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October 9, 2001

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

Re: Standards for Safeguarding Customer Information  
66 FR 41162 (August 7, 2001)

Dear Sir or Madam:

America's Community Bankers ("ACB")<sup>1</sup> is pleased to comment on the proposed rule issued by the Federal Trade Commission ("FTC"), that would establish certain standards relating to administrative, technical, and physical information safeguards for financial institutions subject to the FTC's jurisdiction.<sup>2</sup> The proposed safeguards would implement sections 501 and 505(b)(2) of the Gramm-Leach-Bliley Act ("Gramm-Leach-Bliley").

### **ACB Position**

ACB supports the tailored and flexible approach employed by the FTC in developing the proposed standards. This approach is consistent with comments we previously have provided to the FTC. And, except as noted below, we believe the proposed standards and elemental requirements strike an appropriate balance between certainty and flexibility. This balance should facilitate community banks implementing an effective information security program that is best suited to their institution, its business, customers and practices.

In addition, ACB generally supports the proposed standards for an information security program, which allow institutions to develop programs that are appropriate to their size and complexity, the nature and scope of their activities, and the sensitivity of the information at issue. Assuming the necessary flexibility is incorporated in the final rule, ACB believes the proposed five elements of an information security program, as outlined below, generally are attainable.

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<sup>1</sup> ACB represents the nation's community banks of all charter types and sizes. ACB members, whose aggregate assets exceed \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

<sup>2</sup> 66 Fed. Reg. 41162 (August 7, 2001).

Additional flexibility is necessary, however, in the area of affiliate information sharing. As the FTC notes in its preamble, section 502(a) of Gramm-Leach-Bliley restricts the disclosure of nonpublic personal information to nonaffiliated companies only. In response, the FTC proposes to require that financial institutions sharing customer information with affiliates ensure that the receiving affiliate has appropriate safeguards in place to protect the customer information at issue. The definition of “customer information” in proposed section 314.3(b) specifically includes information shared with affiliates. This is a departure from the definition established by the banking regulators in their final information security regulations<sup>3</sup> issued pursuant to Gramm-Leach-Bliley. When combined with the “service provider” requirements in proposed section 314.4(d), it may be interpreted that affiliated companies functioning as “service providers” under the regulation would be required to execute written contracts committing to implement and maintain the appropriate safeguards.

While ACB supports the view that protection of a financial institution’s customer information is paramount, we believe that requiring written contracts between affiliated entities will result in an additional level of regulatory burden and significant costs without any corresponding enhancement of customer information security. This proposed requirement in an affiliate relationship setting will involve unnecessary and time-consuming record keeping, which, in turn, will divert important resources away from more critical compliance efforts aimed at ensuring the integrity and security of customer information. Particularly with respect to financial institutions and their affiliates, which are subject to high levels of supervision and regulation by the banking agencies, we believe this additional requirement is unwarranted. In the final rule, ACB requests that the FTC eliminate this written contractual requirement for all but unaffiliated third party arrangements.

### **The Proposal**

Gramm-Leach-Bliley directs the FTC, along with the federal banking and other agencies, to establish standards for financial institutions relating to administrative, technical and physical information safeguards. While the federal banking agencies earlier issued guidelines in this area, the FTC is required to proceed via rulemaking. On September 7, 2000, the FTC published an advanced notice of proposed rulemaking seeking input on the mandated standards.<sup>4</sup> Following the comment period, the FTC on August 7, 2001 issued the proposed rule, which is intended to accommodate a necessary level of flexibility among financial institutions while ensuring a general procedural framework for protecting customer information is in place at all institutions.

The FTC’s proposed rule mandates that all financial institutions subject to its jurisdiction shall develop, implement and maintain a comprehensive written information security program that contains administrative technical and physical safeguards, which are appropriate to the size and complexity of the institution, the nature and scope of its activities, and the sensitivity of the customer information at issue.

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<sup>3</sup> 66 Fed. Reg. 8640 (February 1, 2001).

<sup>4</sup> 65 Fed. Reg. 54186 (September 7, 2000).

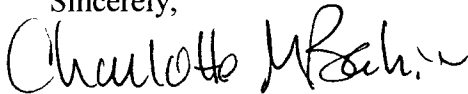
An information security program should include the following elements:

- Designation of an employee or employees to coordinate the program;
- Assessment of risks in each area of operations;
- Design and implementation of a program to control these risks;
- Procedures to require service providers (by contract) to implement appropriate safeguards for the customer information at issue; and
- Ability to adapt an information security program in light of material changes to its business that may affect its safeguards.

### **Conclusion**

ACB appreciates the opportunity to comment on this important matter and stands ready to work with the FTC in its efforts to develop effective yet flexible standards for safeguarding customer information. If you have any questions, please contact the undersigned at (202) 857-3121 or via email at [cbahin@acbankers.org](mailto:cbahin@acbankers.org); or Michael W. Briggs at (202) 857-3122 or via email at [mbriggs@acbankers.org](mailto:mbriggs@acbankers.org).

Sincerely,

A handwritten signature in cursive script that reads "Charlotte M. Bahin".

Charlotte M. Bahin  
Director of Regulatory Affairs  
Senior Regulatory Counsel