

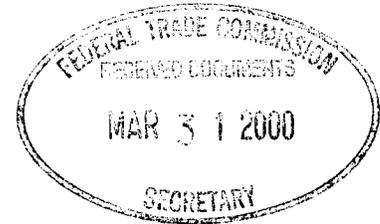
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March 31, 2000

Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Rm. H-159
Washington, DC 20580

RE: Gramm-Leach-Bliley Act Privacy Rule
16 CFR Part 313 — Comment

Dear Sir or Madam:

Pursuant to the notice published in the *Federal Register* on March 1, 2000, we are pleased to submit the following comments on behalf of the National Association of Retail Collection Attorneys (NARCA) regarding the Commission's Proposed Rule implementing the privacy provisions of the Gramm-Leach-Bliley Act of 1999 (G-L-B Act).¹ By way of background, NARCA is an organization of approximately 600 law firms located throughout the country which specialize in consumer credit collection. As such, its members have a keen interest in the federal rules directly governing debt collection activities as well as those rules, such as are under discussion herein, which may indirectly impact third-party collection activities.

In the preamble to the Proposed Rule, "The Commission specifically requests comment on the application of the Rule to debt collectors."² NARCA respectfully submits that a law firm engaged in collection activity falls clearly outside the scope of a "financial institution," which is the controlling statutory definition governing the general applicability of this Title of the G-L-B Act. More specifically, under the G-L-B Act and Proposed Rule §313.3(j)(1), a financial institution means "any institution the business of which is engaging in activities that are financial in nature as described in section 4(k) of the Bank Holding Company Act of 1956."³ It would be unreasonable under both common sense and common business practice to posit that debt collection activity, which can and often does include judgements or other court-ordered payments completely unrelated to an extension of credit, is "financial in nature."

¹ Pub. L. 106-102, §§ 501-510.

² 65 FR 11176, fn. 6.

³ 12 UCS §1843(k).

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As the Commission no doubt realizes, however, section 4(k) of the Bank Holding Company Federal Trade Commission Act creates the new and essentially open-ended statutory phrase "financial in nature," and then delegates to the Federal Reserve Board, acting in consultation with the Treasury Department, the determination by future rule making of precisely what activities fall within this standard. In the meantime, industry participants and courts could be left to their own analysis and statutory interpretation as to precisely how far this new terminology might stretch. For this reason, we strongly urge the Commission to add "debt collectors" to the list of entities set forth in Proposed Rule §313.3(j)(3), which are specifically exempt from the definition of a financial institution.

NARCA commends the Commission for its recognition in the Proposed Rule that engaging a law firm and other third-party to provide collection services to a financial institution does not trigger the notice or opt out requirements of Title V of the G-L-B Act. Proposed Rule §313.10(a) specifically allows for the disclosure of nonpublic personal information "as necessary to effect, administer, or enforce a transaction ... authorized by the consumer." Proposed Rule §313.10(b) provides, in turn, that the phrase "necessary to effect, administer, or enforce a transaction" includes a disclosure required to enforce legal rights, such as collecting amounts owing and due. We interpose no objection to the requirement specified in §313.12(a)(1) that an exempted service provider must not redisclose or reuse nonpublic personal information about a consumer which it receives from a non-affiliated financial institution.

Our reading of the *Federal Register* notice appears to reveal an inconsistency between the commentary to the Proposed Rule (at 65 FR 11176), which states that an individual has a "*customer relationship*" with a debt collector that purchases an account from the original creditor, and the actual text of the Proposed Rule (§313.3(e)(2)(iv)) which describes a debtor in the situation where a person has "bought the account from the financial institution that originally extended credit" as a "*consumer*." As described more fully below, NARCA respectfully suggests that both characterizations are inappropriate and beyond the scope of the enabling statute.

In the case of the former, the Proposed Rule's definition of a "customer relationship" in §313.3(i)(1) accurately tracks the statutory language in that it requires a "continuing relationship" whereby a business provides "one or more financial products or services to the consumer."⁴ Clearly a law firm engaged in debt collection, even one that has acquired the underlying credit obligation, does not meet this criterion since it has not provided credit products or credit-related services to the debtor. Likewise, the definition of "consumer," which is a broader term under the G-L-B Act and the Proposed Rule, still requires the individual to have "obtained a financial product or service"

⁴ Pub. L. 106-102, §509(11).

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from the business entity.⁵ Indeed, unless and until the debt collector extends additional credit - a very rare situation indeed - NARCA is of the view that the relationship between the debtor and the debt collector is neither that of a customer nor a consumer as per the explicit language of the G-L-B Act.

We also note that the Federal Banking Regulatory Agencies in their Proposed Rule state that the "customer relationship" is terminated if the loan has been charged off.⁶ Once that relationship has been terminated by virtue of the consumer's default, there is no "customer relationship" between the two parties to assume when the debt being purchased, as is standard industry practice, involves loans which have already been charged-off. Rather, the debt buyer is merely seeking to enforce an existing obligation where the customer relationship has already been terminated.

For these reasons, we submit that both the above-referenced commentary (65 FR 11176) and the example set forth in §313.3(e)(2)(iv), stating that a consumer has a customer relationship with a debt collector that purchases an account from the original creditor, should be deleted.

We appreciate the opportunity to submit these views and we look forward to working with the Commission and staff as the Proposed Rule progresses through finalization.

Very truly yours,



/ James J. Butera

cc: Communications Division, Office of the Comptroller of the Currency
Secretary, Board of Governors of the Federal Reserve Board
Executive Secretary, Federal Deposit Insurance Corporation
Information Management & Services Division, Office of Thrift Supervision

⁵ *Id.* at §509(9).

⁶ *See, e.g.*, OCC §40.5(c)(2)(ii).