



March 31, 2000

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

RE: "Privacy of Consumer Financial Information" proposed rules
16 CFR Part 313

AARP appreciates the opportunity to offer comments on the proposed rule by which the requirements of Subtitle A of Title V (captioned Disclosure of Nonpublic Personal Information) of the Gramm-Leach-Bliley Act (the Act) are to be implemented. The Act establishes that "each financial institution has 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." Under Title V of the Act, federal financial regulators are charged with establishing appropriate standards "to protect against unauthorized access to or use of such records or information which would result in substantial harm or inconvenience to any customer."

AARP believes that safeguards provided for by Title V leave unprotected several uses of nonpublic personal information that may cause "substantial harm or inconvenience" to customers. This gap in protection is not directly attributable to the proposed regulation, but rather is due primarily to the fact that the Act permits the continuation of unregulated sharing of personal information among business affiliates. Unfortunately the Act also allows a financial institution to continue the practice of sharing personal information with nonaffiliated third-parties as long as the business arrangement is sanctioned by a joint marketing agreement. The Association believes that consumers should have the right to reject unauthorized use of personal financial information outside the original business context in which and for which the data were collected. This right should extend to affiliated businesses as well as nonaffiliated third-parties.

Support for this view comes from a recently conducted, AARP-sponsored survey. In February, 2000, Market Facts, Inc., conducted a random telephone survey of 1,002 computer users age 45 and older, including 375 members of AARP. (A complete copy of the report: "AARP National Survey on Consumer Preparedness and E-Commerce: A Survey of Computer Users Age 45 and Older", March 2000, is attached.) Results from the survey include the following findings:

- An overwhelming majority (93 %) of those surveyed believe that any personal information they give to a business during a business transaction remains the property of the consumer and that the information should not be shared with other businesses without the permission of the consumer. This figure includes 86 % who “strongly” support this position.
- A plurality (45 %) would not permit businesses to share their financial information with other businesses under any conditions.
- Three in ten (30 %) of those surveyed would allow information sharing among businesses if they were notified and had the clear option of saying “no”.
- Eighteen percent would allow their information to be shared with other businesses only with their explicit, recorded permission.
- Just 3 % would allow personal financial information sharing if there were a rebate or free service offered in exchange, and 2 % would permit it without restriction.

Consumers express resounding opposition to unrestricted sharing of personal financial information on the part of businesses. These results are consistent with those from a telephone survey conducted by International Communications Research of Media in December of 1998, which revealed a high level of opposition among AARP members to the selling of information about customers to businesses (92 %), government agencies (93 %), and websites (87 %).

Subtitle A of Title V of the Act does attempt to restrict disclosures by financial institutions of personal information by:

- limiting the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonexempt third-parties, and
- requiring that a financial institution disclose to all of its customers the institution’s privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third-parties.

The Act specifies that the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB, the Board), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the Secretary of the Treasury, the National Credit Union Administration (NCUA), the Federal Trade Commission (FTC), and the Securities Exchange Commission (SEC) – referred to collectively as “the Government Regulators” -- are to prescribe regulations to implement Subtitle A of Title V.

Subtitle A of Title V of the Act requires “to the extent possible, that the regulations prescribed by each such agency and authority are consistent and comparable with the regulations prescribed by the other such agencies and authorities.” Because the proposed regulations differ only to fit particular regulatory jurisdictions and responsibilities, the Association will focus its comments on two cross-cutting concerns. Specifically, AARP’s comments will focus on:

- how the rules should define the term “nonpublic personal information” as part of the general rule. We also have a concern with what that definition should mean for the privacy of personal information made available over the Internet; and
- use of electronic delivery of notices and disclosures by financial institutions. We are concerned that this method could impose new privacy risks and regulatory burdens on American households.

AARP favors a definition of “nonpublic personal information” that includes any personally identifiable financial information as well as any publicly available information pertaining to them. As long as the effect of the collection and aggregation effort is to compile information into files that are linked to individual identities, those files (including the data collected from publicly available sources) should be subject to the third-party disclosure restrictions as well as the “opt out” provisions of the Act. AARP does not believe it should be lawful for a nonaffiliated third-party to disclose information obtained through a joint agreement. The Association believes that under this definition of “nonpublic personal information”, the financial institution will be able to establish an effective notification process and a proper opt out option within the limited privacy context of Title V of the Act. The Association believes that this definition would be most consistent with the values, views and desires of its members.

