



Federal Housing Finance Agency

March 22, 2019

The Honorable Michael Crapo
Chairman
Committee on Banking, Housing, and Urban
Affairs
United States Senate
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban
Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Crapo and Ranking Member Brown:

Acting Director Joseph Otting asked that I respond to your February 13, 2019, request for feedback regarding consumer data privacy, protection and collection as the Agency official involved with these issues. The Federal Housing Finance Agency (FHFA) has been monitoring efforts by a number of States to enhance the privacy of State resident personal information by providing new rights for dealing with information collected without consumer knowledge or consent. FHFA's focus has been to understand how such proposals could impact the availability of home mortgage finance in those States.

As part of its regulatory role, FHFA oversees compliance by Fannie Mae and Freddie Mac (the Enterprises) and the Federal Home Loan Banks (the Banks) with laws and regulations, including those pertaining to the privacy of personal information about consumers ("PI").

The primary interaction of the firms with data is accession of consumer data for the purposes of purchasing mortgages and moving them into securitizations or maintaining consumer data to meet legal requirements for loan servicing, demonstration of contractual commitments and protecting legal rights. Fannie Mae and Freddie Mac have a more diverse market presence, and they have been the focus of FHFA's oversight of privacy issues, though the Banks likewise are subject to FHFA review. FHFA and its regulated entities consider the protection of nonpublic personal information to be critical to the effective operation of the mortgage market.

Collection and Retention of Consumer Information in the Mortgage Process. The mortgage process is fundamentally different from other industries in terms of collecting PI from consumers who may be unaware that the collection is happening or what becomes of their data once it is collected and who lack any ability to control an activity if they know it is happening. The primary and secondary markets for home mortgages are highly regulated under an extensive federal privacy regime that protects consumers and is enforced by various agencies of the federal government.

With regard to control, mortgage loans are *always* initiated by the consumer. With regard to transparency, lenders must inform consumers up front about the types of PI that will be needed to underwrite and service their home loan. Once a consumer applies for a loan, a lender begins gathering, sharing and verifying the consumer's PI, a controlled process that is essential to underwriting, servicing and, if applicable, securitizing the mortgage loan in a safe, sound and lawful

manner. While lenders must share certain PI with the Enterprises in order to sell them a mortgage loan, the Enterprises do not sell the consumer data, which has been raised as an issue with the Internet firms, but use it to make business decisions.

Existing Federal Legal Framework for Data Privacy Related to the Mortgage Market. Data privacy long has been an object of federal statute and regulation in matters relating to housing finance. Central to FHFA's oversight of data protection by its regulated entities is the Gramm Leach Bliley Act of 1999, in particular Title V, which originated in the congressional banking committees. [Gramm-Leach-Bliley Act, Title V, 15 USC 6802 *et seq.* ("GLBAct").]

The GLBAct acknowledges the complexity of the mortgage markets and permits the reasonable and responsible use of information in consumer finance transactions and, at the same time, recognizes the need to protect consumers. Specifically, consumer data may be shared with other parties necessary for a consumer to secure a mortgage— this would include appraisers, mortgage and title insurance firms, credit scoring companies and so forth. Also, financial institutions must provide their customers with privacy notices, the initial notice at the outset of the relationship and annual notices thereafter. If PI is to be shared with nonaffiliated third parties and where no exception to such sharing is specified in the GLBAct, the customer must be provided with an opt-out notice that explains: the customer's right to stop the financial institution from sharing the information, the method of opting out, and a reasonable period of time to opt out. Gramm-Leach-Bliley Act, Title V, 15 USC 6802 *et seq.*; Regulation P, 12 CFR 1016; 16 CFR 313. In addition to these consumer protections, the GLBAct and related regulations require financial institutions to develop and implement strong administrative, technical and physical safeguards designed to protect the PI they collect and to ensure its security, confidentiality and integrity throughout the mortgage lifecycle, which includes not only mortgage origination but also securitization of mortgages.

Information consumers provide enables lenders to comply with federal consumer protection laws, such as the Ability to Repay provisions of the Truth in Lending Act ("TILA"); 15 USC 1639c(a). Other consumer protection provisions, such as the TILA-RESPA Integrated Disclosure ("TRID") requirements of Regulation Z (12 CFR 1026.19, 1026.37, and 1026.38) and the assignee notification provisions of TILA (15 USC 1641(g)), require disclosure of the entities that are party to a transaction and who, therefore, receive the consumer's information.

It should be noted that while FHFA seeks to assure regulated entity compliance with these laws, the Enterprises in effect reinforce statutory privacy standards. The Enterprises have requirements for counterparties involved in the mortgage-making and mortgage securitization process to follow applicable privacy laws and have the ability to return mortgages and to suspend or terminate firms that violate such laws.

State Consumer Privacy Activities. Following concerns with social media firm activities, a number of States have undertaken legislative action to enhance the privacy of State resident personal information by providing new rights for dealing with information collected and used by a business without consumer knowledge or consent.

Responsible information sharing and retention are essential to underwrite, fund and service a mortgage loan. Some proposals at the State level, such as giving consumers the right to prohibit PI transfers and/or retention on a blanket or broad basis, could prevent an applicant from getting a

mortgage loan by blocking a lender's ability to underwrite, service, and sell the loan into the secondary mortgage market in compliance with applicable law. Provisions to permit deletion of consumer information also could impact safe and sound underwriting and a lender's ability to meet the consistent level of disclosures required under the Securities and Exchange Commission's Regulation AB when securitizing the mortgages, thereby affecting the flow of capital for home financing. *See* 17 CFR 229.1100 *et seq.*

FHFA asks that any new privacy legislation should be developed with consideration of the existing stringent privacy controls for mortgage finance that both require transparency and restrict what can be done with a consumer data. Inappropriately tailored legislation could result in significant added expense, confusion and other adverse effects for consumers seeking affordable housing and affordable housing finance. At the State level, FHFA continues to provide technical assistance focused solely on mortgage finance matters requested by State officials. This assistance, in some instances, has resulted in avoidance of steps that could have adverse effects for borrowers as a result of laws aimed to resolve issues primarily at unregulated entities.

The Agency would be happy to provide technical assistance on any data privacy proposals that may come before the Congress insofar as they relate to consumer finance.

FHFA remains committed to ensuring that its regulated entities protect consumer private data needed in the mortgage process and comply with all relevant laws and regulations. Please feel free to contact me at alfred.pollard@fhfa.gov or 202 649-3050 if you have any questions.

With all best wishes, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Alfred Pollard". The signature is fluid and cursive, written in a professional style.

Alfred Pollard
General Counsel