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March 31, 2000

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

Information Management and Services Div.
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20429
Attention: Docket No. 2000-13

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corp.
550 17th Street, NW
Washington, DC 20429
Attention: Comments/OES
(RIN 3064-AC32)

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551
Attention: Docket No. R-1058

Secretary
Federal Trade Commission
Room H-159, 600 Pennsylvania Ave, NW
Washington, DC 20580
Manager Dissemination Branch

Carolyn Jordan
Executive Director
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: Gramm-Leach-Bliley Act Privacy Rule, OCC Docket No. 00-05; Federal Reserve Board Docket No. R-1058; FDIC RIN 3064-AC32; OTS Docket No. 2000-13; FTC 16 C.F.R. Part 313-Comment; NCUA 12 C.F.R. Parts 716 & 741

Dear Sirs and Madams:

The TRANSAMERICA LIFE COMPANIES appreciate the opportunity to submit its comments to the Office of the Comptroller of the Currency ("OCC"), Federal Trade Commission ("FTC"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), the Federal Reserve System ("FRB") and the National Credit Union Administration ("NCUA") (collectively, the "Agencies") in response to the Agencies' request for comments on the Proposed Rules concerning the Privacy of Consumer Financial Information (the "Proposed Rules") issued pursuant to Title V of the Gramm-Leach-Bliley Act ("GLB").

The TRANSAMERICA LIFE COMPANIES, operating through its affiliated insurance carriers, is the third largest life insurer in the United States with over \$100 billion in assets. The TRANSAMERICA LIFE COMPANIES market life and health insurance and savings and pension products throughout the United States through banks, broker dealers and other financial institutions, as well as through affinity association groups.

The TRANSAMERICA LIFE COMPANIES commend the Agencies for their efforts in providing interpretive rules under Title V of GLB. While, as insurers, the carriers within the TRANSAMERICA LIFE COMPANIES are not directly subject to the Proposed Rules, we believe that it is important for us to comment on the Proposed Rules for two reasons. First, as indicated above, the TRANSAMERICA LIFE

Transamerica Occidental Life Insurance Company
Transamerica Assurance Company
Transamerica Life Insurance and Annuity Company
Transamerica Life Insurance Company of Canada
Transamerica Life Insurance Company of New York

Affiliates
Transamerica Financial Resources, Inc.

COMPANIES market their insurance and pension products to a large extent through banks, credit unions and other financial institutions, and have entered into co-branding arrangements with banks and other financial institutions. These co-branding arrangements benefit the customers of the financial institution with whom we have a relationship by providing them with a one-stop shopping approach to financial transactions. Second, GLB requires the Agencies to adopt rules that are consistent and comparable. It is our hope that the National Association of Insurance Commissioners ("NAIC") and the states will use the federal rules as a template and will adopt a similar approach with respect to the rules they are considering on the state level that will apply to insurers. We believe that it is critically important for the efficient conduct of our business nationally that any rules adopted by the states be consistent with the federal rules. We have, therefore, focused our comments on those issues that impact directly our contractual relationships with banks and other financial institutions, as well as those issues that we believe require clarification with respect to insurance products.

In particular, the TRANSAMERICA LIFE COMPANIES urges the Agencies to specifically:

- Define nonpublic personal information within the context of Title V of GLB as information which is both personally identifiable and financial;
- Streamline and simplify the information to be included in the Section 502 Opt-Out and Section 503 Privacy Notices, particularly categories of information to be disclosed, to (1) make the information more meaningful to consumers, and (2) to permit affiliates to send out joint notices;
- Provide that, regarding information sharing practices with affiliates, a financial institution is not required to provide information in its Section 503 Notice regarding its information sharing practices with affiliates, except for the FCRA Opt-Out Notice;
- Clarify that the full disclosure requirements apply only to joint marketing agreements and not to agents, processors and service providers, and that no additional disclosure requirements should be required for jointly marketed products;
- Clarify that co-brand and affinity programs are exempt from the Opt-Out requirements of Title V.
- Clarify that the limits on sharing of account numbers for marketing purposes do not apply to (1) encrypted or truncated account numbers, (2) when the consumer has given his prior consent, or (3) when the consumer has already agreed to use the account to purchase the goods or services being offered. In addition the Proposed rules should clarify that this limitation on sharing of account numbers only applies to credit card, deposit and transaction accounts, and specifically, that mortgage loan numbers are not considered transaction accounts.

The TRANSAMERICA LIFE COMPANIES is a member of the American Council of Life Insurers, the Financial Services Roundtable and the Association of Banks in Insurance, and fully supports the comments on the Proposed Rules of those trade associations.¹

SECTION ____1. PURPOSE AND SCOPE.

