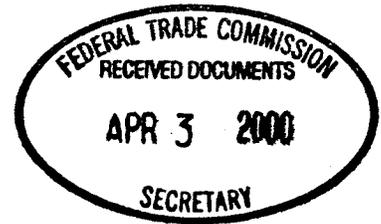


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ROBERT S. LAVET  
Vice President and  
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**VIA E-MAIL AND OVERNIGHT DELIVERY**

March 31, 2000

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580  
E-mail: GLBRule@ftc.gov

RE: "Gramm-Leach-Bliley Act Privacy Rule, 16 CFR Part 313 - Comment  
of SLM Holding Corporation

Dear Sirs and Madams:

This letter is submitted to the Federal Trade Commission (the "FTC") on behalf of SLM Holding Corporation and its subsidiaries, including the Student Loan Marketing Association (collectively "Sallie Mae") in response to your request for comment on the proposed regulations concerning the Privacy of Consumer Financial Information (the "Proposed Regulations") issued pursuant to Title V of the Gramm-Leach-Bliley Act (the "GLB Act"). 65 Fed.Reg.8770 (2000).

Sallie Mae is the nation's largest provider of education financing and largest holder of loans under the Federal Family Education Loan Program (the "FFELP"), a federally sponsored loan program. We own or manage approximately \$51.1 billion of federally insured student loans including \$48.9 billion of FFELP loans. We operate principally through 2 subsidiaries: the Student Loan Marketing Association, a government sponsored enterprise, which acts as a secondary market for FFELP loans, and Sallie Mae Servicing Corporation which is the nation's largest servicer of FFELP loans with nearly 5.3 million accounts. Under the Student Loan Marketing Association Reorganization Act of 1996, the Student Loan Marketing Association will be dissolved on or before September 30, 2008.

Under the GLB Act and the Proposed Regulations, the Student Loan Marketing Association, as a government-sponsored enterprise, would not be considered a "financial institution" so long as it does not sell or transfer non-public personal information to a non-affiliated third party other than as permitted under Sections 313.10 or 313.11. Nevertheless, we recognize privacy as an important issue to our customers. In fact, we had already undertaken a review of our privacy policies prior to passage of the GLB Act and expect to expand the information currently provided to customers concerning our privacy policies. That is why we support the Proposed Regulations and recognize that the FTC and the other federal agencies responsible for implementing Title V of the GLB Act have attempted to balance the legitimate privacy concerns of the public with the need for companies to operate efficiently.

There are several areas, however, in which we believe the Proposed Regulations as they relate to the student loan industry as a whole should be amended or clarified. We therefore submit our comments on selected sections of the Proposed Regulations. As to the significant operational issues presented by the Proposed Regulations, we are members of the National Council of Higher Education Loan Programs, Inc. (“NCHHELP”) and the Education Finance Council (“EFC”) and support and adopt their comments concerning these issues.

1. *Section 313.3 - Definitions.*

a. Definition of “consumer”. This definition states that “[a]n individual who makes payments to you on a loan where you own the servicing rights is a consumer.” We request that this portion of the definition be deleted or at least limited to situations where the servicer can sell or otherwise transfer, without restriction, servicing rights to another non-affiliated party. Many lenders in the FFELP enter into long term servicing relationships with organizations that service FFELP loans. Even if these relationships extend through the life of the loans involved, we believe that the borrower properly is a customer of the lender and not the loan servicer. The servicer, of course, would be bound by the reuse limitation set forth in the Proposed Regulations.

b. Definition of “financial institution”. Proposed Section 313.3(j)(3)(iii) incorporates the Act’s exception for institutions chartered by Congress to engage in securitizations, secondary market sales and similar transactions relating to consumers, as long as the institution does not sell or transfer non public personal information to a third party other than as permitted under Sections 313.10 and 313.11. As stated above, we recognize that this exception covers the activities of the Student Loan Marketing Association. However, to the extent it attempts to cover securitizations and other similar transactions, it fails to recognize that it is typically not the Congressional chartered entity itself that engages in these activities. Rather it is a subsidiary, a trust or a limited partnership established specifically for the transaction in question that conducts these activities. As a technical correction, we therefore proposed that Section 313.3(j)(3)(iii) be amended as follows:

(iii) Government-sponsored enterprises as defined in Section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 or any other institutions chartered by Congress specifically to engage in securitizations, secondary market purchases or sales, or similar transactions related to a transaction of a consumer together with any entities formed or sponsored by such institution or enterprises, as long as such entities do not sell or transfer nonpublic personal information to a non-affiliated third party other than as permitted by Section 313.10 and 313.11.”

