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**Office of the Comptroller of the Currency  
Federal Reserve Board  
Federal Deposit Insurance Corporation  
Office of Thrift Supervision  
National Credit Union Administration**

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May 25, 2001

**Interpretive Letter #910  
June 2001  
15 USC 6802(d) & (e)  
15 USC 6804(d)  
12 CFR 40.12**

Re: Limits on Disclosing Account Numbers

Dear [ ]:

This letter responds to your letters to the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and Office of Thrift Supervision (the Agencies) dated May 2, 2001. You ask the Agencies to allow financial institutions to disclose unencrypted account numbers to [ ] ([ ]) upon a customer's express, written consent.

[ ] markets insurance products by direct mail to customers of financial institutions pursuant to joint marketing agreements between [ ] and the financial institutions. Under these agreements, financial institutions disclose lists of their customers' names, addresses, and encrypted account numbers to [ ]. Using this information, [ ] mails materials to market its insurance products to financial institution customers. When a customer decides to enroll in an insurance plan, the customer signs an authorization for the customer's financial institution to provide the customer's unencrypted account number to [ ]. Upon receiving that unencrypted number, [ ] charges the customer's account.

Section 502(d) of the Gramm-Leach-Bliley Act provides that a “financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code 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.*” (Emphasis added.) The primary reason a marketer seeks access to a customer’s account number is to allow the marketer to initiate a charge to the customer’s account as part of the transaction. We believe that interpreting the Act to consider marketing to have ended at the time the customer accepts the product would substantially undermine the prohibition, effectively limiting its application to the sharing of account numbers for tracking purposes while not denying third party marketers access to customer accounts.

Section 502(d) does not contain any exceptions to this prohibition. Moreover, the general exceptions for notice and opt out under § 502(e) of the Act, including the exception for disclosing information with the consent or at the direction of the consumer, do not apply to the account number disclosure prohibition under § 502(d). Accordingly, under the Act and the Agencies’ privacy regulations,<sup>1</sup> a financial institution may not provide its customers’ account numbers to a third party, such as [     ], under the circumstances you describe.

Section 504(b) of the Act provides that the Agencies may prescribe exceptions to § 502 that the Agencies deem consistent with the purposes of the Act if the Agencies adopt the exception by rule. Section \_\_.12 of the Agencies’ rules implements the § 502(d) prohibition and provides only two exceptions: financial institutions may disclose their account numbers a) to their agents to market the financial institution’s own products or services or b) to their partners in a private label credit card or affinity program. The [     ] disclosure does not fit within either of the limited exceptions that the Agencies have adopted by rule.

The privacy rule makes clear that the statutory prohibition focuses on restricting *access* to customer accounts. Accordingly, the financial institution itself must retain control of its customers’ account numbers. For instance, one of the limited exceptions to the prohibition against disclosing transaction account numbers permits a financial institution to disclose a customer’s transaction account number to its third party agent or service provider solely to market the institution’s own products or services, *provided* the third party may not directly initiate a charge to the customer’s account. In the supplementary information to

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<sup>1</sup> See 12 C.F.R. Part 40 (OCC); 12 C.F.R. Part 216 (FRB); 12 C.F.R. Part 332 (FDIC); 12 C.F.R. Part 573 (OTS); and 12 C.F.R. Part 716 (NCUA). Each of the Agencies adopted a consumer financial privacy regulation in substantially identical form. Each Agency uses a different part number but identical section numbers in its privacy regulation. In this letter, citations to the regulations use section numbers only, leaving the part numbers blank.

the regulations, the Agencies explain that while an institution may frequently use agents to assist in marketing, a consumer's protections are potentially eroded by allowing agents involved in the marketing to have access to a consumer's account. 65 Fed. Reg. 35162, 35181 (June 1, 2000); *see also* 65 Fed. Reg. 31722, 31733 (May 18, 2000) (NCUA).

Other aspects of this section make clear that a financial institution may not provide [ ] with transaction account numbers to access customer accounts — that is, to initiate charges. For example, § \_\_.12(c)(1) states that an encrypted account number is not protected from disclosure as long as the financial institution does not provide the third party with the code to decrypt. The Agencies explain, in the supplementary materials, that such an encrypted number “operates as an identifier attached to an account for internal tracking purposes only.” 65 Fed. Reg. at 35182; *see also* 65 Fed. Reg. at 31733 (NCUA). The Agencies reason that encrypting the account numbers would adequately protect consumers because the encryption would prevent the recipient from accessing the consumer's account. *Id.* For similar reasons, the prohibition against disclosing transaction account numbers does not apply to any accounts to which third parties *cannot initiate charges*. The Agencies explain that, because a third party cannot post charges to these types of accounts, the numbers for such accounts would not be covered by the prohibition. *Id.* If a third party could initiate charges to the account, however, the Agencies maintain that disclosure of the account number would be prohibited. *Id.*

While a financial institution may not provide a customer's account number to a third party under the circumstances you describe, a financial institution may initiate charges to its customer's account for a [ ] product where the customer has agreed to purchase the product. Of course, an individual is free to provide [ ], or any other merchant, with his or her own account number to purchase a product.

We trust that this responds to your question.

Sincerely,

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J. Virgil Mattingly  
General Counsel  
Board of Governors of the  
Federal Reserve System

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William F. Kroener, III  
General Counsel  
Federal Deposit Insurance  
Corporation

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Robert M. Fenner  
General Counsel  
National Credit Union  
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Julie L. Williams  
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