



Texas Guaranteed Student Loan Corporation

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March 31, 2000

sent via email: GLBRule@ftc.gov

Mr. 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 Mr. Clark:

On behalf of the Texas Guaranteed Student Loan Corporation (“TG”) I am pleased to provide comments regarding the Federal Trade Commission’s (the “Commission”) Notice of Proposed Rulemaking (“NPRM”) issued pursuant to Title V of the Gramm-Leach-Bliley Act (the “GLB Act” or “Act”). The NPRM was published on March 1, 2000, at 65 Fed. Reg. 11174 (2000) (to be codified at 16 CFR Part 313).

In general, TG supports the NPRM and commends the Commission for drafting rules that seek to protect the privacy of, among others, those students receiving financial aid assistance. We also appreciate the opportunity to comment on the proposed Privacy Rule.

We offer the following comments where additional clarification of wording, intent, or further consideration of related issues, will strengthen the rule prior to final publication.

Section 313.1 Purpose and Scope

Comment

TG performs all of its activities in accordance with the Federal Family Education Loan Program (“FFELP”), pursuant to the Higher Education Act of 1965, as amended. TG provides its services on behalf of the Federal Government to institutions of learning and financial institutions (please note that the term “financial institutions”, as used throughout this document, collectively refers to the Federal Government (i.e., Department of Education), institutions of higher learning, and financial institutions) who lend funds to students and not directly to the individual “consumer”.

The guaranty itself is provided directly to the lender, default aversion assistance is provided on behalf of the lender, and post-default activities are provided as a fiduciary of the Federal Government (the Department of Education). As such our “consumer” as defined by the rule are the financial institutions involved throughout the life of the loan, not an individual borrower. We have separate duties to the state of Texas to make students aware of the availability of all financial aid available in Texas.

Further, any disclosures by TG of nonpublic personal information as contemplated by the rule are necessary to effect, administer or enforce a guaranteed student loan or are made in order to comply with Federal State or local laws, rules and other applicable legal requirements. As such, we believe all of our disclosures of nonpublic personal information will fall within one or more of the exceptions contained in the rule.

Lastly, Chapter 57 of the Texas Higher Education Act provides that all student loan borrower information collected, assembled, or maintained by us is confidential. As such, State law already dictates the manner in which we can disclose nonpublic personal information.

Because 1) we have no “consumer” as defined by the rule, 2) all disclosures by TG of nonpublic personal information will fall under one or more of the exceptions listed in the rule, 3) we are exempt from the initial and annual notice requirements contained in the rule, 4) it would violate federal and state law and the terms of the promissory note to allow the individual borrower the opportunity to “opt-out” and/or revoke consent of the disclosures by TG of nonpublic personal information in the course of performing its duties under the FFELP, and 5) our disclosure activities are mandated by other federal and state laws, we are exempt from the Act. We ask that an example be included, describing the FFELP and our activities and indicating the exemption from the Act for all similarly situated guarantors.

Suggested Change

We suggest the following language :

“(b)This part does not apply to guaranty agencies which disclose nonpublic personal information in accordance with the provisions of the Higher Education Act of 1965, as amended....”

Section 313.3(e) Definition of “Consumer”

Comment

TG does not provide financial services directly to an individual “consumer”, but rather, provides its services to financial institutions. The guaranty itself is provided directly to the lender and default aversion assistance is provided on behalf of the lender the same way a loan servicer helps a loan owner collect on a loan. Guaranty agencies perform post-default activities as a fiduciary of the Federal Government (the Department of Education). As such, we request a clarification that

an individual will not become our consumer as a result of our activities performed on behalf of financial institutions.

Suggested Change

We suggest the addition of the following sentence to the example in 313.3(e)(2)(v):

“Further, an individual is not your consumer solely because you provide a loan guaranty to, or conduct default aversion assistance or post-default activities on behalf of, a financial institution in accordance with the Federal Family Education Loan Program (“FFELP”) pursuant to the Higher Education Act of 1965, as amended.”

Secondly, as the term “service” of a loan is used throughout the proposed rule, we suggest a new section 313.3(r) be added, defining “service of a loan” to include default aversion assistance and post-default activities performed by guaranty agencies on behalf of a financial institution in accordance with the Federal Family Education Loan Program (“FFELP”) pursuant to the Higher Education Act of 1965, as amended.”

