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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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**Interpretive Letter #918  
15 USC 6802(d)  
15 USC 6802(e)(1)  
15 USC 6809(7)**

September 4, 2001

Re: Borrower's Loan Number on Recorded Documents

Dear [                    ]:

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 particularly helpful 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,

**-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

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<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 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 (retrievable in redacted form from the OCC's web site at <http://www.occ.treas.gov/foia/int910.pdf>).

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Robert M. Fenner  
General Counsel  
National Credit Union  
Administration

**-signed-**

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Julie L. Williams  
First Senior Deputy Comptroller  
and Chief Counsel  
Office of the Comptroller  
of the Currency

**-signed-**

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Carolyn J. Buck  
Chief Counsel  
Office of Thrift Supervision

**-signed-**

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Howard Beales  
Director  
Bureau of Consumer Protection  
Federal Trade Commission