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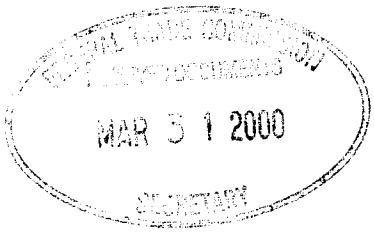
America's Community Bankers®



March 31, 2000

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

Re: Privacy of Consumer Financial Information
65 FR 11174 (March 1, 2000)

Dear Sir or Madam:

America's Community Bankers (ACB) is pleased to comment on the Federal Trade Commission's (FTC) proposed rulemaking implementing the financial privacy provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA). The GLBA requires each financial institution to disclose its financial privacy policy and practices to the consumers and customers it serves based on the requirements, restrictions and prohibitions of the statute. This comment letter addresses the requirements being imposed on banks. For purposes of this letter, the term "banks" includes "savings associations."

The FTC's proposal is substantially similar to the proposal issued by the federal banking agencies. For purposes of this letter, any reference to the federal banking agencies includes the FTC.

America's Community Bankers represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

ACB generally supports the regulations proposed by the agencies. There are, however, a number of areas in the proposed regulations where greater clarification or changes are needed. In developing the final regulations, the agencies should delete or modify requirements that may impose unnecessary regulatory burden on banks, hinder the operational ability of banks to do business, subject banks to undue costs of compliance, or generate confusion among the general public. Any requirement imposed on banks by the final regulations should be accompanied by a corresponding benefit for the consumer. Special attention should be focused on the potentially detrimental effect of regulatory and operational burdens on small banks, as emphasized in the legislative history of the GLBA.

In implementing the privacy provisions of the GLBA, the agencies should keep in mind the concerns of the Congress when it passed this statute. The legislation was passed largely in response to widely publicized allegations that a few financial institutions were selling personal financial information to unrelated entities which would, in turn, market their own products and services to an unknowing bank customer. In reality, these alleged activities were the exception, not the rule.

Banks are uniquely dependent on maintaining public trust in the integrity of the financial system. To preserve this trust, banks historically have protected the confidentiality of customer information as part of their business practices. At the same time, banks have also engaged in information sharing activities that have resulted in tremendous consumer benefits, such as access to new financial products and better customer service.

The final regulations must properly balance the legitimate business needs of banks to engage in information sharing activities and the concomitant consumer benefits with the privacy interests of consumers. To assist the agencies with this task, we have identified a number of changes and revisions that should be made to the proposed regulations. ACB looks forward to working with the agencies to ensure that the privacy provisions of the GLBA are properly implemented.

Summary of key changes needed

The following is a summary of key changes that should be incorporated in the final regulations.

◆ **Extension of effective date:** The proposed effective date of November 13, 2000 should be extended to at least May 13, 2001, so that banks and their service bureaus will have enough time to properly comply with the requirements of the law. If the effective date is not extended, the final regulations should provide protections, such as a grace period for compliance, for those banks which make a good faith effort to comply with the regulations by the deadline.

◆ **Model privacy notice language:** The final regulations should provide model privacy notice language as safe harbor examples. This will reduce compliance costs for banks and reduce the examination burden on the agencies.

◆ **First mailing of privacy notice:** If the proposed effective date is not extended, the final regulations should delay the effective date of a bank's first mailing of its privacy notice to its current customers until March 31, 2001. The proposed 30-day time frame to mail the first privacy notice after the effective date of the regulations is difficult operationally and not required by the statute.

◆ **Annual privacy notice:** The final regulations should clarify that a bank may send its annual privacy notice to its customers on a schedule established by the bank that takes operational difficulties into account. Rather than requiring that each customer be provided the annual notice on the 12 consecutive month anniversary date of the customer relationship, the bank should be permitted to establish a schedule for providing each customer with the appropriate notice during each calendar year.

◆ **Personally identifiable financial information:** Instead of using the overly broad definition in the proposed regulations, the final regulations should use the common meaning of "financial" for purposes of this law. In addition, the final regulations should not include as an example of personally identifiable financial information the mere fact that an individual is identified as a customer of a bank. If a bank discloses a list of its customers, but does not include any intrinsically financial information about them, it should not be required to provide the opt-out opportunity, as is required by the proposed regulations.