The Proposed Rules state that they do not apply to entities for which the Agency does not have primary supervisory authority. The OCC's Proposed Rule states that it does not apply to entities that provide insurance. The other Agencies are urged to similarly clarify, that for purposes of the final Rules, that they

¹ The TRANSAMERICA LIFE COMPANIES do, however, disagree with the comments of the American Council of Life Insurers on its categorization of an applicant as a consumer.

do not have primary supervisory authority over persons engaged in insurance because such authority is vested in the state insurance departments.

SECTION ____ - 3. DEFINITIONS.

"Company"

The intent of Title V of GLB is to govern the information sharing practices of financial institutions, defined in Section 509(3) as "...any institution(s) the business of which is engaging in financial activities..." (emphasis added.)

However, the definition of "company" does not make it clear that a sole proprietorship is not a company under GLB and is therefore not a financial institution.

Moreover, many insurance agents and other providers of financial services, for financial reasons, have chosen to operate as sole proprietorships rather than assume another business organizational form. Because they are generally small, sole proprietorships would find it enormously burdensome to comply with the requirements of GLB and the Proposed Rules. There would be questionable corresponding benefit to consumers who would still be provided the requisite notices and the right to opt-out by the insurer(s) with which the agent sole proprietor is doing business. For these reasons, the Agencies are urged to amend this definition to clarify this point.

"Consumer"

Section ____3(e)(1) of the Proposed Rules defines the term "consumer" to mean an individual who merely submits an application, a response form, or otherwise provides nonpublic personal information to a financial institution in connection with obtaining a loan or account, but never actually obtains a loan or account from the institution. The definition of "consumer" in the Proposed Rules is inconsistent with the definition of "consumer" under Section 509(9) of GLB (under GLB, "consumer" is defined to mean an individual who "obtains" a financial product or service from a financial institution).

To make the final Rule consistent with GLB, the final Rule should make clear that the term "consumer" does not include an individual who merely submits an application, a response form, or otherwise provides information to a financial institution in connection with obtaining a loan or account, but never actually obtains a financial product or service from the financial institution.

"Customer"

Section ____3(e)(1) of the Proposed Rules defines the term "customer" to mean a consumer who has a customer relationship with the financial institution.

The definition of "customer" is ambiguous as applied in the context of insurance. To avoid any confusion as to whether this refers to the policyholder, the insured or the beneficiary in the context of insurance, the Agencies are requested to make clear that, for the purposes of insurance, "customer" shall mean the policyholder.

This clarification that a customer means the policyholder for the purposes of insurance applies equally to individual and group life insurance policies. In group life insurance coverage, the insurer issues a policy to the institution whose customers, members or

employees are covered by the group policy. The insurer's contractual relationship is with the institutional policyholder.

To a great extent, group life insurance policies are similar to trust accounts or deposit accounts held in the names of custodians, guardians or other legal representatives, or for whose benefit funds are held by third party escrow agents. In each case, the financial institution does not have nonpublic personal information about an individual who has some type of interest in the financial product. Neither GLB nor the Proposed Rules require that privacy notices be provided to such individuals. However, to eliminate any confusion, we suggest that the Agencies make clear that an individual is not a consumer when the financial institution does not routinely receive [nonpublic personal information] about the individual. This clarification would be consistent with the approach taken by the Securities and Exchange Commission with respect to record owner versus beneficial owners of securities.

Establishment of Customer Relationship.

In Section __.4(c) of the Proposed Rules, the Agencies indicate that a customer relationship is established at the time the financial institution and the consumer enter into a continuing relationship. Section __.3(h) of the Proposed Rules makes clear that to be a "customer" an individual must have a continuing relationship with a financial institution. Thus, Section __.3(h)(2)(ii)(1) clarifies that the term "customer" does not include an individual who merely engages in an "isolated transaction" with a financial institution, such as an individual who purchases a cashier's check or traveler's check or uses the institution's ATM to access the consumer's account held at another institution. In addition, the Agencies explain that an individual is not a "customer" of a financial institution merely because the individual repeatedly engages in such "isolated transactions" with the institution (e.g., periodic use of an institution's ATMs, or repeated purchases of traveler's checks or money orders).

The important clarification contained in the Proposed Rule, and as noted above, that an individual who merely engages in "isolated transactions" with a financial institution is not a "customer" of the institution for purposes of Section 503 should be maintained in the final Rule.

One of the examples given (in __.4(c)(2) of the Proposed Rules) is that a customer relationship is established at the time the consumer purchases insurance from the financial institution.

In the example provided in the final Rules, the Agencies should make clear that with respect to the purchase of insurance, that the customer relationship is established when the insurance policy, certificate is delivered.

