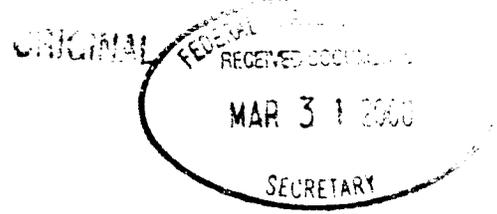




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March 28, 2000

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: UNIPAC Service Corporation's Comments on the Proposed Regulations Concerning the Privacy of Consumer Financial Information (Gramm-Leach-Bliley Act Privacy Rule, 16 CFR Part 313)

Dear Secretary Clark:

This letter is submitted on behalf of UNIPAC Service Corporation 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.

We generally support the Proposed Regulations. As detailed below, however, there are areas in which we believe the Proposed Regulations could be improved or clarified. As a third-party servicer engaged in the servicing of loans made under the Federal Family Education Loan Program ("FFELP"), and private label loans made for attendance at institutions of higher education, our comments are specifically directed toward student loan servicing.

We appreciate this opportunity to comment on the proposed regulations of the Commission. If you have any questions or concerns regarding these comments, please do not hesitate to contact me directly at (303) 696-5405 or bmunn@unipac.com or contact Mr. Gary Schleuger, Compliance, Government and Industry Relations Manager, at (303) 696-5491 or by e-mail at gschleuger@unipac.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Munn', written over a horizontal line.

William J. Munn
Legal Counsel

Specific Comments

Section 313.3(b) – Definition of “Clear and Conspicuous.”

The proposed regulation contains a definition of clear and conspicuous that is considerably more broad than the Truth in Lending Act (“TILA”) and Regulation Z definition, which requires only that disclosures be “readily understandable.” 15 USC §1604(b). The TILA definition provides the necessary flexibility to allow for originality in advertising. Regulation Z has an accepted and effective standard that should be utilized here as well. At the very least, if the proposed language is retained, we suggest the examples must be revised. The suggestion for use of “wide margins” and “ample line spacing”[313.3(b)(2)(ii)(C)] would seem to invite frivolous litigation, and the suggestion that a disclosure should not be “subject to differing interpretations” [313.3(b)(2)(i)(F)] is vague, since practically any potential written notice might be subject to differing interpretations.

Section 313.3(e)(2)(v)

These rules do not apply to an entity whose sole contact with the consumer is as a servicer for the loan holder. In many situations, even a servicer who has a contract with a financial institution for *life of the loan servicing* does not own the servicing rights. Accordingly, this paragraph should be clarified to include a statement that the rules do not apply to a servicer who contracts with a financial institution for *life-of-the-loan servicing* where the servicer does not own the servicing rights.

Section 313.4() – Joint Accounts – Receipt of Notice.

With respect to multiple parties to an account, we suggest that the rule again mirror the standard of Regulation Z, which permits a single disclosure for jointly held accounts.

Section 313.4(d)(2)

The manner in which federally-insured student loans are made in the United States presents a number of unique problems under the Proposed Regulations. Section 313.4(d)(2) should be amended to allow *subsequent* delivery of the initial notices for student loans. Under student lending programs, such as the FFELP, loans can be made without face-to-face contact, on Office of Management and Budget (OMB) approved common forms and with lenders often chosen by the student-borrower from a list maintained by the school the borrower is attending. A customer relationship with the applicant and actual loan disbursement may occur *before* the lender chosen could physically deliver its initial notice required under these proposed rules.

We recommend the addition of a new subsection to 313.4(d)(2) as follows:

.4(d)(2)(iii) (new): “the bank 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.”

Section 313.8(b)(3)

As discussed previously, the manner in which federally-insured student loans are made in the United States presents a number of unique problems under the Proposed Regulations. Section 313.8(b)(3) should be amended to allow *subsequent* delivery of the opt out notices for student loans. Under student lending programs, such as the FFELP, loans can be made without face-to-face contact, on Office of Management and Budget approved common forms and with lenders often chosen by the student-borrower from a list maintained by the school the borrower is attending. A customer relationship with the applicant and actual loan disbursement may occur *before* the lender chosen could physically deliver its initial notice. The regulations should therefore also recognize that in such

situations an opt out notice may be delivered *subsequently* and still conform to the requirements in the regulation. The Proposed Regulations at Section 313.8(b)(1) only allows such delayed delivery of an initial notice if the "bank and consumer orally agree to enter into a customer relationship" which fails to account for standard student lending situations or other situations where no such agreement is possible because there is no contract between the borrower and the lender.

