March 31, 2000

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

Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552

Re: **FEDERAL TRADE COMMISSION PRIVACY RULE, 16 CFR PART 313 - COMMENT OFFICE OF THRIFT SUPERVISION, DOCKET NO. 2000-13**

Household Automotive Finance Corporation ("HAF") is a leading provider of auto-secured consumer finance in the United States. HAF and its subsidiaries make auto loans and purchase motor vehicle retail installment sales contracts throughout almost all of the United States, and hold state lending licenses and motor vehicle sales finance licenses where required. In addition, HAF and its subsidiaries provide auto loan marketing, origination, and processing services to its federal thrift affiliate, Household Bank, f.s.b. ("Household Bank"), for auto lending by Household Bank. HAF's primary customers are middle-market Americans, a core consumer base that HAF's affiliated companies have been serving for over 120 years. HAF's and Household Bank's auto-secured finance products are offered by mail, the internet, alliance marketing, or through auto dealers. HAF manages $3.1 billion in auto-secured receivables and services approximately 250,000 accounts.

We appreciate this opportunity to comment on significant issues raised by the proposed privacy Rule, issued by the Federal Trade Commission ("FTC") and the Office of Thrift Supervision ("OTS"), among other federal agencies, to implement the Financial Privacy Title of the Gramm-Leach-Bliley Act ("GLB Act"). Although the Rule proposed by the FTC and the Rule proposed by the OTS differ to some degree, we will address both proposals simultaneously and note differences where appropriate.

The proposed Rule goes far beyond the language and intent of the GLB Act. As a result, unfortunately, the proposed Rule could create unintended consequences that may hinder the continued development, distribution, and availability of consumer financial products and may in the process harm consumers who rely on the availability of consumer financial products. In addition, if left unchanged, the proposed Rule could potentially weaken the national economy, its sophisticated credit and payment system, and other aspects of the national financial services infrastructure.

**DISCUSSION AND ANALYSIS OF SPECIFIC ISSUES**

1. **Clear and Conspicuous (__.3(b)):**

The proposed definition of "clear and conspicuous" in __.3(b)(1) is reasonable. The listing of examples in __.3(b)(2), however, is unwarranted and could result in costly confusion. Parts of the list are vague (e.g., the requirements of "wide" line spacing, "ample" margins," and "easy to read" typeface). Some requirements are superfluous (e.g., the requirement that the notice avoid "boilerplate explanations that are imprecise and readily subject to different interpretations"). Thus, we believe that the agencies should not include proposed __.3(b)(2) in the final Rule.

2. **Definitions of "Customer" and "Consumer" (__.3(e) and __.3(h)):**

Section 501 of the GLB Act states the following:

> It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its *customers* and to protect the security and confidentiality of those *customers'* nonpublic personal information. [*Emphasis added*.]

This statement shows a clear congressional intent that the purpose of the legislation and its accompanying burdens were meant to protect actual, existing *customers* of financial institutions, rather than a broad, amorphous, virtually indefinable class of individuals who approach financial institutions daily for various purposes. Throughout the GLB Act, Congress used the slightly different term "consumer," but in Section 509(9) limited it to "an individual *who obtains*, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes." [*Emphasis added*.] The definition of "consumer" in the GLB Act requires that a financial product or service be obtained – i.e., a customer relationship has been established. Congress clearly did not intend that a significant group of individuals who are neither the financial institution's "customers" as referenced in Section 501, nor its "consumers" as defined in Section 509(9) should be provided with the full range of rights and notices included in the regulatory proposal. This position is further supported by Section 509(11) of the GLB Act, which provides that the "time of establishing a customer relationship" in the credit context means "the time of establishing the credit relationship with the consumer,"[1] evidencing that there is a specific point in time when an individual actually fully becomes a "customer" and subject to the protections of the GLB Act.

[1] While Section 509(11) does allow for this timing of the customer relationship to be further defined by Rule, the Act has narrowed the possibilities for credit products by providing the specific example for credit relationships which is cited above.

The definition of "consumer" in the proposed Rule, on the other hand, includes individuals who "apply to a bank for credit . . . regardless of whether credit is extended," individuals who provide nonpublic information for prequalification purposes, and individuals who seek other types of financial advice, whether or not a customer relationship is created. The GLB Act covers only individuals who actually *obtain* a product or service, as provided by Section 509(9), whereas the proposed Rule would cover individuals who *seek to obtain* a product or service.

***Eliminate Separate Definition of "Consumer":*** We believe that the agencies should not extend the GLB Act privacy procedures to the group of "consumers" as defined in __.3(e). The definition of "consumer" should be equated with the definition of "customer" and should be as set forth in Section 509(9) of the GLB Act. The broad definition of "consumer" in the proposed Rule and the associated obligations it entails would result in undue costs and burdens to financial institutions and individuals that are not required, and much less contemplated, by GLB Act. No legislative directive exists to expand this definition further by Rule and no legislative mandate exists to provide to "consumers" as defined by the proposed Rules the full privacy notice and opt out procedures that are required under Section 503 for the smaller group of "consumers" as defined by the GLB Act. The result of this expansive definition is to add burden, cost, and complexity to processes that are intended to help individuals to shop effectively for credit and other financial products.

3. **Providing Disclosures to "Consumers" (__.3(e)):**

While it is important for financial institutions to maintain the confidentiality of any nonpublic financial information provided to financial institutions by individuals who do not obtain a financial service or product from the financial institution, and while it may be reasonable for financial institutions to inform such individuals that their information could be shared with others, the GLB Act scheme simply does not require for these individuals the full-scale notice procedures that are required for "consumers" as defined by the Act.