You have also invited comment on whether entities that receive consumers’ non-public personal information from such a chartered institution are nonetheless subject to the limitations on re-use included in the Proposed Regulations. We believe the proper answer is yes. The reuse of non- public information should be limited by the Act and the Proposed Regulations regardless of the status of the source of that information. We however do not think that such a chartered institution should be required to enter into a confidentiality agreement with those unaffiliated third parties with whom they share information as a condition to their exemption. It is our position that such a chartered institution should not have greater demands placed on it than a private financial institution if it were to share information with an unaffiliated third party with respect to servicing or processing transactions. Moreover we believe that the exceptions contained in Sections 313.10 and 313.11 contain sufficient restrictions to adequately protect consumers in these cases.

2. *Sections 313.4 and 313.5 -- Initial and Annual Notices.*

a. Initial Notices. The manner in which education loans, both federally insured students loans and non-federally insured private education loans, are made in the United States presents a number of unique problems under the Proposed Regulations. In particular, the timing of the notice requirements conflicts with the method under which these loans are generally originated. Under the FFELP, as with most private education loans, borrowers typically make their loan arrangements through their school's financial aid office without face-to-face contact between themselves and the lender. The financial aid office provides the student with an application form. In the case of FFELP loans, the student uses a federally mandated common application. The student and the school complete the form, and the student fills in the name of a lender (generally, but not always, from a recommended list provided by the school). The school then forwards the application to the lender, which processes the application and disburses loan funds. Many loans, in fact, are applied for and approved via remote, automated or internet enabled systems where the lender does not have knowledge of receipt of the application or any information concerning the borrower until a much later date. Because of this, a customer relationship (as presently defined in the Proposed Regulations) with the applicant may arise before the lender chosen knows about the relationship and could physically deliver its required initial notice. In these cases, it would be impossible for the lender to comply with the Proposed Regulations. The alternative is delaying loan delivery to ensure compliance with the proposed regulations. This would be unacceptable to students and schools.

The regulations should therefore permit the initial notice to be delivered at the time of or a reasonable period after disbursement of an education loan and still conform to the requirements in the regulation. At present, the Proposed Regulations at Section 313.8(b) (1) only allow such delayed delivery of an initial notice if the "bank and consumer orally agree to enter into a customer relationship". This exception fails to account for the typical student lending situations where no such agreement is possible because there is no contact between the borrower and the lender.

We therefore recommend the addition of a new subsection to Section 313.4(d) (2) and a change to Section 313.8(b) (3) as follows:

313.4(d) (2) (iii) (new):

"(iii) the lender and customer establish a customer relationship under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S. C. 1070 et seq.) or similar federally insured student loan program, or non-federally insured education loan to a student or parent of a student in which case the notice can be provided within ninety (90) days of initial loan disbursement."

313.8(d) (3) (revised):

"(3) Same form as initial notice permitted. A financial institution may provide the opt out notice together with or on the same written or electronic form as the initial notice the bank provides in accordance with Section 313.4, including situations where the financial institution is allowed to delay the delivery of the initial notice pursuant to Section 313.4(d) (2)."

b. Section 313.4(d) - Initial Notices for Certain Loan Sales. This section requires that an initial required notice be provided to a customer prior to the time a customer relationship is established, except, that in the case of an asset sale, the purchaser can provide the notice within a reasonable time after the new customer relationship is established.

(i) Loan Sales Involving Securitizations or Sales to Related Parties. In some cases where there is a loan sale, including but not limited to asset securitizations, the loan will be owned by a subsidiary of or a trust sponsored by the original holder and serviced by the same entity following the loan sale as before the sale. In these cases, the applicable privacy policy will not change despite the fact that legal ownership may have transferred to a new entity. It is therefore our position that it is unnecessary, and may in fact be confusing, to provide the borrower with a new introductory privacy notice. This position would be consistent with the FFELP under which a borrower need not be notified of an ownership change if the party to whom payments and customer service questions is directed does not change. We therefore recommend that Section 313.4 be amended to provide that a new notice need be given in the case of a loan sale involving a securitization or a related party only if the applicable privacy policy (or the means to exercise the opt out right) changes as a result of the sale. The new owner will be responsible for providing future annual privacy notices.