We recommend a revision to subsection 313.8(b)(3) to provide for such delayed delivery of the opt out notice for student loans:

313.8(b)(3) (revised): "(3) *Same form as initial notice permitted.* A bank 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 bank is allowed to delay the delivery of the initial notice pursuant to Section 313.4(d)(2)."

Section 313.10, .11

One of the standard practices in the student loan industry is the exchange of information between the various entities involved with the loan, including the lender, servicer, guaranty agency, and of course, the educational institution. Information is exchanged pursuant to the Higher Education Act and regulations thereunder, for purposes of certifying borrower eligibility and attendance, updating demographic information, and default aversion activities, to name a few. We feel these activities are covered by the exceptions in sections .10 and .11, but suggest a clarification be included to encompass such activities.

Section 313.13

It is also very common the student loan industry to use the consumer's social security number (SSN) as the account number, or some part thereof. The SSN is also a primary data element used to identify consumers when information is being shared between business partners. This section of the proposed rules should provide for an exception from the prohibition on disclosing account numbers where the account number is also the consumer's SSN.

Section 313.16(a) and (b)

The proposed regulations subject "financial institutions" to the most extensive regime of privacy regulations ever in the United States. In order to implement the new regulations, financial institutions engaged in the student loan industry will need to thoroughly understand how they relate to other local, state and federal privacy requirements, including, but not limited to, the Fair Credit Reporting Act, the Privacy Act, and the Higher Education Act. Implementing the privacy regulations will have a very pervasive effect on financial institutions, requiring that practically every process and document involving consumer products and consumers be fundamentally revamped, particularly in the area of new customers. In addition, the disclosures required by the proposed regulations necessitate that financial institutions describe and summarize a tremendous amount of detailed information in a synthesized, comprehensive and clear manner. For this reason, UNIPAC strongly urges the Commission to publish model forms for the initial and annual privacy notices required by the Act and the regulations. We urge the Commission to issue such forms for comment well before the privacy regulations become effective and that such forms be adopted in final form at least 90 days before the effective date of the privacy regulations so that financial institutions have sufficient time to produce and print their initial privacy notices.

Implementation of the privacy regulations may entail, among other things, notifying vendors of the new privacy standards, educating these vendors regarding the new requirements, revising vendor contracts, developing computer systems to handle the notices and opt outs, developing compliance and training procedures and manuals, training marketing and operations staff, revising customer forms and contracts, and communicating with millions of individuals. In the case of renegotiating the tremendous number of vendor contracts, the task cannot be accomplished unilaterally. The new contractual provisions regarding standards for confidentiality, use by third parties of nonpublic personal information and safeguards for the protection of such information will need to be reviewed and many renegotiated on a case-by-case basis.

All of this is a massive task for a large financial institution with significant resources, an even more daunting challenge for smaller institutions with fewer resources, and will be especially challenging for third-parties who contract with multiple financial institutions (e.g., loan servicers). It is a task that cannot be appropriately completed in the short six-month period contemplated by the proposed regulations. 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 Commission to prescribe an effective date later than six months after the privacy regulations are published in final form. Given the immense logistical requirements of implementing the regulations and the tremendous cost associated with implementation, requiring entities to comply with the regulations on the extremely short time-frame of six months proposed by the Commission will undoubtedly result in faulty implementation and significant additional expense.

For the reasons discussed above, we respectfully request that Section 313.16(a) provide that the effective date for Subtitle A of Title V of the Act be 18 months after the regulations are issued in final form. Similarly, we also ask that the time to provide the initial notice to consumers pursuant to Section 313.16(b) be extended to a date that is no later than 90 days after effectiveness.

Request for Clarification

Finally, given the nature of UNIPAC's business, i.e., servicing education loans on behalf of dozens of lenders, we face the prospect of administering dozens of separate policies for these lenders. One alternative for UNIPAC might be to attempt to negotiate a common policy for all of our clients to use in their education lending activities through us, thus streamlining the process and also preventing the need for new disclosures if a loan is sold by one client to another. We request clarification whether this approach would be acceptable under the proposed regulations.

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