

October 9, 2001

Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Avenue, NW
Washington, DC 20580

Gramm-Leach-Bliley Act Privacy Safeguards Rule, 16 CFR Part 314—Comment

Ernst & Young LLP is pleased to submit this comment on the Commission's proposed Standards for Safeguarding Customer Information, 16 C.F.R. Part 314 (the "Standards"). We suggest that Section 314.2(d) be amended to exclude accountants and auditors from the definition of "service provider" to ensure that the Standards are consistent with the treatment of disclosures to accountants and auditors in the Gramm-Leach-Bliley Act ("GLB") itself and in the Commission's existing regulations thereunder.

In enacting GLB, Congress recognized that disclosures to attorneys, accountants and auditors of a financial institution should be treated differently than disclosures to other service providers because these professionals are obligated as a matter of law and professional ethics to keep client information confidential. (In the case of auditors and other accountants, this obligation is embodied in Rule 301 of the Code of Professional Conduct of the American Institute of Certified Public Accountants, as well as state accountancy laws.) Accordingly, Section 502(e)(4) of GLB exempts the provision of information to accountants and auditors, as well as attorneys, from the general rules governing disclosures to third parties. The Commission's regulations implementing GLB include a similar provision. *See* 16 C.F.R. § 313.15(a)(3). Notably, the existing regulations exempt accountants and auditors even from the more lenient rules that govern disclosures to service providers. Thus, although a financial institution generally must enter into a contractual confidentiality agreement with a service provider before disclosing nonpublic personal information to it, this requirement does not apply to disclosures to accountants and auditors.

The proposed Standards could be read to require a contrary approach. Section 314.4(d) of the proposed Standards mandates that financial institutions oversee service providers by, among other things, "requiring [their] service providers by contract to implement and maintain" appropriate safeguards for customer information. Unlike the current GLB regulations, the proposed Standards do not explicitly exempt disclosures to accountants and auditors from this requirement. Arguably, an explicit exemption is unnecessary given that adherence to professional rules — including those governing the safeguarding of client information — is an implicit part of any agreement by an accountant or auditor to provide services. However, explicitly exempting accountants and auditors from the definition of "service provider" in the proposed Standards, just

as these professionals are already exempted from the similar provisions of the existing GLB regulations, would avoid any confusion on this point.

By providing the express exemption for disclosures to accountants and auditors in Section 502 of GLB, Congress made clear its view that, in light of the legal and professional obligation of confidentiality governing accountants and auditors, disclosures to such professional do not raise privacy concerns. In our view, imposing a contract requirement on disclosures to accountants and auditors under the guise of implementing Section 501 would undermine Congressional intent by rendering the explicit exemption in GLB itself essentially meaningless.¹

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We appreciate the opportunity to provide our views on the proposed Standards and would be pleased to provide any further information you may request. Should you have any questions, please contact Kathryn A. Oberly, Vice Chair and General Counsel, at 212-773-2500, or my office at 202-327-7611.

Sincerely,



J. Andrew Heaton
Associate General Counsel

¹ We recognize that the Commission's proposed definition of "service provider" is derived from the guidelines previously adopted by the federal banking agencies. We will be suggesting to the banking agencies that their guidelines be modified to incorporate the same exception we are suggesting here.