

July 22, 2004

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

c/o Chief Counsel's Office
Office of Thrift Supervision
1700 G St., NW
Washington, D.C. 20552

RE: The FACT Act Disposal Rule, No. 2004-26 (RIN 1550-AB87)

Dear Sir or Madam:

On behalf on the more than 1 million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), the Institute for Real Estate Management (IREM), and the Certified Commercial Investment Member (CCIM) Institute, I am pleased to offer comments to the Federal Banking Agencies (FBAs) on the proposed FACT Act Disposal Rule. The NATIONAL ASSOCIATION OF REALTORS®, “The Voice for Real Estate,” is America’s largest trade association, representing more than 1 million members, including NAR’s five commercial real estate institutes, its societies, and its councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries. NAR members belong to one or more of some 1,700 local associations or boards and 54 state and territory associations of REALTORS®.

IREM, an NAR affiliate, is an association of professional property and asset managers who meet strict criteria in the areas of education, experience, and ethics. The 16,000 IREM members manage all types of investment real estate. The Institute educates real estate managers, certifies the competence and professionalism of individuals and organizations engaged in real estate management, advocates on issues affecting the real estate management industry, and enhances its members' professional competence to better meet the needs of their clients.

The CCIM Institute is also an NAR affiliate. The CCIM Institute confers the CCIM designation. The Institute stresses education, networking, and ethical practice. Over 7,500 commercial real estate professionals currently hold the CCIM designation and work in 1,000 markets.

Impact on the Real Estate Industry

As required by section 628 of the Fair Credit Reporting Act (FCRA), the FBAs’ proposed regulations would require insured depository institutions (including their subsidiaries) and other entities they regulate to comply with amended FBA interagency guidelines for safeguarding customer information (Guidelines). The proposed amendments add the following new objective to the Guidelines: “Ensure the proper disposal of consumer information in a manner consistent with the disposal of customer information.” The Guidelines already require covered entities to require, by contract, that their service providers take appropriate measures to meet the objectives of the Guidelines and, where appropriate, to monitor the

service providers for compliance. Under the proposed amendments, this service provider requirement would also apply to the new consumer information disposal requirements.

REALTORS® conducting business in commercial and residential real estate are most likely to acquire consumer credit report information in the course of acting as commercial real estate brokers, property managers, or landlords, through affiliated mortgage lending companies, and as mortgage brokers. For the most part, to the extent real estate firms maintain or possess consumer information, they will be required to dispose of it in accordance with Federal Trade Commission (FTC) regulations. The FBA regulations, for all practical purposes, do not apply to real estate brokerage, leasing, or management because these are commercial activities, not financial. There may, however, be an indirect effect on real estate firms that contract with service providers for disposal. A service provider that is hired by both a real estate firm and an insured depository institution to handle the disposal of consumer information would be subject to both the FTC and the FBA regulations, and to the extent the requirements differ, higher costs will result. In addition, thrifts may own a real estate firm as a service company subsidiary, and a unitary thrift holding company may do so as well (whether or not there is a thrift in the chain of ownership), in which case the FBA disposal regulations would apply.

Recommendations

We have the following comments and suggestions on the proposed amendments to the FBAs' regulations and Guidelines.

Consistency among Agency Regulations. Section 628 of the FCRA requires the FBAs, the FTC, the National Credit Union Administration, and the Securities and Exchange Commission to work together so “to the extent possible” the regulations are consistent and comparable. We recommend that you work with the FTC to eliminate unnecessary differences between the FTC and FBA rules.

For example, the FTC regulations require those subject to the regulations to take “**reasonable** measures” to dispose of consumer information, but the FBA Guidelines require “**appropriate** measures.” The FTC regulations, but not the FBA Guidelines, include examples of “reasonable measures.” NAR prefers the FTC approach because it provides a more specific and better standard. However you decide to proceed, consistency will reduce costs on small businesses and others subject to both regulations. If there is a reason why it is not possible to include examples or why the FTC should require “reasonable measures” but the FBAs should require “appropriate measures,” we request that you include an explanation in the preamble to the final rule.

As noted above, there appears to be overlap in coverage between the FTC and FBA regulations. A service provider of both a real estate firm subject to the FTC regulations and of an entity subject to the FBA regulations appears to be subject to both sets of requirements. If you accept our recommendation to make the standards the same, this will make little practical difference. But in any case it would be best, if the law permits, to tailor the regulations so only one applies to any one individual or entity.

Extend Guidelines to Apply to All Non-Customer Information. As we understand the preamble, if an institution has personal financial information of a non-customer that does not qualify as consumer information under section 628 of the FACT Act, the Guidelines do not now apply and would not apply when amended. Because of the reputation risk to an institution that does not properly dispose of any financial information, regardless of whether section 501(b) of the GLB Act or section 628 of FCRA apply,

NAR recommends that you apply the Guidelines to all financial information. This approach would probably be less burdensome because the entities could have one policy across the board.

Clarify that Thrift Holding Companies and their Subsidiaries Are Subject to the FTC Regulations.

The OTS regulations apply only to thrifts and thrift subsidiaries but not to thrift holding companies or their nonthrift subsidiaries. This should be explained so holding companies and their subsidiaries understand that they are subject to the FTC regulations.

Conclusion

The proposed regulations impose neither new requirements on firms and individuals who already protect sensitive consumer information nor any recordkeeping requirement for service providers of REALTORS®. Consistent with the FACT Act, the regulations may not be construed to require anyone to maintain or destroy any consumer record that is not imposed under other law, or to alter or affect any requirement imposed under any other provision of law to maintain or destroy records. Accordingly, we believe that the proposed rules are reasonable and practical, but should be clarified to minimize regulatory burden as we have suggested.

Thank you for the opportunity to comment on the proposed amendments to the regulations and Guidelines.

Sincerely,



Joe Ventrone
Managing Director, Regulatory and Industry Relations