

Via Electronic Delivery

June 27, 2002

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 159
Washington, D.C. 20580

Re: Telemarketing Rulemaking – User Fee Comment
FTC File No. R411001

Ladies and Gentlemen:

We appreciate the opportunity to submit this comment to the Notice of Proposed Rulemaking (“NPR”) published by the Federal Trade Commission (“Commission”) to amend the Commission’s Telemarketing Sales Rule (“TSR”). Household Bank (SB), N.A. and Household Bank (Nevada), N.A. (collectively, “Household”) are two of the largest issuers of MasterCard and VISA credit cards in the United States. Household’s principal bank card programs are the GM Card, a co-branded product offered in conjunction with General Motors, and the Union Privilege credit card program, an affinity program offered in conjunction with the AFL-CIO. In addition, through its Household Bank and Orchard Bank branded programs, Household offers credit cards to middle-market Americans under-served by traditional credit card providers. Household makes its credit card products available via mail, telephone, the internet and partnership marketing. Household’s credit cards are serviced by its affiliates, Household Credit Services, Inc. and Household Credit Services (II), Inc.

General

As expressed in our March 29, 2002 comment letter to the Commission’s January 30, 2002 Notice of Proposed Rulemaking to amend the TSR (“Rule NPR”), Household generally supports the concept of a national do not call registry (“Registry”). However, we continue to have significant concerns with the Commission’s proposal in this regard which bear repeating briefly here. First, telemarketing calls made to existing customers should be exempt from the prohibitions of proposed section 310.4(b)(1)(iii)(B). Not only does this proposed section conflict with the Telephone Consumer Protection Act (“TCPA”) and state do not call laws which allow telemarketing calls to customers unless

and until the customer instructs the calling party to cease making such calls, it interferes with the established business relationship between consumer and company and requires both to go through time consuming, costly, and burdensome steps in order to return the relationship to its intended state. The least burdensome and most efficient method for the consumer to communicate and the company to honor her wishes not to receive telemarketing calls is the company specific approach as provided in the original TSR and the TCPA.

Next, we understand the Commission is considering only including telephone numbers on the Registry. Our concern is that with this limited information there is more chance for error and inadvertent noncompliance given the fact that a single telephone number can belong or be transferred to more than one consumer and the frequency with which area codes change in highly populated areas. For these reasons, we believe the Registry should contain at least the name, address, and telephone number of each consumer who chooses to be included thereon. The date upon which the consumer was added to the Registry would also be helpful in the event the telemarketer has knowledge that the consumer moved and/or changed telephone numbers after enrolling on the Registry. With all of this information, telemarketers and sellers would have additional sorting capabilities that would enable a more efficient and accurate use of the Registry in order to honor the wishes of consumers thereon and ensure compliance with the proposed amended TSR.

Additionally, we suggest that the Registry be updated on a quarterly rather than monthly basis as the Commission proposes. A monthly schedule is too frequent and not workable given the fact that each update would include information on consumers living in all 50 states and the District of Columbia. We believe a more cost effective and reasonable approach for both the industry and the Commission is an annual list that is updated on a quarterly basis.

Our concern with respect to proposed section 310.4(b)(1) is that it not be construed to prohibit affiliated companies from sharing the Registry for purposes of compliance with the proposed amended TSR. While most states having do not call lists have allowed affiliated companies to purchase and share one list, a few states require each affiliated company to purchase its own list. The ludicrous result of this requirement is that a family of companies must purchase the same list over and over again at significant cost to those companies without corresponding benefit to consumers. This is especially absurd when that family of companies utilizes a central do not call database for cost and efficiency purposes.

Finally, and critical to the establishment of a simplified, centralized, and cost effective method to record and communicate a consumer's telemarketing preferences, the Registry must either preempt or incorporate all existing and future state do not call lists. As proposed, the Registry would simply be layered on top of an already complicated and

inconsistent patchwork of existing state do not call lists. This will serve only to increase the economic and compliance burdens already shouldered by the industry with no corresponding benefit to its members or consumers.

While we appreciate that the Commission must consider the costs of funding the Registry, we believe the NPR is premature at this juncture in light of the issues set forth above, as well as other operational issues which have yet to be resolved. Until entities affected by the proposed amended TSR know exactly how their daily business operations will be impacted, a proper and useful assessment of the Commission's proposal to fund the Registry cannot be made. We therefore suggest that the Commission either withdraw this NPR or issue a revised proposal for public comment once all issues surrounding the Registry have been resolved.

