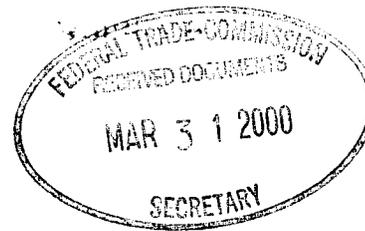


Wachovia Corporation
100 North Main Street
Winston-Salem, North Carolina 27150



March 30, 2000

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

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

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

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

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

Jonathan G. Katz
Secretary
Securities and Exchange
Commission
450 5th Street, NW
Washington, DC 20549
File No. S7-6-00

Becky Baker
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Re: Proposed Privacy Regulations

Dear Sirs and Madams:

This letter is submitted on behalf of Wachovia Corporation, Wachovia Bank, N.A., the First National Bank of Atlanta-Delaware (d/b/a Wachovia Bank Card Services), Atlantic Savings Bank, FSB, and Wachovia Securities, Inc. (hereinafter collectively referred to as "Wachovia"). Wachovia Corporation is an interstate financial holding company with dual headquarters in Atlanta, Georgia and Winston-Salem, North Carolina, serving

regional, national and international markets. Its member companies offer personal, corporate, trust, and institutional financial services. Wachovia Bank, N.A., the principal subsidiary of Wachovia Corporation, has more than 700 offices and 1,300 ATMs in Florida, Georgia, North Carolina, South Carolina and Virginia.

Wachovia strives to build long-standing customer relationships. Such relationships are possible only when a high level of trust and confidence exist between both partners. Full disclosure of policies relating to information collection, use and protection bolsters this trust and confidence. This is one of the reasons that Wachovia was the first large bank to publish the full text of its privacy policy on its web site.

Wachovia appreciates the opportunity to comment to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (hereinafter collectively referred to as the "Agencies") on the proposed privacy regulations authorized and required under Title V of the Gramm-Leach-Bliley Act ("GLBA") adopted on November 12, 1999. This letter also is submitted to the Federal Trade Commission ("FTC"), the Securities and Exchange Commission ("SEC"), and the National Credit Union Administration ("NCUA") because their proposed privacy regulations ("rule") address many of the same issues as the Agencies' proposals. Wachovia appreciates and applauds the efforts and cooperation by the Agencies, the FTC, the SEC, and the NCUA in completing these proposed regulations in a prompt and appropriate manner.

Wachovia generally supports the proposed regulations but does have a few comments that we trust will be helpful to the Agencies as the final privacy rules are crafted. The following comments are organized according to the Section number within the proposed regulations to which they relate.

§ __.1 *Purpose and Scope*

The Agencies request comment on whether the proposed rules also should apply to foreign financial institutions that solicit business in the United States but do not have an office in the United States. Wachovia supports extending these rules to such institutions. By so doing, United States consumers will have the opportunity to evaluate the institution's information privacy policies and practices prior to making the decision to become a customer of that institution. Consistency of required disclosures across economic markets will eliminate any confusion on a consumer's part and will allow consumers to differentiate institutions based upon their policies.

§ __.2 *Rule of Construction*

The Agencies request comment on the usefulness of including examples in the rule. Wachovia encourages the Agencies to continue to include within the rule examples of how an institution might comply with the rule requirements. The guidance provided by these

examples is extremely helpful to financial institutions, but the Agencies should make it clear that the examples provided are not exhaustive and there could be other ways to ensure compliance with the requirements of the rule. Additionally, the Agencies are encouraged to clarify that compliance with any of the examples provided constitutes compliance with the requirements of the rules. Wachovia also would encourage the Agencies to use the same exact language when including the same examples within their respective rules. The effect of this would lead to consistency of disclosure content and would be less confusing to consumers when comparing the policies and practices of different institutions. Identical language for the examples also would meet the statutory intent set forth in Section 504(a)(2) of the GLBA that the Agencies produce consistent and comparable regulations.

§ __.3 Definitions

Consumer

In the Agencies' proposed rule the term "consumer" is defined to include not only an individual who obtains a financial product or service from a financial institution, but also someone who merely submits an application for a loan or who provides personal nonpublic information to a financial institution in connection with seeking to obtain a financial product or service. Wachovia encourages the Agencies to conform the definition of "consumer" within the rules to the definition contained in Section 509(9) of the GLBA. The GLBA defines a consumer as "...an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes,...". The key word in this definition is "obtains". Someone who applies for a loan and either withdraws the application prior to the application being decided or someone whose application is declined never "obtains" a financial product or service and therefore does not meet the statutory definition of a "consumer".