Section 313.3(i) Definition of Customer Relationship

Comment

We do not provide financial services directly to an individual “consumer”, but rather, provide our services to financial institutions. The guaranty itself is provided directly to the lender and default aversion assistance is provided on behalf of the lender the same way a loan servicer helps a loan owner collect on a loan. Guaranty agencies perform post-default activities as a fiduciary of the Federal Government (the Department of Education). As such, we request the addition of language clarifying that an individual will not have a “continuing relationship” with us, as defined in the rule, and thus, will not become our customer as a result of our activities performed on behalf of financial institutions,

Suggested Change

We suggest the following language be added to Section 313.3(i)(2)(ii):

“(D) You provide a loan guaranty to, or conduct default aversion assistance or post-default activities on behalf of, a financial institution in accordance with the Federal Family Education Loan Program (“FFELP”) pursuant to the Higher Education Act of 1965, as amended.”

Section 313.3(j) Definition of “Financial Institution”

Comment

The FTC invited comments on entities that may be “financial institutions, but may not be subject to the disclosure requirements because they have no consumers. Consistent with our comments to sections 313.3(e) and (i), we request that this section be amended to provide or, at least, cross-reference, that guaranty agencies, such as TG, with no consumers or customers be exempted from the rule, as we are providing services for financial institutions, i.e, the lender and/or the Department of Education, and institutions of learning, not the “consumers” involved.

Suggested Change

We suggest the following language be added to Section 313.3(j)(3):

“(v) A guaranty agency that provides a loan guaranty to, or conducts default aversion assistance or post-default activities on behalf of, a financial institution in accordance with the Federal Family Education Loan Program (“FFELP”) pursuant to the Higher Education Act of 1965, as amended.”

Section 313.3 (n), (o), (p), Definition of nonpublic personal information, personally identifiable financial information and publicly available information

Comment

The FTC has requested comments concerning the alternatives A and B offered for these subsections. Chapter 57 of the Texas Higher Education Act provides that all student loan borrower information collected, assembled, or maintained by us is confidential and as such, is disclosed by us only in order to carry out the purposes of the Act. To allow for these situations, we request that the definition of nonpublic personal information be revised to include that information which is confidential by operation of law.

Suggested Change

We suggest the following language:

“(n)(1) (i) Personally identifiable financial information not otherwise deemed confidential by operation of law; and”

Section 313.3 Definitions, Generally

Suggested Change

As the term “service” of a loan is used throughout the proposed rule, we suggest a new section 313.3(r) be added, defining “service of a loan” to include default aversion assistance and post-

default activities performed by guaranty agencies on behalf of a financial institution in accordance with the Federal Family Education Loan Program (“FFELP”) pursuant to the Higher Education Act of 1965, as amended.”

Section 313.4 Initial Notice to Consumers of Privacy Policies

Comment

We make the following comments regarding this section:

Requiring us to provide an initial notice of our privacy policies and practices would be duplicative of the detailed initial privacy notice contained in the Master Promissory Note which is executed by all borrowers participating in the FFELP, in accordance with the HEA and the Privacy Act of 1974 (USC 552a). The notice provides that the information provided by the borrower is principally used to verify the borrower’s identity, to determine the borrower’s program eligibility and benefits, to permit the servicing of the loan, and in the event it becomes necessary, to locate the borrower and collect on the loan(s) if they become delinquent or defaulted. Further, the notice provides that the "routine uses" of the information include its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to guaranty agencies, to credit bureau organizations, to educational and financial institutions, and to agency contractors in order to verify the borrower’s identity, permit the servicing or collecting of the loan(s), to counsel the borrower in repayment efforts, to investigate possible fraud and to verify compliance with program regulations or to locate the borrower in the borrower becomes delinquent in the loan(s) payments or the borrower defaults. The notice further provides that the borrower’s social security number will be used as an account number identifier for the borrower throughout the life of the loan(s) and as such, will be utilized for the “routine uses” enumerated above.

Secondly, requiring an additional initial notice will be confusing to the borrower, as the borrower is more closely aligned with the lender, rather than the guarantor. Further, many borrowers would wonder why they would be receiving a second “initial notice” for the same loan.

Accordingly, we request clarification to section 313.4(b) providing that we do not have to provide a separate initial notice to a borrower because initial notice is provided to the borrower (via the promissory note) by the financial institutions in accordance with the HEA.

Paragraph (d)(1) allows the consumer to agree to receive the initial notice in electronic form. We respectfully request clarification of the acceptable ways by which the consumer may “agree” to receive notices electronically, as well as any level of specificity required to accept (or revoke a prior acceptance).

Suggested Change

We suggest the following exemption language be added to (b):

“You are not required to provide an initial notice to a consumer if you are a guaranty agency providing a loan guaranty to, or conducting default aversion assistance or post-default activities on behalf of, a financial institution in accordance with the Federal Family Education Loan Program (“FFELP”) pursuant to the Higher Education Act of 1965, as amended.”

