



MID-SIZE BANK COALITION OF AMERICA

ASSOCIATED BANK

April 16, 2012

BANK OF HAWAII

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20006

BOK FINANCIAL

CITY NATIONAL BANK

COMMERCE BANCSHARES, INC.

EAST WEST BANK

FIRSTBANK HOLDING COMPANY

FIRST HAWAIIAN BANK

FIRST HORIZON NATIONAL CORPORATION

FIRSTMERIT CORPORATION

FROST NATIONAL BANK

FULTON FINANCIAL CORPORATION

HANCOCK BANK

IBERIA BANK

MB FINANCIAL

OLD NATIONAL

ONE WEST BANK

PEOPLE'S UNITED BANK

RAYMOND JAMES BANK

SILICON VALLEY BANK

SUSQUEHANNA BANK

TCF FINANCIAL CORPORATION

THE PRIVATE BANK

TRUSTMARK CORPORATION

UMB FINANCIAL CORPORATION

UMPQUA BANK

VALLEY NATIONAL BANK

WEBSTER BANK

Re: **Confidential Treatment of Privileged Information: Docket No. CFPB-2012-0010**

Dear Ms. Jackson:

On behalf of the Midsize Bank Coalition of America (“MBCA”), I am writing to provide the MBCA’s comments on the proposed rule regarding confidential treatment of privileged information published by the Consumer Financial Protection Bureau (“CFPB”) on March 15, 2012 (the “Proposed Rule”).¹

I. Background on the MBCA

The MBCA is a non-partisan financial and economic policy organization comprising the CEOs of mid-size banks doing business in the United States. Founded in 2010, the MBCA was formed for the purpose of providing the perspectives of mid-size banks on financial regulatory reform to regulators and legislators. The Coalition now has nearly 30 member banks.

As a group, the MBCA banks do business through more than 3,800 branches in 41 states, Washington D.C. and three U.S. territories. The MBCA’s members’ combined assets exceed \$450 billion (ranging in size from \$7 to \$30 billion) and, together, its members employ approximately 77,000 people. Member institutions hold nearly \$336 billion in deposits and total loans of more than \$260 billion.

¹ *Bureau of Consumer Financial Protection: Confidential Treatment of Privileged Information*, 77 Fed. Reg. 15,286 (March 15, 2012) (proposed rule).

The MBCA has a strong interest in the preservation of privileges with respect to information its members may submit to the CFPB. The protection of these privileges, and defending them from challenge, is of critical importance to each of the MBCA member banks. The MBCA therefore supports, and has a significant stake in the adoption of, the Proposed Rule.

II. MBCA Support for the Proposed Rule

For all the reasons set forth in the Bureau's notice regarding the Proposed Rule,² the MBCA believes it would provide important clarification that documents subject to statutory or common-law privileges, including but not limited to the attorney-client privilege, do not lose the protection of such privileges when shared with the CFPB, or when shared by the CFPB with other federal or state agencies.

Such clarification is important despite the fact that, even in the absence of such a regulation, the submission of privileged information to the Bureau by a CFPB-supervised entity, such as any of the MBCA members, should not be deemed to waive the privilege associated with the information. That is because, as the CFPB has explained, the Bureau's supervisory authority encompasses the authority to compel supervised entities to provide privileged information and, therefore, a supervised entity's submission of privileged information to the Bureau in response to a request is not a voluntary disclosure that would result in the waiver of any applicable privilege.³

The MBCA also supports a legislative confirmation of this same principle. The House of Representatives recently passed a bill (HR 4014) that would provide such confirmation by statutorily clarifying that privileged information financial institutions provide to the CFPB is not subject to, for example, third-party subpoenas. This legislation would provide explicit statutory parity for the CFPB with the other federal banking regulators, whose protection of privileged information submitted by their respective supervised financial institutions Congress codified in 2006.⁴

Although Congress did not include in its prescription of the CFPB's powers and responsibilities an express reference to the Bureau's protection of privileged information, that appears to have been a mere oversight, as the virtually unanimous support for H.R. 4014 and its Senate companion bill, S. 2099, suggests. Therefore, the principle that the Proposed Rule would codify – that there is no waiver of privilege when a supervised entity submits privileged

² See *id.* at 15,287-90.