***Limited and Modified Disclosures:*** We suggest that if the agencies decide to expand the class of individuals protected by the Act to include individuals, that only modified and limited disclosures should be required for such individuals. For example, the agencies could require only that abbreviated information on possible information sharing be displayed, for instance, on the desk of a loan officer or on a website, or provided orally if the transaction occurs by telephone (with possibly the option that the individual can request a written copy).[2]

***Single Disclosures for Multiple Creditors:*** In addition, where internet sites or other loan application programs allow applicants to prequalify with numerous lenders simultaneously, one such abbreviated notice that the information is being submitted to several parties should suffice. This approach should reduce overhead costs and potential customer confusion, while enabling the

[2] In contrast to proposed __.4(d)(5)(ii)(A) and __.7(b).

development of new delivery channels for financial products that are able to cost-effectively serve a wide array of individuals, unhampered by costly and restrictive disclosure procedures.

When an individual applies to a motor vehicle dealer for credit, for example, the dealer may forward the credit application to several lenders for review. Requiring each lender to provide detailed privacy disclosures to the applicant merely inundates the applicant with complex disclosures that will most likely be ignored. A more helpful requirement is for the dealer to provide one notice to the credit applicant regarding the possibility of information sharing.

### 4. <u>The Customer Relationship</u> (__.3(i)(1) and __.5(c)):

We believe that the Rule should allow financial institutions to reasonably determine how to track their accounts, including new, pre-existing, open, or dormant accounts, in order to determine "customer" status. The applicable language in Section 509(11) of the GLB Act, that the "time of establishing a customer relationship" is "the time of establishing the credit relationship with the consumer," is a straightforward provision that should allow particular financial institutions to develop and follow their *own* policies and procedures to determine the time a customer relationship is established and to track open and dormant accounts. The definition of "establishing a customer relationship" as proposed, however, is imprecise and the examples are unhelpful.

***Establishing the Customer Relationship:*** The proposed rule is insufficient because different financial institutions may track dates in different manners. For example, it is unclear at what point a consumer "opens" a credit card account – upon application, mailing, underwriting approval, receipt of the card, receipt of the agreement, enabling the card to make transactions, signing the card, or first use of the card at a merchant. In addition, it is unclear at what point a consumer "opens" an auto loan – upon application, approval, purchase of the vehicle, driving the vehicle, signing the purchase order, signing the credit agreement, or when the finance company purchases the contract from, and pays, the motor vehicle dealer.

It would be better simply to provide in __.4(c)(2)(i) that a credit relationship is established at the time the financial institution opens or establishes the credit account for the consumer under its policies and procedures. This way, financial institutions would be able to have a consistent approach that applies to all consumers, rather than a haphazard and uncertain standard which each consumer could interpret differently.

***When does the Customer Relationship End?*** The rule as proposed is ambiguous as to who is a "customer," or when a person ceases to be a "customer," by including such determinative words as "communication" with the customer (__.5(c)(2)(iv) (OTS) and __.5(c)(2)(iii) (FTC)) - a word that could have vastly different meanings depending upon the product or situation at issue. Is a marketing letter or telephone call considered "communication"? A required 1099 form? A letter from counsel relating to litigation relative to an account that is not yet dormant under the bank's policies? An attempt to contact a non-delinquent debtor's bankruptcy attorney to find out if in fact the debtor has filed or plans to file?

The confusion caused by such broad terms and their attempt to cover a myriad of financial products and services could be eliminated by simply allowing each financial institution to follow reasonably developed policies customized for the various products and services it offers, both for the time and manner of establishing a customer relationship and for the time and manner that the customer relationship ceases. Many such policies are likely in place and have been (and could continue to be) reviewed by examination staff.

5. **<u>Nonpublic Personal Information</u> (__.3(n)):**

This most critical section of the proposal provides the farthest variation from the clear language of the GLB Act, providing an unworkable and, in some cases, unsupportable interpretation of the GLB Act.

Section 509(4)(A) of the GLB Act defines "nonpublic personal information" as "personally identifiable" "financial information" that is:

> (i) provided by a consumer to a financial institution
> (ii) resulting from a transaction with the consumer or
> (iii) otherwise obtained by the financial institution.

Senator Allard confirmed his understanding of these provisions with Chairman Gramm, who agreed on the record that:

> [T]he term "nonpublic personal information" as that term is defined in section 509(4) of the GLB Act, subtitle A, applies to *information that describes an individual's financial condition* obtained from one of the three sources as set forth in the definition, and by example would include experiences with the account established in the initial transaction or *other private financial information*. [*Emphasis added*.][3]

Similarly, in his comments in support of GLB Act, Senator Hagel noted that the legislation's privacy provisions protect "the privacy of customers' *financial information*."[4] Thus, the unambiguous language of the statute and the clear legislative intent of the provision is to protect private, personal information that is solely of a financial nature.

***The proposal ignores the qualifier "financial" in the definition:*** In stark contrast to the language in the GLB Act and the legislative history, the proposed rules in __.3(n) and __.3(o)(1) provide an immensely broad definition of nonpublic personal information to include "personally

[3] 145 Cong. Rec. S13883-01 at S13902 (November 4, 1999)
[4] 145 Cong. Rec. at S13876 (November 4, 1999)

identifiable financial information," which then includes essentially all information "provided by a consumer," "resulting from a transaction with the consumer," or otherwise obtained by the financial institution. The proposed definition would cover nearly every piece of data ever collected by a financial institution regarding its customers

***Recommended definition of "nonpublic personal information":*** Instead, we recommend that the final definition mirror the statutory language and Senator Allard's restatement. "Nonpublic personal information" that is personally identifiable should be information that "describes an individual's financial condition" or other "private financial information." The GLB Act and its legislative history demand no more and no less.

***Characterizing "non-public" information:*** After the limiting term "financial," the next key term in Section 509(4)(A) of the Act is "non-public." The Rules leap to characterize the mere fact that an individual is a customer of a particular institution as "non-public" information, even though such fact gives no particular private information regarding that individual's financial condition. There is no policy reason in either the legislative history or otherwise why the stand-alone fact that an individual is a customer of a particular institution is any more non-public or financial than the fact that the individual subscribes to a particular magazine or shops at a certain store, or why financial institutions should be so singled out for restriction in transferring customer lists (when they do not contain financial information) or taking part in other types of marketing that are permissible for non-financial commercial firms.