“Non-public Personal Information”; “Publicly Available Information”

Section ___3 (n) (1) of the Proposed Rules defines nonpublic personal information as “(i) personally identifiable financial information; and (ii) any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information.” Section ___3 (n) (2) of the Proposed Rules provides examples of categories of information that are not to be considered nonpublic personal information. This list includes “publicly available information.”

The Agencies request comment on two alternative definitions of nonpublic personal information. Under Alternative A, information is public information only if it is *actually* obtained from a publicly available source (i.e., government records, widely distributed media or government-mandated disclosures). Under Alternative B, information is public information if it *can be* obtained from a publicly available source, even if it was obtained from a customer or other source.

A modified version of Alternative B should be adopted in the final Rule. Alternative B is the better alternative because it recognizes that certain information is already in the public domain, regardless of the financial institution's actions. Information that otherwise is generally available public information should not become nonpublic information merely because it is provided to a financial institution by a consumer or customer, or from some other third-party source. To do otherwise would elevate source over substance and foster factual disputes over the immediate origin of information which, by definition, is available to anyone and everyone. A modified version of Alternative B would also be consistent with Section 509(4)(c) of GLB which states that nonpublic personal information does not include “publicly available information”.

However, Alternative B, like Alternative A, is critically flawed because of the Agencies' misinterpretation of the term “financial information”.

“Financial Information”

The Agencies essentially treat any personally identifiable information of a consumer as “financial information” if it is obtained by a financial institution in connection with providing a financial product or service to the consumer.

As a result, the Agencies' interpretation of the term “financial information” is overly broad and is inconsistent with the GLB and its legislative history. Section 509(4) of the GLB states that non-public personal information “means personally identifiable financial information.” Therefore, to be “nonpublic personal information,” information must be both personally identifiable and financial. As explained in a colloquy between Senator Allard and Senator Gramm on Title V, Congress only intended the term

"personally identifiable financial information" to include information that describes a consumer's "financial condition." Thus, the final Rules should adopt the narrower definition of "financial information" intended by Congress -- that is, only information that describes an individual's "financial condition," such as an individual's assets and liabilities, income, account balances, payment history and overdraft history.

The Proposed Rules appropriately define the term "nonpublic personal information" in Section __.3(n) as information that is "personally identifiable financial information" and a list derived from such information. However, in Section __.3(o), the Proposed Rules ignore the words of the statute and state that "personally identifiable financial information" means "any information" (emphasis added) that is provided to or obtained by a financial institution in connection with provision of a "financial product or service" to a consumer.

The Agencies are urged to adopt a definition of the term nonpublic personal information consistent with that provided under the statute and in its legislative history. In particular, the mere fact of a customer relationship, without any indication of the nature of the relationship (e.g., deposit account or credit card account), should not be considered "financial information" because it contains absolutely no information regarding the consumer's "financial condition." Similarly, the final Rules should specifically make clear that mere identification information (e.g., name, address and telephone number) is not "financial information".

The final Rules should also state that demographic information and other information that does not in and of itself describe an individual's "financial condition" is not "financial information", even if received from the customer.

In addition, the final Rules should also include a statement to the effect that any list, description or other grouping of consumers and any "publicly available information" pertaining to them that is derived using any nonpublic personal information is not within the definition of nonpublic personal information so long as it does not specifically link the consumer to specific financial information pertaining to that consumer.

Health and other non-financial information

The Agencies indicate that the Proposed Rules treat any personally identifiable information as financial if it is obtained by a financial institution in connection with providing a financial product or service to a consumer. The Agencies solicit comment as to whether, under this interpretation, certain information may result in being covered by the final Rules that may not be considered intrinsically financial, such as health status.

The Agencies are strongly urged to delete any references to medical information from this definition. Regulations being promulgated by the Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") provide comprehensive standards for protecting the privacy of identifiable

health information. Including medical information within the scope of personally identifiable financial information will prove confusing to financial institutions and their customers. In addition, the Proposed Rules may conflict with the rules being adopted by HHS under HIPAA, thereby placing financial institutions in the difficult position of having to determine with which regulations they must comply. For this reason, an amendment to the GLB addressing the privacy of medical information was rejected as part of the final Act, and should not be governed by the Proposed Rules.

Another inappropriate example of "personally identifiable financial information" is "the fact that an individual is or has been one of your customers... unless that fact is derived using only publicly available information..." (Section __.3(o)(2)(i)(C)). Again, an individual's customer status is not financial information.

