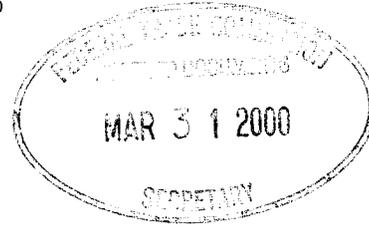


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March 31, 2000

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

Re: Gramm-Leach-Bliley Act Privacy Rule
16 C.F.R. Part 313 – Comment

Dear Sir:

We are pleased to have this opportunity to respond to the Federal Trade Commission's ("Commission") request for comments on its proposed regulations implementing Title V of Gramm-Leach-Bliley Act ("G-L-B Act"), P.L. 106-102. Our comments are limited solely to the impact of the proposal on debt buyers. The debt buying industry, as discussed herein, is principally engaged in purchasing consumer receivables in default. Debt buyers generally attempt to collect such obligations after they are acquired. We will assume for purposes of this letter that debt buyers are "debt collectors," as defined by the Fair Debt Collection Practices Act ("FDCPA"), and "financial institutions," as defined by the G-L-B Act. The purpose of this comment is to explain that debt buyers do not have a "customer relationship" with consumer debtors whose obligations are purchased.

The Commission's proposal provides that a "customer relationship" is characterized by a "*continuing relationship* between a consumer and a financial institution." Proposed § 313.3(i); 65 Fed. Reg. at 11,189 (emphasis supplied). Any financial institution with a "customer relationship" must provide to each customer a detailed written disclosure of its privacy policy at the inception of the relationship and at least annually thereafter. Proposed § 313.4 and § 313.5. This is true even when the institution does not disclose nonpublic personal information about the customer to any nonaffiliated third party.

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The Supplementary Information to the Commission's proposed regulations inaccurately concludes that consumer debtors have a customer relationship with debt buyers:

A consumer has a "customer relationship" with a debt collector that purchases an account from the original creditor (because he or she would have a credit account with the collector), but not with a debt collector that simply attempts to collect amounts owed to the creditor.

65 Fed. Reg. 11,174, 176. The Commission expressly requested public comment on this specific issue. *Id.* at n.6.

No "continuing relationship" exists between a debt buyer and consumer debtor. Indeed, the nature of the relationship between the debt buyer and consumer is so dissimilar to any other description or example of a "customer relationship" as to subject the proposed characterization to claims that it is arbitrary and capricious.

The consideration of debt buyers in the proposal's Supplementary Information section, in fact, mistakenly assumes that a debt buyer "purchases an account" relationship from the original creditor and further inaccurately states that a consumer debtor "would have a credit account" with the debt buyer. Contrary to the Commission's stated assumptions, debt buyers do not purchase "account" relationships. They purchase a receivable that is an accelerated balance. The consumer would have had an "account" with the original creditor, characterized by the provision of cash, goods, or services in return for the payment of principal and interest over time. Any such relationship is wholly dissimilar to the consumer's relationship with a debt buyer. Debt buyers seek payment of a lump sum accelerated balance, and may opt to seek such payment by instituting litigation immediately. In those cases where the consumer does make more than one payment to a debt buyer, such an arrangement results from an informal forbearance, not an "account" relationship.

Until the debt buyer initiates collection efforts, the consumer is utterly unaware of the assignment or the existence or identity of the debt buyer. Even if the debt buyer subsequently notifies the consumer of the assignment, the debt buyer's role is virtually identical to that of a debt collector, not the original creditor. Under the proposal, a consumer debtor does not have a "customer relationship" with a debt collector.

The G-L-B Act in no way compels the Commission's proposed position that debt buyers have a "customer relationship" with consumer debtors. Section 509(11) provides:

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CUSTOMER RELATIONSHIP.—The term “time of establishing a customer relationship” shall be defined by the regulations prescribed under section 504, and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.

Under the plain language of this section, the creation of a customer relationship begins at the inception of a credit relationship in the case of a “financial institution engaged in extending credit *directly* to consumers....” Debt buyers do not extend credit to consumers, directly or otherwise.

We urge the Commission to recognize that debt buyers do not have a customer relationship with consumer debtors, and to apply to debt buyers the straightforward rule set forth in proposed section 313.4(b). The privacy disclosure requirement should not apply unless the debt buyer discloses nonpublic personal financial information about consumer debtors to third parties. Application of this standard results in no fathomable diminution of consumer protection and, as described below, avoids harm to consumers and debt buyers that would result from the proposal.

As it stands, the proposal would require debt buyers, without exception, to mail a privacy notice in connection with each receivable acquired. The postage and administrative costs associated with this requirement will have an adverse financial impact on the business given the low per-receivable acquisition costs of certain portfolios and the fact that, often, debt buyers will attempt to collect only a small proportion of the receivables in a portfolio. For example, portfolios or significant portions thereof often are acquired for resale. In other cases, only those debtors that have a credit score at or above a certain threshold level will be contacted.

Leaving the proposal in its current form unnecessarily will disrupt existing debt buying business practices and impede the efficient marketplace in defaulted consumer debt, resulting in higher costs for debt buyers and, in turn, direct lenders and consumers. If adopted, the proposal also would have the anomalous effect of prompting collection efforts even in cases where the debt buyer otherwise would have no intent to contact the consumer. If the rule were to mandate transmitting a privacy policy to the consumer within a reasonable amount of time after acquisition of the receivable, debt buyers facing the cost of such a communication undoubtedly will send a collection notice at the same time. Indeed, section 807(11) of the FDCPA virtually compels this result. 15 U.S.C. § 1692(e)(11).

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We urge the Commission to take these comments into consideration prior to promulgating a final rule. Of course, we would be pleased to respond to any questions the Commission may have regarding these matters.

Very truly yours,



Walter E. Zalenski