



MORTGAGE BANKERS ASSOCIATION

Protecting Privacy and Helping Homeowners

State Data Protection Bills Must Not Unintentionally Impede Homeownership

Buying a home remains the most significant financial decision most Americans will make, and it has the power to transform lives, families and communities. America's sophisticated real estate finance market means buying a home requires multiple entities beyond lenders, such as federal and state government agencies and the government-sponsored enterprises (Fannie Mae and Freddie Mac). Other regulated companies and entities purchase and insure loans or provide services during the transaction, like title companies and attorneys. These transactions require the use and verification of detailed personal information in order to assist consumers in achieving the goal of homeownership.

The Mortgage Bankers Association (MBA) strongly believes it is critical to protect consumer personal information in real estate financial transactions, and our member companies invest millions in technology systems and staff to do this. As states take steps to strengthen their consumer data protection laws, it is important that policy-makers recognize not just the necessity of sharing and validating data in real estate finance, but to also appreciate that this system is already subject to robust federal consumer protection laws and rules.

For two decades, the Gramm-Leach-Bliley Act (GLBA) has successfully protected consumer privacy in the marketplace by balancing vital consumer protection needs in financial transactions with marketplace demands to serve consumers quickly, efficiently and at a low cost. Under the GLBA, the Federal Trade Commission, Consumer Financial Protection Bureau, and other federal financial regulators have implemented—and vigorously enforced—rules that both establish substantive limitations on the sharing of consumer information, except as necessary to carry out the transaction required by the consumer. In addition, GLBA requires financial institutions to safeguard consumer information in their possession. The GLBA's Privacy Rule ensures that financial institutions use clear language to disclose their privacy policies to consumers and prevents financial institutions from sharing consumers' personal information without offering consumers a reasonable opportunity to opt out of such sharing. Separately, the GLBA's Safeguards Rule requires financial institutions to review their consumer data, identify security risks, and develop a comprehensive information security program to protect consumer data. Further, the GLBA and its implementing rules create workable, nationwide standards to protect consumer information.

In order for this proven consumer protection regime to continue functioning effectively, MBA proposes the inclusion of the following language in proposed state privacy bills:

A [covered entity/company/operator] under this section does not include a financial institution, or an affiliate of a financial institution, that is subject to the

provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq., or the regulations adopted pursuant thereto.

“Affiliate of a financial institution” is any company that controls, is controlled by, or is under common control with another company.

“Control” of a company means:

- (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;*
- (2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or*
- (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company as determined by the applicable prudential regulator (as defined in 12 U.S.C. 5481(24)), if any.*

MBA recognizes and appreciates that consumers deserve strong and effective state laws that protect their data from unauthorized use and disclosure. The GLBA requires financial institutions to provide just these sorts of protections on a nationwide basis and subject to the oversight of federal regulatory agencies. By including this language for financial institutions that already comply with GLBA, a state will continue to protect its citizens without creating unnecessary barriers to companies that intend to offer products and services to the state’s consumers.