The same logic should hold for personal financial information available from the Internet. The security of the website – e.g., access restricted by the need for a password – should not be the sole governing concept. Rather, the rule should also consider whether the website is under the control of a financial institution – including one based on a joint marketing arrangement – and whether the personal information being made available through it conforms to a reasonable extension of the definition for “nonpublicly available information”. If so, then as long as the effect of the collection and aggregation effort is to make available information files that are linked to individual identities, those files (including the data collected from publicly available sources) should be subject to the third-party disclosure restrictions as well as the opt out provisions of the Act. In this regard, the Association believes additional examples of the types of joint agreements provided in the final rule regarding firms and their websites would be useful. In sum, AARP believes that individuals should have the right to be widely involved in financial service provider decisions regarding the dissemination of their financial records as is permitted under the Act.

Regulatory burdens and methods for complying with the notice and disclosure requirements are a second set of issues of concern to the Association. Under the general rule, notices and disclosures may be delivered in writing or, if the recipient agrees, electronically. The request for comments seeks advice on the “likely burden” of complying with the notification and disclosure requirements, methods financial institutions anticipate using to deliver notices, and the approximate number of notices each may expect to deliver and process.

AARP recognizes that paper-based notices and disclosures are a cost of doing business for financial institutions. And because the Act did not provide a general exception for small financial institutions, the proposed rule would apply to all sizes of firms. We are also aware that the rule applies only to information about individuals who apply for or obtain a financial product or service from a financial institution to be used for personal, family, or household purposes.

Analysis of the previously mentioned Market Facts telephone survey produced the following conclusions regarding computer users’ Internet experiences and vulnerabilities:

- Among computer users aged 45 and older, level of skill in using the computer and the use of different applications vary widely.
- While Internet use among computer users is pervasive, there are significant differences across the mid-life and older populations in use and skill levels.
- As with general computer use, level of expertise and familiarity with the different uses of the Internet are largely driven by age, education, and income factors.
- Respondents registered high levels of concern regarding the tracking of their Internet activities without permission.
- A substantial portion of computer users appears unable or unwilling to spend money for maintenance and upgrade of their systems. Thus, many computer users age 45 and older are potentially at risk in an increasingly technology-driven commercial environment.

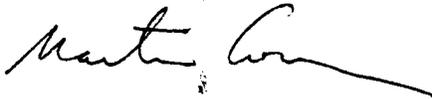
Under certain circumstances, the electronic delivery of privacy notices and disclosures can serve recipient needs as well as those of financial institutions in meeting these new Title V responsibilities. However, the Association is concerned that the delivery of electronic documents of all sorts, strictly as a business convenience and service efficiency, should not be allowed at the cost of consumer safeguards and rights. As American households (whether composed of one individual or many) begin to manage more of their business affairs with the assistance of information technologies, it is evident that these households respond to many of the same technological burdens and responsibilities as would a small firm. However, under the proposed rule, AARP has a concern that over time, and with numerous privacy notices required, pressure to shift

the recordkeeping burden from regulated financial institutions to the household will become intense. The rule warrants careful consideration in that light.

Further, the complexity of maintaining and properly using computer-based technology is an associated concern. AARP believes that electronic delivery of notices and disclosures should facilitate the protection of consumers as well as financial institutions. Federal regulations designed to encourage the use of modern information technologies should not assume that mere access by a consumer to a computer is equivalent to computer proficiency. AARP feels that these recommendations make sense for both financial institutions and their Government Regulators.

AARP urges that every effort be made to ensure that the definition of nonpublic personal information be as inclusive as is feasible under the Act. The Association also urges that the electronic delivery of privacy notices and disclosure statements not be authorized in such a manner as to make receipt of them difficult or expensive for the recipient. AARP asks the Government Regulators to bear in mind the fundamental objectives of the Subtitle A of Title V of the Act. In the broader context, the Association is working with the Congress and the Administration to expand and strengthen the Act's protection for personal financial information.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin A. Corry". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Martin A. Corry
Director
Federal Affairs