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RESPRO

Real Estate Services Providers Council, Inc.

December 29, 2000

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
Attention: Docket No. 00-20

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551
Attention: Docket No. R-1082

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments/OES

Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: Docket No. 2000-81

2001 JAN -2 P 3:51

Re: Fair Credit Reporting Regulations

Dear Sirs and Madams:

This comment letter is filed on behalf of Real Estate Services Providers Council, Inc. ("RESPRO®") in response to the joint notice of proposed rulemaking ("Proposed Rule") published by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the "Agencies") to implement the affiliate sharing provisions of the Fair Credit Reporting Act ("FCRA").

RESPRO® is a national non-profit association of business alliance partners from all segments of the home buying and financing industry. Our membership includes financial institutions, mortgage lenders, real estate franchisors and broker-owners, home builders, title underwriters and agents, and technology companies (see our membership list at http://surge.e-net.com/search/respro/memberlist/memlist).

> The common interest of RESPRO® members is their ability to cost-efficiently offer multiple services ("one-stop shopping") to consumers through affiliations and strategic alliances with other settlement service providers.

RESPRO® is pleased to have the opportunity to provide comments on the Proposed Rule. We also appreciate the Agencies' desire to provide consistent guidance with respect to the privacy disclosures mandated by the Gramm-Leach-Bliley Act ("GLBA") and the opt out notices required under the FCRA.

Although the Proposed Rule raises a large number of issues, we would like to focus on two issues of particular interest to our members. First, we urge the Agencies to clarify that, to the extent affiliate sharing is restricted under the FCRA, the exceptions to notice and opt out provided in the rule implementing the GLBA privacy provisions ("Privacy Rule") would also apply to the sharing of "opt out information"} Second, we believe that the Agencies should delay implementation of the final rule ("Final Rule") in order to avoid significant adverse consequences for those who are in the process of implementing programs to comply with the Privacy Rule.

Restrictions on Affiliate Sharing

The Proposed Rule indicates that an entity may not share "opt out information" with an affiliate unless the entity: (i) has provided a FCRA opt out notice to the consumer, and (ii) has given the consumer a reasonable opportunity (*e.g.* 30 days) to opt out. The Proposed Rule does not provide any exceptions to these requirements. Given the apparent rigidity of these requirements, we are concerned that the Proposed Rule is inconsistent with the language and intent of the affiliate sharing provisions and, in many instances, will be detrimental, rather than helpful, to consumers.

We believe, for example, that the Proposed Rule may inadvertently harm the consumer by forcing a financial institution to wait 30 days before it can share information with an affiliate even if the consumer wishes to have the information shared more quickly. Specifically, it is not uncommon for a consumer who applies for one product to also request additional information about other products offered by affiliates for which the consumer may qualify. However, the Proposed Rule suggests that the consumer would be forced to wait for the "reasonable period of time" to expire (30 days) before any opt out information could be shared with those affiliates for use in responding to the consumer's desire for additional information. We are confident that such a result simply

cannot be what the Agencies intended, nor was it what Congress intended when it amended the FCRA to add the affiliate sharing provisions.

The 30-day waiting period would be inappropriate for other reasons, as well. For example, under a 30-day rule, financial institutions would be required to delay sharing opt out information which is intended to be used by affiliates for fraud detection purposes. Other beneficial uses that have been permitted under existing interpretations under the FCRA, such as disclosing information to an affiliate acting as agent, or making use of the "joint user" exception, could also be adversely affected by the Proposed Rule.

We urge the Agencies to address these issues when adopting the Final Rule. Specifically, the Final Rule should clarify that if an affiliate sharing notice and opportunity to opt out are disclosed on or with documents such as applications, and the consumer submits the application and chooses not to opt out at that time, the affiliates may be permitted to share the information unless and until the consumer subsequently opts out.

