

**Comments of Proposed Regulations  
Privacy of Consumer Financial Information  
March 24, 2000  
Submitted by:  
Craftmatic Organization, Inc.**



Section 504 of the Gramm-Leach-Bliley Act requires that the various agencies charged with the enforcement of the Act shall prescribe “such regulations as may be necessary to carry out the purposes” of the Act. The proposed regulations should reflect the intention of Section 501 through 510 of the Gramm-Leach-Bliley Act. In fact, they exceed the stated Policy contained in section 501(a) and as such should be revised. As proposed, the regulations will have a severe effect upon numerous businesses in the United States. Aside from the obvious costs to financial institutions to provide the annual privacy policy notice and maintenance of the opt-out list, the financial institutions will be denied a traditional source of income. They will not be able to compile and offer to third parties lists that contain “personal financial information” regardless of how unidentifiable that information may be.

Businesses like Craftmatic that depend upon consumer lists that have been demographically limited to target an audience that might find their product acceptable and be predisposed to a purchase would find that their universe of available basic consumer information has shrunk. A loss of the ability to obtain lists of consumers by certain age or other non-financial grouping would have a direct effect upon the economy. Mailers would then be forced to either limit their contacts with potential consumers, lacking information beyond a name, address and telephone number, this would have a trickle down effect in that the mailers would require less employees and use less direct mail advertising material. The fewer pieces mailed the less income to the Postal Service. The fewer pieces mailed the less

income to printers. The fewer pieces mailed the less sales made having an income and profit/loss effect on the business. A mailer's other option would be to increase the amount of mailings, by mailing a broad spectrum of consumers without limitations, hoping by chance to reach the demographically potential consumer. This would have a direct profit/loss effect on the business.

To reduce the amount of mail that is undeliverable because the addressee has moved the Postal Service has created the National Change of Address (NCOA) Service. It is estimated that only 65% of the moving population fills out the required form and submits it to the Postal Service. Most direct mailers process their lists through NCOA thereby reducing the amount of undeliverable mail that the Postal Service must process, return to sender or destroy.

The 35% of those movers that do not use the Postal Service NCOA form do notify their banks, mortgage company, credit card issuer, etc. These changes of address are available through credit reporting agencies.

If direct mailers are denied access to the credit reporting agency information the volume of undeliverable mail will dramatically increase. The downward economic effect of this will affect the Postal Service - higher volumes of undeliverable mail to process; higher costs to direct mailers due to wasted mailings, resulting in lesser profits, resulting in lesser employment, etc. The permutations are endless, but all have the same result - a negative effect upon the economy.

The Supreme Court has held that commercial advertising is protected by the First Amendment, providing that the speech is truthful. Unless the commercial speech proposes an unlawful activity or is misleading or fraudulent the speech cannot be burdened. Any other

regulation of commercial speech will be upheld only if it: (a) serves a substantial government interest; (b) directly advances that interest; (c) is narrowly tailored to serve that interest; and (d) not be more extensive than is necessary to serve that interest. *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). There must be a reasonable correlation between the substantial government interest and the means to accomplish that interest. If the restriction pertained to specific information as to an individual consumer's financial information, i.e. credit card account number, bank account numbers or balances, etc. that would be a substantial interest to protect. However, restricting information that provides a consumer's current address or places a consumer in a category does not reveal any individual financial information that could be used to the consumer's detriment.

Section 504 of the Act authorizes the promulgation of regulations "as may be necessary to carry out the purposes of this subtitle with respect to the financial institutions." It does not authorize an expansion of the purposes of the Act.

The purposes of the Act are clearly stated in Section 501(a): "It is the policy of the Congress that each financial institution has an affirmative and continuing obligations to respect the privacy of its customers and to protect the security and confidentiality of those customer's nonpublic personal information."

In as much as the Act defines "nonpublic personal information" as "personally identifiable financial information", what becomes crucial is the definition of "personally identifiable financial information", which is not defined in the Act..

Craftmatic supports Alternative B, but believes that there should be a modification to the definition of "personally identifiable financial information" to limit it to financial

information that can be directly tied to a specific consumer and which falls within a consumer's expectation of privacy. The deciding issue should not be whether the information was gathered by a financial institution, but whether the information is financial in nature and whether a consumer would expect or consider that information to be "private".

A consumer's age, especially if given in age brackets (50+, 60+) rather than a specific age attached to a specific consumer's name is clearly not "financial information" and most definitely not "personally identifiable". Further, a consumer would not be likely to consider such information to be "private". Both the government and private sectors of the economy consistently request the consumer to reveal their age and that information is available from many areas, i.e. voting records, AARP, driver's licenses, etc.

Likewise, health information cannot under any reasonable definition be categorized as "financial" in nature. Companies, like Craftmatic, sell health related products and should not be foreclosed from obtaining lists containing that information. If a consumer desires his/her health information to be private, then there is the opt-out provision which is offered yearly and can be taken advantage of at any time be communicating with the financial institution.

The definition of "personally identifiable financial information" should be further defined to restrict only that information that is financial in nature and information that can be narrowed down to provide specific information about a specific consumer

The regulations should be amended to more clearly reflect what is financial in nature and to what information, financial or otherwise regardless of source, the ordinary consumer would expect to be private and limit the restrictions to such information.