Nonpublic Personal Information

The proposed rule makes this terminology synonymous with the term *Personally Identifiable Financial Information*. In either case the definition is poorly worded and ill understood. Specifically, confusion exists when explaining *Publicly Available Information* and when it falls or does not fall under the scope of nonpublic personal information. To be consistent with the intent of the GLBA Wachovia suggests that the definition in the proposed rule be modified to clarify that to be considered nonpublic personal information the information must be personally identifiable and financial in nature. The definition of financial in nature should be information that describes an individual's financial condition, such as an individual's assets and liabilities, income, account balances, payment history and overdraft history, and should not include other personally

identifiable information provided by the consumer or collected by the institution that clearly is not financial in nature.

Information that is publicly available is public regardless of how it is obtained. For this reason Wachovia favors the proposed Alternative B from the FRB's proposed rule in deciding whether information obtained should be classed as *Nonpublic Personal Information*.

In response to the question posed by the agencies about whether the proposed definition of *Nonpublic Personal Information* should cover information that contains no indicators of the consumer's identity we believe the answer should be "no". Information that is not personally identifiable poses no consumer privacy concerns and should not be subject to the disclosure and opt-out provisions of the GLBA.

§ __.4 Initial Notice to Consumers of Privacy Policies and Practices Required

The Agencies request comment on "who should receive a notice in situations where there is more than one party to an account". Wachovia believes that in order to reduce the cost of the annual notification it is imperative to send these notices to the "household". This should not materially compromise each account holder's understanding of the financial institution's privacy policy. Such a practice also would be consistent with the providing of regulatory disclosures to joint account parties that are contained in the Federal Reserve Board's consumer protection regulations, such as Regulation Z and Regulation E.

The Agencies also invite comment on the regulatory burden of providing initial notices and the methods financial institutions anticipate using. The requirement to provide an initial notice is not onerous in the sense many other notices also are provided when a financial relationship is established. It is hoped that all of the required components of the institution's privacy policy can be integrated into the Terms and Conditions document but remain conspicuous to the customer.

When a relationship is established in a traditional branch the initial disclosure will be provided to the customer early in the conversation as suggested in the regulation. Wachovia agrees with the Agencies that the initial disclosure can be provided later when a relationship is established over the phone. For example, when a deposit relationship is opened through a 24 hour customer call center, the privacy disclosures would be mailed to the new customer with the other required account disclosures. The account will not be "open" until the signature cards and initial funding are received so the account holder does have the opportunity to shop the privacy policies of financial institutions before finalizing the relationship.

§ __.5 Annual Notice to Customers Required

The Agencies have asked for comment about the best criteria to use in defining a dormant customer relationship. Wachovia suggests that twelve months of no activity is generally a good measure in classifying a relationship as dormant. However, this is complicated by such services as Time Deposits which frequently have terms longer than one year with no customer interaction. Perhaps the definition could be related to the type of financial relationship with transaction accounts being 12 months and time deposits being 12 months after maturity.

The Agencies also invite comment on the methods that institutions anticipate using to provide the required annual disclosure. It is extremely important that information be communicated to customers in an understandable fashion, but it is also important that this be done in a cost-effective manner. Wachovia conservatively estimates that this mailing would be sent annually to approximately 2.4 million households at an annual cost of approximately \$1.5 million. It would seem that as long as the Section 502 disclosures are consistently provided that it would be unnecessary to require an annual mailing to all customers unless an institution's privacy policies and/or practices significantly changed during a twelve month period. Wachovia recognizes that this is mandated by the statute and the Agencies have no discretion to alter this time period. Perhaps the final rules could make it clear that these annual disclosures can be provided in a number of ways, one of which would be by inclusion in periodic customer statements. This method of communication would be much less costly than a separate customer mailing.

§ __.6 Information to Be Included in Section 503 Privacy Notices

Categories of Information Collected:

The proposed rule provides examples of ways in which a financial institution may meet its Section 503 privacy policy requirements with regard to (1) the categories of information collected, (2) the categories of information disclosed, (3) the categories of nonaffiliated third parties to whom information is disclosed (4) the disclosure of nonpublic personal information of former customers and (5) the security protections for customer information. Wachovia is concerned that the examples set forth in the proposed rule would require a financial institution to include such detailed descriptions about its policies with regard to collections, disclosure and protections of customer information, that the notice would be burdensome to the consumers and would not comply with the "clear and conspicuous" requirement as set forth in GLBA.