Furthermore, in order to preserve many of the consumer benefits associated with affiliate sharing, we urge the Agencies to adopt exceptions to the FCRA notice and opt out requirements similar to those adopted in the Privacy Rule. In this regard, sharing information among affiliates should not be subject to greater restrictions than sharing information with third parties. Under GLBA, the Agencies have provided exceptions to the notice and opt out requirements for a wide variety of third party disclosures including disclosures: (i) necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes; (ii) made with the consumer's consent; (iii) in connection with servicing or processing a product or service that a consumer requests or authorizes; or (iv) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability. The policy underlying all of these exceptions applies equally to affiliate sharing. Accordingly, we urge that the applicable exceptions listed in the Privacy Rule be included in the Final Rule.

In addition, the Final Rule should clarify that it does not in any way affect existing interpretations of the FCRA which for many years have permitted affiliates (and unaffiliated third parties) to share opt out information. For example, the Agencies should note that the affiliate sharing rules do not apply when a financial institution shares information with an entity who performs services for the financial institution. Similarly, the Final Rule should specify that the affiliate sharing rules do not apply where affiliates share information pursuant to the so-called "joint user" exception articulated by the Federal Trade Commission in its Commentary on the FCRA.

Effective Date

In issuing the Proposed Rule, the Agencies did not address when a Final Rule would become effective. This is a critical issue, especially in light of current efforts to comply with the Privacy Rule.

We strongly urge the Agencies to study the logistical issues associated with compliance with both the Final Rule and the Privacy Rule. For example, many financial institutions have already printed their GLBA privacy notices in order to comply with the Privacy Rule prior to July 1, 2001. In fact, many financial institutions began their GLBA compliance programs earlier than required at the express urging of the Agencies to do so. Even those who have not yet printed their GLBA notices will most likely have done so before the Agencies issue a Final Rule. Virtually all the GLBA privacy notices have been (or will be) drafted based on the requirements of the Privacy Rule and the plain language of the FCRA. The vast majority of GLBA privacy notices will not contain the new information that would be required under the Proposed Rule. As a result, any requirement to revise the just-printed GLBA privacy notices to include any new requirements mandated by the Final Rule would needlessly cause financial institutions to discard millions of privacy notices that have already been printed, or will have been printed by the time a Final Rule is issued.

RESPRO® suggests that Agencies not make the Final Rule effective until July 1, 2002 at the earliest. This would allow financial institutions the opportunity to use the GLBA privacy notices they have printed, avoiding the unnecessary costs of discarding and reprinting millions of notices. Otherwise, financial institutions would face an unnecessary compliance burden, the cost of which ultimately would be passed on to consumers. This is especially unjustified since any financial institution that shares opt out information with affiliates already provides an affiliate sharing notice and opt out based on the existing language of the FCRA. Moreover, any GLBA privacy notices provided to consumers must contain an affiliate sharing notice and opt out that complies with the FCRA. Since consumers already receive notice of affiliate information sharing and an opportunity to opt out, there is no justification for an effective date that places unnecessary costs on financial institutions and their consumers.

Additionally, the Final Rule should only apply prospectively. Specifically, the Final Rule should apply only to notices provided on or after July 1, 2002. It is especially important that the Final Rule not require financial institutions (i) to send a revised FCRA notice to their consumers solely because the most recent notice provided did not comply with the Final Rule or (ii) to send a revised GLBA privacy notice solely because the most recent GLBA notice did not include the new FCRA notice required by the Final Rule. These clarifications would be consistent with the clear intent of the Proposal and the Privacy Rules. However, the utility of a delayed effective date may be significantly diminished without such specific clarifications from the Agencies. Even if the Agencies do provide for a delayed effective date, there would still be significant cost burdens associated with a requirement that financial institutions provide new FCRA notices and/or GLBA privacy notices containing the new FCRA disclosure to consumers who already received a FCRA notice, either as part of a GLBA privacy notice or otherwise, prior to July 1, 2002. Given that these consumers already received a FCRA notice and opportunity to opt out, there would be no justification for imposing on financial

institutions and consumers the compliance burdens and costs associated with providing revised privacy notices.

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RESPRO® appreciates the opportunity to comment on the Proposal. If you have any questions concerning this comment letter, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to contact me at 202-408-7038 or via e-mail at respro@erols.com

Sincerely,

Susan E. Johnson, Esq.
Executive Director