

March 31, 2000

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580

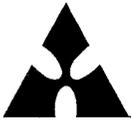
Re: Proposed Privacy Regulations Under Title V of the Gramm-Leach-Bliley Act

Ladies and Gentlemen:

The American Insurance Association is pleased to provide its views to you in connection with your request for public comment on the proposed rules implementing the privacy provisions of title V of the Gramm-Leach-Bliley Act (the "GLB Act"). The AIA is the principal trade association for property and casualty insurance companies, representing more than 370 major insurance companies which provide all lines of property and casualty insurance and write more than \$60 billion in annual premiums.

While insurance companies are not directly subject to the rule which you have proposed, we believe that it is important for us to comment on them for several reasons. First, to the extent that insurance companies affiliate with, or otherwise interact with consumers in conjunction with companies subject to your agency's jurisdiction, our members will be affected by your rules. In addition, the GLB Act requires the agencies to adopt rules that are consistent and comparable. We have urged the state insurance authorities to adopt a similar approach with regard to rules they may be considering at the state level. We believe it is important that the rules adopted by the state insurance authorities mirror the rules adopted at the federal level in order to facilitate a smooth implementation of the privacy provisions of the GLB Act. Accordingly, in the interest of uniformity and consistency among the functional regulators, we believe that it is appropriate for us to provide comments on your proposal.

We have attached to this letter our detailed comments on each section of the proposed rule for your consideration. We urge you to modify the final rule to take into account our suggestions and comments, for we believe that they raise important issues with regard to the ability of financial institutions to implement the rule in a manner that reduces the burden to consumers, customers and the financial services community.



We wish to highlight a few of the more important issues for your consideration. In order to provide a uniform submission to each of the agencies which have proposed privacy rules under the GLB Act, we refer to the sections of your rule without reference to the proposed rule's Code of Federal Regulations citation.

§ __.3(n) and (o) Definitions of nonpublic personal information and personally identifiable financial information.

Alternative A of § __.3(n) of the proposed rule provides that the term “nonpublic personal information” includes the name, address and telephone number of a consumer which is provided by the consumer, as well as any list, description or other grouping of customers (and publicly available information pertaining to them) that is derived using personally identifiable financial information. The term “personally identifiable financial information” includes the fact that a consumer is a customer of the financial institution or has obtained a financial product from the financial institution, unless that information actually is actually derived from publicly available sources.

Alternative B of § __.3(n) of the proposed rule would not treat information provided by a consumer as nonpublic personal information so long as such information is available from public sources, even if the financial institution does not actually obtain such information from the public source.

We strongly support adoption of Alternative B. We believe that the fact that information is available from a public source is more than sufficient to give that information the status of publicly available information regardless of how the financial institution obtained the information. If a consumer's name, address and telephone number is widely available to virtually anyone, the consumer should have no expectation of privacy with regard to such information. It makes little sense to say that information that is otherwise available to everyone is not publicly available information under the GLB Act simply because it was provided to the financial institution by the consumer.

In addition, § __.3(o)(2)(C) of the proposed rule provides that the fact that an individual has been a customer of the financial institution is “personally identifiable financial information.” We strongly object to this characterization. Customers do not regard the fact that they do business with a financial institution to be confidential. Indeed, every time a customer engages in a financial transaction with another person, the customer reveals the financial institution he or she deals with. For example, a credit card indicates which financial institution the customer has an account with. When a customer writes a check, the name of the financial institution is disclosed. We do not believe that the fact that a customer has a continuing relationship with a financial institution should be regarded as personally identifiable financial information under the rule.

We also do not believe that a list comprised solely of customers' names, addresses and telephone numbers should be regarded as nonpublic personal information. A list composed of information that is publicly available, such as names, addresses and



telephone numbers, cannot logically be regarded as “nonpublic” simply because it is presented in the form of a list.

§___.4 Initial notice to consumers of privacy policies and practices required.

The proposed rule requires a financial institution to provide an initial disclosure notice to a consumer prior to the time the consumer establishes a customer relationship with the financial institution. We believe that this requirement is not justified and is not in accord with the GLB Act, which requires a financial institution to provide the initial notice no later than at the time of establishing a customer relationship. The proposed rule does not explain or justify why it does not follow the clear and unambiguous terms of the GLB Act. We believe that it would prove extremely difficult for financial institutions to comply with a standard calling for disclosures prior to the time the customer relationship is established. We urge you to apply no later than “at the time the account relationship is established” standard, as provided for in the GLB Act.

