FEDERAL TRADE COMMISSION
RECEIVED DOCUMENTS
MAR 30 2000
SECRETARY

Before the
FEDERAL TRADE COMMISSION
Washington, DC

In the Matter of:	)
Gramm-Leach-Bliley Act Privacy Rule	)
16 CFR Part 313–Comment	)

Comments of the American Society of Travel Agents, Inc.

Communications with respect to this document should be sent to:

Burton J. Rubin
General Counsel
American Society of Travel Agents, Inc.
1101 King Street
Alexandria, Virginia 22314
(703) 739-6959

Paul M. Ruden
Senior Vice President
Legal & Industry Affairs
American Society of Travel Agents, Inc.
1101 King Street
Alexandria, Virginia 22314
(703) 739-6854

Before the
FEDERAL TRADE COMMISSION
Washington, DC

In the Matter of:	)
Gramm-Leach-Bliley Act Privacy Rule	)
16 CFR Part 313–Comment	)

Comments of the American Society of Travel Agents, Inc.

Introduction

The American Society of Travel Agents, Inc. ("ASTA") welcomes this opportunity to respond to the Federal Trade Commission's Notice of Proposed Rulemaking with respect to its proposed privacy Rule, 16 CFR Part 313, to implement the financial privacy provisions of the Gramm-Leach-Bliley Act ("GLB"), Public Law 106-102, codified at 15 U.S.C. 6801 et seq.

ASTA will specifically respond to the Commission's requests for comment on how the language of 12 CFR 211.5(d)(15) `in connection with financial services * * *" limits the activity of operating a travel agency and, to the extent of available information, the extent to which travel agencies are operated in connection with financial services, as set forth at footnote 4 to the Notice of Proposed Rulemaking. ASTA will also respond to the Commission's requests for information on the nature of

specific business relationships that exist between consumers and travel agents, as well as for more general comments on the application of the proposed Rule to travel agents, as set forth at footnote 5 thereof.[1]

ASTA, the world's largest trade association of professional travel agents, has 13,000 travel agent members throughout the United States, and a total worldwide membership of agents and industry suppliers totaling 25,000 members. ASTA's purpose is the promotion and advancement of the interests of the travel agency industry and the safeguarding of the traveling public against fraud, misrepresentation and other unethical practices.

ASTA has provided testimony to numerous legislative committees and fact finding bodies and has appeared in various legal proceedings; it is widely recognized as responsibly representing the interests of its members and the travel agency industry.[2] It also has a long and proud history of cooperating with the FTC and other governmental agencies in furtherance of the public interest, particularly in connection with the protection of consumers.[3]

---

[1]Data on the sales volume breakdown of ASTA's membership is set forth as Appendix A.

[2]*See, e.g., Investigation into the Competitive Marketing of Air Transportation*, C.A.B. Docket 36595, *aff'd, Republic Airlines, Inc. v. C.A.B.*, 756 F.2d 1304 (8th Cir. 1985); *In re Domestic Air Transportation Antitrust Litigation*, 148 F.R.D. 297, 61 USLW 2610, 1993-1 Trade Cas.(CCH) ¶70,165 (N.D.Ga., 1993); *U.S. v. Airline Tariff Publishing Co.*, 1993-1 Trade Cas. (CCH) ¶70,191 (D.D.C., 1993); *Spiro v. Delmar Travel Bureau, Inc.*, 591 N.Y.S.2d 237 (A.D. 3 Dept. 1992); and *Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996).

[3]See for example FTC publication, "Renting a Car," Revision to Car Rental Guide. ASTA is also pleased to have participated with the FTC in developing and distributing the consumer educational materials issued in connection with the FTC's 1997 enforcement action, "Operation Trip-Up."

Properly construed, the Gramm-Leach-Bliley Act ("GLB" or "the Act") should have only a relatively small impact on a small number of travel agencies. ASTA is deeply concerned, however, that certain ambiguities in the Act, together with certain proposed regulatory interpretations, pose the gravest threat of irreparable damage to the travel agency industry and, ultimately, to the consumers of services sold by travel agents. Travel agents sell the vast majority of all public transportation services (air, cruises, tours, etc.) consumed in the United States. The impact of the wrong interpretation of the Act and the proposed rules will be very large and widespread.

