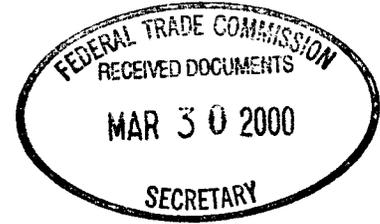




General Revenue Corporation



March 28, 2000

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

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

Dear Mr. Clark:

This letter is submitted on behalf of the General Revenue 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. General Revenue Corporation thanks the FTC for the opportunity to comment on its proposed rule. This comment letter addresses concerns the company has regarding the collection activities of the Gramm-Leach-Bliley Act.

General Revenue Corporation is a collection agency in Cincinnati, Ohio who performs debt collection for the Federal government and numerous credit grantors of various debt types.

### **GENERAL COMMENTS**

#### *Applicability of the Gramm-Leach-Bliley Act and the FTC's Proposed Rule to the collection activities of third-party collection agencies*

General Revenue Corporation does not believe that institutions of higher education are considered to be "financial institutions" under Title V of the Gramm-Leach-Bliley Act ("G-L-B Act") (P.L. 106-102). Further, we do not believe that the commercial partners that contract with colleges and universities to administer functions related to student financial assistance programs should be covered by the requirements of the FTC's proposed rule.

The stated purpose of the G-L-B Act is "to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes."

Many institutions of higher education utilize the services of commercial partners in administering student financial programs. These services typically involve financial data processing and transmission services, servicing institutional and Federal student loans, collection of defaulted Federal Perkins, other student loans and student debts owed to the institution.

Institutions and their servicing agents are also required under the Higher Education Act to report to national credit reporting agencies information regarding Federal Perkins loan defaults. Some of these activities could be considered covered by Title V and the proposed rule by the cross-reference to the Federal Reserve Board's list of activities found to be closely relating to banking (12 CFR 225.28) which makes specific reference to them. However, in these instances, the institution of higher education is simply outsourcing part of its student financial aid functions to the commercial partner, generally to achieve cost savings.

General Revenue Corporation performs such educational collection activities and supports the exemption of these collection activities from the requirements of the G-L-B Act. Further, General Revenue Corporation believes that collection activities for other creditors to enforce the agreements between the consumer and credit grantor should be exempt from coverage by the G-L-B Act as discussed in more detail in the Specific Comments section to follow (especially Part 313.3(i).)

## **SPECIFIC COMMENTS**

In addition to these general comments, we are also providing the following comments on how specific sections of the proposed rule relate to these general concerns.

### **Part 313.1 Purpose and scope.**

Section 313.1(b) of the proposed rule specifically includes account servicers and debt collectors as "financial institutions" for purposes of the rule. However, we do not believe that the rule applies to these organizations in their role as third-party servicers and contractors to institutions of higher education in their administration of the student financial assistance programs. The final rule should be clarified to reflect this.

### **Part 313.2 Rule of construction.**

We support the "safe harbor" established in section 313.2 which considers compliance with an example to constitute compliance with the regulatory requirements. However, because the proposed rule of construction does not consider the examples to be exclusive, the broad definitions contained in the rule could be construed by some as applying to institutions of higher education with regard to their administration of student financial assistance, and to the commercial organizations that assist them in performing this activity. For this reason, we believe that the final rule needs to include examples that specifically exclude institutions of higher education and commercial organizations that assist them in administering student financial assistance from the regulations.

### **Part 313.3 Definitions.**

#### **(e) "Consumer"**

The proposed rule sets forth examples of what constitutes a "consumer." Section 313.3(e)(2)(v) states that "an individual who makes payments to [the financial institution] on a loan where [it]

own[s] the servicing rights is a consumer. An individual is not [a] consumer, however, solely because [the financial institution] service[s] the individual's loan on behalf of a financial institution that made the loan to the individual." Institutions of higher education typically contract with a servicer to service the loan when it reaches repayment. General Revenue Corporation would recommend that the final rule provide for an example to clarify that when an institution of higher education contracts with a servicer to service loans relating to financial assistance programs, the servicer is not deemed to "own" the loan since under the service contract the institution of higher education would retain ownership. This would clarify that a service contract between the institution of higher education and servicer does not transfer ownership rights; therefore, the servicer would not be subject to the rule within the scope of administering financial assistance programs.