◆ **Termination of customer relationship:** The proposed regulations state that a customer relationship is terminated if the bank has not communicated with the consumer about the relationship for a period of 12 consecutive months, other than to provide the annual privacy notice. This ambiguous provision would raise significant compliance concerns, especially as to tracking a pattern of non-communication with a customer. Instead, the final regulations should clarify that only a documented activity or transaction in the normal course of business by the bank or a normally documented communication by the customer within the 12 consecutive month period would continue the customer relationship.

◆ **Limits on sharing of account number information for marketing purposes:** The final regulations should allow for the disclosure of account numbers/codes in encrypted or scrambled forms to nonaffiliated third parties where the disclosure is expressly authorized by the customer and is necessary to service or process a transaction expressly requested or authorized by the customer. The final regulations should also make appropriate exceptions to prevent negative, unintended consequences for banks.

Changes to proposed regulations

The following comments address in detail the changes that ACB urges the agencies to incorporate in the final regulations. Based on operational insights from its members, the following changes should be made to ensure compliance effectiveness and efficiency, and reasonably balance regulatory burdens with consumer/customer benefits within the requirements of the GLBA and the Congressional mandate to reduce the regulatory burden.

- **Definitions**

The following comments focus on two key definitions that should be clarified or corrected in the final regulations.

(1) Publicly available information: The definition of "publicly available information" should provide that information is *per se* public if it is available from a public source without regard to how a bank actually acquired the information. Therefore, if information about a consumer/customer is available from a public source (e.g., telephone book, county recorder office, etc.), the information is public and should not be classified as nonpublic personal information.

The FRB's proposed regulation uses this approach. However, while the proposed regulations of the FDIC, OCC and OTS also contain this approach identified as Alternative B in the respective proposals, a second alternative identified as Alternative A is included. Alternative A would require that publicly available information, i.e., information from a public source, be regarded as nonpublic personal information if a bank obtains it from a nonpublic source, e.g., the bank's loan application completed by a consumer.

ACB urges the agencies to adopt Alternative B. The statute expressly states that the term "nonpublic personal information" does not include "publicly available information." If Alternative A were adopted in the final regulations, banks would be burdened with the need to document and prove for compliance purposes how and where the information in question was obtained. For example, a bank would have to show that it obtained information about certain customers/consumers from a county recorder's records rather than obtaining it from the bank's loan application completed by a consumer.

In addition, the definition of "publicly available information" should also cover information about a consumer that contains no indicators of a consumer's identity, such as information provided by a mortgage lender about its mortgage loans for the purpose of preparing market studies.

(2) Personally identifiable financial information: The federal banking agencies have proposed that the term "personally identifiable financial information" include any information a consumer provides to a bank, that a bank obtains from a consumer, or information resulting from a transaction between a consumer and a bank involving a financial product or service. However, there is no express statutory basis for the comprehensive nature of the proposed definitions of "financial" information. Because Congress did not expressly define the term "financial," nor did it authorize the regulatory agencies to define that term, statutory construction would indicate that Congress intended to use its common meaning for purposes of this law. This restraint,

however, is not reflected in the proposed regulations. In fact, the definition of the term "financial" is so broad that it would likely lead to negative consequences for banks which were unintended by Congress.

Therefore, ACB urges that the final regulations base the definition of the term "financial" on the common and readily understandable meaning of that term, e.g., account balance information, payment histories, income levels. Information which is not commonly understood to be financial, such as names, addresses, phone numbers, places of employment, occupation, should not be considered "financial," simply because the information was provided on an application for a financial product or service.

In addition, the final regulations should not include as an example of personally identifiable financial information the mere fact that an individual is identified as a customer of a bank. As a practice, banks do not sell to nonaffiliated third parties customer lists which are based on intrinsically financial information, such as a listing of those customers who keep large amounts of money in their deposit account. Without such information, a customer list reveals nothing more than the fact that the individuals on the list are customers of the bank. Such lists are regularly utilized for various legitimate purposes. Therefore, if a bank discloses a list of its customers which is not based on any intrinsically financial information about them, it should not be required to provide the opt-out opportunity.

