



March 15, 2019

The Honorable Mike Crapo
Chairman
Senate Committee on Banking,
Housing and Community Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Senate Committee on Banking,
Housing and Community Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

The American Land Title Association¹ (ALTA) urges Congress to develop national, uniform rules to guide businesses about how to protect American's data and help them when it is misappropriated. Data privacy, protection and collection standards should recognize differences in the sensitivity of the data, the risk of harm to the consumer if its exposed and the reasonable ability of businesses, based on their size, to implement different safeguards.

Recent consumer data privacy laws that have been passed or are pending in states intend to target large companies that utilize or profit from collecting and tracking consumers across the internet. Our concern is that these proposals should focus on actual or likely harm to the consumer. We are also concerned that new laws create standards for businesses that consumers are unwilling to follow. An example that ALTA members have experienced is pushback from customers when a business implements secured and encrypted email communications channels for real estate transactions. We urge policymakers to ensure data privacy laws set reasonable expectations and requirements for businesses when providing services directly to Americans, such as title companies that close consumers' mortgage loans.

In response to your request for feedback, below are our thoughts to questions 1, 2 and 3.

Question 1) What could be done through legislation, regulation, or by implementing best practices that would give consumers more control over and enhance the protection of consumer financial data, and ensure that consumers are notified of breaches in a timely and consistent manner?

¹ Founded in 1907, ALTA represents businesses and individuals working in real estate settlement, abstract and title insurance industry. Our 6,300 members, most small family owned companies, work with consumers across the country every day to ensure their property rights are protected. Title agencies, the majority of our membership, have on average of fewer than five employees and earn less than \$500,000 in revenue each year. These agencies do the critical work of searching records that affect property rights and examine them to provide a sense of certainty when homes are purchased or refinanced. Title and settlement companies operate in every community in each state. Most are small, family-owned businesses with an average of three employees and just \$156,000 in annual gross revenue. Title and settlement companies solve problems, innovative to improve the consumer experience, and collaborate to raise consumer awareness about real estate wire transfer fraud.

When buying and selling real estate, regardless of whether there is a mortgage loan, personally identifiable information is collected about consumers. It is done with their knowledge. They are often the sole source of this information.

ALTA members currently collect and share this information in accordance with the requirements of the Gramm Leach Bliley Act (GLBA). Additionally, depending on the consumer's state or country of residence, the European Union's General Data Protection Regulation, California Consumer Privacy Act and state privacy laws will also apply.

When information is collected about the consumer in a real estate and mortgage transaction, it is done at the consumer's request and for their benefit. Real estate transactions involve a significant amount of underwriting. This includes information regarding the borrower's creditworthiness. It also includes the history of the property's legal ownership. Without this underwriting the transaction would not be able to be completed for the consumer's benefit.

Consumers provide much of this data to their lender using the Uniform Residential Loan Application (URLA), which is shared with third parties on a limited basis. This 5-page form², also known as the Freddie Mac Form 65 / Fannie Mae Form 1003, and often simply called "the 1003" is a standardized document used by borrowers to apply for a mortgage. The URLA is jointly published by the Government Sponsored Enterprises and has been in use for more than 20 years in all U.S. States and Territories.³

The URLA includes eight sections. Section one asks about a consumer's personal information along with income from employment and other sources, such as retirement, that the consumer may want considered to qualify for the loan. Personal information includes first, middle, last names and suffix, any alternate names by which the consumer is known or any names under which credit was previously received; their Social Security Number, date of birth, citizenship, type of credit, marital status, dependents, contact information, current address, former address if at current address for less than 2 years, mailing address, military service and status, and language preference.

Section two requests information about a consumer's assets and liabilities, including things a consumer owns that are worth money and that the consumer wants considered to qualify for the loan, including the name of the financial institution, account number and cash or market value. It also asks about a consumer's liabilities or debts that they pay each month, including credit cards, alimony or other expenses, along with the creditor name, account number, unpaid balance and monthly payment.

² A redesigned URLA will begin to be used in an "Optional Use Period" on July 1, 2019. On February 1, 2020, lenders will be required to submit new applications using the redesigned URLA.

³ <https://www.fanniemae.com/content/faq/urla-ulad-fags.pdf>

Section three requests a consumer list all properties they currently own, including address, monthly insurance, taxes and any association dues, property value, creditor name, account numbers, monthly mortgage payment and credit limit, if applicable.

Section four asks about the loan's purpose and information about the property the consumer wants to purchase, including gifts or grants the consumer has been given or will receive.

Section five asks specific questions about the property, a consumer's funding and their past financial history.

Section six discloses a consumer's legal obligations when they sign the application including disclosure that the lender and other loan participants may report information about their account to credit bureaus, including late payments, missed payments or other defaults on the consumer's account that may be reflected in their credit report and will likely affect their credit score.

Section seven asks about a consumer's ethnicity, sex and race. This information is not required but encouraged to be provided to monitor compliance with equal credit opportunity, fair housing and home mortgage disclosure laws.

Finally, section eight provides loan originator information.

