

UNIVERSITY OF ILLINOIS
AT CHICAGO

Student Financial Services and Cashiering Operations (MC 557)
Room 117 Marshfield Building
809 South Marshfield Avenue
Chicago, Illinois 60612-7203



March 17, 2000

The Honorable Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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

Dear Secretary Clark:

On behalf of the University of Illinois at Chicago, the Division of Student Financial Services, I would like to comment on the proposed rules of March 1, 2000, regarding the Gramm-Leach-Bliley (G-L-B) Act Privacy Rule, 16 CFR Part 313. The proposed rules implementing the G-L-B Act limit the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and require a financial institution to 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.

While not clear from the legislation as to what types of entities the G-L-B Act intended to include, the FTC notice of proposed rulemaking (FTC), as is true with the other related agency NPRMs implementing the G-L-B Act, defined the coverage of the law similarly to that of the Act. Section 509(3)(A) of the Act defines a "financial institution" as "any institution the business of which is engaging in financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956." As indicated in the proposed rule, this definition includes not only traditional financial activities, but those activities related to banking.

Since Section 4(k)(4) of the Bank Holding Company Act describes financial activities as activities including lending and transferring of money as well as any activities related to banking such as making or servicing loans, institutions of higher education could be included in this definition because they engage in financial activities such as making Federal Perkins Loans, originating Direct Loans, and certifying Federal Family Educational Loans. If so, institutions of higher education would be subject to the same disclosure requirements as banks and other lending institutions.

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We would strongly oppose any suggestion that institutions of higher education be covered under this rule for a number of reasons notwithstanding the types of financial activities performed by the institution. First, the primary mission of an institution of higher education is not to provide financial services, as is true of a bank or other lending institution, but the primary mission is to deliver to the students enrolled in the institution a quality education. Educational institutions are evaluated on a regular basis by its accrediting agency, which serves to advance this notion by conducting assessments of the education offered by the institution.

An institution of higher education which is licensed and accredited by a nationally recognized accrediting agency may seek to participate in the federal programs authorized by the Higher Education Act, as amended, or other federal programs, such as those authorized by the Public Health Service Act, as amended. An institution of higher education so designated to participate in federal programs may receive grants, loans, or work program funds to offer its students who are otherwise eligible. Federal funds made available to institutions do not belong to the institution, but are held in trust by the institution to award to those students who are eligible to receive the funds so that financial barriers will not prevent access to any institution of higher education.

Therefore, the second reason for institutions of higher education not to be covered by the G-L-B Act is that while institutions do provide financial services to its students, it is not the institution's money to award or to give at its discretion. As just indicated, the federal funds are not funds belonging to the institutions of higher education. Further, institutions of higher education must award grants, work, and in this discussion loans only to students who are eligible to receive the funds. Eligibility is specifically restricted to certain types of students as is evidenced by the rules found in 34 CFR 668.32. For instance, the student must be enrolled in an eligible program, be a citizen or permanent resident, maintain satisfactory progress, be enrolled in a certain number of hours, have registered for the selective service, if applicable, not be in default, not be in repayment, not be incarcerated, etc. In addition, each type of federal program may have its own particular requirements, such as certain federal loans require that a student be at least half-time, that they not exceed certain annual loan limits and aggregate limits, etc. Consequently, not only is it not the institution's money, the institution has no ability to make its own determination as to who to provide federal funds.

Even if the Federal Trade Commission believes that institutions of higher education are covered by the G-L-B Act, another reason for not having to follow the proposed rules is that the institutions of higher education are already required to protect the privacy of students and families under other federal laws. The relevant law is the Family Educational Rights and Privacy Act of 1974 (FERPA). The Department of Education's regulations implementing the law set limits on the disclosure of personally identifiable information from school records, define the responsibilities of the school (i.e., developing a written policy and notifying parents and students of their rights including inspection and amending the records), and define the rights of the student in reviewing the records and requesting a change to the records.

Under 34 CFR Part 99 are very specific and apply to all education records the school keeps, including admissions records, and academic records as well as any financial records pertaining to the student. The FERPA regulations also establish rules governing the disclosure of student information to parties other than the student. The regulation lists 13 conditions under which “personally identifiable information” from a student’s education record may be disclosed without the student’s prior written consent. These conditions include disclosure to authorized representatives of the U.S. Department of Education, the Office of Inspector General or state and local education authorities. Representatives may also include research firms that are under contract with the Department to conduct studies. Disclosure may also be made if it is in connection with financial aid that the student has received or applied for. For instance, the student may receive a request from the Immigration and Naturalization Service (INS) or the Federal Bureau of Investigation (FBI) for access to a student’s records. Disclosure may also be made to the student’s parent if the student is a dependent of the parent, as defined by the Internal Revenue Service (IRS).

34 CFR 99.3 also provides for the disclosure of directory information, which is generally not considered harmful or an invasion of privacy if disclosed, such as the student’s name, address, telephone listing, field of study, date and place of birth, participation in officially recognized activities and sports, dates of attendance, degrees, and awards, most recent previous school attended, and for athletes, weight and height. However, directory information cannot include student identification numbers or social security numbers. Students and parents must be notified that directory information may be disclosed and given the opportunity to indicate that they do not want any information disclosed.

In addition to disclosures required under FERPA, institutions are required to disclose specific information about the institution to students, parents, and sometimes employees of the institution. 34 CFR 668 Subpart D of the Student Assistance General Provisions regulations specify the various requirements which include institutional information as well as information about the financial assistance offered at the institution. The disclosure of the types of financial assistance offered must also include the procedures for applying for financial aid, criteria for determining the student’s eligibility, and the criteria for determining the amount of the aid.

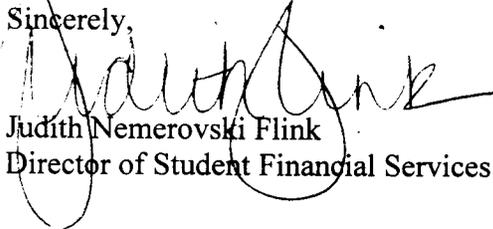
Given that institutions are already covered by another privacy law and are subject to other disclosures under the Department of Education’s rules, it would not only be redundant to require additional disclosures, it would add needless administrative burdens to institutions of higher education. There may also be instances where the FTC rules contradict the FERPA rules. For instance, the FTC rules do not provide for disclosure to authorized representatives who would normally have access under FERPA, such as the Department of Education or state or accrediting agencies.

It is our recommendation that the final rules clearly indicate that institutions of higher education not be covered by the G-L-B Act because they are not primarily providing

financial services and the financial services provided are for funds that are not funds belonging to the institution but are held in trust. Institutions of higher education have no discretion in awarding federal financial aid, and they are subject to a very restrictive and complex set of rules to determine student eligibility which have been disclosed to students and parents. Finally, institutions of higher education are covered under another privacy law, the Family Educational Rights and Privacy Act, and it would be a duplication of effort, an administrative burden, and may even provide contradictory guidance and requirements to institutions of higher education.

Thank you for this opportunity to comment. If you have any questions, please feel free to contact me at (312) 996-2515.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith Nemerovski Flink". The signature is written in a cursive style with a large, sweeping initial "J".

Judith Nemerovski Flink
Director of Student Financial Services