



LEGAL AND REGULATORY COMPLIANCE COMMITTEE UPDATE

Dear Member of the MBA Legal Issues & Regulatory Compliance Committee,

Below are highlights and key developments from the month of March:

Realtors Reach Settlement in Commissions Litigation

On March 15, the National Association of Realtors (NAR) [agreed](#) to settle a series of lawsuits by paying \$418 million in damages and eliminating its rules on “cooperative” commissions. Last November, a Kansas City jury found that NAR, HomeServices of America, and Keller Williams Realty colluded to inflate or maintain high commission rates using the Broker Buyer Commission Rule (the Rule). The defendants were ordered to pay \$1.78 billion in damages. There are other cases across the country that make similar allegations against NAR, different M.L.S., and real estate brokerage companies. The settlement still needs to be approved by the judge in the case. MBA’s summary of the proposed settlement can be found [here](#).

If approved, changes will likely go into effect mid-July 2024. The impact on the home sales process and the mortgage industry is likely to evolve, with new approaches to the negotiation and payment of buyer agent commissions. As new business models emerge in the real estate brokerage space, MBA’s focus will be on helping our members adapt to these developments and ensuring that the changes adhere to core principles that ensure buyers that need representation have access to it, that buyers can negotiate over who pays for that representation, and the new models do not disrupt the home financing process and make the experience worse for homebuyers and home sellers. MBA will monitor the outcome as well as the likelihood of new approaches to buyer agent commissions that develop as a result.

MBA has been in discussions with NAR, the GSEs, Federal Housing Finance Agency (FHFA), Federal Housing Administration (FHA) and the Department of Veterans Affairs (VA) to identify the likely permutations and the best way forward. This challenge is the focus of [Bob Broeksmit’s blog](#). Additionally, MBA released a [pre-recorded webinar](#) with Pete Mills, SVP of Residential Policy and Strategic Industry Engagement, Justin Wiseman, VP of Residential Policy and Managing Regulatory Counsel, and Alisha Sears, Director and Regulatory Counsel, on the National Association of Realtors (NAR) Commission Settlement.

MBA Leads Joint Trades Letter Urging Congress to Act on Trigger Leads Legislation

In advance of a Senate Banking Committee hearing on housing policy, MBA led a diverse coalition of 22 industry trade groups, consumer and housing advocates, and individual mortgage lenders in penning a [letter](#) to the Chairs and Ranking Members of the House Financial Services and Senate Banking Committees urging them to support and “mark-up” the Homebuyers Privacy Protection Act (S. 3502, introduced by Senators Jack Reed (D-RI) and Bill Hagerty (R-TN), and H.R. 7297, introduced by

Rep. John Rose (R-TN) and cosponsored by Rep. Ritchie Torres (D-NY)). These identical, bipartisan bills, both introduced within the past few months, would restrict the use of mortgage credit trigger leads to limited circumstances during a real estate transaction. This large and diverse coalition of groups signing the letter underscores the broad base of support – and increasingly urgent need – for these key congressional authorizing committees to act to curb trigger leads abuses.

MBA Objects to CFPB Overreach on “Abusiveness” Authority

On March 25, MBA submitted a [comment letter](#) in response to a CFPB [proposed rule](#) to ban instantaneous nonsufficient fund fees as an abusive practice. While the rule would not directly affect the mortgage industry, MBA objected to the Bureau’s overbroad interpretation of the scope of its “abusiveness” authority. In particular, the Bureau has set too low of a bar to prove that consumers lack understanding of a product or service. A well-crafted disclosure should be able to cure a consumer’s lack of understanding, especially for novel products. The Bureau’s interpretation in the overdraft rule undermines the entire purpose of consumer disclosures.

The Bureau is attempting to ban the instant NSF practice under its unfair, deceptive, abusive, acts or practices (UDAAP) authority. The Bureau’s overly broad formulation of its authority would allow it to declare a practice as abusive if a consumer does not understand *any* single material cost, condition, or risk and how it might be incurred by the individual consumer, by consumers generally, or by other similarly-situated consumers. Additionally, the consumer’s lack of understanding does not need to be reasonable. This would essentially allow the Bureau to preliminarily declare many practices as abusive.

