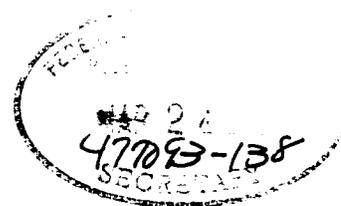


Virginia Commonwealth University

March 24, 2000



Mr. Donald S. Clark
 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 Mr. Clark:

OFFICE OF THE ASSISTANT
 VICE PRESIDENT FOR
 BUSINESS SERVICES AND
 TREASURER

327 WEST MAIN STREET
 P.O. Box 843040
 RICHMOND, VIRGINIA 23284-3040

804 828-4451
 FAX: 804 828-8510
 TDD: 1-800 828-1120

This letter is submitted on behalf of Virginia Commonwealth University (VCU) in response to the Notice of Proposed Rule Making (NPRM) on privacy of consumer financial information published by the Federal Trade Commission (FTC) on March 1, 2000. VCU thanks the FTC for the opportunity to comment on its proposed rule.

Virginia Commonwealth University is a public research university located in Richmond, Virginia and is Virginia's third largest research university. In addition, because of its sponsored research and comprehensive undergraduate and graduate programs, the Carnegie Foundation has recognized VCU as one of the top 100 research universities in the country. Currently, VCU has over 23,000 students enrolled in 156 degree programs.

VCU participates in the U.S. Department of Education Title IV student financial aid programs including the William D. Ford Federal Direct Student Loan program. VCU also participates in the U.S. Department of Health and Human Services Division of Student Assistance Title VII programs. This comment letter focuses on the proposed rule as it affects VCU.

GENERAL COMMENTS

Applicability of the Gramm-Leach-Bliley Act and the FTC's Proposed Rule to Institutions of Higher Education and the Commercial Partners that Assist in Their Administration of Student Financial Assistance Programs

VCU does not believe that institutions of higher education should be considered "financial institutions" under Title V of the Gramm-Leach-Bliley Act (GLBA) (P.L. 106-102). Further we do not believe that the commercial partners that contract with colleges and universities to administer functions related to student financial assistance programs should be covered by the requirements of the FTC's proposed rule.

The stated purpose of the GLBA is "to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes." The terms "college", "university", or "institution of higher education" do not appear anywhere in the law; nor are they referenced anywhere in its legislative history. In contrast, the law specifically references businesses that engage in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (e.g., banking, insurance, and investing).

Despite the fact that institutions of higher education are not mentioned in the legislation, the definitions in the proposed rule are so broad that they may be construed as being applicable to institutions of higher education and the commercial partners supporting their administration of student financial aid programs. We do not believe that Congress intended in Title V to impose additional regulatory requirements on VCU and our commercial partners in helping needy families pay the costs of their children's education.

Gramm-Leach-Bliley Act Privacy Rule – comment
March 24, 2000
Page 2

The student financial aid funds awarded to eligible students at VCU are conditioned upon the students' attendance at VCU. The source of these funds may be the Federal or Virginia government, private organizations or VCU itself. These funds may be in the form of grants, scholarships, loans, employment, or tuition and fee waivers. The combination of the types of assistance and the source of that assistance are unique to each individual student.

However, over two-thirds of the financial aid funds disbursed by VCU under Federal programs are given as fiduciaries of the Federal government. These federal funds are held in trust by VCU and awarded and disbursed to needy students. In some cases, such as the Direct Loan program, VCU determines a student's eligibility for a federally insured loan and then delivers the loan proceeds by crediting the student's account. The source of funds and holder of the note is the Federal government. However, under the Federal Perkins loan program, VCU, much like a trustee, actually manages a revolving loan fund that contains both institutional and Federal capital.

