

Response to GAO on GLB by NCISS

The following letter has been sent to the U.S. General Accounting Office in response to their inquiry regarding Gramm-Leach-Bliley. The law requires that a survey of compliance be accomplished. All investigators are reminded that Section 521(a)(1) & (2) makes it a federal crime to misrepresent yourself to a financial institution or its customer for purposes of obtaining customer information. Any investigator hiring another investigator or outside service to locate assets for a client to satisfy a judgment should make it clear in their assignment letter that no laws are to be broken and that specifically, Section 521 of Gramm-Leach-Bliley must be complied with.

As a matter of interest, NCISS is aware, from testimony before Congressional hearings, that the FTC is in the process of verifying compliance of GLB and we believe is conducting stings of information brokers suspected of non-compliance. We fully expect an example to be made of persons who are violating the law. Lets be sure that the attendant unfavorable publicity does not point at licensed private investigators. If that happens, surely more draconian laws will result. As you can see in the following letter, we are appealing to the government and Congress to amend GLB so that bank accounts to satisfy debtor judgments may be located lawfully. In the interim, we must obey the law.

NCISS Legislative Committee

January 30, 2001

Alexandra Martin-Arseneau
Senior Analyst
United States General Accounting Office
301 Howard Street, Suite 1200
San Francisco, California 94105

Re: Gramm-Leach-Bliley Study

Dear Ms. Martin-Arseneau:

This is in response to your letter of January 18, 2001 to Robert Townsend in care of the California Association of Licensed Investigators, CALI. You asked for the association's position on a number of issues and for the names of other groups or individuals you might contact.

This letter represents the official position of the National Council of Investigation and Security Services with regard to those issues you raised. NCISS membership includes the National Association of Legal Investigators, NALI, as well as forty other state and regional investigative trade associations in the United States. Mr. Townsend is Legislative Chairman of NALI and a member of CALI. I am a past president of CALI and NCISS and currently serve as Legislative Co-Chairman of NCISS.

Following are the questions you posed and our position:

1. Does your organization have a position on Section 521 (prohibition against pretext calling) of the Gramm-Leach-Bliley Act? If so,

(a) What is the position?

The position of the National Council of Investigation and Security Services is to abide by the law as written. As discussed below, we believe that some modifications of the law are needed.

(b) Does your organization have any concerns with respect to the efficacy or adequacy of the remedies provided by the subtitle?

Yes and No. We understand Congress' and the public's abhorrence to the past practice of pretexting financial institutions and we believe that Section 521 (a)(1) adequately makes that unlawful. But in so doing, Congress has eliminated one of the few means by which a consumer can locate and subsequently recover rightfully owed bank account assets from a judgment debtor. There is no central, accessible repository or listing of bank account holders for a law abiding consumer victim to utilize. Therefore, it is nearly impossible for consumers who hold lawful judgments, to locate accounts and collect if bank account assets are being hidden. As a result, victims of fraud and other judgment holders, have limited legal means of locating the bank accounts of fraudsters and persons hiding funds from execution of judgment.

(c) Does your organization have any recommendation or suggestions for additional legislation or regulation related to pretext calling (e.g., private right of action, state enforcement, elimination/restriction of the exemption provisions, etc.)?

Yes. We understand that the practice of obtaining information from financial institutions through the use of pretext had to stop. But Congress should amend GLB to make allowance for the use of pretext as an investigative tool to locate hidden assets when contacting judgment debtors or persons who have committed fraud. This could be done simply by removing paragraph (a)(2) of Section 521.

We find it quite ironic that in order to protect alleged violations of consumer financial privacy, Congress created a law that benefits criminals and judgment debtors hiding assets from lawful collection. The fact remains, it is highly unlikely that anyone would pay substantial fees to a so-called information broker merely to satisfy an idle curiosity. In fact, the clients of these information brokers were mostly other financial institutions and law firms representing consumers who hold lawful judgments. Pity poor elderly consumers who have lost their life savings to fraudulent schemes. They throw good money after bad if they finance a lawsuit to obtain a judgment, only to find it uncollectible because pretexts may not be used against the fraudster to locate the ill-gotten gains.

As also indicated in (d) below, Congress should also clarify GLB to make it clear to the FTC that it was not the intent of Congress to ban the use and sale of credit header information. We do not believe that information that can be used to identify or locate a person or differentiate between persons, is financial information. This information is vital to the conduct of many investigations and the locating of witnesses. Eliminating this information source will make location of some witnesses impossible or add substantially to the cost of locating witnesses and defendants to the detriment of law abiding consumers.

(d) Are you aware of any unintended consequences of the statute?

Yes. The consumer who is holding a judgment does not have access to any central repository of banking and/or brokerage information to assist in the collection of the judgment. By making it unlawful to employ a pretext/subterfuge when contacting any person who also happens to be a bank customer, Congress has provided a shield for any crook who has a bank account. The use of pretext is a tried and true investigative tool used for decades by all law enforcement agencies and the private investigative industry to combat fraud, apprehend criminals and obtain restitution for victims. GLB makes it a crime to employ such a technique, no matter the validity of purpose. Paragraph (a)(2) of section 521, should be removed by amendment.