Moreover, an individual's status as a customer of a particular financial institution may be public information. Any time a consumer uses a personal check or credit card, he or she identifies and makes public the financial institution(s) with which he or she is doing business. There is no expectation among consumers that, under such circumstances, their status as customers of specific financial institutions will be regarded as private. Moreover, as noted above in our discussion of "publicly available information", requiring financial institutions to go to public sources to obtain information that they already have obtained from their customers would seem to provide no benefit to consumers. We urge the Agencies to delete this example of "personally identifiable financial information".

Depersonalized Information

In the Joint Notice, the Agencies also invite comment on whether the term "nonpublic personal information" should cover information about a consumer that contains no indicators of a consumer's identity when it is communicated to a nonaffiliated third-party recipient (so-called "depersonalized information").

In order to be consistent with the statute, the term "nonpublic personal information" should not cover any depersonalized information. Under Section 509 of GLB, the term "nonpublic personal information" only includes "personally identifiable financial information." By using the term "personally identifiable," Congress clearly intended to exclude information that contains no indicators of a consumer's identity when communicated to a nonaffiliated third-party recipient. Also, there is absolutely no policy rationale for including depersonalized information in the term "nonpublic personal information." GLB is designed to protect a consumer's privacy interest with respect to the consumer's financial information. A consumer's privacy cannot be compromised by disclosing depersonalized information, because that information, by definition, does not identify any individual consumer.

Financial institutions use depersonalized information in connection with market studies, trend analysis, and for financial modeling and to develop score cards for evaluating applications for both credit and deposit products. For example, a mortgage lender often provides depersonalized aggregate information about its mortgages loans for the purpose of preparing market studies. These market studies provide invaluable information to both consumers and financial institutions alike, in helping them to understand trends in the lending markets. Restricting the use of depersonalized information would fundamentally change the way financial institutions do business, and would undermine the safety and soundness of such institutions. Thus, it is imperative that the final Rules make clear that depersonalized information is not included within the definition of "nonpublic personal information."

SECTION ____ 4. INITIAL NOTICE TO CONSUMERS OF PRIVACY POLICIES AND PRACTICES REQUIRED.

Timing of the Initial Section 503 Privacy Notice to Customers.

The Proposed Rules in Section ____ 4(a)(1) state that a financial institution must provide the initial notice to an individual "prior to the time" that the institution establishes a customer relationship with the individual.

However, this "prior to" standard is entirely inconsistent with the statutory language of Section 503 of GLB, which clearly states that a financial institution is expected to provide the initial privacy notice to a customer "at the time of" establishing a customer relationship.

We support the Agencies for providing financial institutions with the flexibility of providing their privacy notices at the same time a financial institution is required to give other required notices regarding the account. Financial institutions need this flexibility to address situations where it might be impossible or impractical to provide its initial privacy notice to a customer at the time of establishing a customer relationship. Specifically, the final Rules should provide that a financial institution may deliver the initial Section 503 privacy notice within a reasonable period after the customer relationship is established, so long as no nonpublic personal information relating to that customer is disclosed to a nonaffiliated third party before the initial privacy notice and the Section 502 opt-out notices are provided, and the customer is given a reasonable amount of time to opt out before any such disclosure can occur.

In this regard, the Proposed Rules already appropriately recognize two situations (oral contacts and purchases of portfolios) where it is not feasible for a financial institution to provide the initial Section 503 privacy notice to a customer at the time the customer relationship is established, but numerous other similar situations exist, such as point of sale transactions. The Agencies are urged to specifically permit in the final Rules additional flexibility to financial institutions in these situations.

Communications Division, OCC
 Ms. Jennifer J. Johnson, FRB
 Mr. Robert E. Feldman, FDIC
 Manager, Dissemination Branch, OTS
 Secretary, FTC
 Executive Director, NCUA
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How to Provide Notice.

The Agencies appropriately indicate that the Proposed Rules do not prohibit affiliated financial institutions from using a common initial Section 503 privacy notice, so long as the notice is delivered in accordance with the Rule and is accurate for all recipients. In addition, the Agencies indicate that the Rules do not prohibit an institution from establishing different privacy policies and practices for different categories of consumers, customers, or products, so long as each particular consumer or customer receives a notice that is accurate with respect to him or her.

We support this clarification. In addition, the Agencies should clarify that if one or more financial institutions deliver disclosures when a customer enters into a relationship with any one of the institutions, they should not be required to deliver an additional disclosure when the customer later enters into another relationship with any of the institutions, so long as the disclosure previously provided to that customer includes all of the information required for the new customer relationship being created.

Exceptions to Requirement that the Privacy Notice be Provided at the Time the Customer Relationship is Established.

Section __.4(d)(2) of the Proposed Rules provides exceptions to the requirement that the initial privacy notice to be provided at the time the customer relationship is established for the purchase of a loan or deposit account and when the financial institution and the consumer orally agree to enter into a customer relationship.

