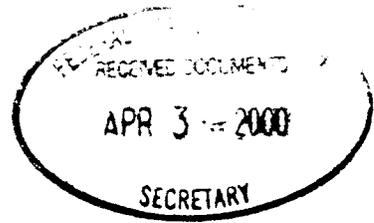


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March 31, 2000

Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

RE: Gramm-Leach-Bliley Act Privacy Rule,  
16 CFR Part 313 – Comment

To Whom It May Concern:

On behalf of several interested parties I am submitting the attached comment on the regulation proposed on March 1, 2000 (65 Fed. Reg. 11173) with respect to the privacy of consumer financial information.

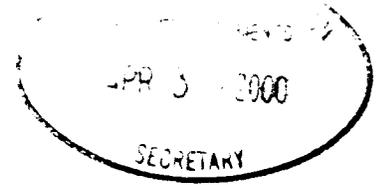
Respectfully submitted,

A handwritten signature in black ink that reads "W.G. Schiffbauer".

William G. Schiffbauer

Enclosure

March 30, 2000



**STAND ALONE  
HEALTH AND LIFE INSURANCE COMPANIES:  
BRIEF COMMENT ON PROPOSED RULES FOR THE PRIVACY OF  
CONSUMER FINANCIAL INFORMATION**

*These comments respond to the invitation of February 22, 2000, where the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively "the financial services agencies") issued proposed rules pursuant to the Title V "Privacy" standards of the "Gramm-Leach-Bliley Act of 1999" ("the 1999 Act"). See 65 Fed. Reg. 8769. Nearly identical rules were also proposed by the Federal Trade Commission ("FTC") on March 1, 2000. See 65 Fed. Reg. 11173. In addition, the Securities and Exchange Commission issued nearly identical rules on March 8, 2000. See 65 Fed. Reg. 12353.*

**Issue**

*A fundamental concern is whether these requirements apply to a "stand alone" health or life insurance company that is not a "financial holding company", or that is not affiliated with or in any joint arrangement with a "financial holding company".*

**Background**

*The proposed rules primarily implement the 1999 Act's notice requirements and restrictions on a financial institution's ability to disclose "non-public personal information" about consumers to nonaffiliated third parties. The 1999 Act broadly defines a "financial institution" to mean "any institution of*

*business” that engages in “financial activities”. See, Bank Holding Company Act of 1956, Section 4(k)(as amended by the 1999 Act). As discussed below, this broad definition of “financial activities” will encompass the business of insurance and appear to require health insurers to comply with these rules under certain circumstances. With respect to aspects of these proposed rules that impact insurance activities of “financial holding companies”, the financial services agencies are required to consult with State insurance regulatory authorities as designated by the National Association of Insurance Commissioners (“NAIC”). See Section 504 of the 1999 Act.*

*The proposed regulations appear to reflect the 1999 Act’s intent in permit new “financial holding companies” that are “financial institutions” to engage in any permitted “financial activity”. Importantly, the 1999 Act intends to capture not only those traditional financial activities of banks as specified in the Bank Holding Company Act of 1956 (as amended by the 1999 Act), but also a wide range of other activities closely related to banking. The 1999 Act specifies that “financial activities” include among other enumerated activities: the insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State. See Bank Holding Company Act of 1956, Section 4(k)(4)(A-E) (as amended by the 1999 Act).*

### **Stand-Alone Insurer Distinguished**

*For health and life insurers the 1999 Act is expected to encourage joint ventures between such insurers and banks. Insurers will be able to use banks*

*and bank affiliates as insurance distribution channels free from most state laws that have prevented bank sales of insurance products. It is primarily in this relationship that the privacy requirements of this proposal will directly impact health and life insurers, and the ability of insurers and banks to share information.*

*Health and life insurers that do not become a financial holding company or do not become affiliated with a financial holding company do not generally appear to be within the scope of the 1999 Act's Title V privacy provisions. This is because the 1999 Act's requirements for the protection of nonpublic personal information apply to a "financial institution". See Section 501(a). The term "financial institution" is defined to mean "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". See Section 509(3)(A). Section 4(k) establishes very general requirements for financial activities of a "financial holding company". See Section 4(k)(1). Section 4(k) includes a description of activities of a financial holding company that are considered to be "financial" in nature, and that includes "insuring" against illness, among its many listed provisions. See Section 4(k)(4)(B).*

*Finally, it is important to note that insurance companies are separately referenced in Title V as an "insurance institution". See Section 521(e) of the 1999 Act. This reference is in connection with various fraudulent activities that may result in the disclosure of customer information of a "financial institution". The section clarifies that the provisions of the section are not intended to prevent*

*an "insurance institution" from investigation of insurance fraud. This would appear further to distinguish a stand-alone insurance company from a "financial institution" that is subject to the 1999 Act's privacy requirements.*

### **Conclusion**

*It appears that an insurance company that is not a "financial holding company", but which remains a traditional insurance carrier is not subject to the privacy requirements of the 1999 Act. A "financial holding company", however, may engage in health insurance activities on its own, subject to the provisions of the 1999 Act and applicable state laws regulating the "business of insurance". See Section 104 of the 1999 Act, and Title III of the 1999 Act (relating to State Regulation of Insurance). Accordingly, it is respectfully requested that the final regulations explicitly clarify that these particular privacy requirements under the 1999 Act do not apply to a health or life insurance company unless it is engaging in a "financial activity" either as a "financial holding company", or with a "financial holding company".*