

# Accountability

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Issue XVII

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## **Guidelines on Gramm-Leach-Bliley Bill responsibilities (FTC Privacy Requirements)**

With effect July 1, 2001, accountants providing tax preparation and/or financial services will be required to provide written notice of their privacy policy to all individual clients, under the Federal Trade Commissions final rule on privacy of consumer financial information (Title 16 CFR Part 313).

The FTC has issued the requirement under those provisions of the 1999 Gramm-Leach-Bliley Act intended to protect the privacy of recipients of very broadly defined financial services, including tax planning, financial planning and tax return preparation.

Accountants providing these services must deliver initial privacy disclosures to existing individual (not business) clients no later than July 1, 2001. From then on, new clients must be provided with an initial privacy notice before they become a client. All existing clients are also to receive an annual privacy notice. Under the FTC rule, if an initial privacy notice is given to a client in 2001 then the annual notice to that client must be by December 31, 2002 and each subsequent annual notice must be within 12 months. No annual notice is required for people who have ceased to be clients. A single notice addressed to a husband and wife is considered satisfactory when they are joint clients of the firm, unless one of the joint account holders requests a separate notice.

The new law also prohibits financial institutions from disclosing nonpublic personal information about a client to nonaffiliated third parties, unless the financial institution meets various disclosure requirements and provides the client with the opportunity to "opt-out".

The ruling affects those accountants "significantly involved" in providing tax and/or financial services. The FTC's example of not being significantly involved is someone who prepares tax returns without remuneration for family or friends or as a community service.

The disclosures must provide a clear and conspicuous notice that accurately reflects the privacy policy and practices, and the notice must be in writing or, if the

consumer agrees, can be provided electronically. The privacy notice should be on a separate piece of paper with bold headings and include:

- A. The types of information you collect.
- B. Parties to Whom You Disclose information.
  1. A statement should be included that nonpublic personal information may be disclosed to affiliates and nonaffiliated third parties as permitted by law and the Code of Professional Conduct of your professional association or society:
    - a. In complying with a validly issued and enforceable subpoena or summons
    - b. In the course of a review of the accounting firm's professional practice under the local professional society or State Board of Accountancy authorization.
    - c. Initiating a complaint or responding to an inquiry made by the Professional Conduct Committee of the local professional society, the ethics division or trial board of AICPA or duty constituted investigative or disciplinary body of another State accounting Society or Board of Accountancy.
    - d. A review of a professional practice in conjunction with a prospective purchase, sale, or merger of all or part of our practice, provided that the firm takes appropriate precautions (for example, through a written confidentiality agreement) so the prospective purchaser does not disclose information obtained in the course of the review.
    - e. Participating in actual or threatened legal proceedings or alternative dispute resolution proceedings either initiated by or against the accounting firm, provided the firm discloses only the information necessary to file, pursue, or defend against the lawsuit, and takes reasonable precautions to ensure that the information disclosed does not become a matter of public record.

2. A statement should be included that nonpublic personal information may be disclosed to affiliates and nonaffiliated third parties, as permitted by law and the Ethics Rulings 391 .001 and 391 .009 of the AICPA, providing information to affiliates of the firm or nonaffiliated third parties who perform services or functions for the firm pursuant to a contractual agreement prohibiting the disclosure or use of the information other than for the purposes for which the information was disclosed; for example, using an outside service bureau to process clients tax returns, or, using a records-retention agency to store clients records.

C. General Restrictions on Disclosure of Nonpublic Personal Information to Affiliates and Nonaffiliated Third Parties.

1. A statement that Internal Revenue Code 7216 generally prohibits disclosure of income tax return information without the client's consent, other than for the specific purpose of preparing, assisting in preparing or obtaining and providing services in connection with the preparation of any income tax return of the taxpayer.

2. A statement that as a member of your professional association or society, every member must comply with the Code of Professional Conduct which prohibits disclosure of confidential client information without specific client consent, except for disclosures identified in paragraph B (1) and (2) above.

D. A statement of your firm's practices for protecting the confidentiality and security of nonpublic personal information.