Section __.4(d)(2) should be amended to include situations in which third parties may create a customer relationship on behalf of the financial institution, but the financial institution does not have information on the consumer sufficient to deliver the initial notice, such as, for example, where a third party insurance agent binds the financial institution to provide insurance coverage.

SECTION __.5. ANNUAL NOTICE TO CUSTOMERS.

Treatment of Terminated Customer Relationships and Dormant Accounts.

Section __.5 of the Proposed Rules state that a financial institution is not required to send the Section 503 privacy notice annually to a customer with whom it no longer has a continuing relationship. Additionally, the Proposed Rules set forth examples of when there is no longer a continuing relationship, such as: (1) deposit accounts that are dormant under the institution's policies; (2) closed-end accounts that have been paid in full, charged off or sold without the institution retaining servicing rights; (3) open-end credit accounts where periodic statements are no longer sent or where such accounts are sold without the institution retaining servicing rights; and (4) other type of accounts, where the institution has not communicated with the consumer about the relationship for a period of 12 consecutive months.

We agree that a person should not be considered a customer if the financial institution has not communicated with a customer for 12 consecutive months of no communication (emphasis added).

In addition, the Agencies request comment on whether, in the example of dormant accounts, the applicable standard should be state law, rather than the institution's policies. The final Rules should retain the institution's policies as the applicable standard with respect to the example regarding dormant accounts.

**SECTION ____ .6. INFORMATION TO BE INCLUDED IN SECTION 503
PRIVACY NOTICE.**

In General.

The Proposed Rules set forth examples of ways in which an institution may meet its Section 503 obligations to include in the institution's privacy policy notice information regarding, among other things: categories of information collected; categories of information disclosed; categories of nonaffiliated third parties to whom information is disclosed; disclosures of nonpublic personal information of former customers; and protecting the nonpublic personal information of customers.

However, the examples set forth in the Proposed Rules would require a financial institution to include in the institution's Section 503 privacy notice so much detail about the institution's policies on collecting, disclosing, and protecting nonpublic personal information of consumers that such notices would not be meaningful to consumers. In fact, the Proposed Rules, by requiring overly detailed privacy notices, would actually be counterproductive to the privacy interest of consumers. A consumer simply may not read any of the Section 503 privacy notices, because of the sheer length of each such notice and the number received from the various financial institutions of which the person is a consumer.

In addition, by requiring overly detailed Section 503 privacy notices, the Proposed Rules would impose substantial additional burdens on financial institutions, with absolutely no corresponding benefits to consumers. In particular, the extraordinary level of detail required by the Proposed Rules would essentially preclude affiliated financial institutions from providing consumers with combined Section 503 privacy notices or from using a single disclosure for the institution as a whole. Instead, as a practical matter, the Proposed Rules could essentially require a financial institution to provide different notices for each of its product lines.

By requiring overly detailed Section 503 privacy notices, the Proposed Rules would greatly increase the frequency with which financial institutions must provide change-in-terms notices regarding its privacy policy to consumers. For example, a financial institution could be forced to provide a change-in-terms notice to consumers each time the institution offers a new financial product or service, obtains information from a new source or establishes a marketing program with a new partner. These frequent change-in-terms notices would create significant confusion on the part of consumers and would impose enormous costs on financial institutions. Because of the substantial costs of providing these change-in-terms notices, the Proposed Rules, as currently drafted, could stifle innovation with respect to financial products and services. For example, the Proposed Rules could effectively restrict the ability of a financial institution to change

marketing arrangements, even if such changes would benefit the institution and its customers, because of the additional costs of providing change-in-terms notices. Thus, unless the Agencies revise the examples to reduce significantly the level of detail required for the Section 503 privacy notice under the final Rules, they would have the unintended consequence of harming consumers and financial institutions alike.

Finally, we urge the Agencies to adopt uniform model form disclosures that comply with the initial and annual disclosures required under Section ___6 of the Proposed Rules. Financial institutions should be given these model disclosures a safe harbor because of the complexities of the statute and Proposed Rules. The uniform model form should be proposed and subject to public comment.

Categories of Information Collected and Disclosed to Nonaffiliated Third Parties.

The examples in Section ___6(d)(1) of the Proposed Rules provides that a financial institution categorize nonpublic personal information it collects according to the source of the information, such as application information, transaction information and credit reports. Section ___6(d)(2) provides that a financial institution categorize nonpublic personal information it discloses according to the source of the information, and provide examples of the content of the information.