***Aggregate rather than personally identifiable information:*** The next critical statutory phrase that is minimized by the proposed rule is "personally identifiable." The agencies have requested comment on whether aggregate data provided to marketing companies or other servicers would be affected by the proposed definition of "nonpublic personal information." Significantly, the GLB Act was intended only to apply to information that is actually "personally identifiable." Aggregate data that does not correspond directly back to specific individuals (even if it includes codes available only to the financial institution who created and provided the data) should *not* fall under the definition of "nonpublic personal information" and this should be made clear in the final Rule. Restricting the transfer of aggregate data to marketing data research firms is unnecessary and anticompetitive.

***Non-financial information in customer lists is not regulated by the Act:*** A customer list of the customers of a particular company should not be considered "financial" in nature simply because the products offered by the company are "financial". Obviously, if that list contained names of all customers who were overdue in their mortgage payments, it would be a nonpublic list "derived using . . . nonpublic personal information," and would be nonpublic pursuant to Section 509(4)(c)(i). But the same concerns do not apply to a list of holders of a particular credit card that appeals to car enthusiasts, for example. Why should the fact that such a list is generated by a bank or finance company make it more difficult to market than if it belonged to a specialty automobile magazine publisher?

Like many other commercial firms, financial institutions may collect information about customers that, while important to the institution and the customer, is likewise in no way "financial." Such information may include an individual's name, address, telephone number, age, sex, driver's license number, social security number, military status, and certain medical information.[5] It may include marketing data that relates to the individual's propensity to respond to direct mail offers or telephone solicitations. It may include memberships in college alumni groups, fraternities, sports' enthusiasts clubs, airline mileage programs, automobile clubs, non-profit organizations, trade unions, or veterans' groups. The Rule's proposed definition of "nonpublic personal financial information," would cover *all* of these types of information.

***Recommendation:*** In contrast to these categories of non-financial data about individuals, "information that describes an individual's financial condition" (as succinctly described by Senator Allard, *supra*), provided or collected in order to obtain a financial product or service, would appear to be exactly the kind of sensitive information covered by the GLB Act. This is the type of data that should constitute the definition of "personally identifiable financial information." Such information, for instance, would include an individual's income, credit relationships, assets, net worth, and credit history. In other words, the definition would cover data that is clearly nonpublic, personally identifiable, and financial. Any such information so provided by a customer, resulting from a transaction with a customer, or otherwise obtained by the financial institution with respect to that customer, is covered by the scope of the GLB Act. The final Rule should reflect this straightforward interpretation of the statutory language and legislative intent. Consistent with Section 509(4)(a)(ii), this information would also include account balance information, payment information, or private information regarding other financial events resulting from the institution's financial relationship with the individual, akin to "experience information" under the Fair Credit Reporting Act.

***Financial information otherwise obtained by financial institutions:*** The last tier of the congressional definition of "personally identifiable financial information" is that which is "otherwise obtained by the financial institution" (Section 509(4)(a)(iii)). Like the phrases before it, this one should not be defined above and beyond what is nonpublic, personally identifiable, and financial. It simply completes the statutory definition of "nonpublic personal information" to cover instances where this type of limited information comes into the possession of the financial institution from a source other than the customer or a financial transaction with the customer. Such information would usually consist of financial information resulting from a credit report. This type of data, if private, personally identifiable, and financial in nature, would be a proper subject of coverage under the Rule.

## 6. **<u>Publicly Available Information</u> (__.3(p)):**

[5] While we agree that data such as medical information or unlisted telephone numbers may deserve some form of privacy protection, we do not agree that The GLB Act authorizes the regulatory institutions to provide a framework for it.

In drafting the GLB Act, Congress also specifically excluded “publicly available information” (to be defined by the Rule) from “non-public personal information.” The proposed definition of this term does not follow its clear meaning: any information available to the public is “publicly available” and thus is not “nonpublic personal information.”

In stark contrast to this plain meaning, the agencies have proposed alternative definitions of “publicly available information” that ignore the characteristics of the information itself and instead focus on the methods by which such information is obtained. In Alternative A, any public information that is provided to a financial institution by a “consumer” is “nonpublic,” and only public information that the financial institution actually obtains from public sources would be “public” for purposes of the Rule. This contorted definition simply defies logic. Only minimally better is Alternative B, whereby information is public only if it can be obtained from public sources. Between the two Alternatives, we support Alternative B, although we recommend changing Alternative B to improve the description of “widely distributed media.”

***Widely distributed media:*** Both alternatives suffer from a restricted definition of “widely distributed media.” A preferable definition could read:

> “Publicly available information from widely distributed media includes information from books, magazines, and newspapers; television and radio programs; publicly available internet sites; and other publicly available written or electronic media.”

Under the proposed Rule, information transmitted through such media would only qualify if it had been lawfully made available to the public. However, restricting the media channel or adding a requirement of password access in a rapidly developing technological environment could hinder and/or confuse later determinations of what was truly public. For example, many news services require a password for subscribers to review certain news stories, and there are many financial and legal information services available to the public for a fee. Simply because for-profit firms control the dissemination of public information in this way should not dilute the fact that the information is, in fact, public.

## 7. **Timing of the Initial Notice to Customers (__.4(a)):**

Section 503(a) requires that the initial privacy notice be provided to an individual “*at the time of* establishing a customer relationship” [*emphasis added*]. For the sake of consistency and clarity, we suggest that this same language be utilized in the final Rule, replacing the proposed requirement that the notice be provided “prior to” establishing the customer relationship. This change could alleviate future disputes regarding how soon in advance of the customer relationship an individual actually received, or was actually required to receive, the privacy notice. We believe that the definition of when the customer relationship actually is entered into should be governed by the financial institution’s own policies and procedures.

It is appropriate, however, to allow the privacy notice to be provided earlier if desired, for instance, at the same time that a financial institution is required to give other notices, such as those required by Regulation Z (12 C.F.R. § 226.17(b)) for closed end transactions, which must be provided "prior to the consummation of the transaction." In some cases no timing difference will result and, depending upon the type of transaction, the timing of other notices may coincide with the time of establishing the customer relationship and providing the privacy notice.