MBA Joins Coalition Letter to FCC on Illegal Text Messages

On February 26, MBA and other trades sent a joint [letter](#) in response to the Federal Communications Commission’s (FCC) [proposal](#) on targeting and eliminating unlawful text messages.

In the letter, MBA urges the FCC to take some of the following actions:

- Require originating providers – in addition to terminating providers – to block texts from a sender after they receive notice from the Commission that the sender is transmitting suspected illegal texts;
- Ensure that agency-mandated or voluntary text blocking identifies only texts that have a clear indicia of illegality and that this blocking is undertaken on a content-neutral, non-discriminatory basis;
- Propose a rule that requires originating providers to provide access to reported “spam” texts to those companies who wish to use the data to find impersonation texts relevant to their company and act on that information to protect their customers; and
- Require prompt and effective redress for erroneous blocking of legal texts.

MBA has weighed in previously on these issues and continues to support the FCC’s efforts to eliminate illegal text messages. Bad actors are increasingly using text messages to impersonate financial services providers with intent to defraud and ultimately causing harm to these institutions and their customers.

MBA Submits Coalition Letter Opposing Troubling TCPA Reforms

On March 18, MBA and other trades sent a joint [letter](#) to Chair Cathy McMorris Rodgers (R-WA) and Ranking Member Frank Pallone (D-NJ) of the House Committee on Energy and Commerce opposing H.R. 7116, the *Do Not Disturb Act*. The bill, as drafted, would restrict important customer communications by expanding the types of calling and texting equipment covered by the Telephone Consumer Protection Act (TCPA), thereby expanding the level of outreach requiring prior express consent before the call may be placed, and the definition of what constitutes a text message through overbroad and ambiguous new requirements.

MBA has previously weighed in on these TCPA-related issues. MBA members often provide important, sometimes critical, information to their customers through voice calls and text messages. These include suspicious activity alerts, notices of data breaches, past-due alerts, multifactor authentication texts, and notices of payments due. Consumers are harmed when they do not receive these time-sensitive communications from legitimate businesses.

H.R. 7116 could jeopardize such timely and important communications. The bill would also undo the Supreme Court's *Facebook, Inc. v. Duguid* decision – a favorable ruling in which MBA submitted an [amicus brief](#) - and would enable the class action plaintiff's bar to bring an onslaught of TCPA cases. MBA will continue to monitor any movement on H.R. 7116 and provide updates accordingly.

Ginnie Mae Implements Cyber Attack Reporting Requirements for Issuers

On March 4, Ginnie Mae [announced](#) the implementation of its cybersecurity incident reporting requirements. Effective immediately, all issuers and their subservicers are required to report significant cybersecurity incidents. Within 48 hours of detection, Issuers must notify Ginnie Mae via email, providing details reporting the incident's date/time, a summary, and designated points of contact. Once notified, Ginnie Mae will coordinate with the designated contact to gather additional information and determine the necessary course of action. Ginnie Mae defines a cyber incident as an event compromising information confidentiality, integrity, or availability, or violating security policies, potentially hindering an Issuer's ability to fulfill its obligations under the Guaranty Agreement. Ginnie Mae is actively enhancing its information security protocols and business continuity measures to ensure comprehensive protection and reporting standards.

A recent increase in cybersecurity incidents against mortgage related companies has the industry on high alert. An incident that impacts issuers could jeopardize the timely remittance of principal and interest to Ginnie Mae investors.

CFPB Releases 2023 HMDA LAR Data

On March 26, the CFPB [announced](#) that Home Mortgage Disclosure Act (HMDA) Modified Loan Application Register (LAR) data for 2023 is now available. LAR data can be found on the Federal Financial Institutions Examination Council's (FFIEC) HMDA Platform, accessible [here](#). Previously, LAR data could only be obtained by requesting data from individual institutions. HMDA data from 2023 will be available in other forms, including: nationwide loan-level datasets with all publicly available data for all HMDA reporters; aggregate and disclosure reports with summary information by geography and lender; and 2023 data through the HMDA Data Browser to allow users to create custom datasets, reports, and data maps.
