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Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580



Re: Gramm-Leach-Bliley Act Privacy Rule, 16 CFR Part 313 – Comment

Fannie Mae respectfully submits these comments in response to the Federal Trade Commission's ("FTC") Notice of Proposed Rulemaking implementing the privacy provisions in the Gramm-Leach-Bliley Act (the "Act"). Fannie Mae supports the Act's framework for protection of consumer privacy and the FTC's work to implement this legislation.

Fannie Mae is a Congressionally chartered, privately owned company created to support affordable residential housing by making a secondary market in residential loans for both single and multifamily mortgages.¹ Fannie Mae expands the flow of funds available for such mortgages by purchasing them from lenders and by issuing mortgage-backed securities in exchange for pools of mortgages. Fannie Mae operates by statute solely in the secondary mortgage market and does not engage in direct mortgage transactions with consumers. Our charter act restricts us from originating mortgages.

Fannie Mae considers maintaining consumer privacy an important part of its responsibility to America's homeowners and has a long history of protecting the private financial information it acquires in the course of performing its secondary market mission.

I. The FTC's Proposed Rule § 313.3(j) Correctly Interprets the Statute and Congressional Intent

The FTC's proposed definition of the term "financial institution" and the exemptions to the definition under proposed § 313.3(j) faithfully implement the Act and are clearly consistent with the Act's language, legislative history, and intent.

¹ Specifically, Congress has stated that the purposes of Congressionally chartered secondary market entities are to:

- (1) provide stability in the secondary market for residential mortgages;
- (2) respond appropriately to the private capital market;
- (3) provide ongoing assistance to the secondary market for residential mortgages by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and
- (4) promote access to mortgage credit throughout the Nation by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.

See 12 U.S.C. § 1716 and 12 U.S.C. Note to § 1451.

The FTC's proposed § 313.3(j)(3)(iii) adopts the Act's exemption from the definition of the term "financial institution" for entities, like Fannie Mae, that are chartered by Congress specifically to engage in securitizations, secondary market sales, or similar transactions. The FTC correctly interprets this exemption to apply "*even if* the chartered institution sells or transfers information," so long as such transfers are pursuant to "the exceptions to the notice and opt-out requirements in proposed §§ 313.10 and 313.11." Proposed Rule at 65 Fed. Reg. 11,174, 11,177 (emphasis added).² The FTC's proposed rule makes it clear that Congressionally chartered institutions do not lose their statutory exemption merely because they transfer nonpublic personal information to third parties, so long as those transfers occur to facilitate secondary market transactions or other transactions that Congress chose to except from the Act.

The FTC's interpretation of this exemption in the Act is the *only* possible approach that gives meaning to the statutory language and avoids rendering the Act's exemption for Congressionally chartered secondary market institutions superfluous. In performing their core secondary market functions, Congressionally chartered secondary market institutions necessarily transfer data to third parties such as lenders, service providers, insurers, investors, and rating agencies. Congress expressly understood that such transfers are necessary to the functioning of the secondary mortgage finance system -- a system whose efficient, effective function is in the public interest. If such transfers of information pursuant to, for example, a secondary market function (see proposed § 313.10) rendered these entities "financial institutions" under the regulation, the statutory language would be eviscerated. Congress clearly intended this exemption to be more than mere verbiage in this statute. The FTC's proposed rule therefore acknowledges that transfers of nonpublic personal information by exempted entities that fall within the exceptions contained in §§ 313.10 and 313.11 do not bring such entities back within the scope of the Act.

The FTC's interpretation is also consistent with the legislative history of the exemption for Congressionally chartered secondary market entities. Representative Bachus, the sponsor of the exemption, stated:

Let me make clear that the types of "transfers" that would pull these institutions back within Title V's scope are transfers other than those contemplated by Sections 502(b)(2) or 502(e).³ For institutions covered by Title V, we recognize that the uses of non-public personal information that Sections 502(b)(2) or 502(e) contemplates are legitimate. This same standard applies to the secondary market institutions covered by Section 509(3)(D).

² Proposed §§ 313.10 and 313.11 implement the Act's exceptions to the notice and opt-out provisions, including the exception for securitizations, secondary market sales or similar transactions. See Proposed section 313.10(a)(4).