8. **Establishing the Customer Relationship by Agreeing to Obtain Financial Services for a Fee (__.4(c)(2)(iii)):**

The example of a customer relationship provided in __.4(c)(2)(iii) should be eliminated. One could argue that consumers "agree to obtain financial services … for a fee" when they complete any application for any financial product because the application initiates the process to obtain the financial product, which results in charges of some kind to the consumer. In fact, some applications include an application fee up-front. The agencies have apparently overlooked the incidence of mortgage loan and other loan application fees. Thus, under the proposal, financial institutions would be required to ascertain for each product at which time customers agree to obtain financial services for a fee and would be required to provide privacy disclosures at different times for different products, depending on the incidence of a fee and the nature of the customers' agreements. The example provided in __.4(c)(2)(iii) should be eliminated. Alternatively, it should specifically exclude loan applications and it should be specifically limited to separate advisory services that do not result in financial products. Further, for the limited cases where it applies, the example should provide that a relationship is established when the consumer actually "pays a fee" or "becomes contractually obligated to pay a fee" for financial, economic, or investment advisory services. The payment of the fee, not the decision to obtain services, should be the objective standard.

9. **Providing Notice where there is more than one Party to an Account (__.4(d)(1) and __.8(a)(1)):**

The proposed Rule requires financial institutions to provide the initial notice such that "each consumer" can be reasonably expected to receive actual notice. The proposal unfortunately avoids precision with respect to joint accounts, although the agencies have invited comment on providing notices for joint accounts, apparently realizing that the proposal is imprecise and operationally difficult. This issue is one of the most important to financial institutions, because it will greatly affect the cost, process, and systems requirements for providing disclosures.

Generally speaking, disclosures that are required under federal laws may be provided to either party on joint accounts, with the exception of certain narrowly drawn circumstances where a fundamental public policy concerned is involved, e.g., rescission of a security interest in a primary dwelling. In this current proposal, however, consumers are merely being informed of a financial institution's privacy policy and a limited right (subject to exceptions) to prevent nonpublic personal information about that consumer from being disclosed to a nonaffiliated third party – a "right" that simply does not equate with a broad, unlimited right to prevent a lien on real estate from attaching to a primary dwelling. Moreover, in the rescission context, notice to each consumer may be justified because the rescission right is time-barred after three business days. Conversely, the privacy opt out right contained in this proposal lasts forever, a position noted by the agencies throughout the proposal.

A requirement to provide privacy disclosures to each party on a joint account creates a regulatory burden far outweighing any benefits to the joint parties. In many cases, financial institutions would have to create separate computer programs to identify joint account holders separately on each account. Double disclosures would obviously double the expense of printing, handling, distribution, and mailing. Even if double distribution were somehow justifiable in the case of the initial notice, the usefulness of the practice is inconceivable for the annual notices required by __.5(a). For a fifteen year loan, for example, lenders would be required to send thirty-two privacy disclosures to joint borrowers. Such doubling of the regulatory burden of this privacy proposal is certainly not justified by any benefit to joint account holders, particularly when disclosures are required both initially and on an annual basis.

The proposal assumes, moreover, that there are only two joint owners on joint accounts. In some cases, there are three or even four joint owners, some of whom reside at different addresses from the primary account owner. In many cases, this second (or third) address is not even recorded in the financial institution's records. Mailing notices to such joint owners would be impossible. Because financial institutions possess limited personal information about such joint owners, there are few or no privacy concerns relating to such customers.

In light of these concerns, we suggest a format consistent with the distribution of notifications to multiple applicants required by Federal Reserve Regulation B[6]. Specifically, under Regulation B, financial institutions must only provide the notice of adverse action to one of the primarily liable applicants on the account. The right to opt out contained in the proposed Rule is roughly comparable to the right to receive specific reasons for adverse action and the related FCRA right to receive a copy of the applicant's credit bureau report. Similarly, compliance with the issuance of privacy notices should be satisfied by mailing the initial and annual notices to any party who is liable on the account. This approach should balance the information needs of consumers with the operational and cost burdens placed on financial institutions.

## 10. <u>**Providing the Initial Notice in connection with a Loan Purchases**</u> **(__.4(d)(2)(i)):**

The exception provided by __.4(d)(2)(i) is not workable. It also totally ignores an entire industry – sales finance, where retail installment contracts are purchased by lenders from dealers or merchants. The qualification for the exception for a loan purchase that requires that the customer

[6] 12 C.F.R. §202.9(f).

"does not have no choice" about the loan purchase introduces an unnecessary element of ambiguity. What if the consumer enters into a transaction with an expectation that the loan will be assigned? Even if customers were provided with an option as to the disposition of their financial account, it would be unworkable for the new financial institution to provide a privacy notice prior to the time of the acquisition. This requirement should be eliminated. The rule should simply grant an exception if the loan is assigned, regardless of whether the customer had a choice about assignment. Furthermore, the exception should apply to all forms of transactions that may generate a customer relationship, such as installment sales contracts, and not just loans.

11. **<u>Providing the Initial Notice in connection with Oral Applications</u> (__.4(d)(2)(ii)):**

The phrase contained in __.4(d)(2)(ii) – "and the consumer agrees to receive the notice thereafter" – should be deleted or replaced with "and the financial institution informs the customer when and how the notice will be provided thereafter." The necessity of proving an oral agreement of the customer in such circumstances is burdensome and unnecessarily risky. In addition, the agencies apparently have not considered how the disclosures would be provided if the customer did not agree to receive the notice thereafter. Would the financial institution be required to read the entire privacy statement and notice of opt out orally? This is certainly an unworkable proposition. Ultimately, under the agencies' proposal, oral agreements and telephone transactions would be hampered and perhaps eliminated. This would greatly inconvenience customers, who generally prefer the speed and immediacy of telephone transactions.