- **Annual notice to customers required**

The proposed regulations addressing the required privacy notice to customers should be clarified and modified as to the following six issues.

(1) Timing of annual notice: The final regulations should clarify that a bank may comply with the annual privacy notice requirement if the notice is sent to each customer once every calendar year throughout the duration of the customer relationship. Being required to track the 12 consecutive month anniversary of a customer relationship would be unduly burdensome to banks.

(2) Redundant annual notices: The final regulations should clarify that a bank can send a customer one annual privacy policy notice in each calendar year, so long as the annual notice covers all of the financial products or services obtained by the customer.

(3) Do-not-send customers: The final regulations should respect the decision of a customer who does not want to receive mail from the bank. In such cases, a bank should be required only to provide such customers with an initial privacy policy notice. The bank should not be required to provide annual notices, if the customer does not choose to have them sent to him or her. A bank should be deemed in compliance with

the law if it keeps privacy policy notices available for pick-up during regular business hours. The bank should not be penalized if the customer does not pick up the notice.

(4) Termination of customer relationship: The final regulations should clarify and provide additional examples of when a customer relationship is terminated to ensure compliance with the annual privacy notice requirement.

(a) Accurate terminology: The language used in the proposed regulations in this context should be clarified to accurately reflect the status of an individual who once was a "customer" but is no longer a customer of the bank. The proposed definitions of "consumer" refer to an individual who "obtains" or "has obtained" a financial product or service from a bank that is to be used primarily for personal, family or household purposes.

The use of the past tense "has obtained" is presumably intended to cover the situation where an individual no longer has a continuing customer relationship with a bank. However, referring to such an individual as a "former customer" more accurately describes that individual's status in a manner that is more readily understandable.

The language in the proposed regulations regarding the termination of a customer relationship states that a bank is not required to provide an annual privacy notice to a "customer" with whom the bank no longer has a continuing relationship. Strictly construed, that language contradicts the proposed definitions of a "customer," i.e., a "customer" means a consumer who has a customer relationship with a bank.

While the proposed regulations refer to a "customer" in this context, the so-called customer is not a "customer." For sake of clarity, the reference should be to "former customer." The term "former customer" indicates the lapse of a previously ongoing customer relationship.

(b) Examples: The proposed regulations cite several examples of when a customer relationship has been terminated and the annual privacy policy notice no longer needs to be sent to the former customer. The final regulations should explicitly incorporate these examples, i.e., deposit accounts deemed dormant by the bank's policies, a paid-off or charged-off loan, a sale of a loan or credit card receivables without retention of servicing rights, an open-end credit relationship when a bank no longer provides any statements or notices concerning that relationship.

(c) No communication for 12 months: To address other types of relationships, the proposed regulations state that a customer relationship is terminated if the bank has not communicated with the consumer about the relationship for a period of 12 consecutive months, other than to provide the annual privacy notice. While the term "consumer" is

used in this context to identify what is in fact a "former customer," the term "former customer" should be used because it is more readily understandable in this context.

The ambiguous nature of the "no communication for 12 consecutive months" standard raises compliance concerns, especially as to tracking a pattern of non-communication. Just as a bank cannot comply with the notice and opt-out requirements of the law orally, a mere conversation between a customer and an employee or agent of the bank should not in and of itself prolong the customer relationship. Instead, the final regulations should clarify that only a documented activity or transaction in the normal course of business by the bank or a normally documented communication by the customer within the 12 consecutive month period preserves the customer relationship in this context until such time that the customer becomes a "former customer."

(5) Joint customers and trust accounts: The final regulations should allow banks to give only one annual privacy notice to customers that own deposit accounts jointly, are joint borrowers, or purchase or receive any other financial product or service from a bank in a joint capacity. Other consumer regulations provide for the treatment of joint customers as a unit, for example, Truth in Savings disclosures and IRS 1099 reporting.

