



September 18, 2006

VIA ELECTRONIC MAIL

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1255

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: No. 2006-19

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD00

Office of the Comptroller of
the Currency
Public Reference Room
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Attn: Public Information, Docket No. 06-07

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue, NW
Washington, DC 20580
The Red Flags Rule, Project No. R611019

Dear Sir or Madam:

The National Association of Mortgage Brokers ("NAMB") appreciates the opportunity to submit the following comments in response to the notice and request for comment published jointly by the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), the National Credit Union Administration ("NCUA"), and the Federal Trade Commission ("FTC") (together, the "Agencies") on Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") ("joint notice of proposed rulemaking" or "JNPR"), Docket No. R -1255 (71 Fed. Reg. 40786 (July 18, 2006)). We commend the Agencies in their efforts to deter identity theft and ensure that financial institutions and creditors have proper policies and procedures in

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place to detect patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.

NAMB is the only trade association exclusively devoted to representing the mortgage brokerage industry and speaks on behalf of more than 25,000 members in all 50 states and the District of Columbia. By adhering to a strict code of ethics and best lending practices, NAMB members guide consumers through the mortgage loan origination process. NAMB members act as intermediaries between consumers, lenders, and other settlement service providers participating in the loan origination process during the purchase or refinancing of a piece of real estate.

Today, mortgage brokers originate the majority of residential mortgage loans. As the principal conduit for bringing an array of loan products directly to consumers, NAMB members have a vested interest in preventing identity theft and ensuring measures are taken to protect consumer's personal information.

To maintain clientele and ensure future customers, NAMB members comply with current federal and state legislation and implement policies and procedures to protect their customer's personal information. To assist NAMB members in complying with federal and state laws, NAMB offers ongoing educational courses and certification programs to mortgage professionals. NAMB also provides resources to members to assist them in developing good business practices to protect consumer's personal information.

Currently, mortgage brokers are required to implement certain policies and procedures to protect consumer's personal information and deter identity theft under the Gramm-Leach-Bliley Act 15 U.S.C. 6801 - 6809 ("GLBA"). Because mortgage brokers are currently regulated by GLBA, NAMB believes the proposed JNPR would be a duplication of current regulations regarding mortgage brokers handling of consumer's information. Therefore, NAMB's comments will focus specifically on the Agencies definition of accounts under the JNPR and the need to narrowly define the term and include only continuing relationships with consumers.

In the JNPR, the Agencies specifically request comment on "whether the definition of 'account' should include relationships that are not 'continuing' that a person may have with a financial institution or creditor." NAMB urges the Agencies to adopt a definition of account that includes only relationships that are continuing. A financial institution's continuing relationship with a client requires additional measures to protect the client's personal information. Relationships that are not continuing are unnecessary and already regulated under the GLBA. Thus, including non-continuing relationships under section 114 of the FACT Act is duplicative.

NAMB believes the definition of account as proposed by the Agencies to describe the relationships covered by section 114 of the FACT Act¹ should be narrowed to exclude non-

¹ As defined in the JNPR "the proposed definition of 'account' is a continuing relationship established to provide a financial product or service that a financial holding company could offer by engaging in an activity that is

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servicing brokers. A non-servicing broker is an entity that does not typically fund a real estate loan with the intent to collect payments on the real estate loan in an ongoing manner – *i.e.* a non-servicing broker does not have a continuing relationship with the customer. The non-servicing broker provides services – *e.g.* origination services, personnel, local facilities, etc. – and then transfers the original loan package on a real estate loan to the wholesale division of a lender, bank or investor. It is then the lender, bank or investor that will fund the loan and collect the payments in an ongoing manner for itself or another investor in the secondary market.

The non-servicing broker maintains security of the consumer's closed and transferred data already as required under the GLBA. However, non-servicing brokers do not have an ongoing servicing relationship with the customer and his or her data beyond the extent of retained copies of the original information. In addition, the information that is retained by the non-servicing broker becomes seasoned and potentially out dated very quickly, unlike the data in an open credit file with a servicing broker/lender.

NAMB is supportive of defining the term account so that it includes servicing brokers. Unlike non-servicing brokers, servicing brokers have a continuing relationship with their clients. Because consumers of servicing brokers can request note modifications or an extended line of credit, NAMB believes it is appropriate for these brokers to be aware of their obligations, take the additional measures proposed in the guidance and be included in the definition of account.

SUMMARY AND CONCLUSION

Non-servicing brokers do not have continuing relationships with their consumers and are currently required to implement precautionary measures to deter identity theft under GLBA. Therefore, NAMB encourages the Agencies to adopt a definition of the term account that will exclude non-servicing brokers.

NAMB appreciates the opportunity to comment on the vital issues presented by this ANPR. If you have any questions, please feel free to contact Nikita Pastor, Senior Counsel, Public Policy & Government Affairs at 703-342-5851 or Danielle Kutch, Government Affairs Manager & PAC Director at 703-342-5860.

Sincerely,



Harry Dinham, CMC
NAMB President 2006-2007