Travel Agency Operations

GLB's Disclosure of Nonpublic Personal Information provisions set out as Subtitle A of Title V, limit the instances in which a financial institution may disclose nonpublic personal information about a consumer to non-affiliated third parties. Financial institutions are further required to disclose to their customers all of their privacy policies and practices with respect to information sharing.

In a very real sense, the essential business of travel agencies is collecting nonpublic personal information about consumers and transmitting it to non-affiliated third parties. That is what they do, not in furtherance of their own business interests, but simply to effectuate the transaction requested by the consumer.

In order to obtain the travel services that the consumer wishes to purchase, the travel agency will secure the consumer's name, contact information, desired classes of services, and means of payment information, such as credit card number, and transmits them, usually through a Computer Reservation System ("CRS"), operated by a non-

affiliated, third-party vendor, to the airline, hotel, or other service provider. This enables the service provider, another non-affiliated third-party, to make the necessary commitments from its inventories. Finally, in the case of airline tickets, the consumer's information is then transmitted, on a weekly basis, to the Airlines Reporting Corporation, another non-affiliated third-party, which is the clearinghouse established by the airlines to settle payment to them for tickets purchased and for payment to the agents of the commissions they have earned on the sales. All of this sharing of the consumer's information is a customary, usual, necessary and an integral part of the contemporary processing involved in the sale of an airline ticket. Subject to the exceptions contained in the Act, for disclosures that are necessary to effect a transaction requested or authorized by the consumer, these disclosures might come within the purview of the Act if travel agencies are "financial institutions."

Financial Institutions

Section 509(3) of the Act 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." The addition of subsection (4) (k) 4 to the Bank Holding Company Act of 1956 by GLB Section 103, 113 Stat. 1343, provides that certain enumerated activities "shall be considered to be financial in nature:" Among these are:

> (G) Engaging, in the United States, in any activity that—
> (I) a bank holding company may engage in outside of the United States; and
> (ii) the Board has determined, under regulations prescribed or interpretations issued pursuant to sub-section

> (c)(13) (as in effect on the day before the date of the enactment of the Gramm-Leach-Bliley Act) to be usual in connection with the transaction of banking or other financial operations abroad.

Under the Federal Reserve Board's Regulation K, 12 CFR 211.5 (d), "permissible activities" that the Board has determined "are usual in connection with the transaction of banking or other financial operations abroad" include:

> (15) Operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others

The proper meaning of this, required by the syntax, is that engaging, in the United States, in operating a travel agency that is operated in connection with financial services offered abroad, would be a financial activity whose conduct would qualify an institution as a financial institution.

Such a construction, required by the statute, should result in relatively minimal impact of the Act on the continued operations of travel agencies.

It appears, however that the Commission contemplates a different interpretation. At footnote 3 to the Notice of Proposed Rule Making, the Commission describes the activity in question simply as "operating a travel agency in connection with financial services," leaving out the crucial qualifier "offered abroad." By doing so, the Proposed Rule draws into its purview many more travel agencies than the statute requires, with the potential for severely burdening, and perhaps completely frustrating their operations.

The only apparent justification for eliminating the important "offered abroad" language contained in Regulation K and then embraced by the statute is the observation at the beginning of the footnote that "the Act is not limited to activities abroad," because the text of Section 4(k)(4)(G) reads:

> Engaging, in the United States, in any activity that (i) a bank holding company may engage in outside of the United States; and (ii) the Board has determined [by regulation in effect on November 11, 1999] to be usual in connection with the transaction of banking and financial operations abroad.

That, however, is no basis for reading the "offered abroad" language, which is clearly there, out of the Federal Reserve Board's Regulation K. The statute certainly does not do so. It does not direct that some modified form of the Board's description of financial activities in Regulation K be adopted as the Act's definition. It adopts the Board's description of financial activities wholesale, without modification, including the "offered abroad" language of 12 CFR 211.5 (d)(15).

