit Reporting Act

The effect of the annual opt out notice requirement will be to create a de facto annual opt out right from affiliate sharing under the FCRA even though that is clearly not required. The FCRA only requires a one-time notice of opt out right, but the effect of the proposed regulations will be to make that notice annual.

_.15 Relation to State Laws

As stated previously, we find the requirement to follow numerous state laws for the same consumer very problematic. It is possible that we would need to comply with 50 individual state laws, and in many cases more than one state for each consumer. A single consumer dealing with a multi-state financial service provider may be faced with an opt in requirement in one state and an opt out in another. Disclosures, by definition, will be cumbersome and confusing as they try to explain consumer rights under different laws.

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Further, conflict of laws principles would have to be used for transactions involving more than one state. For example, a transaction initiated by phone, mail or computer in one state to a financial service provider in another would raise questions of which law applies.

In addition, it is imperative that this issue not be further compounded by a lack of uniformity among the proposed regulations.

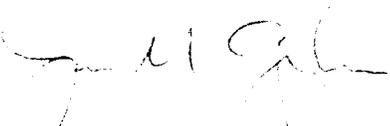
While the regulations cannot preempt state law, they can simplify the issue by providing that an institution would be subject to a single state privacy law, e.g. the law of its home state. In addition, the U.S. Constitution's Commerce Clause requires preemption of state laws because of interference with interstate commerce. The Act permits a method of addressing this issue through its clear and conspicuous requirements.

.16 Effective Date; Transition Rule

We urge that a transition period of at least 18 months be permitted. There are many reasons for this, including the time it will take for banking organizations and others to gear up for this major new area of compliance. Another reason is the burden on the Postal Service if the regulations are implemented as currently recommended. A November 12 effective date would require a December mailing of initial notices to existing customers. We believe that customers will be deluged with privacy disclosure notices from numerous sources, and the volume of privacy mailings in conjunction with the holiday mail may overwhelm the Postal Service. The following month of January 2001 also would combine the privacy disclosure mail with the large volume of income tax mailings that go on that month. Accordingly, we believe that an 18 month implementation period would be best in that it would allow a period of time to review process and procedure without the threat of legal action, it would allow for a more manageable burden on the Postal Service and it would follow the previous practices of the regulators when modifying various consumer regulations.

In closing, we appreciate the opportunity to comment on these very important proposals.

Sincerely,



James M. Garavaglia
Senior Vice President
Director of Public Affairs
Corporate Privacy Officer