Wachovia recommends that the Section 503 privacy policy notices should provide examples of the categories of nonpublic personal information that the institution discloses, shares, and collects. This would assist in reducing the length of the notice to a more manageable and less burdensome size for consumers. In addition, by requiring overly detailed privacy policy notices, the proposed rule would increase the frequency

with which an institution would have to provide its customers with a change in terms notice. Therefore, requiring a financial institution to list each and every category of nonpublic personal information that may be disclosed, shared or collected would unnecessarily increase the length and complexity of the Section 503 notices without a corresponding benefit to consumers.

Categories of Nonaffiliated Third Parties to Whom Information is Disclosed

The example provided by the proposed rule states that a financial institution categorize the nonaffiliated third parties to whom the financial institution discloses nonpublic personal information if the institution identifies the types of businesses in which the nonaffiliated third parties engage. The proposed rule also states that the use of general terms to describe the types of businesses in which such third parties engage is acceptable as long as the institution also provides examples of the significant lines of businesses of the nonaffiliated third parties.

Wachovia suggests that the example be revised to allow financial institutions to categorize nonaffiliated third parties to whom information is disclosed by type of business in which the third parties engage or, by type of products offered by third parties, or by a combination of both. The example also should be revised to provide that a financial institution is not required to list all such third party relationships in its privacy policy notice. This would be beneficial because, in some situations a financial institution may not know the source of the nonpublic personal information that it may disclose, such as when a financial institution purchases the account from another institution.

These changes would allow the final rule to provide a financial institution with the flexibility to choose how best to categorize the nonaffiliated third parties with whom they share nonpublic personal information.

Information Sharing Practices Between Affiliates

Under the proposed rule, a financial institution would be required to include in its Section 503 privacy policy notice information regarding (1) the categories of nonpublic personal information that may be disclosed to affiliates, (2) the categories of affiliates to whom such information may be disclosed, and (3) the opt-out notice required under the Fair Credit Reporting Act. The proposed requirement to disclose an institution's sharing practices between affiliates is inconsistent with the GLBA.

Section 503(a) of the GLBA requires financial institutions to provide a privacy policy notice to customers and Section 503(b)(1) delineates the information to be included in the privacy policy notice mandated by the GLBA. Section 503(b)(1) does not state that a Section 503 privacy policy notice must include a financial institution's practices for sharing information between affiliates. Rather, the only requirement related to affiliate sharing listed in Section 503(b) is the reference to the FCRA opt-out notice. In addition,

Section 506(c) demonstrates that Congress intended Title V of the GLBA to address the sharing practices between financial institutions and nonaffiliated third parties. Thus to be consistent with the expressed intent of the GLBA, the final rule 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 policy notice regarding the institution's information sharing practices with affiliates.

Section 502(e) Exceptions

The proposed rule indicates that with respect to the exceptions in Section 502(e), a financial institution is required only to inform customers that it makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the institution's Section 503 privacy policy notice. The Agencies specifically requested comment on whether this notice is adequate.

Wachovia believes that the Section 503(e) notice is more than adequate to inform customers that an institution may disclose nonpublic personal information to nonaffiliated third parties, other than those nonaffiliated third parties described in the Section 503 privacy policy notice. Therefore, Wachovia fully supports the Agencies' position.

Confidentiality, Security and Integrity of Information:

The example provided in the proposed rule in Section __.6(5) indicated that a financial institution adequately describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if the institution explains who has access to the information and the circumstances under which the information may be accessed. The example further provides that a financial institution adequately describes its policies and practices with respect to protecting the integrity of nonpublic personal information if the institution explains the measures it takes to protect that information against reasonably anticipated threats or hazards.

Wachovia recommends that the example be revised to provide that a financial institution need only provide examples of the types of limitations, if any, that the institution places on access to information and the types of measures that the institution takes to protect against reasonably anticipated threats or hazards. Requiring a financial institution to provide detailed information in its Section 503 privacy policy notice regarding who has access to nonpublic personal information of consumers and the circumstances relating to such access would unnecessarily add to the length and complexity of the Section 503 privacy notice, without providing meaningful information to consumers. In addition, disclosing exact and detailed descriptions of the institution's security and confidentiality measures could undermine the security of the institution.

