

AMERICAN SOCIETY OF APPRAISERS



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Mr. Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave. NW - Room H-159
Washington, DC 20580

April 6, 2000

APR 10 2000

Dear Mr. Secretary:

Re: Comments on Gramm-Leach-Bliley Privacy Rule 16 CFR Part 313

The American Society of Appraisers, the Appraisal Institute, and the National Association of Independent Fee Appraisers, appreciate the opportunity to comment on the Commission's rulemaking proposal in the above-captioned matter. Our three appraisal organizations--which are international in scope--teach, test, and accredit their members in the area of real estate appraisal practice; and, in the case of the American Society of Appraisers, in the areas of personal property, machinery and equipment and business valuation, in addition to real estate. Our societies are founding members of The Appraisal Foundation, a nonprofit educational organization which fosters professionalism in appraising through the promulgation of generally accepted appraisal standards (i.e., the *Uniform Standards of Professional Appraisal Practice*) and appraiser qualification requirements.

I. Background

The FTC has issued proposed regulations to implement the consumer financial privacy provisions of the Gramm-Leach-Bliley Act (GLB Act). The Rule, as proposed, "applies only to information about individuals who obtain a financial product or service from a financial institution to be used for personal, family, or household purposes"; and it states that the "principal type of entity subject to the Rule is a 'financial institution,' a term which is very broad under the Act."

Of primary importance to our members is the Commission's request for comment on whether the Act's financial privacy provisions (Sections 502 and 503) should be interpreted to extend to the activities of firms identified by the Federal Reserve Board as being "closely related to banking" - including, specifically, firms providing real estate and personal property appraisal services. In this regard, the FTC requests comment on whether:

"an entity engaged in (real estate or personal property appraisal services) is a 'financial institution' only if it also extends credit or services loans; or whether (appraisal services) alone constitute a financial activity that results in an entity that engages in that activity being classified as a 'financial institution'"

The Rulemaking Notice states further that the Commission is "also authorized to enforce the Act against 'other persons' who are not financial institutions, but receive protected information from a financial institution and are subject to the Act's restrictions on reuse of the information."

If the FTC were to determine that its final Rule should apply to real estate and personal property appraisal firms (either because they are considered to be "financial institutions"

under the broad definition of that term found in the Bank Holding Company Act; or because they are found to be "other persons" who receive "protected information" from financial institutions), then thousands of small appraisal companies would be required to comply with a detailed set of procedural and substantive regulatory requirements governing their treatment and use of nonpublic financial information.¹ These firms would have to develop formal privacy policies (including the right of customers to "opt-out" of any dissemination arrangements) relating to the collection and dissemination of what the Commission has defined as customers' "personal financial information"; provide an initial notice to their customers of those policies; annual notices thereafter during the duration of the customer relationship; and observe all other substantive requirements relating to the disclosure of nonpublic personal information to affiliated and nonaffiliated third parties.

II. Executive Summary of Comments

Our organizations take the position that there is no valid public policy basis for imposing the financial privacy provisions of the GLB Act on real estate and personal property appraisal firms. It is our view that Congress never intended for the Act's privacy requirements to apply to appraisal firms and that doing so would not enhance in the slightest the financial privacy of consumers. We urge the FTC to consider that:

— Appraisal firms do not possess any of the business or operational characteristics of true financial institutions; and are not, in our opinion, even close to the types of "financial institutions" that Congress intended to cover when it wrote the Act's financial privacy provisions;

— The Federal Reserve Board's inclusion of appraisal services as an activity "closely related to banking" under the Bank Holding Company Act's broad definition of "financial institution," is not a reason to conclude that appraisal firms are "financial institutions" within the meaning of the GLB Act's privacy provisions. The Fed's broad definition of the term "financial institution" was designed to permit bank holding companies to engage in the widest range of financial activities to modernize the financial services industry and to facilitate "one-stop" shopping. Because that purpose is totally different from--and, basically unrelated to--the intent of Congress in establishing financial privacy protections, it should not be used as a basis for including appraisal firms within those privacy protections;

— Real estate and personal property appraisal firms do not receive from financial institutions, and are not otherwise privy to, the type of sensitive "personal financial information" that we believe Congress intended to protect in Sections 502 and 503 of the

¹ Although the precise number of small appraisal companies is unknown, there are approximately 90,000 certified or licensed real estate appraisers in the U.S. and additional thousands of personal property appraisers, most of whom provide their services through incorporated entities, partnership or sole proprietorships. If appraisal firms were determined to be "financial institutions" under the financial privacy Rule, the FTC would presumably expect each of these business firms to fully comply.

