

**Gramm-Leach-Bliley Act Privacy Rule
16 CFR Part 313**

COMMENT

**Comments on the Federal Trade Commission Privacy Regulations
Submitted to:**

**Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580**

Submitted Via Electronic Mail, GLBRule@ftc.gov

Respectfully Submitted on March 31, 2000, by:

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I. Company Background

Metropolitan Mortgage and Securities Co., Inc. (“Metropolitan”), founded in 1953, is a family-owned business located in Spokane, Washington. Through affiliated groups of financial service companies, Metropolitan conducts business throughout the United States.

Our products and services encompass many industries, including:

- Residential Real Estate Lending
- Commercial Real Estate Lending
- Correspondent Lending
- Life Insurance
- Annuities
- Investment Products
- Commercial Equipment Leasing
- Real Estate Sales
- Property Development
- Private Mortgages (Cash Flow Acquisition)

Metropolitan’s affiliates that would be subject to the Privacy of Consumer Financial Information Rule under consideration by the Federal Trade Commission (the "Commission") include: Life insurance companies (Western United Life Assurance Company, Old Standard Life Insurance Company, and Old West Annuity and Life Insurance Company), and Metwest Mortgage Services, Inc., which specializes in non-conforming loans secured by residential real estate properties.

II. Privacy - Generally

Metropolitan values the privacy of its customers, and treats personal information it receives in the course of doing business with sensitivity and confidentiality. Metropolitan does not, in principle, oppose the policy underpinnings of the proposed Privacy of Consumer Financial Information Rule (“The Rule”); indeed, it would welcome the issuance of clear, uniform, workable and definitive guidelines.

However, Metropolitan, like many financial services companies, fear the inconsistency and impediments to interstate commerce that are developing in light of the lack of federal preemption in this area. Because the Gramm-Leach-Bliley Act (the “Act” or “GLB Act”), by its terms, does not preempt state privacy law, this Rule will not provide the definitive framework that Metropolitan and other financial institutions need in order to implement sound, comprehensive privacy protections and concomitant procedures in an economically feasible manner. Rather, it conceivably may be the first of dozens of competing, conflicting regulatory schemes. Ironically, and tragically, this could ultimately undermine certain objectives of the GLB Act itself. The modernization and expansion of financial services depends on information technology that will be difficult to utilize if it must be tailored so as to comply with a “crazy quilt” system of state by state regulation. Companies, particularly small businesses, may conclude it is not possible to attempt to satisfy so many regulatory masters and simply forgo certain types of information sharing. Or, overwhelmed by the

impracticality and complexity of complying with a number of inconsistent or outright conflicting laws, an institution might, despite its best efforts, fail to adequately or consistently employ its privacy protections, thus thwarting the very interest it seeks to protect. The tragic net effect, therefore, may be to create a class system in American business, distinguishing between those companies that can afford to comply with a multitude of privacy laws, thereby gaining admittance to the full benefit of the “Information Age”, and those who are left behind.

III. Request for Public Hearings

Metropolitan wishes to note its concern about the fact that no public hearings have been or will be held before the anticipated May 13, 2000 adoption of the Rule. Accordingly, Metropolitan encourages the Commission to consider employing the authority granted to it by Section 510(1) of the Act to postpone the effective date of the Act’s privacy provisions so that, upon review of the comments submitted prior to March 31, 2000, a second draft of the Proposed Rule can be undertaken and public hearings on that draft scheduled.

IV. Specific Comments

Metropolitan offers the following comments regarding specific sections of the Rule and the questions or issues presented therein.

§313.2: Use of Examples in the Rule

While the use of examples in the Rule is generally helpful, a serious interpretive difficulty arises when used in some definitions. For example, in §313.3(e)(1), the definition of “Consumer” is clearly limited to one who obtains (or has obtained) a financial product or service. However, the examples include multiple instances of individuals who do not obtain such products or services, but merely *seek* to obtain them [e.g., “An individual who applies to you for credit ... *regardless of whether credit is extended.*” §313.2(e)(2) (emphasis added)]. The difficulty arises in determining which part of the Rule should be given the greater weight, the precise wording or the illustration.