§ __.7 *Section 502 Opt-Out Notice*

Joint Accounts.

The Agencies request comment on how the opt out right should apply to joint accounts. In particular, the Agencies asked whether a financial institution should require all parties to an account to opt out before the opt out becomes effective.

Wachovia recommends that the final rule allow financial institutions flexibility in providing opt-out notices. A financial institution should be required to provide the Section 502 opt-out notice to only one party to the account. This approach is entirely consistent with other consumer protection regulations, such as Regulation Z and Regulation E, which generally provide that disclosures required under those consumer protection regulations need be provided only once in connection with the opening of any account. As is the case with these existing regulations, the party who receives the Section 502 opt-out notice also would receive it as a representative of and agent for other parties to the account.

Similarly, where a financial institution provides the Section 502 opt-out notice to one party to the account, the financial institution should be prepared to honor an opt out from any party to the account. Thus, with respect to joint accounts, an opt out received from any party to the account should be honored with respect to all nonpublic personal information relating to that account.

Reasonable Opportunity to Opt Out.

The proposed rule provides that a consumer must be given a reasonable opportunity to opt out before a financial institution may disclose nonpublic personal information about the consumer. Specifically, the proposed rule provides two examples of when a financial institution has complied with the reasonable standard -- one example for opt-out notices for “consumers” who engage in isolated transactions with the institution and one example for notices that are provided to “customers” of the institution.

Example for Isolated Transactions.

The example pertaining to isolated transactions indicates that a financial institution has provided a reasonable opportunity to opt out to a consumer engaged in an isolated transaction with the institution if the institution provides the consumer with the Section 502 opt-out notice at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction. This example, as currently drafted, is entirely inconsistent with the GLBA. In particular, Section 502 of the GLBA does not require that the Section 502 opt-out notice be provided to a consumer at the time of the isolated transaction between the consumer and the financial institution. Instead, under Section 502, a financial institution is allowed to provide the Section 502 opt-out notice to a consumer *at any time* before nonpublic

personal information relating to that consumer is disclosed to a nonaffiliated third party, so long as the institution provides the consumer with a reasonable amount of time to opt out of such disclosures after that Section 502 opt-out notice is given. The final rule should be consistent with the language and intent of Section 502(b)(1)(B) of the GLBA.

In addition, requiring a financial institution to provide the Section 502 opt-out notice to a consumer at the time of the isolated transaction would also significantly inconvenience the consumer. For example, with respect to ATM transactions, a consumer will not want to scroll through the Section 502 opt-out notice (and the Section 503 privacy policy notice) before completing an ATM transaction. This would greatly increase the amount of time a consumer would have at the ATM before being able to complete a transaction. Furthermore, Wachovia would like the final rule to clarify that if a financial institution does not provide a consumer's nonpublic personal information obtained from an isolated transaction to third parties, it does not need to provide an opt-out notice.

For all of these reasons, and to be consistent with the statute, the example regarding isolated transactions should be revised to provide that a financial institution may provide the Section 502 opt-out notice to a consumer that is engaging in an isolated transaction with the institution either: (1) at the time of the transaction; or (2) at a later time, as long as no nonpublic personal information of the consumer is disclosed to a nonaffiliated third party before the Section 502 opt-out notice is provided and the customer is given a reasonable amount of time to opt out. In addition, the example should be revised to provide that if the opt-out opportunity is given at the time of the transaction, a financial institution may provide the opt-out opportunity at any time during the transaction, including after the transaction has been completed.

Mailed Notices to Customers.

The Agencies provided an example indicating that thirty days is an appropriate response period for notices sent by financial institutions to its customers.

This example should be revised to apply to all consumers, not just customers. A financial institution should be allowed to use the mail as a method to provide the Section 502 opt-out notice to all consumers, including consumers who engage in isolated transactions with the institution. The final rule example should specify that if the Section 502 opt-out notice is provided to a consumer through the mail and an address is specified as a method for the consumer to opt out, the institution must allow the consumer a reasonable amount of time to exercise the right to opt out, such as 30 days, before information is shared. In addition, the proposed rule should be revised to clarify that a financial institution can specify in its Section 502 opt-out notice a toll-free telephone number as a means to opt out, and that this is a reasonable opt-out method, as long as the institution allows the consumer a reasonable amount of time, such as 15 days, to exercise the right to opt out before any information relating to the consumer is shared with nonaffiliated third parties.