12. **<u>Providing the Initial Notice after Opening the Customer's Account</u> (__.4(d)(2)):**

The agencies have recognized that at least two situations exist where it is not possible for financial institutions to provide an initial privacy notice to a customer prior to or at the time the customer relationship is established. The final Rule should provide that the privacy notice may be given to customers within a reasonable time after the customer relationship is established, provided that financial institutions may not disclose nonpublic personal information to nonaffiliated third parties prior to the time that the privacy notice is given to the customer. For example, if a credit relationship is established through a third party, it may be impossible or undesirable for the financial institution to deliver the privacy notice to the third party for delivery to the customer. Financial institutions may, rather, desire to deliver the privacy notice themselves using first class mail. It may be economical for financial institutions to include the privacy notice in a welcome package to the customer, or with payment coupons.

13. **<u>Contents of the Initial Notice</u> (__.6):**

In light of the burden of providing the amount of detail required by the GLB Act, we support the use of categories of information and recipients. We believe that the level of detail required by the proposed Rule will add to costs, burden, and customer confusion. In particular, the necessity to issue a change of terms notice when any of the information changes (including categories of information or categories of affiliates or nonaffiliated third parties to whom information is provided) is likely to be extremely burdensome to financial institutions. In particular, the GLB Act does not require disclosure of the "types of affiliates" to whom financial institutions disclose nonpublic personal information, although __.6(a)(3) does. This requirement should be eliminated in the final Rule. We believe it is not necessarily important for customers to know each line of business conducted by the financial institution's affiliates. New types of affiliates (indeed, including new lines of business encouraged by the GLB Act itself) would require new change of terms notices to customers, with little or no benefit to consumers.

An alternative to the extreme detail required by the proposed Rule would be some general statements about the categories of information and third parties along with a toll-free number that customers can call (or a website address that the customer could access) in order to obtain a more detailed explanation.

### 14. **Disclosures for Joint Marketing (__.6(a)(5)):**

Although the GLB Act requires in Section 502(b)(2) only that financial institutions must "fully disclose" the providing of nonpublic personal information to a joint marketing company, the agencies have proposed to require a separate description of the categories of information provided to such third parties and the categories of third parties with whom the financial institution has contracted. There is simply no requirement in Section 502(b)(2) that this disclosure include the same level of detail as required by Section 503(b). It should be sufficient for financial institutions to state that they provide nonpublic personal information about customers to third parties who provide services to the financial institution, including marketing the financial institution's own products or products offered jointly by the financial institution along with another financial institution. Requiring more specificity would result in many such programs being eliminated or modified in ways that could lessen consumers' options, due to the level of detail required and the requirement to provide revised disclosures under __.8(c)(1) prior to implementing such programs. Further detail does not serve any consumer interest in any event, because consumers cannot opt out of such programs and because such programs relate only to the financial institutions' own products.

### 15. **Disclosing Information Transfers Permitted by Exceptions under 502(e) (__.6(b)):**

We support the agencies' position that financial institutions may adequately disclose the transfer of data pursuant to the general exceptions listed in Section 502(e) by simply stating that it "make[s] disclosures to other nonaffiliated third parties as permitted by law." Considering the copious, specific information listed in the rest of the notice, this should not disadvantage the consumer in any way, and should help maintain the clarity of the notice.

16. **Policies that Institutions Maintain to Protect the Confidentiality and Security of Nonpublic Personal Information (__.6(d)(5)):**

While it is important that customers are aware that such policies and practices exist, and the clear language of the statute requires that notification of such policies be included in the notice, we suggest that description of this topic in the notice be permissible in a very abbreviated format. For instance, the rule should allow a financial institution to state that it uses sophisticated firewalls, pass codes, etc., and should permit a one-sentence assurance that such policies do exist and are followed. In contrast, the example provided in __.6(d)(5) would appear to require a much longer description that could overburden the notice and lose the attention of the customer. Any financial institution (or most other businesses for that matter) that expects to remain viable must protect its sensitive security safeguards and similar proprietary information. Thus, adhering to current standard business practices for information security, and providing a brief reference that such practices exist, should suffice to fulfill this disclosure requirement.

17. **Reasonable Opportunity to Opt Out (__.7(a)(3)):**

The agencies' 30-day example suffers from the assumption that 30 days is necessary for a "reasonable opportunity" to opt out of information sharing. Although 30 days could be considered reasonable in some transactions that are consummated by mail, it should not be the standard by which all opt outs are measured. The agencies proposed a second example for "isolated" transactions that is more realistic (permitting financial institutions to request customers to decide during the transaction). The 30-day "wait" required by the first example is unnecessary for all transactions. We believe that most customers who intend to opt out will do so quickly. Because the opt out right continues indefinitely, there is little harm in permitting financial institutions to proceed after a three-day or (at most) a seven-day period. Indeed, if the agencies permit use of a toll free telephone number for exercising the opt out (as proposed by the FTC), a three-day period is clearly sufficient.

18. **Opting Out for Joint Accounts (__.8(a)):**

The agencies have invited comments on how the right to opt out should apply in the case of joint accounts. We propose a manageable process whereby either account holder on a joint account may exercise an opt out right. Opt out forms (to the extent they are provided by the financial institution) could include spaces for one or more consumers to sign and provide their name, social security number or other identification, and account number. If more than one account holder signs the form, or otherwise exercises the right to opt out, the opt out would apply to each account holder signing the form or exercising the right to opt out. If only one account holder signs, on the other hand, the opt out would apply only to that account holder. Financial institutions, of course, should be free to extend the opt out to all account holders at their option. (No customer has a "right," after all, to be included within a group of customers included on lists that are provided to nonaffiliated third parties of a financial institution.) The information that financial institutions could provide to nonaffiliated third parties with respect to any joint account holder that does *not* exercise the opt out would include any information relating to that account holder and any information relating to the joint account (other than personal financial information relating *solely* to the account holder that *does* exercise the opt out). This is a clear and simple process that protects the customers who choose to opt out without imposing preferences on other joint account holders, while providing flexibility to financial institutions to structure procedures that are consistent with computer systems and operational processes. Requiring financial institutions to extend a single opt out to all account holders could require sophisticated database management changes and would eliminate customer choice for some customers.

