

American Financial Services Association • Community Mortgage Banking Project
Community Mortgage Lenders of America • Financial Services Roundtable
Mortgage Bankers Association • National Association of Mortgage Brokers
The Realty Alliance • Residential Servicing Coalition

July 25, 2012

Cosponsor H.R. 6125 to Protect Supervisory Privilege

Dear Member of Congress:

The undersigned organizations, representing companies subject to the jurisdiction of the Consumer Financial Protection Bureau (CFPB), request your cosponsorship of H.R. 6125, legislation to extend protections over supervisory information related to banks and other depository institutions to all entities subject to the CFPB and relevant state agencies.

Under current law and longstanding tradition, bank supervisors have asserted that no applicable privilege is waived over nonpublic, proprietary information submitted in the course of the supervisory process.

The Dodd-Frank Act granted the CFPB authority over a wide range of insured depository institutions and nondepository consumer creditors. In a technical oversight, the Act failed to extend the aforementioned protections to the CFPB and to state regulators of nondepository institutions, with whom the CFPB is expected to exchange privileged and confidential information about covered persons on a regular basis.

Our organizations support efforts to ensure that supervisory privilege is maintained for *all* companies subject to the jurisdiction of the CFPB, which is why we request that Congress take up and pass H.R. 6125, bipartisan legislation introduced by Reps. Renacci and Perlmutter on July 12, 2012.

H.R. 6125 would provide that depository and nondepository institutions alike enjoy the same privilege as those who are currently under supervision by federal, state and foreign bank supervisors. This legislation would establish parity among companies of all types subject to the jurisdiction of the CFPB, and does not seek to advantage any type of consumer creditor.

Supervisory privilege plays a critical role in supporting effective regulation of financial institutions by promoting candor between examiners and the entities they oversee, thereby encouraging a more open and cooperative supervisory process.

There is precedent for this degree of protection in the longtime practice by bank regulators of asserting the confidentiality of records related to entities under their supervision. When challenged, the courts have upheld this privilege. In 1992, the U.S. Court of Appeals for the D.C. Circuit sustained the assertion of privilege by the Federal

Reserve Board and Office of the Comptroller of the Currency in denying the discovery of confidential supervisory information related to a national bank.

In its opinion, the court discussed the justification for bank examination privilege as follows:¹

Because bank supervision is relatively informal 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.

We believe the same policy must apply to all consumer creditors to ensure an effective and equitable examination and investigatory process. Therefore, we urge Congress to enact legislation such as H.R. 6125 to codify this privilege with regard to the CFPB's supervisory activities and those of state bank and nonbank supervisors alike. Our organizations greatly appreciate your consideration of this important matter.

Sincerely,

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¹ In re Subpoena Served upon the Comptroller of Currency, and the Secretary of the Board of Governors of the Federal Reserve System, 967 F.2d 630, 633-34 (D.C. Cir. 1992).