As a fiduciary, it is our belief that VCU is not a "financial institution" as defined in Section 509(3) of the GLBA because it is not an "institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956." Rather, the mission of VCU is to educate full-time and part-time students of all ages and backgrounds in an atmosphere of free inquiry and scholarship so they may realize their full potential as informed, productive citizens with a lifelong commitment to learning and service. Any financial activities performed by VCU are subordinate to the mission of VCU. VCU's fiduciary role in the delivery of federally-insured student loans is primarily done for the convenience of the Federal government as a cost-effective means for delivering funds to needy students under Titles IV and VII of the Higher Education Act of 1965, as amended.

VCU utilizes the services of commercial partners in administering student financial programs. These services include financial data processing and transmission services, billing and accounting for University and Federal student loans, and collection of defaulted loans and other student debts owed to VCU. VCU and its servicing agent are also required under the Higher Education Act to report credit information regarding Federal Perkins loan defaults. These activities could be considered covered by Title V and the proposed rule specifically by the cross-reference to the Federal Reserve Board's list of activities found to be closely relating to banking (12 CFR 225.28). However, in these instances, VCU is simply outsourcing part of its student financial aid functions to the commercial partner, generally to achieve cost savings.

While these commercial entities may generally be subject to Title V of the GLBA and the proposed rule because of the cross-reference to 12 CFR 225.28, VCU does not believe that activities done solely to support student financial aid programs administered by VCU should be covered by the proposed rule. Since the financial aid programs of VCU do not appear to be a "financial activity" because VCU is not considered to be a "financial institution", then it logically follows that if VCU were to outsource one or more functions related to administering these aid programs, that act should not invoke the requirements of Title V. VCU believes that the final rule should clarify in an example that student financial aid activities are not covered.

Duplication, Overlap and Conflict with Current Federal Rules Applying to Institutions of Higher Education and the Commercial Partners that Assist in Their Administration of Student Financial Assistance Programs

Subtitle A of Title V of the GLBA, Disclosure of Nonpublic Personal Information, limits the disclosure of nonpublic personal information about a consumer to nonaffiliated third parties and requires consumer disclosure regarding an institution's privacy policies and practices.

Gramm-Leach-Bliley Act Privacy Rule – comment
March 24, 2000
Page 3

Application of these requirements to VCU would duplicate, overlap and, in some cases, conflict with the other current Federal requirements. VCU is already required to protect personally identifiable information of students and their parents under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and its implementing regulations (34 CFR Part 99). The FERPA requirements address many of the same types of issues in Title V of the GLBA and its proposed rule, and in many cases provide greater protection of privacy by not allowing disclosure of information without consent. FERPA also requires that VCU provide annual notification to students and parents of their privacy rights and the privacy policy regarding educational records. Under FERPA, a student and family's financial aid-related information is considered to be an "educational record" and subject to its limitations on disclosure.

FERPA regulations (34 CFR 99.31) allow limited disclosures of financial aid information of individuals who have applied for or received financial aid at VCU to non-affiliated third parties for four specific purposes:

- Determination of eligibility for aid;
- Determination of the amount of aid;
- Determination of the conditions for the aid; or
- Enforcement of the terms and conditions of the aid.

VCU utilizes commercial partners. The third party receiving this information may only use the information for these purposes. The regulations (34 CFR 99.33) prohibit the re-disclosure of information. If the third party violates this requirement, VCU is barred from disclosing information to that third party for at least five years. The U.S. Department of Education is also given a number of sweeping powers to enforce the FERPA requirements.

SPECIFIC COMMENTS

In addition to these general comments, VCU is also providing the following comments on specific sections of the proposed rule.

Part 313.1 Purpose and scope.

Section 313.1(b) of the proposed rule specifically includes account servicers and debt collectors as "financial institutions" for purposes of the rule. VCU does not believe that the rule should apply to these organizations in their role as third party servicers and contractors to VCU in their administration of student financial assistance programs. The final rule should be clarified to reflect this.

Part 313.2 Rule of construction.