Electronic Medium to Opt Out.

The Agencies seek comment on whether an example in the context of transactions conducted using an electronic medium would be helpful. Wachovia recommends that the final rule include an example that specifies that a financial institution may provide the Section 502 opt-out notice (and the Section 503 privacy notice) to a consumer through electronic means if the consumer has agreed to receive these types of notices and information by electronic delivery. In addition, the final rule should make it clear that if a financial institution provides the Section 502 opt-out notice to such a consumer by using electronic mail, the consumer has a reasonable amount of time, such as 15 days, to exercise the opt-out right before information may be shared.

§. __ 8 Form and Method of Providing Section 502 Opt-Out notice

Examples of Reasonable Means to Opt Out.

The example in Section __.8(a)(2)(ii) of the proposed rule 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 rule, however, specifies 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 it clear that the use of toll-free telephone numbers provides a reasonable means for consumers to exercise their right to opt out. Both consumers and financial institutions would benefit by allowing a financial institution to provide a toll-free telephone number as a means that consumers can use 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.

The example referencing a reply card should be replaced with one indicating that providing an address for opting out, together with clear instructions on how to opt out, is sufficient. Specifying an address where consumers can write to opt out provides consumers with a meaningful means to exercise their opt-out rights, without imposing enormous costs on financial institutions in providing reply forms. Nonetheless, if the Agencies do retain the example pertaining to reply forms in the final Rule, it is absolutely imperative that the Agencies include the example relating to toll-free telephone numbers, as discussed above. Without the ability to provide toll-free telephone numbers as a means to opt out, financial institutions, especially smaller institutions, would face unnecessary and unjustified costs in providing the Section 502 opt-out notice to consumers.

Duration of Consumer's Opt-Out Direction.

The proposed rule provides that a consumer's direction to opt out under Section 502 of the GLBA is effective until revoked by the consumer in writing, or if the consumer has agreed to accept notices in electronic form, in electronic form. The final rule should allow a consumer to revoke an opt-out direction in any manner that the financial institution provides for exercising an opt-out right. Such as, if the financial institution provides a toll-free number for customers to exercise their right to opt-out, any customer who wishes to revoke their opt-out should be able to call the toll-free number. Therefore, the final Rule should not deny consumers convenient ways to reverse their opt-out decision, such as enabling them to do so orally either by telephone or in person.

§ __.9 *Exceptions Relating to Service Providers and Joint Marketing Agreements*

Agents, Processors and Service Providers.

In crafting the disclosure and opt-out provisions of Title V of the GLBA, Congress intended to add wide-ranging consumer privacy protections without interfering with longstanding and often fiscally responsible outsourcing practices of financial institutions. Thus, Congress exempted various servicing activities in both Section 502(b)(2) and in Section 502(e). The intention of these two provisions was to allow financial institutions to continue outsourcing to agents, processors, or other service providers activities that the financial institution could perform itself.

Moreover, Wachovia requests clarification that in situations where a financial institution acts as an agent, processor, or service provider to another financial institution, the servicing institution should be treated as such for the purpose of this regulation. In such cases, the financial institution fulfilling the service provider role is contractually subject to similar terms and conditions as non-financial institution service providers. Therefore, the financial institution providing the servicing to another financial institution is not required to provide a Section 503 privacy policy notice or opt-out notice, but is contractually prevented from using customer data for the benefit of the service provider.

In addition, under Section __.9 as drafted, a financial institution would be required to include in its privacy policy disclosures, for most of its existing outsourcing arrangements, a separate description of the categories of information that are disclosed and the categories of third parties providing the outsourced services. In complying with these requirements, the financial institution must provide the same level of detail that is required to satisfy the requirements for disclosing information to all other nonaffiliated third parties. In addition, under Section __.8 as proposed, a financial institution cannot change its outsourcing arrangements, at least as to the types of information disclosed or the types of third-party service providers utilized, unless and until it sends a change-in-terms notice to *all* of its customers. In other words, in order to economically justify the use of a new service provider, the financial institution would not only have to consider the

cost savings of using this new service provider, but then also weigh these cost savings against the costs of sending change-in-terms notices to *all* of its customers.