In the case of self-directed trusts, such as IRAs and self-directed Keoghs, the final regulations should indicate that the annual privacy notice be given to the trustee/beneficiary. In the case of other trusts, the annual privacy notice should be given to the trustee.

(6) Investors with no direct relationship with the customer: In cases where a loan is owned by one financial institution and serviced by another, the final regulations should not require the party investing in the loan to treat the borrower as a "customer" for purposes of the GLBA. Because the only true "customer" relationship established by the borrower is with the party servicing the loan, the investing party should be allowed to treat the borrower as a "consumer." Therefore, the investing party should only be required to provide an initial privacy policy notice and opt-out opportunity if it discloses the borrower's nonpublic personal information to a nonaffiliated third party.

If this change is not made, the regulations would establish an unnecessary burden on the sale of investments in the secondary market. This burden clearly was not intended by the underlying statute which exempted from the notice and opt-out requirement disclosures of nonpublic personal information in connection with "a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer." In addition, the failure to make this change could subject borrowers to a barrage of meaningless privacy notices from successive owners of the loan, some of whom may own the loan for only a few days or

weeks. In order to prevent such public confusion, only the party servicing a loan should be required to treat the borrower as a "customer."

- **Initial notice of privacy policies and practices**

The following comments address the clarification of four issues: (1) the initial privacy notice in the context of correspondent and broker bank relationships; (2) that the requirement to provide an initial privacy notice to a customer is limited to one copy per calendar year; (3) that joint customers need only receive one annual notice as a unit; and (4) the time frame within which a bank must send its privacy notice to new customers when it purchases loans or deposits from another bank.

(1) Correspondent/broker banks: If a bank receives an application for a loan from a consumer, but passes the application to a correspondent bank without making a credit decision, or if a bank receives a loan application from a broker bank that did not make a credit decision, the final regulations should address the privacy notice requirements of both banks. However, the final regulations should not discourage banks in such relationships from trying to help a consumer obtain a loan by imposing unnecessary disclosure requirements. Examples should be provided in the final regulations demonstrating this compliance requirement.

For example, if the first bank passes the loan application to a correspondent bank, or the broker bank passes the loan application to the first bank and the banks passing the loan application along do not retain the information or pass the information to a nonaffiliated third party, the first bank and the broker bank should not be required to give their privacy policy notice to the consumer. The consumer is protected because he or she will receive the privacy notice of the bank that will make a credit decision and/or retains nonpublic personal financial information from the application.

(2) Redundant initial disclosures: The final regulations should clarify that a bank does not have to provide a customer with an initial privacy policy notice each time he or she obtains a new financial product or service, so long as the initial notice covers all of the financial products or services obtained by the customer.

(3) Joint customers and trust accounts: The final regulations should allow banks to give only one initial privacy notice to customers that own deposit accounts jointly, are joint borrowers or purchase or receive any other financial product or service from a bank in a joint capacity. Other consumer regulations provide for the treatment of joint customers as a unit, for example, Truth in Savings disclosures and IRS 1099 reporting. In the case of self-directed trusts, such as IRAs and self-directed Keoghs, the final regulations should indicate that the initial privacy notice should be given to the trustee/beneficiary. In the case of other trusts, the initial privacy notice should be given to the trustee.

(4) Timing of initial notice: Purchased loans/deposits: The final regulations should not contain a strict definition of a "reasonable time" within which a bank must provide a privacy notice to new customers based on the bank's purchase of loans or deposits from another bank. However, the final regulations should clarify that a "reasonable time" in this context is determined based on the relationship between the purchasing bank and its new customers. Examples should be included in the final regulations, e.g., a bank that purchases loans with servicing rights will have acted within a reasonable time if it includes its first privacy notice in a letter to its new customers about where to send the loan payments. Each example should be based on normal business practices, rather than on arbitrary deadlines.

- **Form and method of providing opt-out notice to consumers**

The following comments address: (1) the clarification of the timeframe a bank has to act on an opt-out directive; (2) joint customers as a unit; and (3) accurate terminology in this context.