Nor does the meaning of the Act in any way require that "offered abroad" be dropped from 12 CFR 211.5 (d)(15), for purposes of Section 4(k)(4)(G) of the Bank Holding Company Act of 1956. It simply establishes the definition as "Engaging, in the United States, in certain activities, one of which is "Operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others." Surely, "engaging, in the United States, in operating a travel agency in connection with financial services offered abroad by the investor or others" describes a real and extant activity intended to be within the reach of the Act.

The difficulty in ascertaining whether a travel agency is subject to regulation under the proposed Rule is further confounded by the definition of ``financial product or service" set forth at Section 313.3(k), which leads to the following tautology:

> Are travel agencies covered "financial institutions" under GLB? A "financial institution" is an institution whose business is engaging in financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956. Among the activities that shall be considered to be financial in nature, under subsection (4)(k) 4 G, are operating a travel agency provided that the travel agency is operated in connection with financial services ***. What sort of "financial services" is it that, when operated in connection with operating a travel agency, causes the operation of the travel agency to be considered an activity that is "financial in nature?" According to the proposed Rule Section 313.3(k), a "financial service" is a service that a financial holding company could offer by engaging in an activity that is financial in nature under Section 4(k) of the Bank Holding Company Act of 1956. What sort of service is it that a financial holding company could offer by engaging in an activity that is financial in nature under Section 4(k) of the Bank Holding Company Act of 1956? One such would be operating a travel agency provided that the travel agency is operated in connection with financial services***.

Clearly, this is not a satisfactory basis upon which to leave the determination of who is subject to regulation under the Rule.

As indicated by proposed Section 313.3(j)(2), an entity is considered a financial institution only if it is significantly engaged in financial activities. Travel agencies commonly solicit applications for, or otherwise place, "trip interruption" or "travel insurance," which protects the policy holder from loss occasioned by an inability to undertake or complete the travel due to illness or other intervening causes. Some agencies sell travelers' checks and some may provide foreign currency exchange. Assuming that some or all of these activities are financial activities, we would expect that they would not be significant to the extent they were incident to the sale of travel services, as apart from stand alone transactions.

We are unsure, however, if the Commission contemplates this sort of substantive approach, a volume or comparative volume test, or some other basis for determining whether a travel agency's financial activities are "significant."

Nonpublic Personal Information

As stated earlier, travel agencies regularly collect nonpublic personal information from consumers and share it with non-affiliated third parties in order to effect the consumer's travel arrangements. GLB Section 509(4) defines "nonpublic personal information" as "personally identifiable financial information," that is provided by a consumer to a financial institution, results from any transaction with the consumer or any service performed for the consumer, or is otherwise obtained by the financial institution. ``Personally identifiable financial information," itself is left by the Act undefined. In the case of a travel agency, this could include names, addresses, and phone numbers of clients, their itineraries, credit card numbers etc.

Under GLB Section 509(6)a, and the proposed FTC Rule, an affiliation will be found only when one company "controls," is controlled by, or is under common control with another company. With respect to travel agencies, the Airlines Reporting Corporation ("ARC"), computer reservation systems vendors, airlines, cruise lines, hotels, car rental companies and other suppliers with whom travel agencies must regularly share what is likely nonpublic personal information would be, in almost every case, non-affiliated third parties.

GLB Section 502(b) requires that a financial institution provide the consumer with a clear and conspicuous notice that the consumer's nonpublic personal information may be disclosed to non-affiliated third parties, and that the consumer be given an opportunity to opt out of that disclosure, and that the consumer be informed of how to opt out.

GLB Section 502(e) creates an exception to the notice and opt-out requirements for disclosures "(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer..." This would cover the disclosure of information through CRS vendors, and to suppliers as necessary to effect the reservation. The information must be shared between the travel agent and the service supplier, usually via a CRS, or the travel services requested by the consumer cannot be obtained. A, perhaps, somewhat less clear case obtains with respect to ARC reports.

Sharing information with ARC is a duty imposed on all ARC appointed travel agencies. It is necessary to enable ARC to operate the clearing system by which

airlines, on whom tickets for transportation have been sold, get paid, and travel agents receive their commissions.

Since it is possible that the transportation can take place before the report is filed, in some sense, reporting information to ARC might not be considered "necessary" to effect the transaction. It is however necessary to operate the system by which airline tickets are currently sold through travel agencies.

