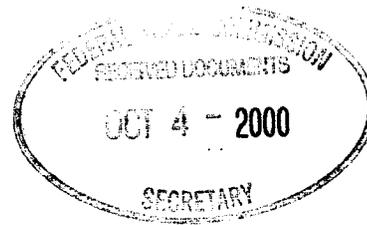


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October 3, 2000

VIA HAND DELIVERY

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

**Re: Gramm-Leach-Bliley Act Safeguards Rule
16 C.F.R. Part 313-Comment**

Dear Mr. Secretary:

The following comments are submitted on behalf of the American Collectors Association, Inc. ("ACA") in response to the Federal Trade Commission's request for written comments on the advanced notice of proposed rulemaking and request for comment concerning the development of administrative, technical, and physical information Safeguards Rule pursuant to Section 501(b) of the Gramm-Leach-Bliley Act ("G-L-B Act"), 15 U.S.C. § 6801 *et seq.* See Privacy of Customer Financial Information – Security, 65 Fed. Reg. 54186 (Sept. 7, 2000) (Advance Notice of Proposed Rulemaking and Request for Comment) (hereinafter "Advance NPRM"). ACA has enclosed five copies of the comments, along with a 3½-inch computer disk labeled "ACA's Comments."

I. *Statement on ACA.*

ACA is a trade association of domestic and international credit and collection professionals who provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 5,100 credit and collection professions in the United States, Canada and 55 other countries. ACA members

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include third party collection agencies, credit grantors, attorneys and vendor affiliates.

Some ACA members also participate in ACA's Asset Buyers Program. The Asset Buyers Program is designed for members interested in purchasing debt from third party creditors. The sale and purchase of accounts receivables are growing and gaining momentum within the collection industry. In 1998 alone, creditors sold more than \$20 billion of debt to third parties, including collection agencies. ACA anticipates that debt purchasing by collection agencies will continue to increase based on projections that debt buying will surpass \$25 billion this year.

II. *Overview of the Collection Industry.*

Unpaid consumer and commercial debt is incredibly costly. According to federal government estimates, there is \$1.3 trillion in total outstanding consumer debt in the United States. This means that unpaid consumer debt costs every adult in the United States \$638 annually.

ACA members perform essential functions in ensuring the continued vibrance of the domestic economy. In 1998 alone, collection agencies were referred more that \$221 billion in past-due accounts, yielding a net return of \$31.8 billion to credit grantors. This represents a substantial amount of money allocated to credit grantors to create new jobs, increase wages, ensure that consumer goods are available at affordable prices, and offer new investment opportunities. Significantly, the economic benefits associated with collection services accrue to consumers, as well as credit grantors, by controlling rising prices generated by bad debt.

III. *Effect of the G-L-B Act on Asset Buyers.*

In *Privacy of Consumer Financial Information*, 65 FED. REG. 33646 (May 24, 2000) (hereinafter "Final Rule") (*codified* at 16 C.F.R. § 313 *et seq.* (2000)), the Commission stated that "[t]he statute is clear that debt collection agencies are financial institutions under its terms. . . . In Regulation Y, 12 C.F.R. § 225.28(b)(2)(iv), the [Federal Reserve] Board specifically designated 'collection agency services' as such a financial activity." Final Rule, 65 FED. REG. at 33655 fn. 25 (emphasis added). However, the commentary to the Final Rule further clarifies that "[a] consumer has a 'customer relationship' with a debt collector that purchases an account from the original creditor (because he or she would have a credit account with the collector), **but not with a debt collector that simply attempts to collect amounts owed to the creditor.**" Final Rule, 65 FED. REG. at 33653 fn. 18 (citation omitted) (emphasis added). Where a collection agency purchases assets, the agency must also locate the debtor *and* attempt to collect payment for the statute to be triggered. Final Rule, 65 FED. REG. at 33654. Thus, ACA's comments are submitted primarily in contemplation of the Safeguards Rule's

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application to asset purchasers because these businesses are most directly affected by the statute.

IV. *Comments on Advance NPRM.*

In accordance with the Advance NPRM, ACA's comments are organized to address: (1) the scope of the Safeguards Rule; and (2) other aspects of the Safeguards Rule including the predicted effect on small financial institutions, the level of specificity, and the compliance with the statutory objectives set forth in Section 501(b)(1)(1)-(3).

A. *The Scope of the Safeguards Rule.*

Pursuant to 15 U.S.C. § 6801(b) (2000), the G-L-B Act requires the Commission to “establish appropriate standards for the financial institutions . . . relating to administrative, technical, and physical safeguards (1) to insure the security and confidentiality of **customer records and information**; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any **customer**.” 15 U.S.C. § 6801 (b) (2000) (emphasis added). Further, 15 U.S.C. § 6801(a) (2000) declares the congressional policy that financial institutions have an affirmative and continuing obligation to “respect the privacy of its **customers** and to protect the security and confidentiality of those **customers’ nonpublic personal information**. . . .” 15 U.S.C. § 6801(a) (2000) (emphasis added).

The Commission requests comment on the scope of the Safeguards Rule as applied to “customers”¹ and “consumers”² under the statute. ACA believes that the statute is clear that the scope of the Safeguards Rule was intended to only apply to “customers” of financial institutions, and not “consumers” generally. Section 501 of the G-L-B Act repeatedly refers

¹ A “customer” is a “consumer” who has a “customer relationship” with the financial institution. 16 C.F.R. § 313.3(h) (2000). In turn, “customer relationship” is defined as a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes. 16 C.F.R. § 313.3(h)(i) (2000).