§313.3(n – p): Alternative Definitions of “Publicly Available Information”

The definition of publicly available information in Alternative B is more consistent with the policy of the GLB Act, and more logical, than Alternative A. Under Alternative B, such information is defined as that which *could be* obtained from a public source, as opposed to *actually* received from a public source. The phrase itself gives away the appropriate definition. If the Alternative A interpretation had been intended by Congress, the term would likely have been “Publicly Obtained Information.” Further, the consumer’s privacy interest in information that is already in the public forum would be substantially less than nonpublic information, and less deserving of the protections of the Act. This is true regardless of the manner in which the information comes into the hands of a financial institution.

Accordingly, we urge adoption of Alternative B.

§313.8(a): Should Institutions be Required to Accept “Opt-Outs” through Means that the Consumer otherwise Communicates with the Institution?

The privacy rules mandated by the GLB Act and implemented through the Rules can create dangerous conditions for business. To avoid liability, businesses must implement strict procedures for compliance with the Act and Rule. Clarity in these procedures is crucial to their success and will limit the amount of increased overhead. Thus, clear rules for what disclosures must be made, their timing, and the methods for consumer reply will simplify this process and insure business compliance. For instance, if a business establishes a post-card reply system for “opting out”, consumers who exercise this option can more clearly be tracked. However, if the institution has a toll-free phone number for consumer complaints, and consumers are allowed to phone in their “opt out” decision, tracking of this decision has become considerably more difficult, and imprecise. What assurance can the institution have that the consumer option has been accurately recorded? What further, costly, procedures must the institution then implement as an over laying protection against inadvertent failure to record the reply? Clarity of consumer reply methods will aid in reducing costs associated with implementation of the Act.

§313.8(d): Should the Commission Define the Specific Time Period for Complying with a Consumer Request to Opt Out?

For the same reasons outlined above, we urge the Commission to adopt clear, precise rules. Vagueness often leads to increased judicial challenge. A “reasonable time” standard would likely invite too great a variance in interpretation, since reasonableness itself is subject to great difference of opinion.

§ E, "Regulatory Flexibility Act"

This section addresses the impact of the Rule on small entities. The Commission states that it "has made every effort to minimize the burden on small entities--and all entities--and to be reasonable in its rulemaking." Metropolitan, while not in disagreement with this statement, notes, however, that implicit in the Commission's statement is an acknowledgement that the Rule does not differentiate in any way between small entities and large entities. The Commission next states that the Rule provides for "a streamlined version of the content of an institution's privacy policy for any entity that does not share nonpublic information with third parties." It is not unreasonable to conclude from the content and placement of this statement that the Commission recognizes that the only practical means of compliance with the Rule for many small entities will be to forgo the benefits of information sharing with nonaffiliated third parties, because the cost of compliance will outweigh them. Should this scenario in fact become reality, Metropolitan would encourage the Commission to revisit the Rule with the intent to rectify its disparate impact on the ability of small entities to remain competitive in the financial services marketplace.

§313.15: Relationship to State Laws

Metropolitan directs its final comment to Section 313.15 of the Rule, which reflects the intent of Congress to permit the imposition by the states of consumer protections "greater" than those created by the GLB Act. Certainly, Metropolitan recognizes that the Commission has no authority to dictate either action or forbearance to the states; however, to the extent the Commission is asked or chooses to opine on the question of enactment of state laws at variance with the Rule,

Metropolitan urges the Commission to counsel prudence at this juncture. States, consumers and financial institutions alike will best be served by a careful evolution of privacy protection rather than a chaotic rush to regulation. The proposed Rule is an auspicious step forward in the development of the right to privacy and its implementation can--and should be permitted to--serve as a touchstone to point the way to further refinement and clarification of this emerging right.

V. Conclusion

The greatest challenge facing business and government in the “Information Age” may well be to strike a balance between the overwhelming opportunity presented by the wealth of easily available information and the privacy rights of individuals. Care must be exercised in not sacrificing human dignity and privacy in the quest for more complete information technology. Conversely, great opportunities for the advancement of technology and business should not be sacrificed through overreaching restrictions in the name of privacy. This delicate balance is most threatened by non-uniform and inconsistent privacy laws.

We thank you for your work in this important area and for the opportunity to comment.