19. **Accepting Opt Out Requests through any Communication Means (__.8(a)):**

The FTC has requested comment on whether financial institutions should be required to accept opt outs through any means established by the institution to communicate with consumers, for example, toll-free customer service numbers or websites. Most financial institutions accept communications from customers through many different means, and such a requirement would require financial institutions to develop extensive training programs and detailed operational procedures, creating additional costs while increasing the risk that a consumer's opt out request may be lost or misplaced. We believe that financial institutions should be permitted, or even encouraged, to institute a single toll-free customer service number in order to receive opt out requests, and that financial institutions may honor, but are not required to honor, requests made at other contact points at the financial institution.

20. **Telephone Opt Out (__.8(b)(2)):**

Section 502(b) of the GLB Act does not require that the description of the opt out or that the opt out itself be in writing. Rather, the legislation mandates a written form for only the disclosure that information may, in fact, be provided to third parties. The proposed Rules, however, consider an oral description of the opt out right insufficient, and (except for the FTC proposal) contain no provision for an opt out process by toll-free telephone number. The Rules also require any revocation of the opt out to be in writing. All of these written requirements are beyond the statutory mandate and will add cost and burden to existing and developing delivery systems that are not outweighed by any obvious benefit to consumers.

Many financial transactions are consummated outside the scope of a traditional brick and mortar office. Written notices, opt outs, and revocations are simply not necessary in order to fulfill the goals of the GLB Act. Indeed, oral or electronic notice of the right to opt out is completely sufficient. A customer service representative on a toll-free line can easily describe the customer's right to opt out and record any opt out requests. Financial institutions should be permitted to provide automated telephone opt out customer response systems, similar to systems that have already been established by credit reporting agencies under 1996 amendments to the Fair Credit Reporting Act requiring credit report agencies to permit consumers to opt out of prescreened credit solicitations. These alternative methods would substantially reduce the time and cost burdens to consumers and financial institutions, while effectively achieving the goals of the GLB Act. The final Rule should permit the use of a toll-free telephone number for opt out requests.

21. **Opt out Notices with respect to Other Products at the Same Financial Institution (__.8):**

The preamble to __.8 states that a financial institution is not "required to provide subsequent opt out notices when a consumer establishes a new type of customer relationship with that financial institution, unless the institution's opt out policies differ depending on the type of consumer relationship." This position may sound innocently attractive, but it may also create the unwarranted assumption that an opt out request by a consumer applies to all customer relationships at the financial institution, an assumption that ignores the complex processing systems used by financial institutions, as well as the tendency of many consumers to open, close, and reopen different types of accounts at financial institutions concurrently or over a lifetime, not to mention the complexity of interrelationships that occurs when two financial institutions merge. Many financial institutions may have different divisions that manage different products, or may employ different servicing agencies to handle different types of products, each of which may record opt out requests and maintain customer information in a different manner. Requiring financial institutions to merge and coordinate these complex processes is burdensome, particularly because there is no corresponding benefit to consumers.

It is therefore critically important that the opt out notice, and any subsequent opt out request, applies only to the account related to the opt out notice, unless the financial institution elects to apply it to all accounts (whether then existing or in the future, at the institution's option) at that institution. In this regard, it will be a simple matter for the financial institution to specify in the opt out notice whether any opt out request applies to all products at that institution, or whether it only applies to information maintained by the institution with respect to a particular product. Likewise, financial institutions could specify whether any opt out request would apply to information collected by the institution with respect to another financial product opened by the individual at a future time.

The opening of a new account is, in effect, partial revocation of any opt out request given in connection with a previous account held by the same customer, but only with respect to information collected for the new account. The opening of the account would therefore constitute the customer's consent for future information transfers under __.11(a)(1), unless the customer chose to exercise a separate opt out, pursuant to a new opt out notice provided in connection with the new account, or unless the financial institution elected to apply an opt out request to all accounts established by the individual.

While the final Rule can certainly provide that new opt out notices are not required for subsequent financial products opened at the same institution, it should clearly provide that a customer's exercise of the opt out right with respect to one account maintained by the financial institution does not apply to all of that customer's accounts at the particular financial institution.

22. **<u>Oral Agreements</u> (__.8(b)(1)):**

Section __.8(b)(1) accounts for the fact that an institution and a customer may orally agree to enter into a customer relationship. In this case the proposed Rule would allow the financial institution to provide the opt out notice "within a reasonable time thereafter if the consumer agrees."

This provision is a bit perplexing because it is unclear what happens if the consumer does not agree. Would the oral agreement regarding the customer relationship be void? How would the financial institution be able to initiate the customer relationship without providing the initial privacy notice first? It appears that the financial institution would have to provide the initial privacy notice and wait some period of time before extending credit to the customer or otherwise providing the financial service or product to the customer. This is a perfect example of how permitting an oral explanation of the opt out, and allowing any opt out to occur orally, can facilitate providing financial services to consumers without creating additional contractual disputes or time delays.

As a result, the additional requirement "if the consumer agrees" must be deleted in the final Rule.

23. **<u>Applicability of the Joint Marketing Exception to General Service Providers</u> (__.9(a))**:

The agencies have proposed to extend Section 502(b)(2) treatment to all service providers, rather than following the framework of the GLB Act exception which applies 502(b)(2) treatment to servicers who provide marketing services or who engage in joint marketing efforts. Section __.9 expands the coverage of Section 502(b)(2) of the GLB Act, because the applicability of the general rule stated in subsection __.9(a) is extremely broad, while the actual qualifying language of Section 502(b)(2) of the GLB Act (wit regard to marketing services and joint marketing agreements) appears as rather an afterthought in subsection __.9(b). The effect of this expansion means that financial institutions which use servicers for purposes that might not clearly fit the exceptions in Section 502(e) of the GLB Act may not provide information to servicers without first providing the disclosures to all of its customers. This requirement will have a staggering impact on some financial institutions clearly beyond the intent of the GLB Act. Financial institutions may need to use servicers for a variety of processes to assist them in managing all aspects of their business, including recordkeeping, data analysis, customer mailings, or collections. Some of these needs may arise on an emergency or temporary basis. If, for example, a financial institution uses a specific type of third party to process and mail notices of adverse action required by Regulation B, and the third party either becomes unable to process the notices or requires more information from the financial institution to do so (e.g., perhaps in order to comply with a new regulatory requirement), then the financial institution would have to mail privacy disclosures to all customers prior to retaining a new type of third party to provide the process, which is costly and time-consuming, or consider the unattractive options of Regulation B non-compliance or privacy rule non-compliance.