§___.5 Annual notices.

The proposed rule states that notices must be provided annually to customers. Annually, according to the proposed rule, means at least once during any period of twelve consecutive months during which the relationship exists. We believe that this permits a financial institution to provide an annual notice to all customers at one time each year, rather than upon the anniversary of the customer’s relationship with the financial institution.

However, the language of the proposal could prove troublesome in certain situations. If a consumer becomes a customer on January 25, 2001, the financial institution must provide the customer with an initial notice by that date. The financial institution has established the policy of sending each customer an annual notice on February 1st. Under the proposed rule, in order to bring the new customer within the financial institution’s practice of sending annual notices to all customers at the same time each year, the financial institution must send the customer another notice on February 1, 2001. This result seems to impose an unreasonable burden on financial institutions, for it requires the financial institution to send far more disclosures than seems appropriate or desirable. From the consumer’s standpoint, he or she has already received the notice during that calendar year. Little purpose is served in requiring financial institutions to provide two notices during the calendar year in order to get all of the customers on the same annual cycle. Accordingly, we request that the rule permit annual notices to be provided to customers at least once during each calendar year in which the relationship continues rather than during each 12 month period.

§___.6 Information to be included in initial and annual notices.

The proposed rule provides that a financial institution must inform consumers of the categories of information that the institution collects and the categories of information that the institution discloses to third parties. However, the examples provided in



connection with categories of information collected do not match the examples of the categories of nonpublic personal information the institution discloses. Examples given in the proposed rule of the former include information such as application information and information about a deposit, loan or credit card account. Examples provided by the proposed rule of the latter are far more detailed, e.g., name, address, social security number, account balance and payment history. We believe that requiring more detailed examples for information disclosed by a financial institution is inappropriate. The GLB Act provides for the disclosure of categories of nonpublic personal information disclosed. The examples provided are not categories; rather, they are the information disclosed. Accordingly, we believe the you should retain only the examples of categories of information collected which appear in the proposed rule, and use those examples for categories of information disclosed as well.

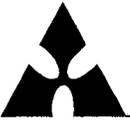
§__.8 Consumers should be permitted to revoke their opt out orally.

Section ____.8(e) provides that a consumer's revocation of his or her decision to opt out must be in writing or in electronic form. We believe that this is overly burdensome and could prove detrimental to consumers. Consumers should have the opportunity to revoke their opt outs orally if it is more convenient for them. If oral revocations are permitted, financial institutions would undoubtedly retain records of their conversations with customers in order to ensure that the revocations were valid. Requiring a customer to provide a written revocation is burdensome to the consumer and contrary to the consumer's interests because it may interfere with the ability of the consumer to receive information from a financial institution. Accordingly, we believe §__.8(e) should be amended to permit a consumer to revoke an opt out orally.

§__.12 Limitation on redisclosure and reuse of information.

The proposed rule states that a financial institution or nonaffiliated third party which receives nonpublic personal information from a financial institution may only use the information for the purposes for which such information was provided. We are concerned that this is not consistent with the GLB Act. Section 502(c) of the GLB Act provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not disclose such information to another person unless the disclosure would be lawful if made directly to the other person by the financial institution. Notwithstanding this clear language, the proposed rule provides a limitation on the recipient of such information that is not justified by the GLB Act. There is no reason to impose further restrictions upon recipients since they are permitted by the GLB Act to disclose such information only to the extent the financial institution which had provided the information is permitted to disclose it.

There is also a practical problem with the approach proposed by the rule. A recipient may need to use the information it receives to pass on to a service provider or for some other operational reason which is unrelated to the purpose for which the entity received the information. Under the proposal, a receiver could not use the information to respond to a subpoena, or to prevent or detect fraud unless the person had received it for



those purposes. Accordingly, we request that the proposed rule reflect the provisions of the GLB Act, and permit the recipient of the information to use it for any permissible purpose.

§__.13 Limits on sharing of account number information for marketing purposes.