The Proposed Rules should be revised to provide that a financial institution is only required to give examples of the categories of information that the institution collects or discloses. Requiring a financial institution to identify every possible category of information that the institution collects or discloses unnecessarily increases the length and complexity of the Section 503 privacy notice, resulting only in confusion on the part of consumers. In addition, the examples in Section ___6(d)(2) should be revised to make clear that a financial institution may categorize information collected or disclosed by "type of source," by content, or by a combination of both. As revised, this example would provide financial institutions with the flexibility they need in deciding how best to categorize nonpublic personal information that the institution collects. The Agencies are also urged in the final Rules to refer to the categorization of information by the "type of source" rather than "source," in order to make clear that a financial institution is not required to disclose the names of entities from which the nonpublic personal information has been collected, or even to identify every conceivable source from which information may be received.

Categories of Nonaffiliated Third Parties to Whom Information is Disclosed.

The example in Section ___6(d)(3) of the Proposed Rules provide that a financial institution adequately categorizes the nonaffiliated third parties to whom the institution discloses nonpublic personal information if the institution identifies the types of businesses in which the nonaffiliated third parties engage. The example further explains that a financial institution may use general terms to describe the types of businesses in which such third parties engage -- such as the term "financial products and services" -- but only if the institution also includes appropriate examples of the significant lines of businesses of the nonaffiliated third parties, such as consumer banking, mortgage lending, life insurance or securities brokerage.

This example should be revised to specify that a financial institution may categorize nonaffiliated third parties to whom information is disclosed by type of business in which such entities engage, by type of products offered by those entities, or by a combination of

both. The final Rules should make clear that financial institutions have the flexibility to choose how best to categorize the nonaffiliated third parties with whom they share nonpublic personal information.

Exceptions to Categorization of Nonpublic Personal Information Collected and Disclosed.

The Proposed Rules indicate that with respect to the exceptions in Section 502(e), a financial institution is required only to inform consumers that it makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the institution's Section 503 privacy notice.

This notice of the Section 502(e) exceptions is more than adequate to inform a consumer that a financial institution may be disclosing nonpublic personal information relating to the consumer to nonaffiliated third parties, other than those described in the Section 503 privacy notice, as permitted by law. A more lengthy, detailed discussion of the Section 503(e) exceptions would unnecessarily increase the length and complexity of the Section 503 notice, potentially confusing consumers without providing them with meaningful information or additional benefits.

Information Sharing Practices with Affiliates.

The Proposed Rules require a financial institution's Section 503 privacy notice to include a detailed discussion of the institution's information sharing practices with respect to the institution's affiliates. In particular, under the Proposed Rules, a financial institution would be required to provide in its Section 503 privacy notice information about: the categories of nonpublic personal information that may be disclosed to affiliated third parties; the categories of affiliated third parties to whom such information may be disclosed; and the opt-out notice required, if any, under Section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act ("FCRA opt-out notice").

The inclusion of these affiliate-sharing provisions in the Proposed Rules is entirely inconsistent with GLB. Section 503 of GLB provides that except for the FCRA opt-out notice, a financial institution is not otherwise required to include in its privacy notice information relating to the institution's information sharing practices with affiliates.

More specifically, Section 503(a) of GLB requires a financial institution to provide a privacy policy notice to customers, and Section 503(b) delineates the information to be included in the privacy policy notice. In particular, Section 503(b)(1) provides that a financial institution's privacy policy must include information regarding the policies and practices of the institution with respect to disclosing nonpublic personal information to "nonaffiliated third parties," including, among other things, the categories of persons to whom the information is or may be disclosed. Section 503(b)(1) does not require that a financial institution include in its privacy policy information regarding the categories of

nonpublic personal information which might be shared with affiliated third parties or the categories of affiliated third parties with whom such information might be shared. The only requirement related to affiliate sharing listed in Section 503(b) is the reference to the FCRA opt-out notice.

This more restrictive reading of Section 503(b) also is consistent with the intended focus of Title V of GLB, since Section 506(c) makes clear that Congress intended Title V of GLB to address only a financial institution's sharing practices with nonaffiliated third parties. Thus, to be consistent with GLB, the final Rules should be revised to provide that except for the FCRA opt-out notice, a financial institution is not otherwise required to provide information in its Section 503 privacy notice regarding the institution's information sharing practices with affiliated third parties.

SECTION __.8. FORM AND METHOD OF PROVIDING SECTION 502 NOTICE.

Examples of Reasonable Means to Opt Out.

The example in Section __.8(a)(2)(ii) of the Proposed Rules specifies that a financial institution provides a reasonable means of opting out if it: (1) designates check-off boxes on the relevant forms with the Section 502 opt-out notice, (2) includes a reply form together with the opt-out notice; or (3) provides an electronic means to opt out, if the consumer agrees to the electronic delivery of information. The Proposed Rules, however, specify that a financial institution does not provide a reasonable means to opt out by requiring consumers to send their own letter to the institution to exercise their right, although an institution may honor such a letter if received.

