



**STATEMENT**

**of Kurt Pfotenhauer for the  
Mortgage Bankers Association**

**on**

***“The Financial Data Protection Act of 2005”***

**for the**

**Subcommittee on Financial Institutions and Consumer Credit**

**United States House of Representatives**

**November 9, 2005**

Thank you for allowing the Mortgage Bankers Association (MBA)<sup>1</sup> the opportunity to submit a Statement for the Record for the hearing on H.R. 3997, the “*Financial Data Protection Act of 2005*.” This legislation, as an amendment to the Fair Credit Reporting Act (FCRA), would mandate a national standard for the protection of consumer information and require institutions to provide notifications to consumers in the event that an investigation determines that a data security breach has occurred or is reasonably likely to occur.

MBA understands the importance of providing effective protection of the sensitive financial information of consumers, and supports legislation that makes this protection possible. MBA believes that, with modifications, the passage of the H.R. 3997 could put in place legislation that would allow for a clear, consistent and uniform set of guidelines by which financial organizations can implement data security programs and policies that better protect consumers from the expanding threat of identity theft.

### **MBA’s Involvement in Data Security**

MBA works with its members on developing policy positions (and associated standards and best practices) on information technology. MBA member activities, such as loan origination, closing and servicing require the collection, processing, transfer, storage and disposal of private information. Personal data elements are critical assets for risk assessment within the primary mortgage market.

MBA has a long and active history of supporting technology initiatives, including the Financial Institution’s Electronic Data Interchange (EDI) in the early 1990s and the establishment of two entities that support data integrity: the Mortgage Industry

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 500,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation’s residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA’s Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

Standards Maintenance Organization (MISMO) <sup>2</sup> and Secure Identity Services Accreditation Corporation (SISAC) <sup>3</sup>.

MISMO continues to press for innovation in the mortgage process by providing a specification for electronic mortgages (eMortgages), codifying a single location for the registry of authoritative electronic notes and establishing federated identity management policy for authentication.

Confidentiality, integrity and non-repudiation have been recognized within the industry as critical principles for electronic records and signatures. For many years, MBA has been addressing information security as a unique discipline. SISAC was established in 2003 to address these security principles. SISAC guidelines are for medium to high assurance levels corresponding to risk associated with mortgage transactions. The framework for SISAC was industry and government best practices including: the Federal Public Key Infrastructure (PKI) Bridge, National Institute of Standards and Technology (NIST), Internet Engineering Task Force (IETF), as well as other well-known standards organizations. MBA is well respected within the security domain as demonstrated by the election of MBA staff to the Electronic Authentication Partnership Board of Directors and by the selection of MBA to provide contract services to the General Services Administration (GSA) Office of Government-wide Policy.

A large number of MBA member companies are regulated by the Financial Regulatory Agencies ("the Agencies") – including the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, the Commodity Futures Trading Commission and the Federal Trade Commission. As such, these companies are currently required to comply with safeguarding provisions that have been mandated by the Gramm-Leach-Bliley (GLB) Act, and therefore, have existing measures in place for protecting the sensitive financial information of consumers.

MBA and its members have also been instrumental in advocating for consumer financial literacy. We encourage consumers to take advantage of accessing free credit reports, as provided by the Fair and Accurate Credit Transaction Act (FACTA), in order to

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<sup>2</sup> The Mortgage Industry Standards Maintenance Organization, Inc. (MISMO), a not-for-profit subsidiary of the Mortgage Bankers Association (MBA), develops data transfer protocols that span the \$9 trillion residential and commercial real estate finance industry. MISMO coordinates the development and maintenance of Internet-based Extensible Markup Language (XML) real estate finance specifications and electronic mortgage guidelines through a voluntary, open and vendor-neutral process, and its workgroups include more than 2,300 individual participants from over 160 subscribing organizations representing all sectors of the residential and commercial industry: lenders, originators, servicers, investors, government-sponsored enterprises, technology vendors, multiservice providers, credit reporting agencies, insurance firms, tax services and law firms. For more information on MISMO, visit [www.mismo.org](http://www.mismo.org).

<sup>3</sup> The MBA's wholly owned nonprofit subsidiary Secure Identity Services Accreditation Corporation (SISAC) is responsible for accrediting digital identity credential issuers against industry standards for secure identities in the mortgage industry. More information can be found at <http://www.sisac.org>.

monitor their financial history and ensure that any unauthorized activity – namely identity theft – has not occurred.

MBA has advocated for a strong and effective information security network. We commend the House Subcommittee on Financial Institutions and Consumer Credit for its efforts to ensure the protection of sensitive financial information of consumers.

### **Background on Data Security**

Data security refers to the secured storage of “personal identifying information,” which is generally defined as a person’s first name or first initial, last name, date of birth, address or telephone number, in conjunction with their Social Security number, driver’s license number or account number or credit or debit card number combined with the access code (also known as a PIN number). Information may come from a variety of sources, such as an application (for a mortgage loan, car, etc.), a credit report or an account transaction history, and is typically not data that is publicly available. A “security breach” occurs when the personal identifying information of a consumer or consumers has been stolen or compromised.