You have asked whether the proposed rule should provide an exception to the prohibition on disclosing account numbers or access codes to nonaffiliated third parties for marketing purposes. We strongly urge you to adopt an exception for the disclosure of encrypted, reference or truncated account numbers by financial institutions to nonaffiliated third parties which are used for identification purposes. The prohibition in § 502(d) of the GLB Act is intended to prevent potential abuse by limiting the ability of nonaffiliated third parties to make direct use of a consumer's account numbers. The use of an encrypted, reference number or truncated account number to identify the consumer satisfactorily responds to the concerns which § 502(d) was intended to address. It is important that nonaffiliated third parties be able to accurately identify potential customers by unique numerical identifiers. Encrypted account numbers, reference numbers and truncated account numbers serve the purpose of providing the parties with a means of associating the consumer with a particular account without compromising the security and integrity of the consumer's account. Accordingly, we urge that the final rule adopt an exception which provides that the term "account number or similar form of access number or access code" does not include an encrypted account number, a reference number or a truncated account number which is provided to a nonaffiliated third party for use in marketing."

We also ask that you clarify the meaning of the term "transaction account" as used in §__.13. It is our understanding that the term transaction account means a "checking account," that is, an account which permits the consumer to make transfers or withdrawals by negotiable instrument or other device in order to make payments to third parties. We do not believe that it is intended to apply to an insurance policy or other type of insurance contract. However, the term transaction account is not generally used outside of the banking sphere, and will undoubtedly be confusing to financial institutions that are not banking institutions. We therefore believe it would be highly desirable for you to clarify the meaning of this term by referring to the term "transaction account" as used in § 204.2(e) of Federal Reserve Regulation D, 12 C.F.R. § 204.2(e).

§__.16 Effective date and transition rule.

The proposed rule indicates a scheduled effective date of November 13, 2000. We are very concerned that this will not provide the nation's more than 41,000 financial institutions with sufficient time in which to implement operational changes, reprogram computers, identify all of the sources and uses of consumer and customer information, prepare disclosure policies and train staff. It has been estimated that as many as 2.4 billion notices will be required to be sent to consumers and customers by November 13th. The scope and scale of the task is unprecedented, and it is highly unlikely that it can



be fully implemented by November 13th. In order to provide an orderly transition, we strongly urge that the effective date be extended for six months until May 14, 2001.

The proposed rule requires financial institutions to send initial notices to existing customers by December 13, 2000. Many insurance companies communicate with policyholders on a quarterly basis rather than a monthly basis, which is more common in the banking industry. Accordingly, the proposed rule will require many insurance companies to make separate mailings to all of these customers. In order to reduce expenses and the operational burden that special mailings will entail, for insurance companies, we request that § __.16(b) be amended to permit financial institutions to send the initial notices to existing customers in the next scheduled periodic mailing to customers.

In the event you do not extend the effective date of the GLB Act, nor permit financial institutions to send the notices required by § __.16(b) in the next scheduled mailing to customers, we urge that you reconsider the date on which initial notices are required to be sent. We are concerned that the manner in which initial notices are required to be provided this November will in effect require that notices be provided by October 13th so as not to disrupt existing disclosure practices of financial institutions. The October 13th date reflects the latest date that notices can be sent to consumers and customers so that they will have an opportunity to opt out. Unless these notices are in the mail on October 13th, financial institutions will have to cease making disclosures to nonaffiliated third parties come November 13th until such time as customers have had a reasonable opportunity to opt out. This unfortunate result is due to the initial timing for implementation of the GLB Act. Financial institutions will have a difficult enough time meeting the November 13th effective date. You should not impose an additional burden which would require considerable efforts to get disclosure notices to customers by October 13th. Accordingly, the proposed rule should be modified to permit a financial institution to continue to make disclosures for 30 days beginning November 13th unless the customer opts out before the 30 day period has run.

The AIA appreciates the opportunity to comment on your proposed privacy rule.

Sincerely,

Craig A. Berrington
Senior Vice President and
General Counsel

Enclosure

**Detailed Comments of the American Insurance Association
on Proposed Privacy of Consumer Financial Information Rules¹**

§ __.1 Purpose and scope.

Section __.1(b) states that it applies to entities for which the agency has “primary supervisory authority.” As you are aware, the Gramm-Leach-Bliley Act (the “GLB Act”) established the overarching principle of functional regulation, which vests supervisory authority over persons engaged in the business of insurance in the insurance authority of an insurer’s state of domicile. The AIA requests that your rule reaffirm the principal of functional regulation.