³ *Id.* at 15290; see also CFPB Bulletin 12-01 (January 4, 2012), available at http://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf.

⁴ See 12 U.S.C. §§ 1828(x), 1785(j).

information to the CFPB – appears to be well established as a matter of implicit federal law.

The MBCA also supports the Proposed Rule’s codification of the principle that the CFPB does not waive any privilege associated with information it possesses by transferring the information to, or allowing the information’s use by, another agency. In this context, the MBCA recommends that, in publishing the final rule, the CFPB explicitly reiterate that only in highly exceptional circumstances, and subject to review of all relevant facts and considerations, will the Bureau share confidential supervisory information with law enforcement agencies, including state Attorneys General.⁵ Encouraging the free flow of information among supervisory agencies by preserving privileges is a policy objective distinct from law enforcement considerations. The Proposed Rule should not be deemed to blur that distinction or to expand in any way the circumstances under which it would be appropriate for the CFPB to share confidential supervisory information with law enforcement agencies, including state Attorneys General.

III. Conclusion

For the reasons set forth above, the MBCA strongly supports the CFPB’s Proposed Rule and believes its clarification of the principles of protection for privileges is warranted, important, and prudent.

Yours Truly,

A handwritten signature in black ink, appearing to read "Russell Goldsmith". The signature is fluid and cursive, with a large initial "R" and "G".

Russell Goldsmith
Chairman, Midsize Bank Coalition of America
Chairman and CEO, City National Bank

cc: Mr. Jack Barnes, People’s United Bank
Mr. Greg Becker, Silicon Valley Bank
Mr. Daryl Byrd, IBERIABANK
Mr. Carl Chaney, Hancock Bank
Mr. William Cooper, TCF Financial Corp.

⁵ CFPB Bulletin 12-01, at 5.

Mr. Raymond Davis, Umpqua Bank
Mr. Dick Evans, Frost National Bank
Mr. Mitch Feiger, MB Financial, Inc.
Mr. Philip Flynn, Associated Bank
Mr. Paul Greig, FirstMerit Corp.
Mr. John Hairston, Hancock Bank
Mr. Robert Harrison, First Hawaiian Bank
Mr. Peter Ho, Bank of Hawaii
Mr. John Hope, Whitney Holding Corp.
Mr. Gerard Host, Trustmark Corp.
Mr. John Ikard, FirstBank Holding Company
Mr. Bob Jones, Old National
Mr. Bryan Jordan, First Horizon National Corp.
Mr. David Kemper, Commerce Bancshares, Inc.
Mr. Mariner Kemper, UMB Financial Corp.
Mr. Gerald Lipkin, Valley National Bank
Mr. Stanley Lybarger, BOK Financial
Mr. Dominic Ng, East West Bank
Mr. Joseph Otting, One West Bank
Mr. Steven Raney, Raymond James Bank
Mr. William Reuter, Susquehanna Bank
Mr. Larry Richman, The PrivateBank
Mr. James Smith, Webster Bank
Mr. Scott Smith, Fulton Financial Corp.
Mr. Michael Cahill, Esq., City National Bank
Mr. Brent Tjarks, City National Bank
Mr. Drew Cantor, Peck, Madigan, Jones & Stewart, Inc.
Mr. Jeffrey Peck, Esq., Peck, Madigan, Jones & Stewart, Inc.
Mr. Richard Alexander, Esq., Arnold & Porter LLP
Mr. Andrew Shipe, Esq., Arnold & Porter LLP
Ms. Nancy L. Perkins, Esq., Arnold & Porter. LLP