This example should be revised to make clear that the use of toll-free telephone numbers provides a reasonable means to opt out. In this regard, the Federal Trade Commission ("FTC"), in its proposed privacy regulations, provides that a financial institution may designate a toll-free telephone number as a means that consumers can use to opt out. Such an opt-out method would be convenient for consumers and financial institutions alike. Consumers can simply pick up the telephone and make a toll-free call to opt out. In addition, financial institutions would be provided the flexibility they need in providing opt-out methods that meet their needs, as well as the needs of their customers.

SECTION __.9. EXCEPTIONS RELATING TO SERVICE PROVIDERS AND JOINT MARKETING AGREEMENTS.

Section __.9 of the Proposed Rules implements Section 502(b)(2) of GLB by providing an exception from the opt-out requirements for third party service providers and for certain joint marketing agreements. However, in these cases, financial institutions are still required to provide the initial privacy notice and to enumerate the categories of information disclosed, etc.

In drafting the Proposed Rules, however, the Agencies have inappropriately applied the disclosure and confidentiality requirements of Section 502(b)(2), intended for joint financial institution marketing arrangements, to traditional bank outsourcing arrangements, unless those arrangements qualify under Section 502(e). The Agencies,

therefore are urged to amend Section ____9 to delete references to third parties other than those engaged in joint marketing agreements.

Application of the disclosure and confidentiality requirements to third parties participating in a joint marketing arrangement with the financial institution to market products of the third party is consistent with the basic approach of Title V of GLB, as well as with the specific language of 501(b)(2). However, applying these requirements to a third party that markets only products of the financial institution, although perhaps consistent with the language of Section 502(b)(2), is inconsistent with the overall rationale of Title V. This is because a third party marketing the financial institution's products is indistinguishable from the financial institution – it does only what the financial institution can do, only at the direction of the financial institution and can only offer the financial institution's products and services.

In addition, the failure to correct this incorrect treatment of outsourcing arrangements would create substantial costs for financial institutions, especially smaller institutions, with absolutely no benefit to the consumer. This rule would mean, for example, that a financial institution could not retain an outside company to develop scoring models, evaluate applications or do reference checks (all common practices, particularly for small banks) without satisfying these same special rules.

Contractual Agreement.

Under Section ____9 of the Proposed Rules, the contractual agreement must specify that the third party will use the information solely for the purposes for which the information is disclosed or as otherwise permitted by Section 502(e). With respect to this contractual agreement requirement, the Agencies request comment on whether third-party contractors should be permitted to use information received pursuant to Section ____9 to improve credit scoring models or analyze marketing trends, so long as the third party does not maintain the information in any way that would permit identification of a particular consumer; that is, to use depersonalized or aggregate information for modeling purposes.

The final Rules should permit third-party contractors to depersonalize information received pursuant to Section ____9 and use such information for other purposes -- such as improving credit scoring models or analyzing marketing trends. Because the information would be depersonalized, the privacy interests of consumers are not lessened in any way by allowing third parties to use information received under Section ____9 for such purposes.

Joint Marketing Agreements.

The Agencies seek comment on whether the Proposed Rules should be revised to require a financial institution to take steps to assure itself that the product being jointly marketed and the other participants in the joint marketing agreement do not present undue risks for the institution. The Agencies indicate that these steps could include ensuring that the financial institution's sponsorship of the product or service in question is evident from the marketing of that product or service.

The Agencies should not impose additional requirements on financial institutions with regard to joint marketing arrangements. Additional disclosures would destroy the seamless approach intended by such arrangements and would cause confusion to the customer. In addition, it is the responsibility of each financial institution to ensure that appropriate legal and reputational risk issues are addressed by the financial institution. In the event an institution does not adequately address these risks, the Agencies should use their general supervisory authority to effect appropriate change.

SECTION __.11. OTHER EXCEPTIONS TO NOTICE AND OPT-OUT REQUIREMENTS.

The notice and opt-out requirements of Title V of GLB do not apply in certain cases, such as:

With Consent or Direction of the Consumer (Section __.11(a)(1)).

The final Rules should make clear that co-brand and affinity programs are exempt from the opt out requirements of Title V. When a consumer enters into an arrangement with a financial institution involving a co-brand or affinity program, the use of information relating to the consumer by both the financial institution and the co-brand or affinity partner is an essential part of the operation of that program. Consumers that acquire products or services through co-brand or affinity programs are, by their nature, providing consent to their financial institution to share information to the extent necessary to provide the benefits of such products or services. Additionally, the Agencies should clarify that if a consumer insists on opting-out of information sharing for such products or services at a later time, the financial institution should have the right to terminate the customer relationship or move the customer into another account.