Affording consumers the right to opt-out of the disclosure of their information to ARC would completely frustrate the operation of the system for the sale of airline tickets through travel agents as it now exists. ASTA cannot accept that such a bizarre result was intended, or is required, by the statute or the implementing Rule, and urges that the final Rule make this clear and explicit.

Consumer or Customer

GLB distinguishes between "consumers" and "customers" with respect to the obligations imposed on a financial institution with respect to each group. "Consumers," which is the broader category, need be given notice of an institution's privacy policies and practices only if the institution intends to disclose nonpublic personal information about the consumer to a non-affiliated third party for a purpose that is not authorized by an exception set out in Sections 313.10 and 313.11 of the FTC's proposed Rule. In contrast, "customers" must be given a notice of the institution's privacy policies at the time the customer relationship is established and annually thereafter during the continuation of the relationship.

"Customer" seams, generally, to contemplate an ongoing relationship as opposed to a single transaction or even a string of transactions. However, a one-time transaction may be sufficient to establish a customer relationship, depending on the nature of the transaction.

The examples set forth at Section 313.3(h)(2)(ii)(C) of the proposed Rule make clear that a customer relationship would not be established by sale to a consumer of airline tickets, travel insurance or traveler's checks in an isolated transaction. This will be extremely helpfully to the travel agency industry. Footnote 5 to the Notice of Proposed Rulemaking further clarifies that this would be so even if such transactions took place on a "repeated basis."

This same footnote, 5, however, also indicates that a travel agency operated in connection with financial services would have a customer relationship with an individual for whom it plans a trip.

In practice, it may prove hard to determine where selling an airline ticket, with a suggestion for hotel accommodations and possibly a rental car ends, and where planning a trip, which would create a customer relationship, begins. Further guidance on just what sort of activities undertaken under what circumstances would transform the sale of an aggregation of services, such as airline tickets, hotel, car rental, and travelers' checks, into planning a trip, is essential to the industry, the consumer and the government if the proposed rule is to be lawfully applied to the travel agent industry.

Conflict With Other Regulations

GLB Section 502(c) provides that a non-affiliated third party that receives nonpublic personal information from a financial institution shall not, directly or indirectly through an affiliate, disclose the information to any person that is not affiliated with either the financial institution or the third party, unless the disclosure would be lawful if made directly by the financial institution. To the extent that travel agencies may be held to be financial institutions, this prohibition on re-disclosure and reuse might conflict with the Department of Transportation's Computer Reservation System Regulation at 14 CFR 255.10, which requires each CRS system to "make available to all U.S. participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to carriers that it elects to generate from its system." [4]

Thus, a CRS vendor that receives from a travel agent information to effect a consumer's transaction must, under the applicable circumstances, in turn, make it available to the other airlines, which are not involved in any way in providing the consumer's transportation.

Such data is contained on "Marketing Information Data Tapes."[5] While it is believed that such tapes do not currently contain passenger names, there is a field for "PNR Locator Code," which might, of itself be regarded as nonpublic personal information and might be subject to decoding into nonpublic personal information.

---

[4]ASTA opposes this regulation and has requested the Department of Transportation to rescind it. See Response of the American Society of Travel Agents, Inc., Department of Transportation Docket No. OST-2000-6984.

[5]The MIDT file layout is set forth at Appendix B.

Undoubtedly for worthwhile reasons, Title V of Gramm-Leach-Bliley imposes certain obligations on financial institutions. Due to an array of anti-competitive practices directed at travel agencies by airlines, the continued vitality of the travel agency business as the public's only neutral, independent source of comparative price and service information is today gravely threatened.[6] Like the dolphin inadvertently caught in the tuna boat's net, if travel agencies are unnecessarily entangled in the requirements of Gramm-Leach-Bliley, they too will be unnecessarily harmed. The travel agency industry looks to the Federal Trade Commission to assure that this does not happen.

Respectfully submitted,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

By Burton J. Rubin

Burton J. Rubin
General Counsel

March 31, 2000

[6]See Complaint of the American Society of Travel Agents, Inc., Department of Transportation Docket No. OST-99-6410.

