



July 8, 2005

Office of the Comptroller of the Currency  
250 E Street, SW  
Mail Stop 1-5  
Washington, DC 20219  
Attn: Docket Number 05-10

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Attn: Docket No. R-1188

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
Re: RIN 3064-AC81

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
Attention: Docket No. 2005-16

Mary Rupp  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428  
Re: 12 CFR Part 717

**Re:** *Interim Final Rule - Fair Credit Reporting Medical Information Regulations*  
*OCC Docket No. 05-10, RIN 1557-AC85*  
*Board Docket No. R-1188*  
*FDIC RIN 3064-AC81*  
*OTS No. 2005-16, RIN 1550-AB88*  
*NCUA 12 CFR Part 717*

Dear Sirs and Madams,

The National Association of Mortgage Brokers ("NAMB") appreciates the opportunity to respond to the notice and request of the Office of the Comptroller of the Currency ("OCC"), Federal Reserve Board ("Board"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), and National Credit Union Administration ("NCUA") (collectively, the "Agencies") to provide comment on the interim final rules regarding medical information, published June 10, 2005 ("Final Rule"),

implementing Section 411 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”). 70 Fed. Reg. 33957.

Section 604(g)(5)(A) of the Fair Credit Reporting Act (“FCRA”) requires “[e]ach Federal banking agency and the National Credit Union Administration [to] . . . prescribe regulations that permit transactions under paragraph (2) [of § 604(g) of the FCRA<sup>1</sup>] that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.”

For the reasons which follow, NAMB supports the Final Rule as proposed by the Agencies. Before providing the Agencies with our suggestions, we provide general information about mortgage brokers and NAMB.

### **Mortgage Brokerage Industry**

Mortgage brokers act as intermediaries between consumers and lenders when the borrower finances the purchase of a home or refinances an existing mortgage. A typical broker maintains business relationships with various lenders to provide consumers with numerous financing options. These partnerships allows the 52,000 mortgage brokerage companies employing over 452,000 employees in the United States to offer consumers the most competitive mortgage products available.

By offering consumers a variety of products, mortgage brokers are able to find loans for borrowers that match their financial needs. Mortgage brokers assist buyers with excellent credit histories and buyers with less than perfect credit histories. The mortgage brokerage industry also helps borrowers with low-to-moderate incomes obtain access to the credit they need to secure the benefits of homeownership. By delivering cost-effective mortgages to consumers, mortgage brokers originate two out of every three residential loans in any given year. As the single largest group of loan originators, mortgage brokers undoubtedly have played a significant role in increasing the rate of homeownership in the United States to almost 70 percent.

NAMB is the only national trade association exclusively devoted to representing the mortgage brokerage industry. As the voice of mortgage brokers, NAMB speaks on behalf of more than 26,000 members in all 50 states and the District of Columbia. NAMB’s government affairs representation ensures that the voice of the mortgage brokerage industry is heard on Capitol Hill. NAMB offers educational courses to mortgage professionals to build and enhance their knowledge of the mortgage industry. NAMB administers certification programs which measure, recognize, and encourage continuing development of industry expertise. By adhering to a strict code of ethics and best lending practices, NAMB members guide consumers through the mortgage loan origination process.

### **Universal Application of Rules and Exceptions to all Creditors**

The proposed rule published in 2004<sup>2</sup> (“Proposed Rule”) §.1(b)(2) originally restricted the scope of the Agencies’ rules and exceptions to creditors subject to the regulatory jurisdiction of each respective

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<sup>1</sup> 15 U.S.C. § 1681b

<sup>2</sup> 69 Fed. Reg. 23380, April 28, 2004

Agency. Consequently, the Proposed Rule precluded mortgage brokers from obtaining or using key financial information that would be classified as medical information in the credit underwriting process, while banks and credit unions would have been able to obtain and use that information.

Section §.30(b)(2)(ii) of the Final Rule now states that, for purposes of the FCRA, “creditor” has the same meaning as it does in section 702 of the Equal Credit Opportunity Act<sup>3</sup> (“ECOA”). Section 702 of ECOA defines “creditor” as: “any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.” This definition clearly encompasses both mortgage lenders and mortgage brokers.

In the interest of fairness, NAMB supports universal application to all mortgage originators of laws and rules regulating the mortgage industry. Thus, NAMB supports the clarification in the Final Rule—codified in §.30(a)(2) of the Final Rule and in 12 CFR Chapter II, Part 232—that the scope of the exceptions adopted pursuant to Section 604(g)(5) of the FCRA<sup>4</sup> is as broad as the prohibition to which it applies, and is available to “[a]ny . . . person that participates as a creditor in a transaction involving a person described in . . . this section,” which includes mortgage brokers.