§ __.2 Rules of construction.

You ask whether including examples in the proposed rules is useful. The AIA believes that examples can be helpful, provided they are not the exclusive means of compliance with the rule. We do have certain concerns with some of the examples presented in the proposed rules. We discuss our concerns below.

§ __.3 Definitions.

(a) **Affiliate.** No comment.

(b) **Clear and Conspicuous.** The AIA believes that the proposed definition of the term is appropriate. However, the examples presented appear to be an exclusive set of rules indicating the manner in which a notice must be drafted in order to be clear and conspicuous. The fact that there appear to be several rules as to how to make the notice “reasonably understandable” and how to “call attention to its nature and significance,” is confusing.

The AIA suggests that the agencies amend § __.3(b)(2) to characterize all the examples provided in subsections (i), (ii), and (iii) simply as examples of ways to make a notice clear and conspicuous.”

(c) **Collect.** No comment.

(d) **Company.** No comment.

(e) **Consumer.-** This definition, like that of “customer”, is of particular concern to the insurance industry. Although the proposed rule generally does not govern actions taken in connection with the business of insurance, the AIA is concerned that this definition will have an effect on possible state rules. We

¹ In order to facilitate a uniform presentation to each of the agencies which have proposed privacy rules, this submission generically references the relevant sections of each agency’s rule.

believe that the states may use the federal rules as a model for rules they may adopt to implement the GLB Act. We believe that it is therefore important for the federal rules to adopt a definition that takes into account the unique aspects of the insurance industry.

As applied to insurance, it is unclear whether the individual identified is the applicant, the policyholder, the insured or the beneficiary. It is essential for insurers, like all financial institutions, to know which individuals they are required to provide notices.

During the application process, the insurer deals primarily with the applicant. Upon issuance of the insurance policy, the insurer's contractual relationship is with the policyholder. It is the policyholder who exercises rights under the insurance contract. The insurer is unlikely to have the address of an insured or beneficiary unless the insured or beneficiary is the same individual as the policyholder. This is particularly true in the context of group insurance, where the insurer may not even have the names of the individuals insured.

The AIA urges you to amend the definition of "consumer," for purposes of insurance to mean only the applicant. Upon issuance of the insurance policy, the consumer becomes the "customer."

- (f) **Consumer reporting agency.** No comment..
- (g) **Control.** No comment.
- (h) **Customer.** Like the definition of "consumer", the definition of the term "customer" is of concern to us as applied in the context of insurance. It is unclear whether it means the policyholder, the insured, or the beneficiary. As noted above, after the policy is issued and coverage is in effect, the insurer's contractual relationship is with the policyholder. Accordingly, the AIA requests that the agencies amend this definition and determine that the term customer, for the purposes of insurance, means only the policyholder.
- (i) **Customer relationship.** This definition is also ambiguous as applied to insurance. The proposed rule is unclear as to when a "continuing relationship" begins in connection with insurance. Section __.3(i)(2)(B) provides that a consumer has a continuing relationship with the financial institution if the consumer "purchases an insurance product" from the financial institution. We believe it important for the federal regulators to clarify this definition as it relates to insurers. The AIA urges that the example set forth at § __.3(i)(2)(B) make it clear that in the context of insurance, the consumer has a continuing relationship when the policy is issued and insurance coverage is in effect. This will provide needed specificity with regard to the person with whom the insurer has a customer relationship and the time at which that relationship begins.

- (j) **Financial institution.** The intent of Title V of the GLB Act is to govern the information sharing practices of financial institutions. As defined in § 509(3) of the GLB Act a financial institution is “...any institution the business of which is engaging in financial activities...”. However, the definition of financial institution should make it clear that a sole proprietorship is not a financial institution under the GLB Act.

Many insurance agents and other providers of financial services chose to operate as sole proprietorships rather than assume another business organizational form. Because they are generally small, sole proprietorships would find it quite burdensome to comply with the requirements of the GLB Act and the proposed rules. Consumers would still be provided the requisite notices and the opportunity to opt-out by the insurers with which the agent sole proprietor is doing business. Accordingly, the AIA requests that the agencies amend this definition to clarify that it does not include a sole proprietorship.

