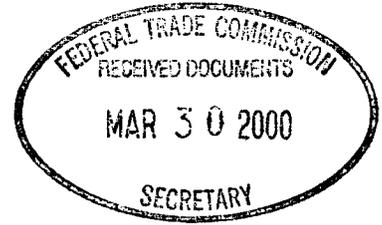



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March 28, 2000

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580



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

Dear Commission:

The eFunds business unit of Deluxe Corporation (“eFunds”) would like to take this opportunity to commend you on your efforts in drafting a regulation to implement Title V of the newly-enacted Gramm-Leach-Bliley Act (“GLBA”). eFunds recognizes the extreme difficulty posed in crafting a regulation that balances the diverse interests of adequately protecting the privacy expectations of consumers, without obstructing the legitimate use of information in commerce or jeopardizing the safety and soundness of the banking system.

eFunds’ interest in your proposed financial privacy regulation is a direct result of our business of providing financial institutions with consumer report information regarding the transaction accounts and debit transactions of consumers, and debit transaction collection services. Our QualiFileSM and FraudFinderSM services provide identity verification, fraud detection, and account application decisioning capabilities to a wide range of financial institutions. Because much of the information eFunds receives is from financial institutions, our interest in assisting you in developing a balanced, workable regulation is paramount.

The following comments regarding the definition of “Nonpublic Personal Information”, the definition of “Financial Institution”, and the protection of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), are presented to you for your consideration when drafting the final regulation.

Definition of “Nonpublic Personal Information”

The GLBA defines “Nonpublic Personal Information” as personally identifiable financial information: (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the financial institution. GLBA § 509(4)(A)(i)-(iii). Nonpublic personal information does not include publicly available information. GLBA § 509(4)(B).

Thus, in order to determine whether information is Nonpublic Personal Information under the GLBA, a four-pronged test is necessary. One must first determine if such information is *financial in nature*. If so, the next step would be to determine if the financial information is personally

identifiable. Then, a determination must be made whether the personally identifiable financial information is publicly available. If the information is personally identifiable financial information that is not publicly available, the final determination is whether that information was (i) provided by a consumer to a financial institution, (ii) resulted from any transaction with the consumer or any service performed for the consumer, or (iii) was otherwise obtained by the financial institution. Information about a consumer is Nonpublic Personal Information only after *all* four of these criteria are met.

Unfortunately, the proposed regulation sets the definition of Nonpublic Personal Information askew. Instead of limiting the scope of information considered to be nonpublic and personal by the analysis required by the GLBA and outlined above, it broadens the scope by defining the term “Personally Identifiable Financial Information” using the final factors that are intended to *limit* the scope of Nonpublic Personal Information. This has the effect of eliminating the first two prongs of the test required by the GLBA. In other words, “Personally Identifiable Financial Information” does not have to be “personally identifiable” or “financial” in nature under the proposed regulation. This is inconsistent with consumers’ expectations about the confidentiality of information that is not inherently financial, such as name and address information. Most consumers do not keep their name or address private, nor do they expect this information to be treated in the same manner as their inherently financial information. Moreover, this is inconsistent with basic statutory construction and, more importantly, the intent of Congress when drafting the GLBA.

The proposed regulation is also inconsistent with basic statutory construction and the intent of Congress in its definition of “Publicly Available Information” under Alternative A. Under that alternative, information would only be considered publicly available if it were actually obtained from one of the listed sources. As such, this alternative attempts to replace the term “available” with “obtained”. Basic statutory construction assumes that the terms used have their plain meaning. As such, if Congress intended that such information actually be obtained from a public source, it would have used the term “publicly obtained information.”

eFunds strongly urges you to reconstruct the definition of Nonpublic Personal Information (and as a result, the definition of Personally Identifiable Financial Information) to conform to the analysis required by the GLBA. Moreover, eFunds strongly urges you to abandon the definition of “Publicly Available Information” in Alternative A.

Definition of “Financial Institution”

The GLBA generally defines “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.” GLBA § 509(3)(A). The proposed regulation adopts this definition without further clarification.

Contrary to the spirit of the GLBA, this definition has the effect of characterizing a subset of entities as Financial Institutions that should be excluded from the definition because they provide no financial products or services to consumers. For example, credit bureaus and collection agencies would be considered Financial Institutions even though they provide no financial products or services to consumers (except when expressly required by other applicable law). In addition, other federal consumer protection laws (e.g., the FCRA and the Fair Debt Collection Practices Act, 15 U.S.C. 1692, *et seq.*) already appropriately restrict the disclosure of information by consumer reporting agencies and collection agencies.

Because the GLBA has the underlying purpose of protecting consumers from inappropriate disclosure of their nonpublic personal information by financial institutions that provide financial products or services to them, eFunds strongly urges you to add clarifying language to the definition of “Financial Institution” to indicate that only those entities that provide financial products or services to consumers will be considered a Financial Institution.

Protection of the FCRA

The GLBA provides that “[N]othing in this title shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of this title regarding whether information is transaction or experience information under section 603 of such Act.” GLBA § 506(c). The proposed regulation adopts this provision without further clarification.

A basic tenant of statutory construction is that when a statute is re-invoked within the text of another law, all settled issues and interpretations of that statute are also incorporated into the other law. It is clear that Congress, when enacting the GLBA, was concerned with impeding the recently established body of law and statutory interpretations of the FCRA. As such, the proposed regulation should not only protect the operation of the FCRA, but also any activities of consumer reporting agencies permitted by the FCRA.

eFunds strongly urges you to add clarifying language to the Protection of Fair Credit Report Act provision to clarify that those activities of consumer reporting agencies permitted by the FCRA are solely governed by that statute.

Conclusion

eFunds supports your efforts in developing strong, balanced, and fair regulations that implement the GLBA’s financial privacy provisions. Such a task is momentous and arduous at best. Our concern is that the proposed regulation would have some practical, unintended consequences. We feel that those consequences could be mitigated by redefining “Nonpublic Personal Information” in a manner that would limit it to the information that, the disclosure of which, Congress was concerned. Moreover, by clarifying that to be considered a “Financial Institution” the entity must provide financial products or services to consumers, possible unintended consequences resulting from ambiguity is diminished. Finally, clarifying that the activities of consumer reporting agencies permitted by the FCRA are protected would eliminate the unintended consequence of “gutting” the body of law and interpretations surrounding the FCRA. eFunds appreciates the opportunity to comment on your regulations and thanks you for your due consideration.

Respectfully,



Debra Janssen
President and Chief Operating Officer