VCU supports the "safe harbor" established in section 313.2, which considers compliance with an example to constitute compliance with the regulatory requirements. However, because the proposed rule of construction does not consider the examples to be exclusive, the broad definitions contained in the rule could be construed as applying to institutions of higher education with regard to their administration of student financial assistance, and to the commercial organizations that assist them in performing this activity. For this reason, VCU believes that the final rule needs to include examples that specifically exclude institutions of higher education and commercial organizations that assist them in administering student financial assistance from the regulations.

Gramm-Leach-Bliley Act Privacy Rule – comment
March 24, 2000
Page 4

Part 313.4 Initial notice to consumers of privacy policies and practices required.

Requiring VCU to provide an initial notice reflecting privacy policies and practices would be unnecessary and redundant with current Federal requirements. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and the implementing regulations (34 CFR Part 99) require a detailed set of consumer disclosure requirements regarding the privacy of educational records, including student financial aid information.

Part 313.5 Annual notice to customers required.

The requirements of 313.5 of the proposed rule duplicate the requirements of 34 CFR 99.7 of the Department of Education's FERPA regulations. Under those regulations, VCU must already provide annual notice to eligible students and their parents of their privacy rights under FERPA.

Part 313.6 Information to be included in initial and annual notices.

If VCU were regulated under the GLBA as a "financial institution", our annual notice would be required to disclose a description of the "nonpublic personal information" we collect. The amount of information VCU collects from its students is massive. However, much of the information is not related to the financial aid a student receives. Therefore, if VCU was a "financial institution", the requirement under this part would be extremely burdensome as we would need to describe all the "categories" of information we collect, even information not related to financial aid. In addition, it should be noted that FERPA has its own requirements regarding information that may not be disclosed as an "educational record"; therefore, another notice would be redundant.

Part 313.8 Forum and method of providing opt out notice to consumer.

Section 313.8(e) states that a consumer's opt out is effective until revoked in writing. An issue arises if the consumer opts out and then VCU was to change its policies and practices. If VCU sends an amended notice and the consumer does not opt out to the changes, it is unclear from the rule whether we could disclose information that is not covered by the initial opt out or if the opt out applies to any subsequent changes in policy as well. The final rule should address this concern.

Thank you again for the opportunity to comment. If you have any questions regarding the comments or need further clarification, please contact Connie Davidson at (804) 828-4557.

Sincerely,



Paul P. Jez
Assistant Vice President, Business
Services and Treasurer

c: Dr. Eugene P. Trani
Dr. Roderick J. McDavis
Mr. Paul W. Timmreck



Virginia Commonwealth University

FAX TRANSMITTAL COVER SHEET

If you do not receive all of the pages listed below, please call as soon as possible. Otherwise, it will be assumed that all pages were received.

TREASURY SERVICES

327 WEST MAIN STREET
P.O. Box 843031
RICHMOND, VIRGINIA 23284-3031

804 828-6533
FAX: 804 828-5402
TDD: 1-800 828-1120

ACCOUNTS RECEIVABLE

P.O. Box 843055
RICHMOND, VA 23284-3055
804 828-4538

CASHIERS OPERATIONS

P.O. Box 843031
RICHMOND, VA 23284-3031
804 828-5458

COLLECTION UNIT

P.O. Box 843054
RICHMOND, VA 23284-3054
804 828-0737

DISBURSEMENT OPERATIONS

P.O. Box 842515
RICHMOND, VA 23284-2515
804 828-2138

DATE: 3/24/00

TOTAL PAGES: 5

TO: Mr. Donald Clark

Name

FTC

Company/Department

202/326-2496

Fax No.

Phone No.

FROM: Virginia Commonwealth University

Name

Phone No.

COMMENTS:

We will send the original in the mail.
Thank you for the opportunity to respond.

Confidentiality Notice: The materials enclosed with this facsimile transmission are private and confidential. The information contained in the material is privileged and is intended only for the use of the individual(s) or entity(ies) names above. If you are not the intended recipient, note that unauthorized use, disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this facsimile transmission in error, please immediately notify us by telephone to arrange for the return of the documents. Thank you.