CREDIT BUREAU'S PRIVACY STATEMENT ON THE GLB ACT

We understand that some financial institutions have been concerned about the effect that the Gramm-Leach-Bliley Act ("GLB Act") will have on contracts with **consumer reporting agencies** when compliance with the GLB Act becomes mandatory in July 2001. Specifically, there are questions as to when the law requires privacy statements or contract language protecting the confidentiality of "nonpublic personal information." An explanation of the applicable GLB Act requirements may answer these questions.

The GLB Act privacy rules impose certain requirements on financial institutions when they enter into **"service provider"** agreements with nonaffiliated third parties and wish to disclose "nonpublic personal information" to those parties for use in performing services to the company such as marketing the institution's financial products or services. [1] If the financial institution does not want to give the consumer the opportunity to "opt out" of having the consumer's nonpublic personal information disclosed to the third party for such purposes, then the GLB Act requires that the agreement with that third party service provider contain a clause requiring the third party to protect the confidentiality of the information. [2]

This contractual requirement for the **"service provider"** exception may lead to confusion about whether other exceptions require the use of contracts as well. However, when nonpublic personal information is disclosed under other specific exceptions, the GLB Act does not require the parties to enter into a contract to protect the confidentiality of the information.[3] Instead, in providing for the specific exceptions, the GLB Act contains language that restricts the redisclosure of the nonpublic personal information provided under the specific exception to the purpose for which the financial institution originally disclosed it. In other words, the law itself provides for the confidentiality of the nonpublic personal information when used pursuant to the specific exceptions and, therefore, the law does not require any contract provision to protect this confidentiality.

One such specific exception is when a financial institution discloses nonpublic personal information to a **consumer reporting agency**.[4] Because the Fair Credit Reporting Act ("FCRA") governs the disclosure of nonpublic personal information *by* **consumer reporting agencies** and because both laws address the disclosure of nonpublic personal information disclosed *to*

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[1] Section 502(b)(2) of the GLB Act contains the requirement that financial institutions enter into confidentiality agreements with nonaffiliated third parties that perform services for the institution. As specified in the contract, the service provider agrees to maintain the confidentiality of the information it receives.

[2] For example, when a service provider receives nonpublic personal information in order to provide marketing services, it could be argued that the redisclosure of that information for other marketing purposes would be sanctioned by the language of the Act, which requires subsequent use of the information to conform with the purpose for which it was received. Yet to allow the reuse of this information for other marketing purposes would not serve to protect the consumer against unauthorized and unrestricted reuse of this information. Therefore, the requirement for confidentiality agreements may have grown out of Congress's desire to restrict the reuse of this information by service providers.

[3] Section 502(e) states that a financial institution can disclose information to a consumer reporting agency, pursuant to the FCRA, without being subject to the notice, opt-out, or contract requirements of the GLB Act. Other specific exceptions not subject to the contract requirement include disclosing information (a) with the consent of, or at the direction of the consumer, (b) to protect against fraud, (c) for required institutional risk control, resolving consumer disputes or inquiries, (d) to provide information to insurance rate advisory organizations (e) to attorneys, accountants or auditors, and (f) in connection with a proposed or actual sale, merger, transfer of a business or operating unit, if the disclosure concerns solely consumers of such business unit.

consumer reporting agencies, the GLB Act does not require any contractual language to protect the confidentiality of that information.[4]

Therefore, in light of these exceptions, the confidentiality agreements you are currently asking your third party processors or servicers to sign are inaccurate because they do not reflect your right to disclose information to a **consumer reporting agency** without any such agreements. In this regard, we would be happy to present you with a short privacy position statement or, if you so choose, execute the following privacy provision that can be attached as an addendum to your membership contract:

CONFIDENTIALITY OF INFORMATION

The Bureau, as a consumer reporting agency, adheres to the privacy tenets of the Fair Credit Reporting Act, 15 U.S.C. ээ 1681 to 1681u (Sections 601 to 625 of the FCRA). The Bureau will use and disclose any personally identifiable financial information that the Member furnishes to the Bureau about consumers or customers only as permitted under the FCRA and, where applicable, the Gramm-Leach-Bliley Act. 15 USC §6801 et seq.

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[4] The Federal Trade Commission (FTC) promulgated rules to implement the GLB Act for certain financial institutions. The FTC confirmed these exceptions, expressly stating that disclosures made to a consumer reporting agency are not subject to the confidentiality agreement requirement:

> The majority of the comments on this exception expressed concern that routine servicing agreements between a financial institution and, for instance, a loan servicer would be subject to the requirements of proposed §313.9, which appears as §313.13 in the final rule. These commentators consistently pointed out that section 502(e) of the GLB Act contains several exceptions for the sharing of information by a financial institution that is necessary to permit a third party to perform services for a financial institution. **The commentators requested clarification that disclosure made pursuant to one of the section 502(e) exceptions are not subject to the requirements imposed on disclosures made pursuant to section 502(b)(2) of the GLB Act. The Commission agrees that when a disclosure is made under section 502(e), the Act permits that disclosure without first complying with the requirements of section 502(b).**