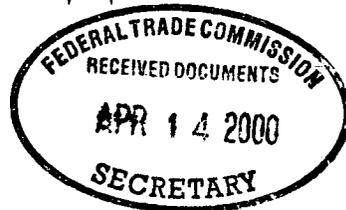


Independent Fee Appraisers



April 5, 2000

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: Gramm-Leach-Bliley Privacy Rule
16 CFR Part 131 - Comment

The National Association of Independent Fee Appraisers (NAIFA) appreciates the opportunity to comment on the Commission's rulemaking proposal in the above-captioned matter. NAIFA which was established in 1961, is a highly recognized professional appraisal association in the United States. International in scope, it teaches, tests and accredits its members as appraisal experts in the areas of real property. NAIFA is a founding member of the Appraisal Foundation, a nonprofit educational organization which fosters professionalism in appraising through the promulgation of generally accepted appraisal standards (i.e., The Uniforms Standards of Professional Appraisal Practice) and appraiser qualification requirements.

I. Background

The FTC has issued proposed regulations to implement the consumer financial privacy provisions of the Gramm-Leach-Bliley Act (GLB Act). The Rule, as proposed, "applies only to information about individuals who obtain a financial product or service from a financial institution to be used for personal, family, or household purposes"; and it states that the "principal type of entity subject to the Rule is a 'financial institution,' a term which is very broad under the Act."

Of primary importance to NAIFA is the Commission's request for comment on whether the Act's financial privacy provisions (Sections 502 and 503) should be interpreted to extend to the activities of firms identified by the Federal Reserve Board as being "closely related to banking" - including, specifically, firms providing real estate and personal property appraisal services. In this regard, the FTC requests comment on whether -

"An entity engaged in [real estate or personal property appraisal services] is a 'financial institution' only if it also extends credit or services loans; or whether [appraisal services] alone constitute a financial activity that results in an entity that engages in that activity being classified as a 'financial institution'."

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The Rulemaking Notice states, further, that the Commission is “also authorized to enforce the Act against ‘other persons’ who are not financial institutions, but receive protected information from a financial institution and are subject to the Act’s restrictions on reuse of the information...”.

If the FTC determines that its final Rule should apply to real estate and personal property appraisal firms (either because they are considered to be “financial institutions” under the broad definition of that term found in the Bank Holding Company Act; or because they are found to be ‘other persons’ who receive “protected information” from financial institutions), then thousands of small appraisal companies would be required to comply with a detailed set of procedural and substantive regulatory requirements governing their treatment and use of nonpublic financial information. These firms would have to develop formal privacy policies relating to the collection and dissemination of what the Commission has defined as customers’ “personal financial information” (including the right of customers to “opt-out” of any dissemination arrangement); provide an initial notice to their customers of those policies; annual notices thereafter during the duration of the customer relationship; and, observe all other substantive requirements relating to the disclosure of nonpublic personal information to affiliated and nonaffiliated third parties.

II. Executive Summary of Comments

The National Association of Independent Fee Appraisers strongly believes that there is no valid public policy basis for imposing the financial privacy provisions of the GLB Act on real estate and personal property appraisal firms. It is our view that Congress never intended for the Act’s privacy requirements to apply to appraisal firms and that doing so would not enhance in any meaningful way the financial privacy of consumers. We urge the FTC to consider that -

- Appraisal firms do not possess any of the business or operational characteristics of true financial institutions; and are not, in our opinion, even close to the types of “financial institutions” that Congress intended to cover when it wrote the Act’s financial privacy provisions;

- The Federal Reserve Board’s inclusion of appraisal services as an activity “closely related to banking” under the Bank Holding Company’s Act’s broad definition of “financial institution,” is not a reason to conclude that appraisal firms are “financial institutions” within the meaning of the GLB Act’s privacy provisions. The Fed’s broad definition of the term “financial institution” was designed to permit Bank Holding Companies to engage in the widest range of financial activities so as to modernize the financial services industry and to facilitate “one-stop” shopping. Because that purpose is totally different from - and, in fact, unrelated to - the intent of Congress in establishing financial privacy protections, it should not be used as a basis for including appraisal firms within those privacy protections;

- Real estate and personal property appraisal firms do not receive from financial institutions, and are not otherwise privy to, the type of sensitive “personal financial information” that we believe Congress intended to protect in Sections 502 and 503 of

the Act. Information gathered by appraisers concerns the real estate or personal property being appraised, not information about individuals.