- (k) **Financial product or service.** The AIA strongly objects to this broadening of the usual and customary definition of the term “financial service” by including within its scope the evaluation of information submitted under an application. We question whether it is within your statutory authority under the GLB Act to broaden the definition of this term in this manner. We do not believe that the language nor the intent of the GLB Act reaches the application process. Accordingly, we object to the agency’s attempt to expand the usual and customary definition of the term “service” to cover an evaluation of an application.

- (l) **Government regulator.** We are puzzled as to why the proposed rule contains the qualification “with respect to any person domiciled in that insurance authority’s State that is engaged in providing insurance” when it references a state insurance authority. None of the references in the proposed rule to the federal regulators are qualified. Accordingly, the AIA requests that § __.(3)(1)(8) be amended to strike the qualifying language and to read “A State insurance authority;”.

- (m) **Nonaffiliated third party.** The AIA objects to the language of this definition that would include within its scope companies which represent downstream investments of insurers. This will cause these affiliates to be excluded from the scope of the definition of “affiliate” in § 509(6) of the GLB Act and § __.3(a) of the proposed rule, which include any company which is “controlled by” a financial institution. There would appear to be neither a legal basis for excluding such companies in this manner from the scope of the term “affiliate.”

The practical effect of the definition will be to preclude any company controlled by an insurance company from being regarded as an affiliate of an insurer because insurance companies do not as a practical matter distinguish between the different legal authorities used to make certain types of

investments. This definition will impose a hardship on insurance companies that are not part of financial holding companies, for they have no reason to distinguish between financial activities and other activities engaged in by companies in which they invest.

- (n) **Nonpublic personal information.** The AIA strongly supports Alternative B which is discussed in the Supplementary Information to the agency's proposed rule. The AIA believes that the definition of "publicly available information" should include information made available to the general public as opposed to information made available to the general public that is obtained from public sources.

We do not believe that information which is available from public sources stops being public information simply because it is obtained from a consumer rather than from public sources. We question the benefit to consumers of requiring financial institutions to go to public sources to ensure that the information is publicly available.

A list of customers is derived using "publicly available information," and consequently is not "nonpublic personal information." An individual's status as a customer of a particular financial institution is ordinarily public information. Any time a consumer uses a personal check or credit card, he or she identifies and makes public the financial institution with which he or she is doing business. There is no expectation among consumers that, under such circumstances, their status as customers of specific financial institutions will be regarded as private.

The AIA strongly urges adoption of Alternative B with respect to the definitions of "nonpublic personal information" and "publicly available information." We also urge deletion of the example provided at § __.3(n)(3), which provides that "nonpublic personal information includes any list of individuals' street addresses and telephone numbers that is derived using personally identifiable financial information, such as account numbers."

The Supplementary Information specifically invites comment "on whether either definition of 'nonpublic personal information' would cover information about a consumer that contains no indicators of a consumer's identity." Section 509(4)(A) of the GLB Act clearly provides that the "term 'nonpublic personal information' means personally identifiable financial information..." Therefore, if consumer information does not contain indicators of the consumer's identity, then it fails to meet one of the two core requirements of the statutory definition of "nonpublic personal information" – that is, that it must be personally identifiable, as well as financial information. This is true regardless of the breadth of the definition of "publicly available information."

Consequently, neither alternative definition of "nonpublic personal information" would include information about a consumer that has no

identifiers. The AIA urges the agencies to amend the definition of “nonpublic personal information” to clarify this point.

- (o) **Personally identifiable financial information.** The AIA is concerned by the proposed rule’s definition of the term “personally identifiable financial information.”

The AIA objects to the example provided at § __.3(o)(2)(i)(C), which treats as “personally identifiable financial information” the fact that a person is a customer of the financial institution. We believe that this result is not in accord with the definition of the term “nonpublic personal information” in § 509(4) of the GLB Act, because customer status is not “financial” information.

Moreover, a customer list does not provide any information about a consumer that should be considered “nonpublic personal information”. As noted above in our discussion of the definition of “nonpublic personal information,” an individual’s status as a customer of a particular financial institution is ordinarily public information. Consumers do not expect that their status as customers of specific financial institutions will be kept private. Accordingly, the AIA urges that the example set forth at § __.3(o)(2)(i)(C) be deleted.