² A “consumer” is defined as “an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.” 16 C.F.R. § 313.3(e)(1) (2000).

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to “customers” and not “consumers.”

The Commission requests comment on whether the “customer records and information” referenced in Section 501 should be similar to the definition of “nonpublic personal information” for customers under the Commission’s Privacy Rule. ACA believes that, in some very limited situations, there will be similarities between the two terms. However, there also are substantial differences that counsel against treating the two terms as the same. For example, “nonpublic personal information” is defined as “personally identifiable financial information” and “any list, description, or other grouping of *consumers* (and publicly available information pertaining to them) that is derived using personally identifiable financial information that is not publicly available.” 16 C.F.R. § 313.3(n)(3)(i-ii) (2000) (emphasis added). “Personally identifiable financial information” further is defined as information (1) that a *consumer* provides to you to obtain a financial product or service from you; (2) about a *consumer* resulting from any transaction involving a financial product or service between you and a consumer; and (3) about a *consumer* obtained in connection with providing a financial product or service to that consumer. 16 C.F.R. § 313.3(o)(1) (2000). Thus, it is clear that “nonpublic personal information” focuses on consumer information, not customer information. In light of the painstaking effort undertaken by Congress and the Commission to distinguish between these two categories of individuals, ACA believes that it is unwarranted to treat the two the same for purposes of the Safeguards Rule because financial institutions owe entirely different obligations to these two distinct categories of individuals.

The Commission requests comment on whether the Congressional mandate to enact the Safeguards Rule was intended to apply to when a financial institution discloses customer records and information to a financial institution that has no customer relationships or consumers. ACA believes that the Safeguards Rule was not intended to cover transactions involving disclosures by one financial institution to a second financial institution that has no customers or customer relationships. This is evident from Section 501 of the statute, which, as noted previously, focuses on the affirmative obligations of financial institutions vis á vis their customers. Simply stated, Section 501 does not instruct the Commission to establish safeguard standards with respect to consumers or customers of other financial institutions.

B. *Other Aspects of the Safeguards Rule.*

ACA’s comments with respect to other aspects of the Safeguards Rule focus on minimizing the negative effect that the Safeguards Rule might have on small financial institutions, the level of specificity, and the compliance with the statutory objectives set forth in Section 501(b)(1)(1)-(3).

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First, ACA believes that the Safeguards Rule must account for the potentially severe consequences the Rule might have on small financial institutions. Many ACA members, including asset buyers, are comparatively small financial institutions that will be unreasonably burdened if the Commission adopts complex or overly regimented minimum standards necessary for compliance. Indeed, these small financial institutions are already devoting substantial time and resources to ensure compliance with the Commission's extremely detailed and complex Privacy Rule. As such, engrafting even more detailed requirements on these small financial institutions would impose additional hardships on small business attempting to comply with the Safeguards Rule.

Second, the Commission requests comment on the level of specificity that should be reflected in the Safeguard Rule. That is, should the Rule set forth general requirements for compliance or, in the alternative, impose minimum standards that all financial institutions must satisfy. ACA believes that there is no effective way to create minimum standards for compliance that would account for the wide-ranging activities of financial institutions. Certainly this is implicitly recognized in the approach of the Securities and Exchange Commission ("SEC") with respect its safeguards requirements, to the extent that the SEC requires financial institutions to develop safeguard policies that are "reasonably designed" to satisfy the statute. *See* Privacy of Consumer Financial Information (Regulation S-P) (Final Rule), Section 248.30 Procedures to safeguard customer information and records *available at* http://www.sec.gov/rules/final/34-42974.htm#P454_179663 ("The rules implement this section by requiring every broker-dealer, fund, and registered adviser to adopt policies and procedures to address the safeguards described above. Consistent with the Act, the proposed rule further requires that the policies and procedures be reasonably designed to: (i) insure the security and confidentiality of customer records and information; (ii) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (iii) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer"). In summary, ACA believes that it is consistent with the objectives of the G-L-B Act that the Safeguards Rule prescribe general requirements that can be used by financial institutions to tailor to their individual policies and procedures.

Finally, ACA believes that this flexible approach should be reflected in the Commission's treatment of the objectives of Section 501(b)(1)-(3) to insure the security and confidentiality of customer records and information, to protect against any anticipated threats or hazards, and to protect against unauthorized access. For example, ACA believes that the Commission should not adopt definitions concerning such terms as "anticipated threats and hazards," "unauthorized use," or "unauthorized access." These terms defy definitions that will account for the wide variety of anticipated threats and unauthorized access issues that may

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arise for financial institutions based on the size and type of business conduct in which the institution is engaged. As an alternative to specific definitions, ACA members would benefit by general statements or examples from the Commission of the types of policies and procedures that a financial institution may utilize in order to comply with Section 501(b)(1)-(3). Similar to the sample privacy and opt out notices contained in Appendix A to the Privacy Rule, ACA believes that the Commission should structure the statements or examples to clarify that compliance with the Commission's examples is not mandatory, but operates as a safe harbor from enforcement.

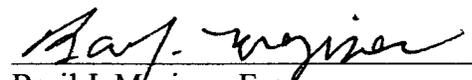
VI. Conclusion.

ACA appreciates the Commission's consideration of these comments. We commend the Commission's effort to translate an admittedly challenging statutory mandate into a workable regulation that protects consumers' nonpublic personal information from disclosure to nonaffiliated third parties.

Respectfully submitted,



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