Additional information is also frequently provided by the consumer for the real estate sales contract and the deed. If a consumer is buying or selling the real estate or applying for a loan with others, each additional borrower must provide information as well. Often state law mandates this information be retained by businesses for a long period of time, typically seven years.

Since this information is necessary to buy and sell real estate, and obtain a mortgage loan, it is not feasible to provide consumers more control over the use and retention of their financial data. This makes the "opt-in" or an "opt-out" features of many proposed data privacy laws unworkable.

However, legislation could require additional third parties to comply with GLBA, including the Safeguards Rule. This existing regulation, which ALTA members comply with as financial institutions, requires a financial institution to develop, implement, and maintain a comprehensive information security program that consists of the administrative, technical, and physical safeguards the financial institution uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.⁴

By broadening the Safeguards Rule, consumers could be given more control over and enhance the protection of consumer financial data to address the practice by some contracted service providers in a real estate transaction to also present consumers with agreements to use the consumer's data in other ways, for purposes not core to the service or product offered to the

⁴ 16 CFR 314.2(c).

consumer for that transaction. Consumer protections are needed to maintain data privacy in these situations.

Legislation could also direct the Federal Trade Commission to update the privacy notice required under GLBA. Consumers would benefit from an updated disclosure including model forms that use clear language and design to make it easier for consumers to locate key information, regardless of whether the notices are provided to consumers in electronic or paper format. This updated disclosure would be similar to the Consumer Financial Protection Bureau's improvements to consumer mortgage disclosures, and these design elements have been incorporated into the new 1003. An updated notice would provide information about which entities the data is shared with and for what purposes. An effective privacy notice could aid in building transparency and consumer trust to describe what personal information is collected, why it is requested or needed, how that information is used and shared, and for what purposes.

A national standard should also be established to ensure that consumers are notified of breaches in a timely and consistent manner. A single federal law will provide consumers with clarity regarding the scope of protections of their personal information and will eliminate disparity in consumer rights and protections based solely on the consumer's state or residence or location of the business. Data is now typically shared electronically across jurisdictional boundaries. Physical location of the consumer or the business should not be a factor in consumer protection. It is important for consumers served by the industry to have the same set of safeguards and protections in place, regardless of the state jurisdiction.

Consider the confusion that can result when data is breached from a single data storage location of a company that conducts business in multiple states. The company will have to attempt to follow myriad timing and formatting requirements for sending information about the same incident to similarly-impacted customers whose only point of differentiation is the state where they reside. Along with equal protection for consumers, a single national standard will eliminate compliance and operational uncertainty.

In addition, a risk-based approach should align consumer expectations with regulatory compliance. Consumers expect sensitive information to receive heightened protection; while non-sensitive or less sensitive information, which creates a lower risk that consumers would be harmed, or even associated with an individual, would not receive the same level of protection. An additional benefit of a risk-based approach is that it provides for scalability, regardless of the size of the business.

Question 2) What could be done through legislation, regulation, or by implementing best practices to ensure that financial regulators and private financial companies (including third-parties that share information with financial regulators and private financial companies) provide adequate disclosure to citizens and consumers about the information that is being collected about them and for what purposes?

For purposes of buying and selling real estate, including transactions where there is a mortgage loan, there exists today a great deal of regulation, but this regulation is not uniform or

consistent. The lack of uniformity and consistency results in (1) inconsistent consumer protections based on their state of residence, (2) consumer confusion about the scope of those protections, and (3) significant compliance and operational challenges for businesses.

The title insurance and real estate settlement industry shares information with financial regulators only when required or authorized by law to do so. There are several public interest reasons compelling regulators to have access to certain information collected by these businesses, including anti-money laundering and anti-terror efforts, and fraud detection and prevention.

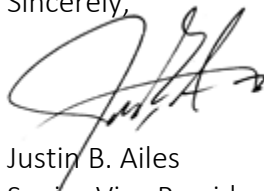
The ability to disclose to citizens and consumers that information is being shared helps align industry compliance with consumer expectations for their data. For example, until recently, FinCEN's Geographic Targeting Orders (GTOs) required businesses to collect personal information from individuals without disclosing the purpose for that collection. This approach put market participants in a difficult position, as naturally consumers are sensitive about sharing their sensitive personal information and expect transparency regarding its use. Subsequent changes to these GTOs lifted the confidentiality requirements, and businesses were able to provide greater transparency and education to consumers regarding this process, which helps maintain customer trust. While our members understand that transparency in these regulatory disclosures does not always serve the public interest, we appreciate the government's willingness to consider when and where a more transparent process may be beneficial.

Question 3) What could be done through legislation, regulation, or by implementing best practices to give citizens and consumers control over how financial regulators and private financial companies (including third-parties that share information with financial regulators and private financial companies) use consumer data?

As described in Question 1, the nature of the information required to buy and sell real estate, including transactions where there is a mortgage loan, may not make it possible to give consumers more control over this type of consumer financial data or an "opt-out".

Thank you for this request for feedback from interested stakeholders on the collection, use and protection of sensitive information by financial regulators and private companies. Our members look forward to working with the Committee to protect consumers and their data.

Sincerely,



Justin B. Ailes
Senior Vice President of Policy