- (p) **Publicly available information.** The AIA requests that you adopt the definition of “publicly available information” set forth in Alternative B, which treats information as publicly available if it is made available to the general public from public sources.

The AIA further believes that the definition of the term “publicly available information” is unreasonably narrow because it unreasonably limits the sources from which publicly available information may be obtained to government records, the media, and disclosures required by law. Information should be able to qualify as publicly available information so long as it is made available from public sources. The AIA requests that this definition be amended accordingly.

- (q) **You.** No comment.

§ __.4 Initial notice to consumers.

The AIA opposes the requirement contained in § __.4(a)(1) that initial privacy notices be provided prior to the time the financial institution establishes a customer relationship. Section 503 of the GLB Act provides that an initial disclosure must be made at the time of establishing a customer relationship with a consumer. We believe that the “prior to” requirement the agency has proposed is contrary to the GLB Act and will prove difficult and overly burdensome to meet. It will require financial institutions to first determine when the customer

relationship is established, and then just before that time, provide the required notice to the customer. This approach is inconsistent with normal business practices. It also fails to allow for the flexibility necessary to accommodate the variety of business practices in today's rapidly changing financial services market. It will impose burdens on financial institutions which are not needed to ensure that the consumer will receive privacy notices at a meaningful time.

The AIA strongly requests that the agencies amend this provision to permit the initial notice to be provided "at or before" the time the customer relationship is established. This would conform the language of the proposed rule to that of the GLB Act.

The Supplementary Information indicates that affiliated financial institutions may use a common notice. We believe that this is an important point and should be incorporated into your rule.

§ __.5 Annual notice to customers.

Section 503(a) of the GLB Act requires that privacy notices be provided at the time a customer relationship is established and no less frequently than annually during the continuation of the relationship. The proposed rule provides that a notice must be sent to customers at least once during any 12 month period during which the relationship exists. The AIA believes that the requirement of providing notice "once every 12 month period" will prove unduly burdensome.

If the proposed rule is unchanged, a financial institution which desires to send the required annual mailing to all of its customers on the same date would have to send many more notices than would seem desirable or intended by the GLB Act or the proposed rule. The financial institution would incur substantial additional costs in order to achieve this result.

For example, if a consumer becomes a customer on January 25, 2001, he or she will receive an initial notice by that date. For operational reasons, the financial institution sends annual notices to all customers on February 1st. Under the proposed rule, the financial institution would have to send the new customer another notice on February 1, 2001 in order to ensure that the customer receives the annual notice within 12 months. This result seems to impose an unnecessary burden on the financial institution because it requires the financial institution to send more disclosures than is appropriate, without providing a corresponding consumer benefit. From the consumer's standpoint, he or she has already received the notice during that calendar year. No purpose is served by requiring the financial institution to provide two notices during the calendar year in order to ensure that all customers are on the same annual cycle.

To avoid this needless burden, the AIA urges that the proposed rule be clarified to permit financial institutions to have the flexibility to send customers annual notices at least once during each calendar year, beginning immediately after the customer establishes a relationship with the financial institution. For example, a

financial institution would be required to send an initial notice to a customer by the time the relationship is established. In subsequent calendar years, the financial institution would be required to send the annual notice to the customer before December 31st. This would result in considerable savings for financial institutions because it would enable them to send notices once each calendar year to all customers in one mailing. Such an approach is consistent with the GLB Act because each customer would in fact receive a notice annually.

§___.6 Information to be included in initial and annual notices.

The AIA agrees with the agency that the same information should be provided in both the initial and annual notices. We also believe that it is appropriate to require the notices to list the categories of information that may be collected, such as application information, transaction information and consumer report information.

While we believe it is also appropriate that the notice be required to list the categories of nonpublic personal information that the financial institution discloses, we do not believe that requiring financial institutions to provide examples of the categories of information disclosed is appropriate. We believe the examples of the categories of information provided in the proposed rule with respect to “disclosures” should match the examples of the categories of information provided in the proposed rule with respect to “information collected.” Requiring a financial institution to provide such specific examples of the information which may be disclosed will be confusing to customers and unnecessarily burdensome to financial institutions. The AIA request that you amend the example in §___.6(d)(2) to delete the requirement of providing specific examples of information to be disclosed.

