



December 15, 2014

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

RE: Docket No. CFPB-2014-0025 – Policy on No-Action Letters

Dear Ms. Jackson,

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the subject proposed policy (Proposal) by the Bureau of Consumer Financial Protection (CFPB or Bureau) to issue No-Action Letters (NALs). Under the Proposal, CFPB staff would, in their discretion, issue NALs to specific applicants for specific financial products or services where there is substantial uncertainty about whether or how specific provisions of statutes or regulations implemented by the Bureau would apply.

MBA supports the objectives of this effort and the Proposal's stated goal of reducing regulatory uncertainty that discourages innovation to serve consumers. MBA believes that the issuance of reliable NALs along with clear authoritative written guidance from the CFPB would help foster a more innovative, dynamic marketplace providing consumers greater competition, increased choices, and lower costs. As other regulators such as the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) have shown, NALs can be an important part of fostering regulatory certainty to facilitate the provision of innovative products for consumers.

MBA is concerned, however, that several limitations in this Proposal would undermine the utility of NALs unless they are addressed. As proposed, NALs would only be available to new and innovative products, would only apply to the submitting entity, would be subject to modification or revocation at any time, and would not bind courts or other actors including other regulators or parties in litigation.

MBA also urges in this comment that in addition to establishing NAL procedures the Bureau examine and conduct a rulemaking on rules and authoritative guidance generally.

¹ The Mortgage Bankers Association (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.

I. Suggested Improvements

1. Expand the scope and availability of NALs to all products, services, and activities.

The Proposal states that NALs will reduce areas of substantial regulatory uncertainty that would otherwise limit innovation and access. MBA believes, however, that to reduce regulatory uncertainty CFPB should expand the availability of NALs to existing products and services and that coverage should also be expanded from the recipient of the NAL to all analogous products or services offered by financial service providers. MBA also recommends that the CFPB allow trade associations or similar groups to submit NAL applications on behalf of their members. Trade associations are able to work with diverse members to develop ideas that could have market-wide consumer benefits. Additionally, MBA urges that a NAL should also provide protection from supervisory or enforcement actions based on a covered product or service while they are in force.

By limiting the use of NALs to new products and services, treating the NAL process as an exceptional procedure, and limiting the coverage of the NAL to the submitting entity, MBA does not believe the CFPB will achieve increased market innovation and competition. Indeed, the restraints inherent in the proposal do not invite innovation.

2. Make NALs more reliable.

Under the Proposal a NAL is required to state that it is subject to modification or revocation at any time at the discretion of staff “for any reason.” It is also required to state that an NAL is not issued by or on behalf of any other government agency and so far as the CFPB “is concerned, no other government agency or person, and no court, has any obligation to honor or defer to it in any way.”

Both of these provisions are likely to markedly decrease interest in NALs. In order to lessen this possibility, MBA urges the Board to explicitly limit the bases upon which an NAL can be withdrawn only to the reasons listed in the rule and remove the disclaimer language altogether. The courts and private parties should regard NALs as actions of the Bureau and be allowed to provide them the deference they deem appropriate.

3. Make NALs reviewable earlier in the product development cycle for new products or services.

The Proposal would require that lenders engage in intensive product development, almost to the point of being able to offer a product to consumers, before a NAL could be sought and provided. If lenders are required to complete expensive product development before they offer a product or service that could benefit from a NAL, it is likely that few will participate in the process. MBA believes to maximize participation in the NAL process lenders should be allowed to apply for a NAL earlier in the product development cycle when a product is first conceived.

4. Simplify the NAL application process.

The Proposal would require that applicants respond to a series of detailed questions when applying for a NAL. MBA believes that the resources required for this process will dissuade many mortgage providers, especially smaller community-based lenders, from applying for a NAL. MBA suggests that the submission process be simplified by creating a standard application for a NAL. Such a process could allow Bureau staff to follow up to obtain further documentation if necessary before approving a NAL.

5. Keep proprietary information confidential.

The thoroughness of the NAL application process will almost inevitably require that lenders disclose sensitive and proprietary business information. The possibility of the public release of such information will discourage lenders from pursuing NALs. Consequently, to the extent that proprietary and sensitive business information would be released by the CFPB through the NAL process it should be redacted and, if release is absolutely necessary, issued on a delayed basis.

6. Establish a timeline for CFPB staff to respond to NAL requests.

The Proposal does not contemplate a timeframe by which CFPB staff would be required to respond to a request for NAL. CFPB should establish a timeframe by which staff would be required to respond to applicants either with a decision that a NAL will or will not be forthcoming, or that the staff require additional information to reach a decision. Once additional information was provided, the staff would be required to make a decision within a reasonable timeframe provided outstanding information requests have been satisfied.

7. Review its policies on written guidance generally.

The Proposal aptly acknowledges that Government may reduce regulatory uncertainty in a variety of ways. These include clarifying the application of its statute and regulations to the type of product in question by rulemaking or by the issuance of less formal guidance or by providing some form of notification that it does not intend to recommend enforcement action regarding the offering of a particular product.

While the Proposal makes clear that it only deals with what is effectively product-by-product review, we also urge yet again that the Bureau provide authoritative guidance, frequently asked questions, and interpretive rules as well as NALs. MBA has said consistently that the issuance of such guidance is essential to clarify its myriad rules and will have much wider effects. Such guidance will foster broader entry into markets and innovation while its absence is having the opposite effect.

To date as a general matter, CFPB has only issued authoritative rules and commentary or provided oral guidance that the Bureau itself says may not be relied on in a supervisory or enforcement proceeding. It has also used enforcement under relatively

undefined Unfair, Deceptive and Abusive Acts and Practices authority to establish regulatory standards.

MBA believes, however, the Bureau's exercise of the full extent of its regulatory authorities would be a far better approach to serve and protect consumers. Like other government regulators, the Bureau should issue various levels of rules, guidance and policies. To this end, we strongly urge that the Bureau issue for public comment a formal rule on rules, policies and procedures. Such a rule should set forth the circumstances under which the CFPB shall issue rules, commentary, supervisory guidance and other authoritative issuances including NALs, and the circumstances when such authority will be exercised. A proposed rule of this nature would lead to a discussion of CFPB rulemaking that at end would do much to broadly encourage innovation, competition and better choices for consumers than what is proposed.

II. CONCLUSION

MBA appreciates the opportunity to comment on this Proposal and the Bureau's dedication to improving financial markets for consumers. We support the intent of the Proposal, but we believe more needs to be done to encourage innovation in the market and improve consumer access to credit. To this end, a broader examination of rulemaking and guidance by the Bureau is needed. To begin this work, MBA would appreciate an opportunity to meet with CFPB staff.

If you wish to arrange such a meeting or have any questions regarding this comment, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or at kmarkison@mba.org; or Joe Gormley, Associate Regulatory Counsel, at (202) 557-2870 or at jgormley@mba.org.

Thank you for your consideration of our comments.

Sincerely,



Pete Mills
Senior Vice President
Residential Policy and Member Services