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VIA E-MAIL  
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March 30, 2000

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

Re: Attention: "Gramm-Leach-Bliley Act  
Privacy Rule, 16 CFR Part 313-Comment."

Dear Sir or Madam:

I submit the following as comments to your proposed regulations under the Gramm-Leach-Bliley Act. I am a private citizen unaffiliated with any financial institution, and I submit these comments as such. However, I am a partner of a law firm (Willkie Farr & Gallagher) that represents many financial institutions in various matters -- none of which, as far as I know, relate to these privacy issues.

I believe that your proposed regulations have a huge flaw in that they totally miss the most important financial privacy issue, which is the systematic theft and sale of confidential information, particularly social security numbers (SSN's), by the credit reporting agencies (Experian, Trans Union, Equifax). The confidential information sold by the credit bureaus completely enables any resourceful investigator -- or crook -- to decipher a full financial picture on every American, from bank balances to stock holdings, without the subject's knowledge or permission. Any so-called "privacy" regulations that do not deal with this issue are, frankly, a waste of time. Yet your proposed regulations, while devoting great energy and complexity to peripheral issues, do not deal explicitly with the critical issue at all, and the credit bureaus may even claim that your regulations legitimize their outrageous conduct.

The flaw in your regulations derives in part from the statutory framework, and I of course recognize that you need to deal with the statute as written. But I think that the statute authorizes you to address this issue and if you fail to do so you risk leaving a hole so big that we end up even worse off than when you started.

Here is some relevant factual background:

Social security numbers in connection with name are used as the principal verification of identity by banks and credit providers. Each time someone applies for credit, she must provide her SSN. The credit provider gives the SSN to the credit bureau, which organizes its files by this number.

The credit bureaus systematically sell the SSN's in association with names, addresses, and other identifying information. They make the SSN's available through massive data bases maintained by services sometimes called "lookup" services. Although the credit bureaus claim these services are not available to the "public," the services are in fact available to anyone claiming a "legitimate business need," and certainly include: all banks, all insurance companies, the entire debt collection industry, the repo man who takes back your car in the dead of night, all lawyers, all hospitals, all private detectives, all law enforcement agencies, the guy your ex-wife has hired to dig up dirt on you, the private detective hired by the guy across the street who doesn't like you, and any one of the ten million or so people who work for one of these companies.

Recent widely published articles have detailed how an investigator, armed with someone's SSN, can easily put together a complete financial portrait of the individual, including supposed non-public information like bank balances, contents of brokerage accounts, and charges to credit cards. Because of the practice of the credit bureaus of selling confidential information without authorization, this information can be obtained with respect to anyone who has ever obtained credit of any sort in the United States -- whether or not an individual is suspected of a crime or of fraud, whether or not there is a judgment against him, whether or not he is current on his debts, whether or not he even has any current debt outstanding, irrespective of whether he may have paid every bill on time for his entire life. Again, because of the credit bureaus' misuse of confidential information, this information can be obtained without the permission of the subject of the investigation, and without informing the subject that the investigation is going on. And it can be obtained by essentially anyone legitimate or illegitimate, without need to establish the reason for the

investigation. The investigator could just as easily be a personal enemy digging up dirt or a thief preparing to clean out your mutual fund account as a legitimate creditor.

Take a look at the comments which are flooding in to you. It appears the private detective industry has organized a mass mailing to save its turf. All the comments are about the exact same thing: access to the credit bureaus' so-called "credit header" information, which includes name, address, prior addresses, SSN, and often other information thought likely to be known only by the individual, like mother's maiden name or high school attended. The form letters urge you not to restrict access to addresses, and on that issue I happen to agree. Addresses do not have a strong claim to confidentiality and, without more (like SSN or mother's maiden name) cannot be used to steal an identity or compile a financial profile.

But address is not the critical issue and is not, I believe, what the private investigators are really trying to protect. What the private detective industry really operates on is name associated with SSN and/or mother's maiden name, which information they purchase from the credit bureaus. With this information a detective can fake being you and can get a complete list of your assets from financial institutions. An unscrupulous person who knows how the system works can also open credit in your name and run up massive bills before you discover it, or alternatively can clean out your accounts.

Many comments urge unrestricted access to "credit-header" information on grounds that it is necessary or useful to enforce judgments or child support orders. Wrong. Someone with a legitimate judgment or child support order can and rightfully should be able to get the credit-header information by the simple device of a subpoena. Of course a subpoena entails putting the other side on notice. Too bad -- that's the law.