There is no apparent policy reason why outsourcing activities under Section 502(b)(2) should be treated any differently than outsourcing activities under Section 502(e). In both cases, a financial institution is making information available to its own agents, processors and servicers to perform activities that the institution would otherwise do itself, but because the third party can perform the activity cheaper, better or more efficiently, or any combination thereof, the financial institution chooses to outsource. In any case, this should not be viewed as the “sharing” of information with a nonaffiliated third party. Instead, the servicer should be viewed as an extension of the financial institution, and as such the servicers and processors performs functions that the financial institution would otherwise perform itself.

However should the Agencies believe that some outsourcing disclosure is necessary, it should be brief and generic. Such an example should be: “We may use third party processors and servicers to assist us in providing our customers with the products and services, and thus share with the servicers and processors the necessary information to perform these functions. To require otherwise would turn every outsourcing decision into an economic burden on financial institutions and consumers alike, with no accompanying benefits to consumers.

Contractual Agreement.

Under Section __.9, a joint marketing 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.

Wachovia supports a final rule that permits third-party contractors to depersonalize information received pursuant to Section __.9 and use such information for purposes such as improving credit scoring models or analyzing marketing trends. Wachovia recommends this for two reasons. First, the use by third-party contractors of such aggregate information for the purpose of improving credit scoring models falls within the “necessary to effect, administer or enforce a transaction” exception under Section 502(e)(1). Specifically, the disclosure of such aggregate information for credit scoring models is “usual . . . to carry out . . . the product or service business to which the transaction is a part . . .” because the development and utilization of scoring systems is not only common, but has become an essential element of the credit approval process. Second, because the information would be depersonalized, the privacy interests of

consumers are not lessened in any way when a third party uses the information received under Section __.9 for credit scoring models.

Joint Marketing Agreements.

The Agencies seek comment on whether the final rule should require a financial institution 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.

Wachovia recommends that the Agencies not impose additional requirements on financial institutions with regard to joint marketing arrangements, but should first wait and see whether the statutory requirements of full disclosure and confidentiality agreements are adequate to protect the interests of consumers and financial institutions. In this regard, the Agencies always can revisit the issue of whether additional requirements beyond the statutory requirements are needed with respect to joint marketing programs. Furthermore, financial institutions already must take into consideration safety and soundness issues as part of the normal risk assessment used for conducting due diligence when determining what products or services it will pursue with joint marketing participants. For this reason, any additional requirements would be unduly burdensome without a corresponding benefit.

Therefore, Wachovia recommends that the Proposed Rule be revised to provide that the statutory conditions of full disclosure and contractual agreements only apply to joint marketing agreements, and not to disclosures to agents, processors or service providers who provide the financial institution with operational support.

§ __.11 *Other Exceptions.*

Wachovia generally supports the provisions governing the exception to Section __.11, but proposed several changes to benefit consumers of financial products and services.

With Consent or Direction of the Consumer.

Co-brand and Affinity Program.

In certain credit or debit card arrangements, it is contemplated that the consumer has or will have a relationship with both a financial institution and a nonaffiliated third party that also participates in so-called "co-brand" or "affinity" programs. For example, a financial institution may offer a co-branded credit card with an airline company, where cardholders would receive benefits (such as frequent flier miles) from the airline company based on use of the credit card. As is the case with all such rewards programs, the benefits program provided by the airline company is offered in conjunction with the

credit card program, essentially as one product. These types of co-brand or affinity programs benefit consumers and financial institutions alike.

Wachovia encourages the agencies to make clear in the final rule that sharing information with co-brand or affinity partners is not subject to the opt-out provisions of the bill, but rather is a matter of notice and consent. In such co-brand or affinity programs, the relationship agreement itself contemplates that the consumer has or will have a relationship with both the financial institution and the co-brand or affinity partner, and the benefits program is offered by the co-brand or affinity partner in conjunction with the debit or credit card program, essentially as one product. 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 in connection with what is essentially the same customer relationship. Since, the sharing of information by the financial institution with the co-brand or affinity partner is an integral part of offering that product, the programs should not be subject to notice and opt-out.

Also, the final Rule should specify that if a consumer participating in a co-brand or affinity program later opts out of sharing, a financial institution should be able to terminate the account or shift the consumer to another account that does not offer the co-branded or affinity elements, since the sharing of customer information is an integral aspect of the co-brand or affinity program.

Consent Safeguards.

The Agencies seek comment on whether safeguards should be added to the exception for consent in order to minimize the potential for consumer confusion. The Agencies indicate that such safeguards might include, for instance, a requirement that consent be written or that it be indicated on a separate line in a relevant document or on a distinct Web page.