³ We note that Representative Bachus' statement suggests that transfers pursuant to § 502(b)(2), relating to joint marketing activities and servicing agreements, should likewise be permitted without impact on the treatment of Congressionally chartered secondary market institutions under the Act. The FTC's current proposed rule does not reflect this view; in the interest of completeness, it should probably be amended to include transfers pursuant to § 313.9 (and not just pursuant to §§ 313.10 and 313.11) in the list of permissible institutional transfers.

to disclose it for non-excepted purposes merely because they obtained the information from an entity that is not a financial institution.

B. The Act's Reuse Provisions Do Not Prevent the Use of Non-Personally Identifiable Information

The FTC has invited comment on whether information obtained in accordance with the secondary market transaction exception and other exceptions to the Act's notice and opt-out requirements can be reused "for purposes beyond the scope of those exceptions if the information is not used in a personally identifiable form." Proposed Rule, 65 Fed. Reg. at 11185. The FTC uses as an example a credit-scoring vendor using information to improve its scoring models. *Id.*

Fannie Mae urges the FTC not to restrict the use of information if it is not in a personally identifiable form. First, the Act, by its express terms, protects only "personally identifiable" financial information. 15 U.S.C. § 6809(4)(A). Precluding the use of information that is not "personally identifiable" arguably is beyond the scope of the Act and is contrary to the deliberate policy choices made by Congress in this particular privacy legislation. Second, limiting the use of information that is not "personally identifiable" would not further the Act's privacy goals. If the information cannot be linked to any particular consumer's financial history or circumstances, the disclosure of such information would not threaten consumer privacy. Finally, prohibiting the use of non-personally identifiable information would create inefficiencies that would needlessly increase the cost of financial services and products. To use the FTC's example, if credit-scoring vendors could not use non-personally identifiable information to improve their scoring models, the cost of credit would necessarily increase, making it more difficult (and more expensive) for consumers to obtain loans.

C. The Use of Nonpublic Personal Information and Confidentiality Agreements By Congressionally Chartered Secondary Market Institutions

Notwithstanding that a Congressionally chartered secondary market institution is not a "financial institution" for purposes of the FTC's proposed regulation, Fannie Mae takes its obligation to protect nonpublic personal information seriously. It has adopted procedures designed to protect nonpublic personal information. For instance, Fannie Mae limits employee access to nonpublic personal information and has a state-of-the-art security system designed to prevent unauthorized parties from obtaining such information. In addition, Fannie Mae does not sell any nonpublic personal information to any third party. Any transfers of nonpublic personal information will be limited to the types of transactions that Congress wanted to encourage and therefore excepted from the scope of the Act.

The FTC specifically invited comment on whether Congressionally chartered institutions should be required to enter into a confidentiality agreement with nonaffiliated third parties with whom they share information pursuant to §§ 313.10 and 313.11 as a condition of their exemption. *See* Proposed Rule, 65 Fed. Reg. at 11,177. The Act does not contain a requirement that exempt entities must enter into confidentiality agreements with unaffiliated third parties as a condition of the exemption, and absent that we do not believe that the FTC should impose such a requirement. As part of our existing commitment to protect nonpublic personal information, Fannie Mae currently uses confidentiality agreements where appropriate and necessary to prevent the improper disclosure of nonpublic personal information. Therefore, we do not believe any regulatory requirement is needed to ensure that in appropriate instances confidentiality agreements are used to protect nonpublic personal information that we transfer. We further note that any entity that receives nonpublic personal information from Fannie Mae would be subject to limitations on reuse of such information under the approach described in section II.A. of this comment letter.

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For the reasons discussed above, Fannie Mae strongly urges the FTC to adopt § 313.3(j)(3)(iii) as proposed. When supplemented by the other protections described in our letter, the FTC proposal provides strong privacy protections for consumers while, at the same time, permitting the efficient functioning of the secondary market. Taken as a whole, these proposals give full meaning and effect to the careful balance that Congress struck in enacting the Act.

Thank you for consideration of our views.

Sincerely,



Thomas E. Donilon
General Counsel

cc: Office of Comptroller of the Currency
Office of Thrift Supervision
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Securities and Exchange Commission