(1) Time frame to act on an opt-out directive: The time frame a bank has to act on a consumer's/customer's directive to opt out should be clarified in the final regulations. The final regulations should provide for a "reasonable time" based on data processing system/personnel capacity to act upon an opt-out directive. The final regulations should not impose a rigid time period. Anecdotal experience indicates that companies may need 10 to 12 weeks to make an opt-out election effective within their computer systems. Also, examples should be included in the final regulations of what may constitute a "reasonable time" period.

(2) Joint customers and trust accounts: The final regulations should allow banks to give only one opt-out notice and right to customers that own deposit accounts jointly, are joint borrowers or purchase or receive any other financial product or service from a bank in a joint capacity. Other consumer regulations provide for the treatment of joint customers as a unit, for example, Truth in Savings disclosures and IRS 1099 reporting. In the case of self-directed trusts, such as IRAs and self-directed Keoghs, the final regulations should indicate that the opt-out notice and opportunity should be given to the trustee/beneficiary. In the case of other trusts, the opt-out notice and opportunity should be given to the trustee.

(3) Accurate terminology: The proposed regulations contain the term "consumer" in this context. However, a "customer" also has the right to opt-out at a later date. Therefore, the final regulations should contain appropriate references to both "consumers" and "customers" to aid compliance accuracy.

- **Exception to opt-out requirements for joint arragements**

ACB believes that the final regulations should not require steps that a bank should take to ensure that a joint agreement does not present undue risks for the bank. Further, ACB maintains that it is unnecessary to incorporate additional requirements in the final regulations regarding the joint marketing exception in Section 502(b)(2) of the GLBA.

This section does not contain requirements reflecting the agencies' suggested additional requirements. The concerns raised by the agencies regarding these issues are amply addressed in well-known standards to protect a bank when engaging in commerce. Joint marketing agreements are a standard business practice in which banks have engaged for many years. General familiarity by banks with this commercial activity and the advice of legal counsel when structuring joint marketing agreements have provided, and will continue to provide, banks with needed safeguards. Any added regulatory provisions in this context would create an unnecessary layer of compliance complexity, as well as unnecessarily add to the cost of compliance.

- **Other exceptions to notice and opt-out requirements**

The following comments address changes to the proposed regulations to allow for commercially acceptable activities for banks, while providing reasonable financial privacy protections for consumers/customers of banks. The final regulations should provide exceptions to the notice and opt-out requirements for sharing nonpublic personal information with third party debt collectors pursuant to the Fair Debt Collection Practices Act; and third party real estate appraisers pursuant to the regulations of the federal banking agencies.

In addition, the final regulations should provide an exception for information disclosed to nonaffiliated third parties conducting research or surveys, so long as the final product contains no personal identifiers and the information disclosed is not used for any other purpose. Banks, however, should not be required to "police" the activities of the nonaffiliated party conducting the research.

- **Limits on sharing of account number information for marketing purposes**

The GLBA prohibits a bank from disclosing, other than to a consumer reporting agency, a consumer's account number or similar form of access number or access code for a credit card account, deposit account or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer. This prohibition is included, without exceptions, in the proposed regulations.

However, because the GLBA and the proposed regulations use the term "consumer" in this context without also using the term "customer," an inherent contradiction is created. Based on the meaning of those two terms in the proposed regulations as noted

above, it is likely that the term "customer" is the more appropriate term in this context because of the reference to account numbers or codes that are indicative of a customer relationship, i.e., an individual has a checking account at a bank, or an individual uses a bank-issued credit card, both of which indicate a customer relationship. The legislative history regarding this provision uses the term "customer." The final regulations should clarify the scope of this statutory/regulatory prohibition to ensure effective compliance.

In addition, a narrow reading of the statutory language could very well lead to negative, unintended consequences for banks. In the proposed regulations, the agencies identified an example of where such unintended consequences might occur. If Section 502(d) of the GLBA is interpreted strictly, routine practices, such as disclosing account numbers to a service provider that prepares and distributes monthly statements for a bank, coupled with a request by the bank that promotional literature about a product of the bank be included with the statements, would be disrupted. An exception should be made for such cases.