The final rule should provide financial institutions flexibility with respect to the methods by which financial institutions may obtain consent from a consumer. Specifically, the final rule should not require that a consumer's consent be in writing or indicated on a separate line in a relevant document or on a distinct Web page. Instead, the final Rule should only require that the consent provision be presented in a clear and conspicuous manner to the consumer.

With respect to standards relating to the scope of consent, the Agencies, at most, should only require that the consent provision be specific in its terms, such that the consent provision identifies the particular purposes for which information will be disclosed and the types of information that will be disclosed. In particular, the consent provision should not be required to identify nonaffiliated third parties to whom the information will be disclosed, other than by type of business, because the identity of the third party may differ based on the circumstances and the consumer's geographical location.

§ __.12 *Limits on Redisdisclosure and Reuse of Information*

Redisdisclosure of Information by a Third Party.

The Agencies seek comment on whether the final 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 redisdisclosure of that information. Wachovia believes that nonaffiliated third parties, that receive nonpublic personal information about consumers, should be subject to the same limits and restrictions that govern the financial institution that initially collected the information.

In addition, the final Rule should not require a financial institution to affirmatively audit the activities of such nonaffiliated third parties, other than to contractually limit redisdisclosure of the information and enforce those contractual provisions should evidence of a violation arise. A financial institution could not effectively audit each third party to whom it might disclose nonpublic personal information to ensure that such parties are complying with their statutory obligations to limit redisdisclosure of that information, but could enforce contractual obligations should violations occur. The rules could be modified to require that a financial institution should complete appropriate due diligence when selecting nonaffiliated third party providers, as an industry standard practice.

Reuse of Information by a Third Party.

The proposed rule provides that a nonaffiliated third party may use nonpublic personal information about a consumer that it receives from a financial institution in accordance with an exception under Sections __.9, __.10 or __.11 only for the purpose of that exception. Wachovia recommends that the final rule allow the nonaffiliated third party to reuse the information if the so-called “secondary use” falls within one of the exceptions in Sections __.10 or __.11. Because the “secondary use” falls within one of the exceptions in Sections __.10 or __.11, the nonaffiliated third party could simply re-obtain the information from the financial institution for the “secondary use” purpose. The final rule should not require the nonaffiliated third party to undergo this additional step of obtaining the information from the financial institution. Instead, the final rule should allow a nonaffiliated third party to reuse information for a secondary purpose if this secondary purpose falls within one of the exceptions in Sections __.10 or __.11.

§ __.13 *Limits On Sharing of Account Numbers for Marketing Purposes*

The Agencies seek comment on whether an exception to the Section 502(d) prohibition that permits nonaffiliated third parties access to account number is appropriate, the circumstances under which an exception would be appropriate, and how such an exception should be formulated to provide consumers with adequate protection. In

particular, the Agencies seek comments on whether account numbers can be provided (1) to agents, processors or service providers, (2) after receiving consent from the customer, and (3) so long as it is encrypted.

Agents, Processors and Service Providers.

Wachovia recommends that the final rule make it clear that providing account numbers to agents, processors or service providers that supply operational support for the financial institution, including marketing products on behalf of the financial institution itself, is not prohibited under Section 502(d) of the GLBA. Wachovia believes that Congress intended Section 502(d) to restrict the ability of a financial institution to provide account numbers for a credit card account, deposit account or other transaction account of a consumer to a nonaffiliated third party for use by the nonaffiliated third party that is marketing its own goods or services. There is nothing in the GLBA to support a finding that Congress intended to inhibit or restrict the longstanding practice of outsourcing utilized by financial institutions.

Encrypted Account Numbers and Reference Numbers.

Wachovia recommends that the final rule clarify that the term “account number or similar form of access number or access code” does not include a so-called reference number used by the financial institution to identify a particular account holder, provided the reference number cannot be used by the recipient nonaffiliated third-party marketer to post a charge or debit against the particular 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. Reference numbers serve this important purpose of allowing a third party to identify accurately to the institution which account should be debited or charged, without imposing risks regarding unauthorized use of the consumer’s account.

Consent.

The final rule should specify that a financial institution may provide 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 marketer.

This consent provision is particularly important in the context of co-brand or affinity credit or debit card programs. A financial institution often makes 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.

Conclusion of Marketing Activities.

