

# Understanding Gramm-Leach-Bliley

## Keeping Personal Information More Private Than Victoria's Secret

By ALEX HOGAN

Despite the irony, a Victoria's Secret catalog provided stimulus for lawmakers to include Title V into the Gramm-Leach-Bliley Act (GLBA), which regulates financial institutions' ability to disclose customers' personal information, and also provides customers with a small measure of control by allowing them to opt out of information sharing under certain circumstances.

Rep. Ed Markey introduced Title V. But the measure's connection with Victoria's Secret arose from Rep. Joe Barton's personal experience when he began receiving catalogs from the lingerie company at his home in Washington. On its face, this does not sound like an unusual circumstance, except for the fact that neither he nor his wife had purchased any items from Victoria Secret at the Washington address.

Barton barely spent money in Washington at all, and his credit union was the only business that had his Washington address. While outraged at the concept that his personal information had been sold, Barton had a second and perhaps more pressing worry. He was troubled by the notion that his wife might believe he'd purchased lingerie items for other women in Washington. Barton's concern was especially valid for a politician in the capital city, but unfortunately his experience is not unique.

The reality is that people regularly receive similar unsolicited catalogs and advertisements. How do businesses obtain personal information from people they have never done business with before? Financial institutions may be profiting by selling personal information they collect from their customers, including their names, addresses, Social Security numbers, bank balances, and financial account numbers.

If you are not sufficiently alarmed yet, this might help. Another scandal that prompted Title V of the GLBA occurred when Charter Pacific Bank of Agoura Hills, Calif. sold an Internet-porn operation access to a database of approximately 3 million credit-card numbers. The porn operation then engaged in an illegal scheme that entailed charging customers for visits to a porn Web site that the customers had not ordered. In fact, many of the customers did not even own a computer.

Ultimately, the Federal Trade Commission won a \$37.5 million judgment against the

porn operation. The court found that approximately 90% of its annual 'sales' of about \$49 million were derived from illegal charges.

Although I have shamelessly attempted to lure readers with mentions of sexy lingerie and scandals, the intent of this article is actually to provide a general overview to individuals as to how and when they should protect certain personal information possessed by financial institutions, and to provide financial institu-

include the contents of a loan application, Social Security numbers, and account balances and histories. A financial institution must provide notice to its customer at the time it establishes a relationship with the customer, and then annually for so long as the relationship continues.

The contents of the notice must include the financial institution's sharing policies and practices and the NPI it collects. If it intends to disclose NPI, the notice must also indicate whether such disclosure is permitted by a GLBA exception, the type of NPI it intends to disclose, and a description of the parties to whom NPI will be disclosed.

What rights does the customer have? While there are

many exceptions, a financial institution generally may not disclose NPI to a non-affiliated third party unless it provides the customer with a reasonable method and opportunity to opt out of such sharing. (Note that GLBA does not prohibit sharing NPI with affiliates.) The financial institution's opt-out notice must provide the customer with an explanation of his or her right to opt out within a certain time frame, and provide a reasonable means to do so. The notice should include, for instance, a toll-free telephone number or detachable form with mailing instructions. Provided adequate notice is given, a financial institution may share a customer's NPI if the customer fails to opt out within the delineated time — say, 30 days, for example.

Certain exceptions enable financial institutions to share NPI with non-affiliated third parties without providing an opportunity to opt out. For example, a financial institution may disclose the NPI to a third-party service provider of the financial institution to market its products and services. Other permitted disclosures include those necessary to administer or enforce a transaction with the customer, maintain or service the customer's account, or comply with federal, state, or local laws, or those pursuant to the Fair Credit Reporting Act.



tions with some insight into GLBA compliance. Obviously this article is limited in scope and cannot be viewed as a comprehensive report of the entire law on this matter; consult a lawyer for specific legal advice.

What businesses are affected by GLBA, and who is protected? More than just banks are impacted — the law applies to financial institutions that are significantly engaged in financial activities, some of which are automobile dealers that finance or lease to customers, credit-counseling services, financial advisors, collection-agency services, mortgage lenders or brokers, and retailers that issue their own credit cards, among many others.

Consumers and customers are protected by this law. Their rights and protections depend on the distinction between the two. However, for the purposes of this article, the main focus will be on a 'customer,' i.e. an individual who has consumed the financial institution's product or service to be used mainly for family, household, or personal use, and who has a relationship with the financial institution.

What are a financial institution's obligations? Such a business is generally required to provide its customers notice of its policies and practices regarding sharing non-public personal information (NPI). Examples of NPI

GLBA does not provide customers with a private right of action against financial institutions for violations. Various federal agencies, such as the Federal Trade Commission, are responsible for enforcement. Therefore,

customers must be proactive if they wish to protect their information by reviewing papers provided by their financial institutions and taking affirmative action to opt out if that choice is available. ■

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