Act. Information gathered by appraisers concerns the real estate or personal property being appraised, not information about individuals.

Accordingly, we respectfully urge the FTC not to apply to appraisal firms, the privacy provisions contained in its final Rule. We sincerely believe that no public policy purpose contemplated by Congress would be served by doing so. To the contrary, application of the Rule to real estate and personal property appraisal firms would impose a substantial burden on thousands of what are primarily "Mom & Pop" businesses.

III. Discussion

Although the Federal Reserve Board has concluded that real estate and personal property appraisal services are "closely related to banking"² and, as such, are permissible activities for bank and financial holding companies, we urge the Commission to recognize that the public policy reasons for that determination are entirely different from those which motivated the financial privacy requirements of the GLB Act. The legislative history of the Bank Holding Company Act and the GLB amendments thereto, demonstrate an intent by Congress to modernize the banking industry by permitting financial services companies to offer consumers, under one roof, the broadest possible array of financial services. In implementing this clear public policy objective, it was logical and even necessary for the Federal Reserve to be as comprehensive as possible in enumerating the types of services that these financial conglomerates could offer. In this public policy context, the inclusion of real estate and personal property appraisal services is entirely appropriate.

On the other hand, the public policy purpose driving Congressional enactment of Section 502 was entirely different. It was directed at circumscribing the dissemination of personal financial information by large or powerful financial entities whose customers are obligated to furnish them with vast amounts of such information; and which those financial entities then control. By contrast, the customers of real estate and personal property appraisal firms are the financial institutions themselves, which hire and pay them; and the information appraisers use to establish fair market value has to do only with the property itself, not the customer of the financial institution.

Appraisal firms operate on the periphery of the financial services system and share none of the operational and business characteristics of the financial institutions they serve:

— Appraisal firms do not extend credit, sell insurance, provide brokerage services or offer other similar financial products to consumers;

-- Appraisal firms do not set the terms and conditions under which credit is extended or other financial products are offered;

— Appraisal firms do not receive from financial institutions (or otherwise collect from consumers) the types of "personal financial information" contemplated by Congress

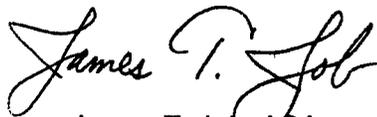
²12 CFR 225.28

when it enacted the GLB privacy provisions. Indeed, in most appraisal assignments relating to mortgage loans or loans otherwise collateralized by real estate, the appraiser does not even know the identity of the financial institution's prospective borrower. When an appraiser receives a real property appraisal assignment, they are told only the address of the property to be valued and the name of its current occupant if there is one. In a majority of cases, the current occupant of the property to be valued is a seller or a renter--not the individual applying for credit. Additionally, in conducting a typical real estate appraisal, the data utilized by the appraiser to establish a fair market value of the property is derived from public sources (e.g., property tax records, easements or other encumbrances that are recorded on land records, etc).

For personal property appraisal firms, the dynamic is much the same. The appraiser receiving the assignment would have access to the personal property being appraised, but not necessarily the identity of the property's owner; and the appraisal itself would rely, to a great extent, on records of sales of comparable personal property items that are entirely unrelated to the customer of the financial institution from which the assignment is received. Personal financial information about the owner of the personal property is irrelevant to the appraisal and of no interest to the appraiser.

In conclusion, real estate and personal property appraisal firms should not be required to comply with complex financial privacy requirements that are truly relevant only to traditional financial institutions and to other major players in the financial marketplace who collect and control personal financial information from consumers. Accordingly, I as President of the American Society of Appraisers, and my colleagues Woodward S. Hanson, President of the Appraisal Institute, and John C. Wilkerson, Jr., President of the National Association of Independent Fee Appraisers, respectfully urge the FTC not to include appraisal firms in its final Rule.

Sincerely,



James T. Job, ASA
President

cc:
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