

November 21, 2016

BY ELECTRONIC TRANSMISSION ONLY:

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B),
Washington, DC 20580

Re: **Safeguards Rule, 16 CFR 314, Matter No. P145407**

Dear Ladies and Gentlemen:

I am writing on behalf of the members of the American Escrow Association, the nation's trade association on federal matters for real estate settlement agents. We are submitting comments on the impact of key provisions, in this regulatory review of the Safeguards Rule, which could apply to the real estate settlement agent industry.

AEA members serve the public as trusted guardians of their dollars, their documents and their data in settling a real estate transaction, often handling loan dollars as well. For that reason the essential function of the escrow settlement agent has always been to handle all these elements with strict fidelity to safeguarding all of them as a neutral third party. In a purchase transaction this is guided by fiduciary responsibilities to the buyer and seller through written instructions and additional parties (such as the lender) by contract through additional written instructions.

Real estate settlement agents serve as specific (limited) purpose agents. The Gramm Leach Bliley Act ("GLBA") covers our members and they are included in that coverage, for certain provisions, as being considered part of a "financial institution." That makes sense given the scope and scale of the amount of non-public personal information associated with a home purchase transaction, particularly one with a loan. However, and in addition, as the preamble to the Federal Register Notice indicates, not every consumer is covered by this Rule.

Generally the position of the settlement agent is handling sensitive non-public personal (and other) information on a transactional basis. This contact may re-occur with a specific person but almost always is not on a continuing basis. Thus, it is important that any revised Rule articulate carefully how the following coverage statement in the preamble plays out in a real estate transaction:

The Rule does not apply to all *consumer* information handled by a financial institution; it applies only to the information of *customers*, which are consumers that have a continuing relationship with a financial institution that provides one or more financial products or services to be used primarily for personal, family, or household purposes. The Rule is not limited to protecting a financial institution's own customers, but also applies to all customer information in the financial institution's possession, including information about the customers of other financial institutions.

The Commission is also reviewing its Disposal Rule. Finally the CFPB is in the midst of considering a rulemaking that incorporates the sharing of GLBA protected non-public personal information by settlement agents with other parties such as a real estate agent.

Based on the all these considerations, the American Escrow Association recommends that the Commission develop real estate settlement industry focused examples that articulate how these various rules apply (or could apply) in a typical residential purchase transaction with a loan. We are available and prepared to meet to discuss specifics of what this information may consist of. Our members would greatly benefit by a clear example or set of examples of what constitutes the basic application of this and the other referenced rules and we believe our members will meet and exceed the expectations of these provisions. The Association leadership will be in Washington DC from February 29 through March 3, 2017 and we can meet then; or we could discuss by phone meeting before then.

Please note that these comments and requests also apply to the other Rule being reviewed by the FTC concurrently; the “Disposal Rule.” Hence please treat this letter as also being submitted under: **“Disposal Rule, 16 CFR Part 682, Project No. 165410”**

Respectfully submitted,
On Behalf of the American Escrow Association.

/s/ Art Davis
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