In response to the request for comment contained in your Supplementary Information, the AIA believes that a financial institution that uses a third party to perform services for the institution need not disclose this to customers if the transaction comes within one of the exceptions provided in § 502(e) of the GLB Act. Under §___.6(b), the financial institution must inform consumers that it makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the notice. We believe that this notice is adequate under the GLB Act.

§___.7 Limitation of disclosure to nonaffiliated third parties.

The proposed rule states that a financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless the consumer has been given an opportunity to opt out from such disclosure. We believe that the rule should not provide examples of the time periods during which the consumer has an opportunity to opt out. Rather, the time periods should depend upon the specific facts and circumstances involved.

Further, the AIA believes that financial institutions should not be required to send multiple opt out notices to customers who maintain joint accounts. We believe it is appropriate to send one notice and opportunity to opt out to the address indicated in the institution's records.

§ __.8 Form and method of providing opt out notice.

The Supplementary Information to the proposed rule states that a financial institution is not required to provide an opt out notice when a customer establishes a new type of customer relationship. This section of the proposed rule, however, does not appear to include this important provision. We recommend that this point be included in the language of the final rule.

The AIA believes that you should clarify in the rule that the examples provided in § __.8(a)(2) are not exclusive, but merely illustrative of the ways in which a financial institution may provide consumers with an opportunity to opt out.

The AIA also believes that a financial institution should be required to provide a notice of change in terms to consumers before being permitted to disclose nonpublic personal information only if the change in terms is material or substantial. We believe that a financial institution should not be required to send a new notice to its customers if changes to its privacy policies are minor or insignificant.

The proposed rule states that a consumer's revocation of his or her decision to opt out must be in writing or in electronic form. We believe that this is overly burdensome and could prove detrimental to consumers. Consumers should have the opportunity to revoke their opt outs orally so that they can receive information from financial institutions immediately, rather than having to wait for a writing to be sent. We believe this could prove beneficial to customers in that it enables financial institution to contact customers by telephone and receive their consent to a disclosure that would enable information to be disclosed to a nonaffiliated third party to explain a new product or service to the customer. Institutions would undoubtedly retain records to ensure that the revocations were valid.

Accordingly, we believe § __.8(e) should be amended to permit a consumer to revoke an opt out orally.

§ __.9 Service provider and joint marketing exceptions.

Section __.9(a)(2)(ii) permits information which is disclosed to a third party in accordance with this exception to be used only for the purposes for which the information is disclosed or in accordance with the processing or other listed exceptions. The GLB Act does not limit subsequent disclosures by third parties in this manner. Section 502(b)(2) of the GLB Act provides that the third party need only agree to maintain the confidentiality of the information. As indicated in § 502(c) of the GLB Act, a third party that receives nonpublic personal information under § 502 may not disclose such information to a nonaffiliated third

party of both the financial institution and the third party unless such disclosure would be lawful if made directly to the other person by the financial institution.

The restriction in the proposed rule goes beyond the scope of that provided in the Act. Congress did not intend to limit the use of information obtained by third parties solely to the purpose for which it was provided. If the financial institution could lawfully disclose the information, there is no reason why a third party should be so limited. The AIA requests that you conform the proposed rule to the provisions of the GLB Act.

The issue has been raised as to whether to require financial institutions to take steps to assure that the product being jointly marketed and the other participants in the joint marketing agreement do not present undue risks for the institution. The AIA does not believe it is appropriate to impose such requirements on financial institutions under this rule. Such requirements should be considered in the context of laws which directly address the safety and soundness of financial institutions.

§ __.10 Exceptions for processing and servicing.

The AIA believes that the exceptions provided in § __.10 generally follow Section 502(e) of the GLB Act. We suggest that the structure of the GLB Act be preserved. The words “in connection with” which appear in § 502(e)(1) should modify § __.10(a)(2), (3) and (4), as they do in the GLB Act. Section __.10(a)(1) of the proposed rule deletes the words “or in connection with” which are contained in the GLB Act. We believe that this is a material deviation from the GLB Act. Congress intended that the processing exception apply “as necessary to effect, administer or enforce a transaction requested or authorized by the consumer,” “or in connection with servicing or processing a financial product or service requested or authorized by the consumer.” This latter clause may not relate to a transaction requested or authorized by the consumer despite the fact that the product or service was requested or authorized by the consumer. Unless this exception is included as provided for in the GLB Act, we are concerned that a gap may exist which could interfere with the efficient delivery of products and services to consumers.