Secondly, we request that Section 313.4(c)(2)(vi) be amended, for consistency, to replace the phrase “you have obtained” the servicing rights with “you own” the servicing rights.

Section 313.5 Annual Notice to Customers

Comment

As our privacy policies, as they relate to borrowers information, are dictated by law and/or the note executed by the borrower, they will not change at our whim. As such we request an exemption from the annual notice requirement.

Suggested Change:

We suggest the following language:

“(d) When annual notice to a consumer is not required. You are not required to provide annual notice to a consumer under this section if you are not required to provide an initial notice to a consumer under section 313.4.”

Section 313.6 Information included in the initial and annual notices

Comment

In the event we are not exempted from the provisions of the rule entirely, or in the alternative from those provisions pertaining to initial and annual notices, we make the following comments regarding this section:

Paragraph (6) requires an explanation of the consumer’s right to opt-out of the disclosure of nonpublic personal information to nonaffiliated third parties. A consumer may not opt-out of the disclosure of nonpublic personal information which is required to be disclosed by other law. For example, we are required by Chapter 57 of the Texas Higher Education Code to provide the name of defaulted borrowers to the Texas Comptroller of Public Accounts. We also are required to disclose nonpublic personal information concerning defaulted loans pursuant to the HEA. Further, as a matter of public policy, we believe that a borrower who has previously contractually agreed to the disclosure of nonpublic personal information and the borrower’s agreement to such disclosure was a condition to the granting of the loan by the financial institution, must be prohibited from later attempting to opt-out of the disclosure of such information. We regularly exchange nonpublic information with entities such as the Texas Workforce Commission, State Licensing Boards, other servicers, lenders, schools, employers, and credit bureaus. We need to be able to continue to communicate with these entities to receive accurate information in order for us

to perform skip tracing, federal offsets, administrative wage garnishment, fraud investigations, and other activities that enable us to service the loan. As such we request a revision to the notice requirements which clarifies that the consumer's right to opt out is limited.

Secondly, paragraph (a)(8) requires the initial and annual notices to include our policies and practices with respect to protecting the confidentiality, security, and integrity of nonpublic information. We respectfully request clarification concerning when such a "protection" duty would end. For instance, if entity A discloses information under sections 313.10 or 313.11 to entity B, would A be responsible for B's violations of the act, such as the unauthorized reuse of the information received from A? Does A have any duty to attempt, (and if yes, how), to prevent B from committing a violation of the Act with information it receives from A?

Lastly, it is impossible to anticipate all of the categories of such information we might have to disclose as a result of judicial process, governmental subpoena, or as a result of communications with federal, state or local agencies authorized and/or required by the HEA. Other disclosures authorized by Sections 313.10 and 313.11 also involve a variety of information that would prove difficult to disclose in advance. Accordingly, we request that Sections 313.6 be amended to reflect that guaranty agencies do not need to provide initial or annual notices of the categories of nonpublic information that the guaranty agency discloses under Sections 313.10 and 313.11.

Suggested Change

We suggest section (a)(6) be revised to read:

“(6) An explanation of the limited right under 313.8(a) of the consumer to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right. Further, you may include in the explanation, a listing of those categories of nonpublic personal information which the consumer is prohibited from opting out, either by operation of law or a loan document executed by the consumer in favor of a financial institution in accordance with the Federal Family Education Loan Program (“FFELP”), pursuant to the Higher Education Act of 1965, as amended.”

Secondly, we suggest the following revision to (b):

“(b) Description of categories of nonpublic personal information and nonaffiliated third parties subject to exceptions. If you disclose nonpublic personal about a consumer to third parties as authorized under Sections 313.10 and 313.11, you are not required to list those exceptions in the initial or annual privacy notices required by Sections 313.4 and 313.5. When describing the categories with respect to such information and such parties, you are only required to state that you make disclosures of nonpublic personal information to other nonaffiliated third parties as required and/or permitted by law.”

Section 313.7 Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties

Comment

In the event we are not exempted from the provisions of the rule entirely, or in the alternative from those provisions pertaining to the opt-out notice, we make the following comments regarding this section:

A consumer may not opt-out of the disclosure of nonpublic personal information which is required to be disclosed by operation of law. For example, we are required by Chapter 57 of the Texas Higher Education Code to provide the name of defaulted borrowers to the Texas Comptroller of Public Accounts. We also are required to disclose nonpublic personal information concerning defaulted loans pursuant to the HEA. Further, as a matter of public policy, we believe that a borrower who has previously contractually agreed to the disclosure of nonpublic personal information and the borrower's agreement to such disclosure was a condition to the granting of the loan by the financial institution, must be prohibited from later attempting to opt-out of the disclosure of such information. We regularly exchange nonpublic information with entities such as the Texas Workforce Commission, State Licensing Boards, other servicers, lenders, schools, employers, and credit bureaus. We need to be able to continue to communicate with these entities to receive accurate information in order for us to perform skip tracing, federal offsets, administrative wage garnishment, fraud investigations, and other activities that enable us to service the loan. As such we request a revision to this section which clarifies that the consumer's right to opt out is limited.