What the snoops want is access to the credit-header information when they don't have a judgment and don't have a child support order. They want to be able to find out bank balances and brokerage accounts at any time and without necessity to make a showing of need or let the subject know what they're up to. That's what they're doing right now, and it's their bread and butter. And it's theft. And if you don't at least give people the right to opt out, then your regulations are meaningless.

Some comments attempt to support current practices by arguing that "identifying" information is not "financial" information, and therefore is beyond the scope of what you may

restrict under the statute. As to address they have a point; but as to SSN or mother's maiden name I respectfully disagree. As was stated in the cover story of Forbes in November 1999, SSN associated with name is "the key to decrypting your financial privacy." Selling name associated with SSN renders your most confidential financial information a complete open book. I submit that that makes this information the very essence of "financial" information. And again, if you exclude this information from your opt out provisions, then there is no financial privacy in this country, and your regulations are a waste of time.

Now, how do the statute and your proposed regulations deal with this issue? The answer is that both appear to have been written by people who are totally unaware of the problem. My view is that your regulations as drafted would prohibit what the credit bureaus are doing -- but it is sufficiently unclear that they will undoubtedly take the opposite position and continue their outrageous conduct.

Your proposed regulation § \_\_.12(b) provides:

"(b) Limits on redisclosure and the reuse by other persons. (1) Except as otherwise provided in this part, if a bank discloses nonpublic personal information about a consumer to a nonaffiliated third party, that party must not, directly or through an affiliate, disclose the information to any other person that is a nonaffiliated third party of both the bank and that party, unless the disclosure would be lawful if the bank made it directly to such other person.

(2) A nonaffiliated third party may use nonpublic personal information about a consumer that it receives from a bank in accordance with an exception under §§ \_\_.9, \_\_.10, or \_\_.11 only for the purpose of that exception."

Back in § \_\_.11 we find the following:

"§ \_\_.11(a) Exceptions to opt out requirements. The requirements for initial notice to consumers in § 40.4(a)(2), the opt out in §§ \_\_.7 and \_\_.8 ... do not apply when a bank discloses nonpublic personal information:

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681) et seq.); or

(ii) From a consumer report reported by a consumer reporting agency."

Well, does that mean you can opt out of what the credit bureaus are doing or not? Currently they flatly refuse demands (including mine) to stop selling SSN's and other confidential identifying information. I submit that the 24 hour a day uncontrolled sale of all Americans' confidential information has nothing to do with the "purpose" of the Fair Credit Reporting Act exception. But rest assured that the credit bureaus will take the opposite position and continue doing just what they are doing, unless and until it is absolutely explicit that they cannot.

If the credit bureaus continue to make a mockery of financial privacy, then the pages and pages of your complex regulations will do nothing whatsoever to protect Americans' privacy, and will really only amount to a half-hearted effort to control junk mail -- an effort which is futile anyway because almost all names and addresses are available from other public sources like telephone directories and the NCOA data base.

I propose a simple change to your regulations that, while perhaps not a complete solution, goes as far as I think you can go under this statutory framework. Add to § \_\_.11(a)(5) a third subdivision as follows:

(iii) The purpose of this exception does not include the use or disclosure by a credit reporting agency of non-public personal information other than as part of consumer credit reporting, and the notice, opt out and joint marketing provisions of this part explicitly apply to disclosure or sale by credit reporting agencies of any portion of so-called "credit header" or other identifying information except for name associated with address and/or former address(es). Disclosure of name associated with any other identifying information, including but not limited to social security number, age, birth date, mother's maiden name and/or high school attended, is explicitly subject to the notice, opt out and joint marketing provisions.

You have an alphabet soup of big time bureaucracies working on this issue. My question is: are you going to deal with the problem or miss it completely while it's staring you in the face?

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A point made by many commenters - that we have to balance privacy against legitimate creditors' rights - is perfectly valid. That balancing has been done by state laws, that give legitimate creditors extensive discovery and subpoena powers. The balance struck by those laws is appropriate. But we now have a situation where the credit bureaus and the private detectives have arrogated to themselves, through theft of confidential information, the right to denude all Americans of financial privacy not just when they owe a judgment but at all times and without notice. The system they have put in place leaves every American at constant and unacceptable risk of identity theft or wrongful asset transfer. You have been given the authority to fix the mess. Do your job.

Very truly yours,

A handwritten signature in black ink, reading "Francis J. Menton, Jr." in a cursive script.

Francis J. Menton, Jr.

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