Accordingly, we respectfully urge the FTC not to apply to appraisal firms, the privacy provisions contained in its final Rule. We sincerely believe that no public policy purpose contemplated by Congress would be served by doing so. To the contrary, application of the Rule to real estate and personal property appraisal firms would impose a substantial burden on thousands of which are primarily “Mom & Pop” businesses.

III. Discussion

Although the Federal Reserve Board has concluded that real estate and personal property appraisal services are “closely related to banking” and, as such, are permissible activities for bank and financial holding companies, we urge the Commission to recognize that the public policy reasons for that determination are entirely different from those which motivated the financial privacy requirements of the GLB Act. The legislative history of the Bank Holding Company Act and the GLB amendments thereto, demonstrate an intent by Congress to modernize the banking industry by permitting financial services companies to offer consumers, under one roof, the broadest possible array of financial services. In implementing this clear public policy objective, it was logical and even necessary for the Federal Reserve to be as comprehensive as possible in enumerating the types of services that these financial conglomerates could offer. In this public policy context, the inclusion of real estate and personal property appraisal services is entirely appropriate.

On the other hand, the public policy purpose driving Congressional enactment of Section 502 was entirely different. It was directed at circumscribing the dissemination of personal financial information by large or powerful financial entities whose customers are obligated to furnish them with vast amounts of such information; and which those financial entities then control. By contrast, the customers of real estate and personal property appraisal firms are the financial institutions themselves, which hire and pay them; and the information appraisers use to establish fair market value has to do only with the property itself, not the customers of the financial institution.

Appraisal firms operate on the outermost fringes of the financial services system and share virtually none of the operational and business characteristics of the financial institutions they serve:

- Appraisal firms do not extend credit, sell insurance, provide brokerage services or offer other similar financial products to consumers;

¹12CFR 225.28 enumerates the activities that the Federal Reserve regards as being “closely related to banking” and, therefore, permissible for a bank holding company or its subsidiary to engage in. In addition to “Real estate and personal property appraising, the CFR section includes “Check guaranty services”; “collection agency services”; “credit bureau services”; “asset management, servicing and collection activities”; “companies acquiring debt in default”.

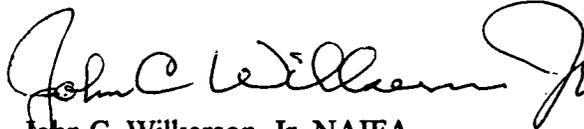
- Appraisal firms do not set the terms and conditions under which credit is extended or other financial products are offered;

- Appraisal firms do not collect from consumers the types of sensitive financial information contemplated by Congress when it enacted the GLB privacy provisions. Indeed, in most appraisal assignments relating to mortgage lending, the appraiser does not even know the identity of the financial institution's prospective borrower. That is because in performing an appraisal, the appraiser only knows the address of the property to be valued and the name of its current occupant. In a majority of cases, the current occupant of the collateral property is a seller or a tenant — not the individual applying for credit.

In short, appraisal firms should not be required to comply with a series of complex privacy requirements that are truly relevant only to significant players in the financial marketplace.

For all of the reasons state above, the final FTC Rule should not include real estate and personal property appraisal firms.

Sincerely,

A handwritten signature in black ink, reading "John C. Wilkerson, Jr." with a stylized flourish at the end.

John C. Wilkerson, Jr. NAIFA
President