With all of these concerns in mind, our specific comments to the NPR are set forth below.

User Fee Calculation (Questions 1.-8.)

In calculating the proposed user fee, the Commission estimates that 3,000 telemarketers or sellers will access the Registry. This estimate is based on the highest number of telemarketing firms that have accessed a single state do not call list. Because we do not have data regarding the number of telemarketers and sellers that conduct outbound telemarketing, we cannot speak to whether this estimate is realistic or appropriate. We do note, however, that not all entities are required to obtain state do not call lists. For example, some states exempt publicly traded companies and their subsidiaries, licensed lenders, and real estate brokers from their list purchase requirements. Therefore, while state do not call list access data is one source of information upon which the Commission can base its assumptions, it should not be the only source. We suggest that in addition to reviewing state information, the Commission also obtain data from the Direct Marketing Association ("DMA") and the various telemarketing industry trade associations in order to reach a more realistic estimate of the number of telemarketers and sellers that may access the Registry.

The Commission's expectation that some telemarketers and sellers may only wish to access a portion of the Registry is realistic. For this reason, the proposal to assess the user fee on an area code basis is not unreasonable. However, we strongly disagree that the user fee be waived for any entity, regardless of size, wishing to access five area codes or less. This proposed fee waiver directly contradicts the Commission's own statements in the Supplementary Information that "[t]o maintain the fairness of the fee structure ...it is critical that all firms that derive a benefit from the registry pay for that benefit." 67 Fed. Reg. 37,363. Certainly, a company that wishes to telemarket to only five area codes would obtain no less of a benefit from the Registry than would the company that wishes to telemarket to 100 or 250 area codes. And, a company that has the capacity to

telemarket to consumers living in five area codes can certainly pay \$60 per year to do so. There is simply no rational basis to waive the fee for any entity that wishes to obtain all or any portion of the Registry. Further, neither the Commission nor other telemarketers or sellers should have to subsidize the telemarketing activities of other telemarketers or sellers, regardless of their size. Therefore, if a Registry is implemented, a user fee should be assessed to all entities given access to it.

Although assessing the user fee on an area code basis may be a reasonable approach for entities that only wish access to a limited portion of the Registry, we encourage the Commission to continue its consideration of a flat annual fee for a number of reasons. First, charging one simple flat annual fee would significantly reduce the administration costs to the Commission by eliminating the need to track the number of area codes purchased by each seller or telemarketer to ensure that the correct user fee was assessed. The flat annual fee approach would also alleviate the need for the “buy up” provisions which we believe will also be costly to the Commission to implement. And the Commission’s estimate that the annual fee would be \$1000 may not be a burden to telemarketers or sellers (assuming the Registry preempts all state do not call lists) that currently pay between \$100 and \$800 for a single state list. In the alternative, the Commission could establish a threshold number of area codes above which an annual flat user fee would apply and below which a fee per area code would apply. This bifurcated approach may, however, increase the Commission’s cost of administration.

Regardless of whether the Commission adopts the flat annual fee or fee per area code method, we believe user fees should be collected on an annual basis. As opposed to a monthly fee which is also being considered by the Commission, collection of the fee on an annual basis is a significantly more cost efficient payment method for both the industry and the Commission. If the Registry is not available for the entire fiscal year, the amount of the user fee should be pro-rated based upon the amount of time it is available for use. In addition, if the Commission anticipates collecting the user fee significantly in advance of when the Registry is available to the telemarketer or seller, the user fee should be discounted. And, if the user fee is paid prior to the time the Registry is available to the telemarketer or seller, the annual period should not begin to run until the date the Registry becomes available.