#### **(i) "Customer Relationship"**

In the Section-by-Section analysis of the proposed rule, the discussion of the definition of "customer relationship" states that a "customer relationship" does not exist with a "debt collector that simply attempts to collect amounts owed to the creditor." This description of when a debt collector has a "customer relationship" is missing from the actual rule. General Revenue Corporation recommends that the example found in its Section-by-Section analysis concerning debt collectors be added to Section 313.3(i)(2) which provides examples of what does not constitute a "customer relationship." This would clarify the FTC's position that debt collectors who simply collect the debt for the creditor does not have a "customer relationship" with the consumer. Therefore, since no "customer relationship" exists, the debt collector under this circumstance would not be covered under the rule.

#### **Part 313.4 Initial notice to consumers of privacy policies and practices required.**

Requiring institutions of higher education to provide an initial notice reflecting privacy policies and practices would be unnecessary and redundant with current Federal requirements. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and the implementing regulations (34 CFR Part 99) currently require a detailed set of consumer disclosure requirements regarding the privacy of educational records, including student financial aid information.

#### **Part 313.5 Annual notice to customers required.**

The requirements in 313.5 of the proposed rule duplicate the requirements of 34 CFR 99.7 of the Department of Education's FERPA regulations. Under those regulations, institutions of higher education must already provide annual notice to eligible students and their parents of their privacy rights under FERPA.

#### **Part 313.6 Information to be included in initial and annual notices.**

If institutions of higher education were regulated under the G-L-B Act, then as a "financial institution," their notice would be required to disclose a description of the "nonpublic personal information" it collects. The amount of information an institution of higher education collects

from its students is massive. However, much of the information is not related to the financial aid a student receives. Therefore, if an institution of higher education was a “financial institution,” the requirement under this part would be extremely burdensome as the school would need to describe all the “categories” of information the institution collects, even information not related to financial aid. In addition, it should be noted that FERPA has its own requirements regarding information that may not be disclosed as an “educational record;” therefore, another notice would be redundant.

**Part 313.8 Form and method of providing opt out notice to consumer.**

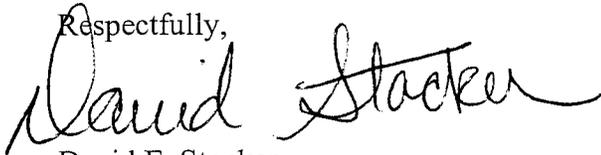
Section 313.8(e) states that a consumer’s opt out is effective until revoked in writing. An issue arises if the consumer opts out and then the institution was to change its policies and practices. If the institution sends an amended notice and the consumer does not opt out to the changes, it is unclear from the rule whether institutions could disclose information that is not covered by the initial opt out or if the opt out applies to any subsequent changes in policy as well. The final rule should address this concern.

**Part 313.10 Exception to notice and opt out requirements for processing and servicing.**

Section 313.10(a) states that there is an exception to both the initial notice to a consumer and the opt out requirement if the disclosure of nonpublic personal information is “as necessary to effect, administer, or enforce a transaction” or “to service or process a financial product or service requested or authorized by the consumer.” The FTC should include language that makes it clear that this exception includes the activities of collection and billing services in the administration and enforcement activities.

Thank you again for the opportunity to comment. If you have any questions regarding the comments or need further clarification, please contact me directly at (513) 469-1472, extension 2084.

Respectfully,

A handwritten signature in cursive script that reads "David E. Stocker". The signature is written in black ink and is positioned to the right of the word "Respectfully,".

David E. Stocker  
Corporate Counsel