

March 7, 2012

The Honorable Tim Johnson
Chairman
Senate Banking Committee
529 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Spencer Bachus
Chairman
House Financial Services Committee
2128 Rayburn House Office Building
Washington, DC 20515

The Honorable Richard Shelby
Ranking Member
Senate Banking Committee
529 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Barney Frank
Ranking Member
House Financial Services Committee
2128 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen and Ranking Members,

The undersigned organizations, representing nondepository companies subject to supervision by the Bureau of Consumer Financial Protection (CFPB), ask for your support to address our concerns with legislation extending the long-standing examination privilege to companies newly subject to examination by the CFPB.

The Dodd-Frank Act gave the CFPB examination authority over a wide range of both depository institutions and nondepository consumer creditors. However, in a technical oversight, the Act did not extend to the CFPB (as the new regulator on the block), or to the newly covered nonbank lenders, the historical protections for privileged information submitted to the bank supervisory agencies in the examination process. Our organizations support efforts by Congress to extend the examination privilege to all examined companies.

We support changes to S. 2099 and H.R. 4014 to ensure that nondepository companies subject to CFPB jurisdiction enjoy the same privilege as those who are federally insured depositories. Our goal is to provide parity among examined companies of *all* types and we do not seek to advantage any type of creditor.

It is important to emphasize the important role this privilege plays in supporting a more effective and open examination process between regulators and the regulated entities. Effective examinations are enhanced by the privilege. The Court of Appeals for the D.C. Circuit¹ put it this way:

The bank examination privilege is firmly rooted in practical necessity. Bank safety and soundness supervision is an iterative process of comment by the regulators and response by the bank. The success of the supervision therefore depends vitally upon the quality of communication between the regulated banking firm and the bank regulatory agency. This relationship is both extensive and informal. It is extensive in that bank examiners concern themselves with all manner of a bank's affairs Because bank supervision is relatively informal

¹ *In re* Subpoena Served upon Comptroller of Currency, 967 F.2d 630, 633–34 (D.C. Cir. 1992)

and more or less continuous, so too must be the flow of communication between the bank and the regulatory agency. Bank management must be open and forthcoming in response to the inquiries of bank examiners, and the examiners must in turn be frank in expressing their concerns about the bank. **These conditions simply could not be met as well if communications between the bank and its regulators were not privileged** (emphasis added) .

We believe the same policy must apply to all consumer creditors to ensure an effective and equitable examination and investigatory process. Our organizations greatly appreciate your consideration of this important matter.

Sincerely,

American Financial Services Association
Community Mortgage Banking Project
Financial Services Roundtable
Mortgage Bankers Association
National Association of Mortgage Brokers
National Association of REALTORS
Real Estate Services Providers Council, Inc. (RESPRO®)
Residential Servicing Coalition
The Realty Alliance