Frequencies

APPENDIX A

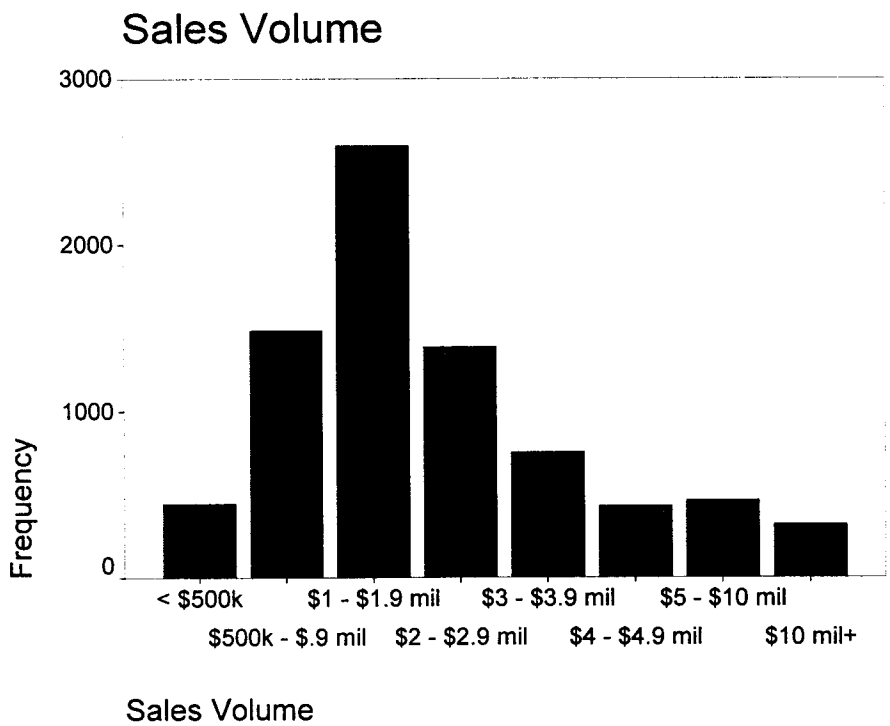
Statistics

Sales Volume

N	Valid	7891
	Missing	635

Sales Volume

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	< $500k	447	5.2	5.7	5.7
	$500k - $.9 mil	1486	17.4	18.8	24.5
	$1 - $1.9 mil	2599	30.5	32.9	57.4
	$2 - $2.9 mil	1387	16.3	17.6	75.0
	$3 - $3.9 mil	756	8.9	9.6	84.6
	$4 - $4.9 mil	432	5.1	5.5	90.1
	$5 - $10 mil	466	5.5	5.9	96.0
	$10 mil+	318	3.7	4.0	100.0
	Total	7891	92.6	100.0	
Missing	System	635	7.4		
Total		8526	100.0		



APPENDIX B

MARKETING INFORMATION DATA TAPES
MIDT FILE LAYOUT

PURCHASER'S BOOKING DATA

```
PSEUDO CITY                 CHAR(05),
ATC NUMBER                  PIC '(07)9',
AGENCY NAME                 CHAR(25),
AIRLINE CODE                CHAR(03),
BOARD ON                    CHAR(03),
BOARD OFF                   CHAR(03),
CLASS                       CHAR(02),
FLIGHT NUMBER               PIC '(04)9',
COUNT                       PIC '(03)9',
DEPARTURE DATE DAY          CHAR(02),
DEPARTURE DATE MONTH        CHAR(03),
PNR LOCATOR CODE            CHAR(06),
INTERNATIONAL_IND /* 0:DOM, 1:INT, 2:UNMATCHED*/      CHAR(01),
BOOKING STATUS              CHAR(02),
CANCELLED BOOKED            CHAR(01),
BOOKING DATE MONTH          CHAR(02),
BOOKING DATE DAY            CHAR(02),
BOOKING DATE YEAR           CHAR(04),
AGENCY CITY STATE           CHAR(20),
AGENCY ZIP                  CHAR(10),
AGENT SINE                  CHAR(3),
ACCESS TYPE                 CHAR(1),
FILLER  /*FOR FUTURE ENHANCEMENTS*/          CHAR(8);
```