24. **Treatment of Credit Scoring and Limitations on the Use of Information (__.9(a)(2)(ii)):**

The agencies have requested comments on whether __.9(a)(2)(ii) would restrict credit-scoring vendors from using customer credit data to "validate" a financial institution's scorecard as well as to underwrite a credit application. First, as we commented in relation to __.3(n), neither aggregate consumer data, nor data that is not "personally identifiable," should be included in the definition of "nonpublic personal financial information" to begin with, and therefore __.9(a)(2)(ii) would not apply to the process of developing or validating a credit scorecard, which usually employs aggregate customer data devoid of personal identifiers, albeit with highly specific credit characteristics.

Second, the concept of __.9.(a)(2)(ii) is not supported in the GLB Act. Although Section 502(c) and __.12(b) prohibit redisclosure of information to another third party for an unpermitted purpose, Section 502(b)(2) does not limit the receiving third party's use of the information, provided that the financial institution enters into an agreement to require the third party to maintain the confidentiality of the information. In addition, proposed __.12(b) permits all receiving parties to use the information for lawful purposes permitted by __.9, __.10, and __.11, although proposed __.9(a)(2)(ii) only permits use under __.10 and __.11. At a minimum, the agencies should amend __.9(a)(2)(ii) in order to permit all uses permitted by __.9 as well as __.10 and __.11. The agencies should permit financial institutions to retain third parties to perform multiple types of services and to provide information to third parties in connection with all of those types of services. Provided that third parties covered by Section 502(b)(2) use information solely for providing services to the financial institution, there is no risk to consumers in permitting multiple uses of information.

Third, credit scoring could be considered a Section 502(e)(3)(C) activity to the extent that developing an adequate credit scorecard is a feature of risk control, or it could be considered a Section 502(e)(1)(B) activity because appropriate credit underwriting is essential to the maintenance and servicing of the financial institution's accounts.

Finally, credit scoring does not present any risks to consumers that are intended to be covered by the GLB Act. Congress was concerned about the use of nonpublic personal information by third parties on behalf of such third parties (e.g., for marketing or other related purposes), not the use of information by third parties on behalf of the financial institution.

The agencies should clearly exclude aggregate data or data without personal identifiers from the definition of nonpublic personal financial information in __.3(n). In addition, the agencies should include __.9 uses within the list of uses permitted by __.9(a)(2)(ii).

25. **Additional Protections Applicable to the Joint Marketing Exception (__.9(a)):**

***Possibility of reputation risk or legal risk:*** The agencies have requested comment on whether they should impose additional regulatory requirements on the disclosure of information to service providers. The agencies note, for instance, that agreements with service providers and other financial institutions have the potential to create reputation risk and legal risk for financial institutions. Financial institutions enter such agreements (and a myriad of other contracts) in the ordinary course of business on a continuing basis, and the managers of these institutions consider the reduction of risks related to such arrangements as a basic ongoing function of their management. They are also subject to continuing supervision by their boards of directors, their board's approved policies and procedures, and, where applicable, the safety and soundness standards of 12 U.S.C. §1818. As a result, additional regulatory requirements would constitute nothing more than superfluous micromanagement wholly beyond the legislative purposes or any dictates of the GLB Act. It is unwise for the agencies to attempt this kind of risk regulation in the absence of any legislative dictate, evidence of management neglect, or pressing consumer privacy concerns. Lessening any risks associated with third party service providers, while laudable, is simply not included within the requirements of the GLB Act.

***Additional protections:*** The agencies additionally requested comment on whether, under this exception for service providers and joint marketers, any other protections for consumers could be added to protect their financial privacy. We believe that providing a simple statement that the financial institution may provide information to service providers subject to confidentiality agreements is more than sufficient in order to protect consumers, and thus no additional requirements, notices, or other regulatory burdens are either necessary or merited under the GLB Act.

***Types of agreement covered by the Rule:*** Finally, the agencies have requested input on whether the Rule should provide examples of the type of joint agreements that would be covered by the Rule. We believe that the statutory language is sufficiently clear to establish which types of agreements are covered, provided that the language is appropriately revised consistent with these comments. As new technology develops, and as the financial services industry changes, new types of agreements will develop that are included within the joint marketing exception of the

GLB Act but may appear contrary to then outdated examples provided by the Rule, resulting in uncertainty and the likely alternative of sending new privacy notices to all customers.

26. **Exception for Processing and Servicing Transactions (__.10(a)):**

The agencies must change the heading of __.10(a) in the final Rule. "Exceptions for processing transactions at consumer's request" is inaccurate because not all of the types of activities contained within the exception in Section 502(e)(1) of the GLB Act (and in __.10(a) of the proposed Rule) are conducted at the consumer's request, nor are they required to be conducted at the consumer's request under the GLB Act.

In addition, the agencies have distorted the meaning of the GLB Act by eliminating the phrase "in connection with" in __.10(a)(2) and __.10(a)(3). That is, the exceptions in Sections 502(e)(1)(A) and 502(e)(1)(B) permit all of the following activities:

- disclosure of nonpublic personal information in connection with servicing or processing the financial product or service requested or authorized by the consumer; and
- disclosure of nonpublic personal information in connection with maintaining or servicing the account with the financial institution; and
- disclosure of nonpublic personal information in connection with maintaining or servicing the account with another entity as part of a private label credit card program or other extension of credit on behalf of such entity.