Furthermore, the legislative history of the GLBA notes the intent of Congress that this prohibition does not *per* se preclude the use of encrypted, scrambled or similarly coded forms of account numbers where the disclosure is expressly authorized by the customer and is necessary to service or process a transaction expressly requested or authorized by the customer. Therefore, ACB urges that the final regulations allow banks to use encrypted or scrambled account numbers/codes under these circumstances.

- **Effective date; transition rule**

The following comments address the proposed effective date of November 13, 2000 and the proposed requirement to provide the initial privacy notice to current customers 30 days after the effective date of the final regulations.

(1) Effective date: The proposed effective date of November 13, 2000 gives banks only six months to comply with the final regulations. During that time, a bank will have to thoroughly review all of its current information sharing policies and practices and determine its future policies and practices based on the requirements of the GLBA and final regulations. It must then describe in writing and in great detail its privacy policies and practices. It must provide each of its consumers and customers with a copy of its privacy notice. Because this requirement is unprecedented, the process of developing an initial privacy policy disclosure will be both complicated and time-consuming.

Simultaneously, these same banks will have to comply with the law's opt-out requirement. This will require banks, at a minimum, to review all of their information sharing practices with nonaffiliated third parties, determine whether or not they fit

within the exceptions to the opt-out requirement, and then possibly establish a broad-based opt-out strategy.

Complicating this matter further is the fact that many banks will have to work hand-in-hand with any service bureaus they use for information systems and operations. ACB and its Working Group on Privacy held a conference call with nine of the major regional and national service bureaus. During this call, the service bureaus indicated that they cannot begin preparing for implementation of the new privacy law until they consult with their bank clients following the promulgation of the final regulations. Both the service bureaus and banks believe that six months does not present a sufficient period of time to meet the requirements of the new privacy law.

The proposed effective date should be extended to at least May 13, 2001, so that banks have enough time to properly comply with the law. If the effective date is not extended, the final regulations should, at the very least, provide some protections, such as a grace period, for banks which make a good faith effort to comply with the requirements by the required deadline. Extending the effective date, however, would be preferable in helping banks, particularly those smaller institutions which generally have fewer resources to allocate for compliance functions, meet the requirements of the law.

(2) Providing initial privacy notice to current customers: If the effective date is not extended, banks will need more time than the 30 days provided in the proposed regulations to send the first mailing of their privacy polices and practices to their existing customers. Given the inordinate amount of preparation described above, rushing to provide an initial disclosure to current customers within that time period may likely result in compliance errors for which the bank would be held responsible. Inadequate time to properly prepare the initial disclosure would not serve the purpose of helping bank customers.

Also, the proposed mid-December 2000 mass mailing date conflicts with the planning and processing of other end-of-the-year mailings, including IRS Form 1099 reports that cannot include non-tax related material such as a privacy notice. Because the GLBA does not mandate a specific date to mail the first privacy notices, ACB recommends that, if the proposed effective date of November 13, 2000 is retained in the final regulations, banks have until March 31, 2001 to send their initial privacy notices to existing customers. ACB notes that Congress granted authority to the agencies to delay the effective date of the GLBA privacy provisions and the final regulations.

• Additional comments: Issues not directly addressed in the proposed regulations

(1) Model privacy notice language

While not addressed in the proposed regulations, model privacy notice language should be provided by the federal banking agencies as safe-harbor examples. Model privacy notice language approved by the agencies will enable banks to more efficiently develop their privacy notices. Also, agency examiners will save valuable time by referring to the model notice language that banks are likely to use. Many precedents for model notice/disclosure language exist (e.g., Truth in Lending, Truth in Savings, Electronic Fund Transfers, Equal Credit Opportunity, etc.).

(2) Proof of compliance

The proposed regulations do not address what a bank must do to prove compliance with the initial or annual disclosure of its privacy notice or honoring an opt-out directive from a consumer/customer. ACB recommends that the agencies incorporate in the final regulations the approach used to determine compliance with Truth in Savings Regulation DD compliance requirements. This approach is based on the principle that a bank will have substantiated compliance with the final regulations by demonstrating: the establishment and maintenance of procedures to ensure compliance with the privacy policy, notice, and opt-out requirements; retention of sample notices; and ability to reconstruct the required notices.

