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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  
Federal Trade Commission**

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September 4, 2001

Re: Borrower's Loan Number on Recorded Documents

This letter responds to your letter to the Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), and Federal Trade Commission (FTC) (collectively, the Agencies<sup>1</sup>), dated June 8, 2001. You ask the Agencies whether it is permissible under the Gramm-Leach-Bliley Act (GLBA), Pub. L. No. 106-102 (Nov. 12, 1999), for an originating lender to place the borrower's loan account number on mortgages, deeds of trust, and assignments and releases of mortgages (collectively, "mortgage loan documents") that are then recorded in public records. For the reasons discussed below, it is our opinion that such practice falls within section 502(e)(1) of the GLBA, which excepts from the opt-out requirements disclosures of nonpublic personal information that are "necessary to effect, administer, or enforce the transaction" as that term is defined in section 509(7) of GLBA.<sup>2</sup> It also is our opinion that the practice is not prohibited by section 502(d) of GLBA, which, as a general rule, bans the disclosure of account numbers to nonaffiliated third parties for use in marketing.

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<sup>1</sup> The National Credit Union Administration (NCUA), while not a recipient of your letter, joins in this response.

<sup>2</sup> The Agencies' rules implement section 502(e)(1) in 12 C.F.R. § 40.14 (OCC); 12 C.F.R. § 216.14 (FRB); 12 C.F.R. § 332.14 (FDIC); 12 C.F.R. § 573.14 (OTS); 12 C.F.R. § 716.14 (NCUA); and 16 C.F.R. § 313.14 (FTC).

You state in your letter that it is a longstanding common practice for a mortgage lender to place the borrower's account number on a mortgage loan document to enable the document to be tracked and placed in the proper file once the document is recorded and returned from the recording office. You also state that the return of the document might take several months, and you note that the presence of the account number provides an efficient method for the receiving party (who might be the purchaser or servicer of the loan) to correctly identify the file in which to place the instrument.

Your letter raises two issues. The first is whether the disclosure of account numbers fits within the exceptions to the opt-out requirements. The second is whether the practice you ask about is permissible in light of the prohibition against disclosing account numbers to third parties for use in marketing. These issues are addressed below.

Exceptions to opt-out requirements. A financial institution may not disclose nonpublic personal information unless either (a) the institution first informs a consumer that it intends to do so and gives the consumer an opportunity to opt out or (b) the disclosure fits within one of the exceptions to the opt-out requirement. You note that the lender will be disclosing nonpublic personal information by adding the account number to the mortgage loan document and then having it recorded, but you maintain that this disclosure fits within the exception to the opt out rules for disclosures that are "necessary to effect, administer, or enforce a transaction requested or authorized by the consumer." GLBA, § 502(e)(1).

As you point out, the exception for disclosures that are "necessary to effect, administer, or enforce a transaction" applies to, among other things, a disclosure that is "required, or is a usual, appropriate, or acceptable method to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product...." *Id.* § 509(7)(A). Your letter suggests that, since the practice of placing account numbers on mortgages is so widespread and because the account number on a recorded instrument assists the recipient of the document in placing the instrument in the appropriate file, the disclosure of the mortgage account number under the circumstances you describe should be viewed as a "usual" and "appropriate" method of carrying out a transaction and of recording the instruments in question.

We agree that the presence of an account number on a mortgage loan document facilitates the appropriate handling of that document, and note that many mortgage lenders use account numbers on loan documents for this reason. In many cases, ownership of the loan will have changed hands between the time the document is submitted for recordation and the time it is returned from the recording office. The presence of the account number on the mortgage loan documents in such situations is an appropriate and acceptable measure to ensure proper filing. Thus, we believe that the disclosure of the account

number on the mortgage loan document fits within the exception provided for by Congress in § 502(e)(1).

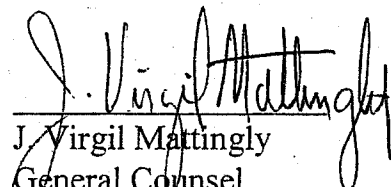
Applicability of prohibition against disclosing account numbers for use in marketing.

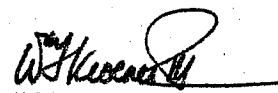
Section 502(d) generally prohibits a financial institution from disclosing account numbers of credit card accounts, deposit accounts, or transaction accounts to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to a consumer. This prohibition overrides the exceptions to the opt-out requirements. Thus, if the disclosure of a mortgage account number on a mortgage loan document is deemed to be the disclosure of a "transaction account" number, the disclosure will be prohibited if it is "for use in marketing."

We believe that this prohibition does not apply to the disclosure of mortgage account numbers on mortgage loan documents. The disclosure in question is not "for use in marketing." The account number is placed on the mortgage loan document solely for the purpose of facilitating the accurate processing of the document, and the document is disclosed to the recording office solely for the purpose of recordation. Accordingly, the prohibition against disclosing account numbers for use in marketing would not apply.<sup>3</sup>

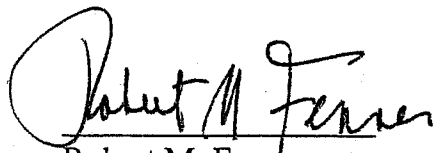
We trust that this is responsive to your inquiry.

Sincerely,

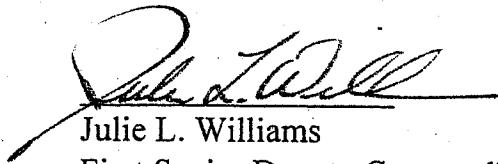
  
J. Virgil Mattingly  
General Counsel  
Board of Governors of the  
Federal Reserve System

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

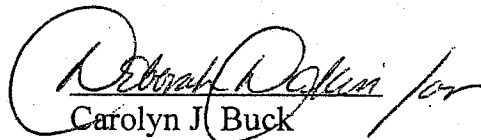
<sup>3</sup> We do not address the issue in this letter of whether a mortgage account number is a "transaction account" number. As noted in the Agencies' final rules, a "transaction account" does not include an account to which a third party cannot initiate a charge. 12 C.F.R. § 40.12(c)(2) (OCC); 12 C.F.R. § 216.12(c)(2) (FRB); 12 C.F.R. § 332.12(c)(2) (FDIC); 12 C.F.R. § 573.12(c)(2) (OTS); 12 C.F.R. § 716.12(c)(2) (NCUA); and 16 C.F.R. § 313.12(c)(2) (FTC). For additional discussion of the limits on disclosures of transaction account numbers, see the attached joint letter from the Chief Counsels and General Counsels of the OCC, FRB, FDIC, OTS, and NCUA, dated May 25, 2001, regarding Limits on Disclosing Account Numbers.



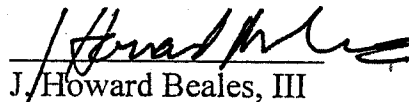
Robert M. Fenner  
General Counsel  
National Credit Union  
Administration



Julie L. Williams  
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Office of the Comptroller  
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Carolyn J. Buck  
Chief Counsel  
Office of Thrift Supervision



J. Howard Beales, III  
Director  
Bureau of Consumer Protection  
Federal Trade Commission<sup>3</sup>

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<sup>3</sup> The views set forth in this informal opinion letter are those of the staff of the Federal Trade Commission and are not binding on the Commission.

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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,

-signed-

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

-signed-

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

-signed-

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Robert M. Fenner  
General Counsel  
National Credit Union  
Administration

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Julie L. Williams  
First Senior Deputy Comptroller  
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Office of the Comptroller  
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