Congress provided these exemptions in order to permit the continuation of routine business transactions which are transparent to consumers. Many business operations conducted by financial institutions are not necessarily requested by consumers and are not necessarily performed for the purpose of maintaining, servicing, or processing the account, even though they are in connection with the maintenance, servicing, or processing of accounts. These operations have nothing to do with the legislative purpose of the GLB Act.

The phrase "in connection with" must be inserted in __.10(a)(2) and __10(a)(3). Indeed, the agencies state in the preamble that they made only cosmetic changes to the language of Sections 502(e)(1)(A) and 502(e)(1)(B), so conforming these sections to the GLB Act language should be acceptable to the agencies.

27. **Consumer Consent to Disclosures to Third Parties (__.11(b)(1)):**

The agencies have asked for comment on the proposed example at __.11(b)(1), illustrating circumstances under which the consumer may consent to disclosures. The proposed Rule specifies that a consumer mortgage loan applicant may provide consent for the financial institution to notify a third-party insurance company that the consumer is applying for a loan, so that the insurance company may contact the consumer regarding the potential sale of homeowner's insurance. The agencies have invited comment on whether safeguards should be added to this exception for consent in order to minimize the potential for consumer confusion.

We do not believe the fact that the individual is a loan applicant is "nonpublic personal financial information." This simple fact does not include any financial information about the individual. Thus, the one proposed example does not need any exception in order to occur. But even if the agencies determine that an individual's status of applying for a loan is somehow "nonpublic personal financial information" covered by the GLB Act, we do not believe that there is any serious potential for consumer confusion. We oppose requiring written consent, a separate signature line, or time limitations for consumer consent, as suggested, because these requirements could require financial institutions to institute complex operational processes in order to obtain a written form, record consents, and monitor time frames. It should be sufficient for financial institutions to inquire if the applicant wishes to be contacted by an insurance company regarding homeowner's insurance and for the applicant to respond yes or no. If the agencies remain concerned about an insurance company contacting the individual years later, it would be appropriate to specify in the final Rule that this mortgage loan example is intended for relatively current disclosures to insurance companies, without requiring specific time periods, which would be unduly burdensome to track for separate applicants.

The agencies should include additional examples of consent in __.11(b). Specifically, customers who apply for auto credit at a motor vehicle dealer have given implied consent for participating financial institutions (who have evaluated the credit application) to inform the motor vehicle dealer whether or not the credit application was approved or denied.

28. **Redisclosure of Information (__.12(b)):**

Proposed __.12 implements Section 502(c)'s limitations on redisclosure of information by third parties. In the preamble to the proposal, the agencies have requested comments on whether this section of the proposed Rule "should require a financial institution that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information." We believe that imposing additional obligations and responsibilities on financial institutions is burdensome and unnecessary. The third parties receiving the information are, after all, *third* parties, who by definition are beyond the control of the financial institution. Financial institutions cannot be expected to manage the confidentiality obligations of all third parties or to ensure that specific activities do not take place. Indeed, Congress seems to have recognized this in the GLB Act, because it specified in Section 502(b)(2) that third party marketing servicers must be governed by confidentiality agreements with financial institutions, but decided not to enact the same requirement in Section 502(c) for other third parties who receive nonpublic personal information, possibly because disclosures to other third parties are already subject to notice and a right to opt out where applicable. No additional operational requirements are necessary in __.12.

29. **Limits on Sharing of Account Numbers for Marking Purposes (__.13):**

Section 502(d) generally prohibits the sharing of account number information for marketing purposes, the Conference Report section referencing the provision encouraged the agencies to grant an exception for the sharing of encrypted account numbers. In the preamble to the proposed Rule, the agencies indicated that they have not proposed an exception because of the risks associated with third parties' direct access to a consumer's account, although the agencies have requested comment on whether an exception would be appropriate.

There are many conditions under which providing an encrypted identifying number to a third party who performs marketing for a financial institution can actually lessen risk to all of those parties. If a third party, who has been engaged by a financial institution to perform marketing services, contacts a customer for the sale of a financial product and the customer agrees to obtain the product, the third party would not have to request the consumer's account number over the telephone if it has been provided with an encrypted number to use in order to bill the consumer. The use of encrypted account numbers may assist in the prevention of financial fraud and identity theft, while permitting the flexibility of current operations. In the alternative, we suggest that at a minimum the final Rule should provide an exception which would permit financial institutions to disclose an identifying number to a third party marketing firm, for tracking purposes, once the consumer has agreed to purchase the goods or services being marketed.

30. **Notices to Existing Customers (__.16(b)):**

The proposed effective date of the Rule is November 13, 2000. Under proposed __.16(b), within 30 days after that effective date (by December 13, 2000), financial institutions would be required to provide privacy notices to all of its existing customers. The coincidence of every financial institution mailing detailed privacy notices to all of its customers during the busiest mailing season of the year would surely put a great strain on the Postal Service. Conservatively estimating, billions of privacy notices would have to be mailed to customers over this short period. Such massive dislocation of resources is easily avoidable by extending the time set forth in __.16(b) to twelve months after the effective date. This extended time period is clearly warranted by the GLB Act, particularly in light of the obvious fact that existing customers as of November 13 are not required to receive any *initial* notice under Section 503(a) of the GLB Act (because the time that the customer relationship is established is not after the effective date). Existing customers are required only to receive an *annual* notice, which under proposed __.5(a) would only have to be provided once every twelve months after November 13, 2000, and notice of the right to opt out of disclosures of nonpublic personal information to third parties.

Therefore, the final Rule should include a provision stating that the first annual notice (including notice of the right to opt out) for customers existing on November 13, 2000 shall be provided no later than November 12, 2001. If the agencies determine that this time period is not warranted, it would be appropriate for the agencies to provide that financial institutions may provide a simple, separate notice under Section 502(b)(1)(A) of the right to opt out to existing customers within a shorter time period, such as 180 days after the effective date.

In conclusion, we sincerely appreciate the opportunity to comment on this important proposal. If you have any questions on these comments, please feel free to contact me at 847/564-6064.

Sincerely,

HOUSEHOLD AUTOMOTIVE FINANCE CORPORATION

/S/

Rose C. Mancini
General Counsel