(ii) Loan Sales under Purchase Agreements. In other cases, sales of education loans (both FFELP and non-FFELP loans) occur under formal purchase agreements either immediately after disbursement or within a relatively short period of time thereafter. In these cases, requiring the initial lender to provide a notice and an opt-out option would be pointless since by the time the borrower receives the notice, the loan has been sold and the borrower no longer has a continuing relationship with that lender. We recommend that Section 313.4 be amended to provide that the initial notice be given by the ultimate holder of the loan in the case of a loan sale under a purchase agreement and not the initial lender. The new owner will be responsible for providing future annual privacy notices.

c. Section 313.4(d) - Initial Notice for Joint Accounts. Section 313.4 (d) states that the initial notice be provided so that each recipient can reasonably be expected to receive actual notice. The Preamble to the Proposed Rules requests comment as to who should receive the initial notice when there is more than one party to the account. The same question arises with respect to the annual notices required under Section 313.5. We believe that in all cases involving multiple parties to an account (including joint accounts and accounts with co-signers), the regulation should state that the recipient of the notice should be the party to whom the lender sends account statements. Other consumer regulations such as the Federal Reserve Board's Regulations Z, DD, and CC allow single disclosures for jointly held accounts, and we would urge a similar approach focused on the recipient of the account statement, which would be the procedure most consistent with existing practices.

### 3. Sections 313.7 and 313.8 - Exercise of Opt Out Right

These sections provide that certain disclosures of nonpublic personal information can be made to nonaffiliated third parties only if the consumer has been given notice of the right to opt out of the disclosure, including a reasonable opportunity and means to exercise the right. The Preamble discussion for Section 313.8 asks for comment on whether financial institutions should be required to accept opt out exercise notices delivered through any means the institution has established to communicate with customers. The answer should be “no.” Financial institutions should be required to establish a reasonable means for consumers to exercise the opt out right. By the same token, consumers should be required to utilize this communication method. This response is particularly necessary in the case of education loans, where lenders use third party servicers to administer their loans. It would be administratively unmanageable if a borrower could ignore this approved delivery method and, for example, deliver an opt-out notice to a bank teller in a branch bank that has nothing to do with the lender’s student lending program.

We recommend that the Proposed Regulations be revised to make clear that a financial institution has no obligation to honor an opt out notice that is not delivered by the established method.

4. *Section 313.16 – Effective Date; Transition Rule*

a. The Act specifies that regulations implementing the privacy provision in Title V shall take effect six months after publication of final rules unless otherwise specified in the final rule. The Proposed Rules state that they will be effective on November 13, 2000. Although Congress mandated May 11, 2000 as the date by which the privacy regulations must be issued in final form, Section 510(1) of the GLB Act authorizes the agencies to prescribe an effective date later than six months after the privacy regulations are published in final form. We strongly recommend that you utilize this discretion to extend the effective date.

Implementing the rules will have a pervasive effective on financial institutions, in general, and Sallie Mae, in particular, requiring changes that can only be made after a detailed review of all of an institution's operational policies and practices. For Sallie Mae, the changes are daunting in scope and entail, among other things, notifying vendors of the new privacy standards, revising vendor contracts, developing computer systems to handle the notices and opt outs, developing compliance and training procedures and manuals, training call-center and operations staff, revising customer forms and contracts, and communicating with our more than 5.3 million borrowers.

In addition, we are anticipating that many of our lender partners and financial institutions for whom our subsidiary, Sallie Mae Servicing, provides loan servicing will request that Sallie Mae Servicing provide their borrowers with that institution's privacy policy. We are also anticipating that many of these partners, will ask Sallie Mae Servicing to provide the opt-out systems as well. The notices and opt-out mechanics for each client may be different, reflecting the privacy policies of each individual financial institution. All of these revisions will need to be made on a case by case basis. In many cases, we will not be able to finalize our systems and policies until our vendors and our lender partners have finalized theirs. For these reasons, we respectfully request that Section 313.16 of the Proposed Rules be revised to provide that the effective date be 18 months after the regulations are issued in final form

b. Section 313.16(b) provides that the initial customer notice must be provided to existing customer within 30 days of the effective date of the final rule. You have invited comment on whether this 30-day period is sufficient. In response, we believe that this 30-day window for providing notices to existing customers should be widened. As stated above, Student Loan Marketing Association and Sallie Mae Servicing own or provide servicing for nearly 5.3 million borrower loan accounts. It is impractical to expect these entities to undertake the processing of a huge number of notices within a 30-day period. The volume is just too great. We recommend that the transition rule be revised to provide for a 90 day period to provide required notices to existing customers.

We appreciate this opportunity to comment on the Proposed Regulations. We would hope that the agencies with regulatory responsibility for implementing the provisions of the Act will do so in a manner which will minimize the effects on our ability to provide financial aid to students and their families. If you have any questions concerning this letter or if you would like additional information, please do not hesitate to contact me at 703-810-5016.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert Lavet". The signature is written in a cursive style with a large initial "R".

Robert S. Lavet  
Vice President and  
Deputy General Counsel