With respect to the actual user fees proposed, it is difficult to comment as to whether they are reasonable and rationally calculated knowing that the assumptions upon which they are based (i.e., costs to implement and develop the Registry and number of telemarketers and sellers accessing it) may not be accurate. This difficulty is compounded by not knowing whether the Registry will preempt all existing and future state do not call lists, whether it must be used for in-bound calls, and whether it will apply to telemarketing calls made to existing customers. If the Commission adopts the fee per area code approach, we believe an annual cap is appropriate. Whether that annual fee cap should be \$3000 or some amount less than that depends on all of the issues

referenced above. Whether the \$12 fee per area code is realistic also depends on whether the Commission's assumption that the average telemarketer or seller will access 83 area codes of data is accurate. We believe the average number of area codes accessed will be higher than 83 and recommend that the Commission gather further information from the DMA and telemarketing trade associations in this regard. As for the flat annual fee approach, \$1000 appears reasonable and in line with market prices, but only if the Registry preempts all state do not call lists. Under either approach, without preemption, sellers and telemarketers will find themselves purchasing information twice where consumers have registered on both the list maintained by their state of residence and the Registry. We believe the likelihood that consumers will register on both their state list and the Registry is high, which will lead to increased and unreasonable economic and compliance burdens for the industry unless the Registry is preemptive.

Telemarketer Access to the Proposed National Registry (Questions 9.-15.)

If the Commission implements the Registry, all entities that seek to use it in accordance with the proposed amended TSR, provide the Commission with the identifying information and certification requested, and pay the user fee, should be allowed access. Each entity that obtains access to the Registry should only be required to pay for such access once during a twelve month period. In addition, to maintain cost efficiencies and avoid unnecessary administrative burden to affected entities and the Commission, affiliated companies should be allowed to purchase and share one Registry per year.

The Commission proposes to limit access to the Registry only to telemarketers working on their own behalf or working on behalf of other sellers or telemarketers. While we appreciate the need to restrict access to the Registry only to entities with a legitimate business purpose, we believe access must be expanded to include sellers, and other entities that perform services in connection with telemarketing. Quite simply, if an entity is subject to the TSR and it wishes to make telemarketing calls it should be allowed to access and purchase the Registry directly from the Commission whether it is making such calls on its own behalf or on behalf of another entity. For example, while a seller may not be conducting the actual telemarketing campaign, for its own due diligence purposes it may wish to "scrub" its telemarketing list against the Registry before delivering the list to its telemarketing vendor. A seller may also use the Registry to evaluate whether and how to conduct a telemarketing campaign or to evaluate its telemarketer's compliance with the proposed amended TSR. In addition, brokers that provide "list scrubbing" services and other vendors that provide telemarketing support services should be allowed to access and purchase the Registry. In short, so long as the entity seeking to access the Registry pays the user fee, provides the Commission with the basic information the Commission requires, and certifies to the Commission that it will use the Registry solely in accordance with the proposed amended TSR, it should not be denied access.

Allowing the Registry to be accessed only by telemarketers on behalf of themselves and the clients they represent is unworkable for other reasons as well. First, depending on the number of seller and telemarketing clients a telemarketer represents, the Commission's request for minimal user information on the telemarketer and every one of its clients could very quickly become a cumbersome, time consuming, and confusing process which may also lead to costly errors (e.g., accessing the wrong area codes for a particular client) impacting the telemarketer, the clients it represents, the Commission and, ultimately, the consumer. Alternatively, if each telemarketer, seller, list broker, or other entity requests access to the Registry on behalf of only itself, the minimal identifying information requested by the Commission is much more manageable and the process to access the Registry should be completed quickly, cost effectively, and with little chance of error.

Additionally, requiring telemarketers to access the Registry on behalf of all of their clients assumes the telemarketer knows who all of its clients will be for the ensuing year. This, however, is not likely to be the case. Consequently, after initially accessing the Registry, a telemarketer could conceivably have to go through process several more times for that year depending on the number of new clients that subsequently retain its services.

Finally, many sellers use more than one telemarketer in any given year. As a result, the NPR would require sellers to purchase the Registry many times over. For example, if a seller uses five different telemarketers, according to the NPR, the seller would have to purchase the Registry five times; once through each telemarketer that accesses the Registry. Certainly this is not the intent of the Commission.

Paperwork Reduction Act

Household supports the Commission's proposal to require only minimal identifying information from entities that wish to access the Registry and that such information need only be provided once per year. With respect to the submission of area codes of data the entity wishes to access, we ask the Commission to clarify that if the entity wishes to access the Registry on a nationwide or state basis, a list of area codes would not be required. In addition, we ask the Commission to reconsider its proposal to require an entity to submit all identifying and certification information again during a given year if it wishes to access area codes in addition to those originally requested. To save both the entity and the Commission time and expense, information should only have to be re-submitted under this circumstance if it has materially changed.

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Once again, we appreciate the opportunity to comment on this NPR.

Sincerely,

Julie A. Davenport
Associate General Counsel

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