Wachovia would like clarification that Section 502(d) 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. To avoid confusion regarding when the marketing activities have concluded, the final Rule should clarify that Section 502(d) 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, which is consistent with the plain language of Section 502(d).

§ __.16 Effective Date; Transition Rule

The Agencies seek comment on whether six months following the adoption of the final rule is sufficient time to enable financial institutions to comply with the regulations. In addition, the Agencies indicated in the Joint Notice that if a financial institution intends to disclose nonpublic information about a consumer before the effective date of the regulations, the institution must provide the Section 502 opt-out notice (and the Section 503 privacy notice) to the consumer and provide a reasonable opportunity to opt out before the effective date.

The final rule should provide that while the obligations of Sections 502 and 503 of the GLBA and the implementing regulations become effective six months following the adoption of the final Rule, compliance with such obligations is voluntary until 6 months after the effective date (*i.e.*, until May 13, 2001). Sections 502 and 503 of the GLBA place on financial institutions numerous new obligations, many of which will not be fully realized until the final Rules are released. Thereafter, Wachovia believes that financial institutions need adequate time to implement operational changes and audit procedures necessary to comply with obligations set forth in the final Rule.

In addition to developing Sections 502 and 503 notices, financial institutions must establish and implement new procedures for delivering such notices to consumers. Moreover, financial institutions must (1) establish and implement new procedures for providing opt-out methods to consumers and for receiving and handling opt outs received from consumers; (2) design and implement effective employee training programs for satisfying all of these new procedural requirements and establish compliance systems to adequately monitor the institutions' performance in complying with these requirements; and (3) evaluate all of their existing contracts with nonaffiliated third parties, to determine if they comply with the obligations imposed under Sections 502 and 503. These requirements require significant computer system changes that financial institutions need time to implement.

Although a voluntary compliance rule should apply to both new and existing customers of the financial institution, the final Rule should adopt a voluntary compliance rule of 6 months with respect to existing customers of financial institutions, or provide a longer time period for sending the Section 503 privacy policy notices, such as 90 days. For existing customers, the Proposed Rule provides that a financial institution is required to provide the Section 503 privacy notices within 30 days of the effective date of regulations. With this 30-day transition period, financial institutions would be required to provide a Section 503 privacy notice to each and every one of their existing customers by December 13, 2000, thus during the holiday season, which is, needless to say, one of the busiest times during the year for mail. In addition, financial institutions are at that same time preparing other year-end disclosures to consumers.

The short 30-day transition period also would place tremendous pressure on financial institutions in finding third-party service organizations to prepare and print their privacy notices and to provide these notices to consumers on behalf of the institutions. In many cases, financial institutions use third-party mail houses to process and send notices to consumers on behalf of the institution. If each and every financial institution is required to send a Section 503 privacy notice to all of their existing customers within the same 30 days, mail houses will be completely overwhelmed. In fact, because of this market demand, financial institutions may be required to pay exorbitant fees to these mail houses in order to retain their services in mailing out the notices. Moreover, the 30-day transition period will not allow an institution to coordinate the mailing of Section 503 privacy notices with other required disclosures that are mailed out, such as periodic statements, because the 30-day period might not necessarily overlap with the time period in which the next periodic statement must be mailed out.

For all of these reasons, it is imperative that the final Rule provides financial institutions sufficient time to send out the Section 503 privacy policy notices to existing customers. A voluntary compliance rule of 6 months would provide financial institutions with the flexibility they need in providing the Sections 502 and 503 notices to all of their existing customers.

In the final rule, the Agencies also should make it clear that if an institution attempts to establish and implement reasonable procedures to comply with the obligations of Sections 502 and 503 of the GLBA, as implemented by the final Rule, the institution's failure to comply with such obligations should not be considered a violation of the statute if the violation results from an inadvertent error. This concept of a safe harbor from inadvertent errors is essential if financial institutions are not given adequate time after the final Rule is released to comply with the obligations under Sections 502 and 503.

Again, Wachovia appreciates the opportunity to offer comments concerning these important rules. Wachovia recognizes that developing rules in simple and plain language that balance regulatory burden with consumer protection is not an easy task. The Agencies, the FTC, the SEC and the NCUA are to be commended for their efforts.

Very truly yours,

A handwritten signature in black ink, appearing to read 'G. Joseph Prendergast', written over a large, circular, light-colored scribble or stamp.

**G. Joseph Prendergast
President and Chief Operating Officer**