**Example Letter:**

**PRIVACY POLICY OF XYZ ACCOUNTING FIRM**

*Your privacy is important to us. At XYZ accounting firm, we are committed to your privacy and retaining your trust. We respect your right to keep your personal information confidential and to avoid unwanted solicitations.*

*Please read this to learn how we handle your personal information.*

**Types Of Information We Collect:**

*We collect nonpublic personal information about you that is provided by you or obtained by us with your authorization to prepare your personal income tax*

*returns and provide personal financial planning to you.*

**Examples Of Sources From Which We Collect Information:**

*CLIENT INTERVIEWS, TAX RETURN ORGANIZERS, FINANCIAL PLANNTNG ORGANIZERS, AND FINANCIAL HISTORY QUESTIONNAIRES*

*To properly prepare your income tax return or provide financial planning services, we receive information from you to complete your tax return or financial plan. This information is collected from you in written form, by phone, on line, by mail and in personal interviews arid consultations conducted by us, as well as by information we collect from others with your authorization.*

*TRANSACTION INFORMATION. This is information about your transactions with us and includes information necessary for billing and payment for our income tax preparation and financial planning services, as well as all correspondence between you and us. Transaction information would also include your payment history with us, billing records and any collection effort engaged in by us for payment of services rendered to you.*

**Parties To Whom We Disclose Information:**

*We do not disclose any nonpublic personal information about our clients or former clients to our affiliates or to nonaffiliated third parties except as permitted by law, the Code of Professional Conduct of the [local professional association or society] and Ethics Rulings of the American Institute of Certified Public Accountants (AICPA). Nonpublic Personal Information about you and our former clients may be disclosed to both our affiliates and nonaffiliated third parties as permitted by law, our Code of Professional Conduct, and Ethics Rulings of the AICPA, as follows:*

- 1. Complying with a validly issued and enforceable subpoena or summons,*
- 2. In the course of a review of our firm's practices under [your local] State Board of Accountancy authorization.*
- 3. Initiating a complaint or responding to an inquiry made by tile Professional Conduct Committee of [your local professional association or society], the ethics division or trial board of the AICPA or duly constituted investigative or disciplinary body of another State accounting Society or Board of Accountancy.*
- 4. A review of a professional practice in conjunction with a prospective purchase,*

sate, or merger of all or part of our practice, provided that we take appropriate precautions (for example, through a written confidentiality agreement) so the prospective purchaser does not disclose in formation obtained in the course of the review.

5. Participating in actual or threatened legal proceedings or alternative dispute resolution proceedings either initiated by or against us, provided we disclose only the information necessary to file, pursue, or defend against the lawsuit, and take reasonable precautions to ensure that the information disclosed does not become a matter of public record.
6. Providing information to affiliates of the firm and nonaffiliated third parties who perform services or functions for us pursuant to a contractual agreement which prohibits the third party or affiliate from disclosing or using the information other than for the purposes for which the information was disclosed; for example, using an outside service bureau to process clients' tax returns, or using a records-retention agency to store clients records.

with applicable laws and regulations to guard your Nonpublic Personal Information.

Preparer's Name

#### *General Restrictions on Disclosure of Nonpublic Personal Information to Affiliates and Nonaffiliated Third Parties*

As tax preparers, we are prohibited by Internal Revenue Code Section 7216 from disclosing your income tax return information without your consent, other than for the specific purpose of preparing, assisting in preparing or obtaining and providing services in connection with the preparation of an income tax return for you. Furthermore, as a member of the [local professional association or society] engaged in income tax preparation or financial planning, we are generally prohibited from disclosing confidential client information about you to affiliates and nonaffiliated third parties without your specific consent (See exceptions under heading "Parties to whom we disclose information").

#### **Confidentiality and Security of Nonpublic Personal Information**

We restrict access to nonpublic personal information about you to those employees and other parties who must use that information to provide services to you. Their right to further disclose and use the information is limited by (our employee code of conduct if applicable), applicable law, our Code of Professional Conduct and nondisclosure agreements where appropriate. We also maintain physical, electronic, and procedural safeguards in compliance