### **Non-Exclusivity of Information Types Subject to Financial Information Exception**

Proposed Rule §.30(c)(1) provided that “[a] creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit so long as” three elements were met. The first element was that “the information must relate to debts, expenses, income, benefits, collateral, or the purpose of the loan, including the use of proceeds.”

Section §.30(d)(1)(i) of the Final Rule expands the scope of that element, to “information routinely used in making credit eligibility determinations,” and provides a non-exclusive list of such types of information.

NAMB supports this modification, because an exclusive list may have inadvertently omitted types of information routinely used in the underwriting process.

### **Inclusion of Medical Information Furnisher Identity in Examples of Information Routinely Used**

Section 605(a)(6) of the FCRA<sup>5</sup> prohibits consumer reporting agencies from making consumer reports containing the uncoded identifying and contact information of medical information furnishers.<sup>6</sup> As applied to medical collection accounts and the entity on whose behalf the collection agency is collecting, this provision has had a significant negative impact on mortgage brokers and consumers.

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<sup>3</sup> 15 U.S.C. § 1691a

<sup>4</sup> 15 U.S.C. § 1681b

<sup>5</sup> 15 U.S.C. § 1681c

<sup>6</sup> Except when the report is “provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.” FCRA § 605(a)(6)(B).

In the absence of regulatory exceptions, consumers have experienced delays in the loan application process when credit reports furnished to mortgage brokers have listed “medical collection”<sup>7</sup> without identifying the collection company or original creditor. When lenders want the collection account to be paid prior to loan approval, the application process grinds to a halt while consumers order their own credit reports from the appropriate credit reporting agencies.<sup>8</sup>

The type of medical services provided is immaterial to a mortgage broker, as the packager of credit applications. However, the payment pattern and debt owed are material to the transaction. Thus, the identity and contact information of collection companies and the medical creditors for whom the collection companies are collecting are types of information routinely and appropriately used in making credit eligibility determinations. Mortgage brokers use such information to determine whether the reported collection is a duplicate debt and has already been paid, or is a debt that will have to be paid before the residential loan transaction can be completed.

Section 30(d)(2)(D) of the Final Rule provides an example that clarifies that the “identity of creditors to whom outstanding medical debts are owed in connection with an application for credit . . .” is a “type of information routinely used in making credit eligibility determinations” and therefore falls under the financial information exception<sup>9</sup> to § 604(g)(2) of the FCRA.<sup>10</sup>

NAMB supports the inclusion of the example in § 30(d)(2)(D) because it clarifies that the financial information exception applies to collection company and original medical creditor identity and contact information and, therefore, relieves consumers of an unduly burdensome loan application process when a medical collection appears on a credit report. As clarified by the example, the financial information exception allows mortgage brokers to provide better service to consumers.

However, NAMB recommends that the example be modified so that it clarifies that the identity and contact information of creditors to whom outstanding medical debts are owed need not be coded<sup>11</sup> to be included on credit reports furnished by credit reporting agencies to creditors pursuant to § 30(d)(1)(i) of the Final Rule.

### **Credit-Related Assistance Programs**

The Final Rule includes an exception, in § 30(e)(1)(iii), allowing creditors to “obtain and use medical information in connection with a determination of the consumer’s eligibility, or continued eligibility, for credit . . . [t]o determine, at the consumer’s request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is— (A) Designed to meet the special needs of consumers with medical conditions . . . .” Section 30(e)(2) of the Final Rule provides an example that clarifies that creditors may provide consumers with information about credit assistance programs, to educate consumers about their options.

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<sup>7</sup> Also listing the amount and date of the collection account and whether it had been paid.

<sup>8</sup> In many eastern states, consumers are unable to order free annual credit reports until 1 September 2005, so the burden on these consumers has been particularly onerous.

<sup>9</sup> Section 30(d)(1)(i) of the Final Rule.

<sup>10</sup> 15 U.S.C. § 1681b

<sup>11</sup> As required by FCRA § 605(a)(6).

NAMB supports this new exception because it allows mortgage brokers to inform their customers about special assistance programs and to obtain and use the information necessary to satisfy the requirements of those programs. By enhancing the capacity of mortgage brokers to educate consumers, this exception will bring the goal of homeownership within the reach of consumers who might otherwise have been unable to attain that goal.

NAMB commends the Agencies for protecting consumers from inappropriate use of their medical information. NAMB greatly appreciates your consideration of our comments. If you have any questions, please contact our Vice President of Government Affairs, Roy DeLoach, at 703-245-8035.

Sincerely,

A handwritten signature in black ink that reads "Jim Nabors". The signature is written in a cursive, slightly slanted style.

Jim Nabors, II, CRMS  
President  
National Association of Mortgage Brokers