However, banks should not have to keep privacy notices or opt-out right material in hard copy for proof of compliance. The final regulations should provide that records evidencing compliance may be retained on microfilm, microfiche or by other methods that reproduce records accurately, including computer files and postal expense records.

(3) Consistency of proposed regulations

The GLBA requires the agencies to consult and coordinate with each other when prescribing regulations so that the separately issued regulations of the various agencies are consistent and comparable with each other. This is particularly important in cases involving bank holding companies and savings and loan holding companies, which may engage in a variety of different financial activities. Inconsistent regulations could pose a very significant obstacle in the efforts of these institutions to comply with the requirements of the law.

Generally, the proposed regulations of the federal banking agencies meet this Congressional standard. ACB commends the banking agencies for working together on the proposed rules and urges continued coordination to ensure that the final rules are consistent when issued by each agency.

However, ACB points out two areas where the final regulations should be amended to ensure fulfillment of the Congressional mandate for regulatory consistency and avoidance of compliance confusion.

(a) Covered institutions/persons: The FRB identifies covered institutions in the scope section of its proposed regulations. The OCC identifies covered institutions and persons in the scope sections of its proposed regulations. However, the OCC also identifies institutions and persons that are not covered. The FRB, however, also addresses covered and non-covered institutions and persons in its definitions section.

The FDIC and the OTS identify institutions and persons that are covered and not covered in the scope sections of their respective proposed regulations. ACB suggests that for consistency, institutions that and persons who are covered or not covered should be identified in the scope section of the final regulations of each of the federal banking agencies.

(b) Examples: When referring to the categories of nonpublic personal information a bank discloses, the proposed regulations of the FRB and the OTS state that a bank's privacy notice should contain "a few" illustrative examples of the content of the information. The proposed regulations of the OCC and the FDIC state that a bank provide "illustrative examples" of the content of the information without using the modifying words "a few" to qualify "illustrative examples."

To avoid any confusion about the number of examples to be used in privacy notices regarding categories of nonpublic personal information that a bank discloses, ACB suggests that the FRB and the OTS follow the approach of the FDIC and the OCC and use the expression "providing illustrative examples" without using the modifying words "a few" when referring to illustrative examples in this context.

Liability protection: Unintentional compliance errors

ACB urges the agencies to add a provision to the final regulations that would provide reasonable protection for banks against liability and administrative penalties for unintentional compliance errors, if those errors are corrected promptly by the bank after being made aware of them. In providing these protections, the agencies can look to the Truth in Savings Act, which contains a provision creating safe harbors against unavoidable errors and the ability to correct errors in a timely manner without incurring liability.

Administrative, technical, and physical safeguards:

If any additional requirements are needed to implement Section 501(b) of the GLBA, ACB urges the agencies to propose such standards for comment as quickly as possible.

Regulation E: Electronic Fund Transfers

As an aid to comprehensive compliance on the issue of privacy, ACB suggests that the final regulations cross-reference the disclosure requirement in Regulation E regarding the circumstances under which a bank in the ordinary course of business may provide information concerning a customer's account to third parties. The model disclosure language regarding this issue in Regulation E reflects the exceptions to the opt-out notice regarding information sharing necessary to effect funds transfers, to consumer reporting agencies, and when required by law.

However, the last item in the Regulation E model language is a type of opt-in provision, i.e., information may be provided to third parties "if you give us your written permission." In light of the GLBA's provisions that will be reflected in the final regulations allowing for information sharing with affiliates, agents, and for servicing/processing purposes without an opt-out right, ACB urges the FRB to adjust the model language in Regulation E to reflect the GLBA and its final regulations.

Conclusion

ACB appreciates the opportunity to comment on this important matter and supports the agencies in their efforts to draft a workable regulations to implement the requirements of the GLBA. We stand ready to work with the agencies to implement the final regulations. If you have any questions, please contact the undersigned at (202) 857-5088 or Charlotte Bahin at (202) 857-3121.

Sincerely,

Robert R. Davis
Director, Government Relations