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MORTGAGE BANKERS ASSOCIATION

July 16, 2018

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

**Re: Request for Information Regarding the Bureau’s Consumer Complaint and Consumer Inquiry Handling Process, Docket No. CFPB-2018-0014**

**Dear Ms. Jackson:**

The Mortgage Bankers Association (“MBA”)<sup>1</sup> appreciates the opportunity to comment on the Request for Information (“RFI”) from the Bureau of Consumer Financial Protection (the “Bureau” or “BCFP”) regarding the Bureau’s consumer complaint and inquiry handling process. In addition to offering comments on this subject below, MBA would like to reiterate our belief in the need for a thorough reexamination of the Bureau’s operations and practices after a half-decade in operation. MBA released *CFPB 2.0: Advancing Consumer Protection* in September 2017 (the “White Paper”) to outline key considerations for the Bureau as it begins to think about the next five years. In brief, MBA recommended that:

- BCFP end “regulation by enforcement” by issuing rules and guidance to facilitate compliance rather than relying on fact-specific enforcement actions to announce new regulatory interpretations;
- BCFP communicate clearly when and how it plans to offer compliance guidance and acknowledge that it is bound by the guidance it releases; and
- BCFP provide more due process protections in its enforcement actions to ensure fairness and consistency.

These larger, thematic concerns apply to all Bureau operations and therefore are a theme of all of our comments on the RFIs that have been released to date. The RFI process can be a crucial starting point to gather the information necessary to determine how to best direct the BCFP

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<sup>1</sup> The MBA is the national association representing the real estate finance industry, an industry that employs more than 280,000 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 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA’s Web site: [www.mba.org](http://www.mba.org).

going forward to ensure it best serves consumers and facilitates access to financial opportunity. MBA applauds this effort and encourages the Bureau to continue to seek stakeholder input as it weighs the suggestions received during the RFI process.

As an initial matter, it is important to stress that MBA members take consumer complaints very seriously. While generally infrequent, the reality is that mistakes happen. MBA members understand this and have implemented various systems to promptly respond to, and appropriately address, consumer complaints. Doing so is a matter of business necessity.

MBA supports the Bureau's statutory objective to ensure consumers have access to timely and clear information on consumer financial products and services. However, in the context of its consumer complaint processes, the Bureau's pursuit of this objective has resulted in unwarranted regulatory burden for many financial service providers. Much like the previous RFI on the Bureau's complaint reporting practices, this RFI provides a valuable opportunity to identify remedies for the significant shortcomings in the consumer complaint process.

## **I. Background**

During 2017, the Bureau forwarded 31,800 mortgage-related complaints to companies for review and response.<sup>2</sup> More than 80 percent of these complaints were resolved with the company providing a simple explanation.<sup>3</sup> These statistics suggest that the overwhelming majority of mortgage-related complaints are the product of misunderstandings rather than company mistakes or instances of wrongdoing.

Given that they were satisfactorily resolved with an explanation, these mortgage-related complaints are much more akin to consumer inquiries. Unfortunately, they are not treated like consumer inquiries. They are classified as complaints and carry all the obvious negative connotations associated with the term "complaint."<sup>4</sup> They are displayed on the public-facing complaint database alongside valid complaints based on actual regulatory violations. Perhaps most concerning, they are included in the Bureau's periodic reports to the public and factored into lists with titles such as the "Top 10 Most-Complained-About Companies."

Treating misunderstandings as complaints is unfair. It causes unwarranted reputational harm and misleads consumers by dramatically inflating complaint statistics. One way to address this issue

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<sup>2</sup> BCFP, Consumer Response Annual Report (April, 2018), p. 20.

<sup>3</sup> *Id.* at 44.

<sup>4</sup> Merriam-Webster's website defines "complaint" as: (1) expression of grief, pain, or dissatisfaction; (2) something that is the cause or subject of protest or outcry; (3) a formal allegation against a party. See <https://www.merriam-webster.com/dictionary/complaint> (visited July 5, 2018).

is to change how the Bureau uses consumer complaint data.<sup>5</sup> MBA previously submitted recommendations with this in mind. Along with improving how complaint data is used, the Bureau should adjust the manner in which it collects consumer complaints and inquiries. The following specific recommendations will help ensure misunderstandings are not treated as complaints.

## **II. Develop a Process for Companies to Reclassify Consumers' Submissions**

Companies should be able to reclassify a consumer's submission to ensure it is correctly labeled. Currently, a complaint remains classified as a complaint regardless of the nature of the underlying issue or its resolution. The inflexibility of the 'once a complaint, always a complaint' policy is inappropriate. At the time of submission, many consumers simply do not know whether they have a complaint or an inquiry.<sup>6</sup>

By way of example, consider the mortgage application process. Consumers applying for mortgage loans are often surprised by the personal, non-financial questions included in the application. MBA members report instances where applicants take offense to questions on race or ethnicity. It would not be surprising for such an applicant to access the BCFP website and submit a consumer complaint. The subject company would likely resolve this complaint by explaining that federal law requires mortgage lenders to ask race and ethnicity questions.