A similar concern exists with regard to the exceptions for maintaining or servicing a customer’s account for securitizations which appear in §§ __.10(a)(3) and (4). We urge that the language of the statute be reflected in this section of the rule.

§ __.11 Other exceptions.

Under the proposed rule, a consumer may consent to the disclosure of information by the financial institution. The agency has asked whether a financial institution should require a consumer to provide such consent in writing. For the reasons presented above with regard to a consumer’s ability to orally revoke his or her opt out, we believe that a consumer’s consent should be permitted to be made in any manner, including orally.

which are used for identification purposes. The prohibition in § 502(d) of the GLB Act is intended to prevent potential abuse by limiting the ability of nonaffiliated third parties to make direct use of a consumer's account number. The use of an encrypted, reference or truncated account numbers to identify the consumer satisfactorily responds to the concerns which § 502(d) was intended to address.

It is important that nonaffiliated third parties be able to accurately identify customers to the financial institution by using unique numerical identifiers. Encrypted account numbers, reference numbers and truncated account numbers serve the purpose of providing a means of associating the consumer with a particular account without compromising the security and integrity of the consumer's account. Accordingly, we request that the final rule adopt an exception which provides that the term "account number or similar form of access number or access code" does not include an encrypted account number, a reference number or a truncated account number which is provided to a nonaffiliated third party for use in marketing.

We also ask that you clarify the meaning of the term "transaction account" as used in § __.13. It is our understanding that the term transaction account means a "checking account," that is, an account which permits the consumer to make transfers or withdrawals by negotiable instrument or other device in order to make payments to third parties. We do not believe that it is intended to apply to an insurance policy or other type of insurance contract. The term transaction account is not generally used outside of the banking sphere, and will undoubtedly be confusing to financial institutions that are not banking institutions. We therefore believe it would be highly desirable for you to clarify the meaning of this term by referring to the term "transaction account" as used in § 204.2(e) of Federal Reserve Regulation D, 12 C.F.R. § 204.2(e).

§ __.14 Protection of the Fair Credit Reporting Act.

The AIA supports this section of the proposed rule which reaffirms that the rule does not affect the Fair Credit Reporting Act.

§ __.15 Relation to State laws.

This provision restates § 507 of the GLB Act. However, the GLB Act grants authority to the Federal Trade Commission ("FTC") to make the determination as to whether a State law is inconsistent with the provisions of the GLB Act. Section 507 of the GLB Act does not grant the FTC authority to make a determination concerning the inconsistency of a State law with the rule of an agency. We do not believe the FTC possesses such authority. Accordingly, we request that § __.15(b) should be deleted.

§ __.16 Effective date.

The proposed rule indicates a scheduled effective date of November 13, 2000. We are very concerned that this will not provide financial institutions with sufficient time in which to implement operational changes, reprogram computers, identify all of the sources and uses of consumer and customer information, prepare disclosure policies and train staff. It has been estimated that as many as two billion notices will be required to be sent to consumers and customers by November 13th. The scope and scale of the task is unprecedented in this country. In order to provide an orderly transition, we strongly urge that the effective date be extended six months until May 14, 2001.

In the event the scheduled November 13, 2000 effective date is not extended, we request a clarification as to when initial notices will be required to be sent to existing customers. The AIA is concerned that the proposed rule will require financial institutions to send notices to all existing customers by October 13th in order to avoid disruptions to existing information flows. The October 13th date reflects the latest date that notices can be sent to consumers and customers so that they will have an opportunity to opt out before the November 13th effective date. Unless these notices are in the mail on October 13th, financial institutions will have to cease making disclosures to nonaffiliated third parties come November 13th until such time as consumers and customers have had a reasonable opportunity to opt out. Financial institutions will have a difficult enough time meeting the November 13th effective date. You should not impose an additional burden on financial institutions to get disclosure notices in the mail to customers by October 13th in order to avoid further disruptions to their operations. Accordingly, if the scheduled effective date is not extended, the AIA urges that the proposed rule be modified to permit a financial institution to continue to make disclosures of nonpublic personal information to nonaffiliated third parties for 30 days beginning November 13th until either the customer has opted out or until the 30 day opt out period has expired.