GLB has been interpreted by the FTC as directing that our profession and others not have access to credit head-

ers for non-FCRA purposes. This is currently the subject of litigation. Congress should make it clear that it was not their intent to assume that credit header information is derived from financial sources. This information is vital to the conduct of many investigations and the locating of witnesses for plaintiffs and defendants alike. The unintended consequence of limiting access to credit headers will be to the detriment of consumers through increased costs of litigation and inability to locate witnesses economically, if at all.

2. Does your organization have any concerns about or a position on information brokers relative to financial privacy in general and pretext calling specifically?

There are information brokers and there are information brokers. Many information brokers are reputable, responsible organizations who provide information only to authorized persons with whom they have a contractual, audited agreement. But, there are also rogue information brokers who advertise they will sell information to anyone willing to pay the price. Many of these rogue offerings are scams that provide little or no information. But many irresponsibly provide non-public personal information, no matter the client or purpose. NCISS would support carefully crafted legislation which would preclude the sale of non-public personal information, financial or otherwise, to the general public. We believe that FTC oversight and possible criminal sanctions should be applied. The legitimate information brokers, such as IRSG members who are making great strides with self regulation, should be supported because they, like licensed private investigators, are an integral part of our civil and criminal justice systems. Congress should make it clear that information for legitimate purposes needs to be available to support commerce and our legal system. The regulation of non-public private information must not be at the expense of extinguishing the ability of licensed private investigators and attorneys to obtain vital information for the very citizens the Act and the FTC's ruling were designed to protect.

3. Are you aware of any data that would show the extent or the prevalence of pretext calling or the size of the information broker industry?

We presume you are speaking of current pretext calling of financial institutions that may be taking place. From Congressional testimony and media programs, we understand that some information broker methods have included pretext calling of financial institutions which is now prohibited. There are still services who advertise that they can help locate bank accounts. We have no first hand knowledge of their practices, but suspect the FTC is, or will be, investigating them to determine if they are violating GLB.

We recently provided the FTC a package of questionable information broker advertising materials which had been sent to our members. Our allied associations will continue to search for web sites providing non-public information and provide documentation to the FTC for their review. We have no data indicating the size of the information broker industry.

4. Are you aware of any actions taken by the information brokerage industry as a result of the passage of section 521?

Again, most of our members revised their practices with regard to assets investigations and informed their clients of the new law. Yet as leaders of our organization speak to gatherings of investigators across the country, it is obvious from the questions of some in the audience that not everyone understands the new law. Accordingly, we recommend that the requirements of GLB continue to be publicized.

We do not have first-hand knowledge of what actions the information brokers have taken. Some have undoubtedly gone out of business, but others still advertise. Some of the remaining brokers who claim to be able to locate assets also advertise that they do so without violating GLB. I have spoken to members who say they are reluctant to utilize these brokers in spite of this assurance. Licensed investigators continue to locate assets relying primarily on public records and traditional means of investigation. The prohibition of using a pretext when speak-

ing to the judgment debtor is a major hindrance to obtaining restitution for victims.

5. Does your organization have any concerns related to the privacy of customer financial information? Social Security numbers?

Yes. We are consumers too. We feel that financial information of the average consumer should be confidential. But we believe exceptions are in order for judgment debtors and the subjects of lawful investigations. Why should individuals be able to hide assets when a court has ruled that they owe monies or restitution? A system whereby consumers may opt-out of having their information shared will be exploited by crooks and scam artists using this loophole to their advantage.

We do not believe that social security numbers should be available on the Internet to anyone willing to pay the price to buy them. But, whether we like it or not, the social security number has become a prime means of personal identification that is used by most consumers to identify themselves. In our work, preparing evidence for use in court and locating witnesses, heirs, etc., positive identification is absolutely essential. For this reason, NCISS supported "Amy Boyer's Law" which was introduced in the 106th Congress by Senator Gregg. As written, the law would have provided for the legitimate uses of the social security number, while precluding what we consider to be the illegitimate uses and wrongful publication of the social security number. We hope that this legislation will be reintroduced as it appears to be a common-sense solution to a thorny problem. NCISS disagrees with privacy advocates who felt it was not restrictive enough.

6. What privacy problems are created from the sharing of customer information within a financial holding company?

NCISS does not have first-hand knowledge of these issues. We do realize that there are concerns. It would be improper for us to speculate on these practices.

7. In your view, what states have been most active in the area of financial privacy?

We have no first-hand way of answering this question. If you are referring to state legislatures, we presume the so-called bellwether states are the most active, but that is speculation.

8. What other groups or individuals would you suggest that we contact regarding the issue of pretext calling?

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Thank you for the opportunity to present the consolidated views of our industry. If you have any questions, you may email me at mclained@aol.com.

Yours truly,

Eddy L. McClain
Director & Past President