



## American Bar Association

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### Resources on Gramm-Leach-Bliley Act

A Win for Lawyers.

U.S. Court of Appeals for the DC Circuit makes its decision. On March 6, 2006, the Federal Trade Commission (FTC) allowed its option to appeal to expire. The decision will stand.

**The Court finds that attorneys are not financial institutions under the definition of the Gramm-Leach-Bliley Act and that Title V Subtitle A does not apply to attorneys engaged in the practice of law.**

In June 2001, the [Federal Trade Commission](#) determined that the [Gramm-Leach-Bliley \(Public Law 106-102\)](#), a banking law passed in 1999, granted the Commission authority to regulate the ethical duty of confidentiality that U.S. attorneys owe their clients. Title V, Subtitle A of the Gramm-Leach-Bliley Act requires financial institutions to provide customers with periodic notice of the institution's privacy protection policies and empowers federal agencies to enforce protection regimes within those firms. A "financial institution," as [interpreted by the FTC](#), is any business "significantly engaged" in activities seemed to be financial in nature, including tax planning and tax preparations; financial, investment and economic advising; and real estate settlements services.

**The American Bar Association believes that the privacy protection afforded the public by the professional conduct codes of each of the fifty states and the territories provide stronger protection for the public than that offered by the Gramm-Leach-Bliley Act for the following reasons:**

- **The law was drafted for financial institutions that form customer relationships with the consumers.** Law firms are distinct from financial institutions due to the unique nature of the attorney-client relationship, and the privileges and duties that arise from it. Attorneys are strictly regulated by the appellate court of highest authority in each state or territory, unlike financial institutions that are regulated by the state and federal legislatures and administrative agencies.
- **Gramm-Leach-Bliley infringes upon longstanding state regulation of the attorney-client relationship, and could destroy the attorney-client privilege in some circumstances.** States have regulated attorneys for more than 200 years. This Act conflicts with that system.
- **All attorneys and all law within each state are bound by a duty of confidentiality that is far more broad and protective of consumer privacy than are the Gramm-Leach-Bliley provisions.** Violations may be subject to judicial process, civil liability to the injured client, and disciplinary actions ranging from censure to disbarment. Gramm-Leach-Bliley does not add to these protections.

- **The notice requirements in Gramm-Leach-Bliley is unnecessary and causes confusion and expense for clients of law firms.** The public already knows to expect confidentiality for *all* disclosures to attorneys, not just the disclosures protected by this Act. The expense of compliance, though higher fees and more hours billed, hurts clients and could place legal services beyond the reach for many Americans.
- **The public is better protected by the existing system of ethical regulation of lawyers by the state courts than it would be by Gramm-Leach-Bliley.**

After the FTC refused the ABA request for an exemption for attorneys engaged in the practice of law, the New York State Bar Association and ABA filed suit against the FTC. They were joined by a total of 25 state and local bar associations and the Conference of Chief Justices filing as *amici*. On April 30, 2004, Judge Reggie Walton of the U.S. District Court of the District of Columbia ruled against the FTC, and in favor of the ABA and the NYSBA. **On December 20, 2004, the FTC filed an appeal.**

In the 108th Congress, Representative Judy Biggert (R-IL) and Carolyn Maloney (D-NY) introduced the Privacy Protection Clarification Act, HR 781, which would exempt attorneys from the application of Gramm-Leach-Bliley, Title V.

For additional information on this issue:

- Read the article "[ABA Sues Over Privacy Statute, Judge Asked To Stop FTC From Enforcing Client Notification Rules](#)" published in the September 27, 2002, edition of the ABA Journal eReport.
- On June 30, 2003, ABA President informed the ABA membership that the FTC had issued the equivalent of a [preliminary injunction](#) against enforcement of the GLB privacy provisions against attorneys engaged in the practice of law pending the decision of Judge Reggie Walton of the Federal District Court of the District of Columbia in the ABA v. FTC and the NYSBA v. FTC.
- Read the August 11, 2003, [opinion](#) issued by Federal District Court Judge Reggie Walton on the FTC's motion to dismiss.
- Read the FTC's voluntary [injunction](#) against enforcing against attorneys pending Judge Walton's final decision.
- Read the ABA [motion](#) for summary judgment.
- Read the government's [cross motion](#) in response to the motion for summary judgment.
- Read the ABA [response](#) to the government response brief to the motion for summary judgment.

- Read the government's [final brief](#) in response to the motion for summary judgment.
- See the court's [decision in the motion for summary judgment](#).
- See the [statement](#) by ABA President Dennis W. Archer.
- See the U.S. District Court for the District of Columbia's declaratory judgment in the cases [ABA v. FTC and New York State Bar Association v. FTC](#).
- See the [FTC's voluntary injunction](#) against enforcement action pending any possible reversal.
- Read the [statement by ABA President Dennis Archer](#) to the Senate Committee on Banking, Housing and Urban Affairs for the hearing entitled, "An Examination of the Gramm-Leach-Bliley Act Five Years After Its Passage."
- See the [Appeals Court's order](#) to consolidate the 2 cases, NYSBA v. FTC and ABA v. FTC.
- See the FTC's [appeal](#) of the U.S. District Court decision.
- See the ABA's [response](#) to the FTC's appeal.
- See the NYSBA's [brief](#) responding to the FTC's appeal.
- See the [brief](#) filed by 52 state and local bar associations in favor of the ABA and the NYSBA position in the appeal.
- See the [brief](#) filed by the Conference of Chief Justices in favor of the ABA and the NYSBA position in the appeal.
- See the Final Reply [Brief](#) for the Appellant FTC.
- See the [decision](#) in the case of the ABA v. FTC by the U.S. Court of Appeals for the District of Columbia Circuit, issued December 6, 2005.
- See the [statement](#) by the New York State Bar Association on the court's decision.
- See ABA President Greco's [statement](#) on the court's decision.

For further information, contact [Ellen McBarnette](#), Legislative Counsel.