

Gramm-Leach-Bliley Act of 1999 (P.L. 106-102, 113 STAT 1338)

Summary:

Repeals last vestiges of the Glass Steagall Act of 1933. Modifies portions of the Bank Holding Company Act to allow affiliations between banks and insurance underwriters. While preserving authority of states to regulate insurance, the Act prohibits state actions that have the effect of preventing bank-affiliated firms from selling insurance on an equal basis with other insurance agents. Law creates a new financial holding company under section 4 of the BHCA, authorized to engage in: underwriting and selling insurance and securities, conducting both commercial and merchant banking, investing in and developing real estate and other "complimentary activities." There are limits on the kinds of non-financial activities these new entities may engage in.

Key Points:

- Allows securities firms and insurance companies to become Financial Holding Companies (FHCs) and to be affiliates of banks. National banks may own securities underwriting subsidiaries, but not insurance underwriting subsidiaries. The Act also allows for a SEC-supervised "investment bank holding company" that does not own banks in the but that could be useful for securities firms engaged in financial activities outside the U.S.
- Closes loophole in the Home Owners' Loan Act that allowed unitary thrift holding companies from engaging in nonfinancial activities or affiliating with nonfinancial organizations.
- FRB is umbrella supervisor of FHCs. The Act requires "functional" supervision, whereby the regulator with relevant expertise (e.g. securities, insurance, banking) primarily supervises those activities within the FHC structure. Regulators must coordinate information sharing, especially with FRB, to accomplish effective supervision of FHCs.
- State laws governing financial activities may not discriminate against depository institutions.
- National banks may establish "financial subsidiaries" to engage in financial activities not permitted to the national bank itself, subject to certain capital and safety and soundness standards. Financial activities are those permitted for an FHC nonbank subsidiary, but do not include insurance or annuity underwriting, developing or investing in real estate, merchant banking or insurance portfolio investing. Additional financial activities beyond those identified in GLB will be agreed on by both the Federal Reserve Board and the Secretary of the Treasury.
- Allows national banks to underwrite municipal bonds.
- Banks lose exemption from definition of "broker" and "dealer" under the Securities Exchange Act, and therefore must push certain securities activities out of the bank, subject to certain exceptions that were carved out for traditional bank securities activities (e.g. networking arrangements, certain trust functions, certain safekeeping and custody functions, private placements, identified banking products, etc). Banks also lose exemption from definition of "investment adviser" under the Investment Company Act. Therefore, in keeping with functional regulation, banks must now compete on level field with other securities firms and be subject to SEC examination and oversight for their securities activities.
- State insurance laws may not prohibit affiliations with insurance firms allowed by GLB. States may continue to regulate insurance business, but may not "prevent or significantly interfere" with depository institutions' insurance sales, solicitations or cross-marketing activities. The Act sets forth 13 safe harbors or areas in which state laws would be permitted. Also sets out procedures for preemption/dispute resolution between state and federal regulators. Mandates coordination in supervision between federal banking agencies and state insurance regulators. Requires federal banking agencies to jointly issue consumer protection regulation on the sale of insurance by depository institutions and their subsidiaries.

- National Association of Insurance Commissioners directed to form new body known as NARAB, National Association of Registered Agents and Brokers, to establish uniform licensing requirements and conditions for insurance agents and brokers that can be adopted and applied on a multi-state basis. NARAB also to establish an Office of Consumer Complaints.
- National bank title insurance activities limited except in certain states where state banks are permitted to engage in title insurance sales. Certain title insurance activities may be grandfathered if conducted by a national bank or its subsidiary before November 12, 1999.
- Restricts the disclosure of nonpublic customer information by financial institutions. All financial institutions must provide customers the opportunity to "opt-out" of the sharing of the customers' nonpublic information with unaffiliated third parties. Act establishes minimum federal privacy standards but allows states to adopt stricter standards not inconsistent with federal law. Sets forth enforcement powers of federal financial regulators, state insurance regulators, and FTC. Act requires Federal study of information sharing, including benefits and risks. The Act imposes criminal penalties on anyone who obtains customer information from a financial institution under false pretenses.
- Amends the Community Reinvestment Act (CRA) to require that financial holding companies cannot be formed before their insured depository institutions receive and maintain a satisfactory CRA rating. Also requires public disclosure of bank-community CRA-related agreements. Grants some regulatory relief to small institutions in the shape of reducing the frequency of their CRA examinations if they have received outstanding or satisfactory ratings.
- Makes significant changes in the operation of the Federal Home Loan Bank System, easing membership requirements and loosening restrictions on the use of FHLB funds.
- Requires ATM operators to disclose surcharge fees to cardholders who are not customers of the ATM operator.
- Permits federal savings associations that convert to national or state bank charter to retain the word "Federal" in their names.
- Authorizes FRB at its discretion to share confidential supervisory information concerning state banks or other entities it examines with state supervisory authorities.
- Permits a foreign bank to upgrade an agency located outside its home state to a branch and to operate branches and agencies outside its home state with required regulatory approvals.
- Allows U.S. Attorneys to seek court order granting permission to share grand jury materials relating to possible banking law violations with federal or state regulatory agencies.

Why is it still relevant?

GLB established a legal framework to encourage and allow new "financial supermarkets" (one-stop shopping) by permitting previously prohibited affiliations between and among depository institutions, insurance and securities firms. In order to make such "supermarkets" effective, it also had to loosen restrictions on sharing of customer personal financial information. We are still in the early stages of seeing the advantages/disadvantages of this. We will observe the degree to which combinations/affiliations occur among firms; the costs/benefits/risks, etc. of permitting sharing of customer personal financial information and whether more privacy legislation is needed. The Act mandates further study in these areas. The Act will also force more cooperation among functional regulators, requiring increased formal and informal agreements and interaction.