SECTION __.13. LIMITS ON SHARING OF ACCOUNT NUMBERS FOR MARKETING PURPOSES.

Section __.13 implements Section 502(d) of GLB which prohibits a financial institution from disclosing account numbers or similar access codes for credit cards, deposits or transaction accounts to any nonaffiliated third party for use in marketing.

The Agencies are urged to specifically clarify in their Final Rules that the prohibition in this section:

- 1. Applies only to an account number or code "for a credit card account, deposit account, or transaction account" as Section 502(d) of the statute provides. The final Rules should specify that mortgage loan account numbers are not within the scope of Section __.13, both because they are not covered by the language of the statute and*

- because a mortgage loan account number cannot be used to effectuate a payment instruction against a consumer's funds;*
- 2. Does not apply to agents, processors or service providers that are providing operational support for the financial institution, including marketing products on behalf of the financial institution itself;*
 - 3. Does not include an account number or other similar reference number, so long as that number is encrypted or truncated when provided to the nonaffiliated third-party marketer and, in the case of an encrypted number, the nonaffiliated third-party marketer is not given the device or other information needed to decode or unscramble the encrypted number, or in the case of a partial or truncated account number, the reference number cannot be used by the recipient nonaffiliated third-party marketer to post a charge or debit against the particular account;*
 - 4. Does not apply when a financial institution provides an account number to a nonaffiliated third party for use in marketing to the consumer, if the financial institution has obtained the consumer's prior consent to provide that information to that nonaffiliated third party; and*
 - 5. Does not preclude a financial institution from providing an account number of a consumer to a nonaffiliated third-party after the consumer has already agreed to use the account to purchase the goods or services being offered.*

Without a clarification in the final Rules that the providing of account numbers by a financial institution to the institution's agents, processors or service providers is not prohibited by Section 502(d), financial institutions may be required to discontinue certain routine practices in using agents, processors and service providers, such as preparation of marketing literature, for the institution, because of the uncertainty surrounding whether such practices are prohibited under Section 502(d). In such cases, the financial institution should not be viewed as "sharing" information with a nonaffiliated third party. Instead, the processor or service provider should be viewed as an extension of the financial institution itself.

As the Agencies discuss in the Joint Notice, the Section 502(d) prohibition is designed to avoid the risks associated with direct access by a third party to a consumer's account, whereby the third party can directly post charges or debits to the consumer's account by using the account number. These risks are not present, however, when encrypted accounts numbers or so-called reference numbers are used, because the third party marketer cannot use these numbers to post a charge or debit against a consumer's account. In addition, when a consumer agrees to purchase goods or services from a nonaffiliated third party and agrees to use a credit card or debit card account for this purchase, the third party needs some accurate device to identify for the financial institution which account should be debited or charged. Encrypted account numbers and reference numbers serve this important purpose of allowing a third party to identify accurately to the institution which account should be debited, without imposing risks regarding unauthorized use of the consumer's account.

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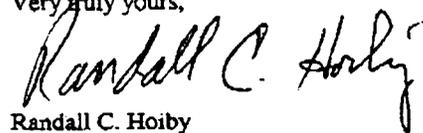
The ability to provide an account number to a nonaffiliated third party with the consumer's consent is particularly important in the context of co-brand or affinity credit or debit card programs. Financial institutions often make available account numbers relating to the co-brand or affinity accounts to the co-brand or affinity partners, so that when the co-brand or affinity partner communicates information relating to the accounts to the financial institution, the co-brand or affinity partner can accurately identify the account to which the information relates.

As discussed above, the sharing of information by a financial institution with a co-brand or affinity partner -- including account numbers -- should be a matter of notice and consent. The consumer has chosen to participate in this arrangement which necessarily involves use of the information by both the financial institution and the co-brand or affinity partner.

The clarification that Section __.13 does not preclude a financial institution from providing an account number of a consumer to a nonaffiliated third-party after the consumer has already agreed to use the account to purchase the goods or services being offered is consistent with the plain language of Section 502(d), which only restricts a financial institution from providing an account number for a credit card account, deposit account or transaction account of a consumer to any nonaffiliated third party "for use in" telemarketing, direct mail marketing or other marketing through electronic mail to the consumer. Once a consumer has decided to purchase the good or service being marketed, the marketing has concluded.

The TRANSAMERICA LIFE COMPANIES appreciates the opportunity to comment on the Proposed Rules. Please do not hesitate to call me at 410 576-4529 if you have any questions, or if I can provide you with additional information.

Very truly yours,



Randall C. Hoiby
Associate General Counsel