Some companies collect personal identifying information and use it directly, for purposes such as extending credit, while other companies collect and store personal identifying information for use by third parties, such as credit reporting agencies. Whether companies directly use the information or store it for another party, they are required to have policies and procedures in place for safeguarding the information and protecting it from unwarranted access by outside parties.

Currently, GLB requires the Agencies to establish data safeguards standards for the financial institutions subject to their jurisdiction. The safeguards are to ensure the security and confidentiality of customer records and information, and to protect against any anticipated threats or hazards to the security or integrity of those records. The safeguards are also to protect against unauthorized access to, or use of the records or information, that could result in harm to the customer.

The Agencies have issued guidelines that establish standards for safeguarding customer information and are authorized to enforce these guidelines with respect to the financial institutions that fall under their jurisdiction.

### **Current Legislative Activity**

Over the past year, there have been a number of cases involving personal information that was either accessed without authorization, improperly disclosed to third parties or lost via postal transmission. In response to this activity, Congress has held a series of hearings relating to the storage and protection of the personal identifying information of consumers. A variety of bills have also been introduced, at both the Federal and state level, that outline provisions for proper storage of personal information data and for notifying consumers when their information has been compromised.

As of today, 20 bills have been introduced in Congress concerning the protection of sensitive consumer information. At the state level, there are approximately 266 bills that have been introduced relating to the overarching issue of privacy. To date, 18 states have passed legislation requiring consumer notification of a breach of personal information and more than a dozen others have drafts pending.<sup>4</sup> These numbers are expected to increase.

### **Positive Features of H.R. 3997**

H.R. 3997 is a bipartisan bill that would mandate a national standard for the protection of consumer information. It requires financial institutions to conduct investigations if they determine or become aware of information indicating that a data security breach has occurred or is reasonably likely to occur. If these investigations determine that a breach is reasonably likely to result in identity theft or account fraud, the institutions must provide notifications to consumers. Furthermore, if any institution issues notifications, they must also provide consumers with a free credit monitoring service for at least a 90-day period. The bill would be an amendment to FCRA.

MBA's review of H.R. 3997 has determined that the legislation contains a number of positive provisions that would implement data security standards while still allowing mortgage lenders to avoid additional regulatory burdens and continue serving the nation's consumers in the most efficient manner. Specifically these provisions would:

- Set a national standard for the protection of consumers' sensitive financial information. MBA supports this measure, as it will help lenders avoid the regulatory burden of staying current with an ever-changing patchwork of state and local laws. Uniformity would lower the cost of home financing, as lenders who operate in multiple states would have a single standard to apply. Furthermore, a national standard would mean that consumers need only understand one law when pursuing remedies for a data security breach. Precedence for Federal preemption has already been set with the passage of FCRA.
- Authorize the Agencies to develop standards and guidelines that would allow financial institutions an exemption from liability if, at the time of a security breach, an institution had reasonable policies and procedures in place for protecting the security and confidentiality of the sensitive financial information of consumers, and if free credit monitoring service is offered as a result of the breach. MBA believes such a provision would encourage financial institutions to further develop conscientious policies and procedures for safeguarding consumer information. MBA does seek further clarification on what would be considered "reasonable."

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<sup>4</sup> Although Indiana is one of the 18 states, the law is applicable to state agencies only.

- Appropriately recognize GLB requirements by deeming financial institutions as in compliance with certain provisions of the bill, so long as such institutions are subject to and substantially in compliance with GLB. MBA supports legislation that considers GLB applicability, and is evaluating the bill to determine whether it provides enough coverage of GLB.
- Assign the responsibility of providing consumer notifications to the organization that suffers a data security breach. MBA agrees that ownership of a security breach should be directly assigned to the organization accountable for the breach. However, MBA also believes that legislation should clarify which entity will be responsible for the costs of providing consumer notifications in cases involving breaches of personal information that is stored, but not owned, by third party companies. Responsibility of all associated costs incurred when there is a breach, such as credit freezing and call-center operations, should be assigned directly to that organization regardless of the origin of personal information involved in the breach.

### **Other Issues Affecting Mortgage Lenders**

Upon MBA's review of all the proposed Federal legislation and state bills that have either been proposed or passed, a number of other issues have emerged that could have a significant impact on the mortgage banking industry. MBA urges the consideration of the following issues in H.R. 3997:

- The development of agreeable and concise security breach triggers that will not cause lenders to be unnecessarily overburdened in providing notifications, especially if there is not a perceivable threat of identity theft.
- H.R. 3997 does not specify what form of data (paper or computerized) is covered in the definition of "sensitive financial identity information." MBA believes the bill should clarify the type of form for the sensitive information, in order to allow for consistent interstate commerce application.

### **Conclusion**

MBA and its members understand that strong data security is crucial for the operation of our modern real estate finance system. As such, MBA supports legislation that provides protection for the personal identifying information of consumers. MBA believes that, with modifications, the passage of the "*Financial Data Protection Act of 2005*," could put in place legislation that provides a clear, consistent and uniform set of guidelines and laws by which financial organizations can implement personal information protection programs and policies that better protect consumers from the expanding threat of identity theft.

We look forward to working with the Subcommittee on this legislation.