Suggested Change

We suggest the following language:

“(b)(3) A consumer may not opt out of the disclosure of nonpublic personal information which the consumer is prohibited from opting out, either by operation of law or a loan document executed by the consumer in favor of a financial institution in accordance with the Federal Family Education Loan Program (“FFELP”), pursuant to the Higher Education Act of 1965, as amended. You are not required to provide a consumer an opt out notice, required by paragraph (a)(1), for nonpublic personal information for which the consumer may not opt out.”

Section 313.8 Form and Method of providing opt out to consumer

Comment

In the event we are not exempted from the provisions of the rule entirely, or in the alternative from those provisions pertaining to the opt-out notice, we make the following comments regarding this section:

A consumer may not opt-out of the disclosure of nonpublic personal information which is required to be disclosed by operation of law. For example, we are required by Chapter 57 of the Texas Higher Education Code to provide the name of defaulted borrowers to the Texas Comptroller of Public Accounts. We also are required to disclose nonpublic personal information concerning defaulted loans pursuant to the HEA. Further, as a matter of public policy, we believe that a borrower who has previously contractually agreed to the disclosure of nonpublic personal information and the borrower's agreement to such disclosure was a condition to the granting of the loan by the financial institution, must be prohibited from later attempting to opt-out of the disclosure of such information. As such we request a revision to this section which clarifies that the consumer's right to opt out is limited.

Suggested Change

We suggest the following revision of (a)(1)(ii):

“That the consumer has the right to opt out of that disclosure. Further, you may include in the explanation of this right, a listing of those categories of nonpublic personal information which the consumer is prohibited from opting out, either by operation of law or a loan document executed by the consumer in favor of a financial institution in accordance with the Federal Family Education Loan Program (“FFELP”), pursuant to the Higher Education Act of 1965, as amended.”

Section 313.10 Exceptions to notice and opt out requirements for processing and servicing transactions

Comments

In the event we are not exempted from the provisions of the rule entirely, or in the alternative from those provisions pertaining to notices and opt out, we make the following comments regarding this section:

All of our disclosures are necessary to effect, administer or enforce, on behalf of financial institutions, a transaction requested by a consumer, or are required by law. We are required by Chapter 57 of the Texas Higher Education Code to provide the name of defaulted borrowers to the Texas Comptroller of Public Accounts. We also are required to disclose nonpublic personal information concerning defaulted loans pursuant to the HEA. Further, we regularly exchange nonpublic information with entities such as the Texas Workforce Commission, State Licensing Boards, other servicers, lenders, schools, employers, and credit bureaus. We need to be able to continue to communicate with these entities to receive accurate information in order for us to perform skip tracing, federal offsets, administrative wage garnishment, fraud investigations, and other activities that enable us to service the loan.

Consequently, we request a clarification that default aversion assistance and post-default activities performed by guaranty agencies on behalf of a financial institution in accordance with Federal

Family Education Loan Program (“FFELP”) pursuant to the Higher Education Act of 1965, as amended, are excepted from the notice and opt out requirements of the rule.

Suggested Change

We suggest the following language:

“(b)(2)(vii) In connection with default aversion assistance and post-default activities performed by guaranty agencies on behalf of a financial institution in accordance with Federal Family Education Loan Program (“FFELP”) pursuant to the Higher Education Act of 1965, as amended.”

Section 313.12 Limits on redisclosure and reuse of information

Comment

The FTC has requested comments on whether the Rule should require a financial institution that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information. We believe that it would unduly burdensome to impose such a requirement. Rather, we suggest that the receiving party be required to indemnify the disclosing party as well as the affected consumer for damages resulting from the receiving party’s noncompliance with the Act.

Section 313.16 Effective Date; Transition Rule

Comment

We request that Section 313.16(a) be amended to provide that the effective date be 18 months after the issuance of the Final Rule.

Further, in the event that we are deemed to be required to provide the initial notice of Section 313.4, we ask that the time in which to provide an initial notice to consumers pursuant to Section 313.16(b) be no later than 90 days after the effective date of the issuance of the Final Rule.

Thank you for the opportunity to comment on the proposed privacy rule contained in the above referenced NPRM.

Sincerely,

Karen A. Hendershot
Deputy Counsel