Clearly, such a complaint is best described as an inquiry. The consumer's issue stemmed from a misunderstanding and not from the company's misconduct. It is not fair to treat it as a complaint. For this reason, the Bureau should establish a process whereby companies have the option to reclassify a consumer complaint as a consumer inquiry. The ability to reclassify should be limited to complaints that were resolved with an explanation.

## **III. Allow Consumers to Submit Inquires through the BCFP Website**

Under the Dodd-Frank Act, the Bureau is required to establish "reasonable procedures to provide a timely response" to consumer complaints and inquires.<sup>7</sup> Pursuant to this requirement, the Bureau created six channels through which consumers may submit complaints ("Website, referral from Federal and State entities/agencies, telephone, mail, fax, and email") and two channels through

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<sup>5</sup> MBA submitted suggestions on what changes are necessary in our response to the Bureau's Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information. A copy of that letter can be found at ([www.regulations.gov/document?D=CFPB-2018-0006-0230](http://www.regulations.gov/document?D=CFPB-2018-0006-0230)).

<sup>6</sup> The Bureau's telephone intake procedures state that "[o]ften the consumer isn't sure if they have a complaint or a question." See "Attachment 2.Consumer Response Intake Instruments\_FINAL" submitted with the BCFP's Information Collection Activities; Proposals, Submissions, and Approvals: Consumer Response Intake Form, 82 Fed. Reg. 33070, (November 28, 2017) (<https://www.regulations.gov/document?D=CFPB-2017-0035-0001>).

<sup>7</sup> 12 U.S.C. 5534(a).

which consumers may submit inquiries (“telephone and mail”).<sup>8</sup> While the statute does not require equal procedures, it does require reasonable procedures. Given that the internet has become the primary channel through which consumers and financial service providers interact, Dodd-Frank’s requirement for reasonable procedures should be interpreted to require the creation of a process for submitting inquiries via the Bureau’s website. The popularity of the Bureau’s website (81% of consumer complaints were submitted through the website) over the six other complaint channels strongly supports this idea.<sup>9</sup>

Moreover, failing to provide an inquiry option on the BCFP website needlessly increases the number of complaints. As acknowledged in the Bureau’s telephone intake procedures, “[o]ften the consumer isn’t sure if they have a complaint or a question.”<sup>10</sup> One may assume consumers using the Bureau’s website are just as likely to be unsure as those using the toll-free telephone number. Unfortunately, consumers on the Bureau’s website are not provided with the option of submitting an inquiry. The only option available on the website is to submit a complaint.

To address this issue and satisfy its statutory obligation, the Bureau should create a process to accept consumer inquiries submitted through the Bureau website.

#### **IV. Encourage Consumers to Resolve their Issue Directly with the Company before Submitting a Complaint**

The Bureau should take steps to reduce the likelihood of a misunderstanding leading to a complaint. One way to do so is by amending the complaint intake procedures. The current procedures include a question asking the consumer whether they’ve tried to “fix the problem with the company[.]” Strangely, consumers responding in the negative (i.e. answering that they have not previously tried to resolve the issue with the company) are not instructed to do so.

At minimum, the Bureau should encourage consumers to attempt to resolve the issue with the company. This approach benefits both the consumer and company. Directly contacting the company provides the consumer with the best chance for a prompt, satisfactory resolution. For similar reasons, financial service providers would also prefer to deal directly with the consumer. Financial service providers care about their customers and want to “get it right” when problems come up. A direct engagement offers the best opportunity to do so.

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<sup>8</sup> Request for Information Regarding the Bureau’s Consumer Complaint and Consumer Inquiry Handling Process, 83 Fed. Reg. 16,839 (April 17, 2018).

<sup>9</sup> BCFP, Consumer Response Annual Report (April, 2018), p. 7.

<sup>10</sup> See “Attachment 2.Consumer Response Intake Instruments\_FINAL” submitted with the BCFP’s Information Collection Activities; Proposals, Submissions, and Approvals: Consumer Response Intake Form, 82 Fed. Reg. 33070, (November 28, 2017) (<https://www.regulations.gov/document?D=CFPB-2017-0035-0001>).

## V. Conclusion

MBA appreciates the opportunity to comment on this RFI. We are hopeful that these recommendations will help the Bureau strike a better balance between its objective of providing timely and understandable information to consumers, and its objective of reducing unwarranted regulatory burden on companies. We welcome the opportunity to continue to meet with you and your staff to discuss this comment and any specific changes under consideration. Please feel free to direct any questions or comments to me directly ([soconnor@mba.org](mailto:soconnor@mba.org)) or to Justin Wiseman, Managing Regulatory Counsel ([jwiseman@mba.org](mailto:jwiseman@mba.org)).

Sincerely,

A handwritten signature in black ink that reads "Stephen A. O'Connor". The signature is written in a cursive style with a long horizontal line extending from the end.

Stephen A. O'Connor  
Senior Vice President  
Public Policy and Industry Relations  
Mortgage Bankers Association