



MORTGAGE BANKERS ASSOCIATION

June 1, 2020

Consumer Financial Protection Bureau
Taskforce on Federal Consumer Financial Law
Submitted via Federal eRulemaking Portal: <http://www.regulations.gov>

Re: Request for Information: Assist the Taskforce on Federal Consumer Financial Law; Docket No. CFPB-2020-0013

Federal Consumer Financial Law Taskforce Members,

The Mortgage Bankers Association (“MBA”)¹ appreciates the opportunity to assist the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) Taskforce on Federal Consumer Financial Law (“Taskforce”) in identifying areas of consumer protection on which it should focus its research and analysis during its one-year appointment. MBA strongly supports the Taskforce’s mission to make recommendations for ways to improve Federal consumer financial laws and their implementation.

The questions posed in this Request for Information (“RFI”) cover topics ranging from consumer protection law and theory, to Bureau oversight and enforcement. We appreciate the spirit of this undertaking and have included numerous footnotes to resources that MBA has produced on our members’ behalf to offer areas of suggested improvement for the Bureau. We encourage the Taskforce to consider these materials. In this letter we also highlight a few top priorities for the Taskforce’s immediate consideration.

I. Consumer Data

The RFI includes several questions that seek to explore “current and future-looking topics regarding the protection and use of consumer data.” The issue of consumer data protection is a critical issue for MBA members and an appropriate topic for the Taskforce. Mortgage

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, DC, the association works to ensure the continued strength of the nation’s residential and commercial real estate markets, to expand homeownership, and to 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, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA’s website: www.mba.org.

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lenders and servicers, like many businesses, increasingly rely on consumer data to carry out day-to-day operations. Among many other benefits, the ability to effectively leverage consumer data has contributed to greater operational efficiency and improved customer service. Data-driven consumer insights help financial institutions deliver individualized products and services that more effectively meet consumer needs. It follows that, given its importance to the modern mortgage market, consumer data has become a key driver of innovation. Through such innovation, housing finance providers can expand access to credit by connecting with more consumers or evaluate them for sustainable credit in new ways, including members of historically underserved communities.

While these trends are not necessarily new, recent events, in particular, the ongoing COVID-19 pandemic, mean they are likely to accelerate. With consumers and businesses limiting face-to-face interactions in response to the pandemic, reliance on consumer data or digital processes will, by necessity, increase. One such example—the shift toward a digital mortgage—has been accelerated by the health crisis, with many others products and services poised to follow.

The current regulatory landscape governing the use and protection of consumer data should be updated to reflect the changes that have occurred since the passage of many of the consumer finance statutes. As a threshold matter, the Task Force should ensure that all Bureau notification or disclosure statutes and rules enable efficient electronic delivery, don't prioritize paper-based processes and are otherwise compatible with both electronic and mobile delivery.

While the Gramm-Leach-Bliley Act governs the behavior of financial institutions in some respects, the sweeping policy actions around data security or its appropriate usage often implicate these companies. In the absence of federal action, states—most notably California—have moved to adopt data protection standards that are inconsistent or dissimilar. As this trend continues, the regulatory system is expected to become even more fragmented, with rules that vary based on jurisdiction. Such a state is fundamentally inconsistent with a modern, data-driven market.

While all agree on the need for a robust and effective consumer data protection regime, the current patchwork of confusing, often inconsistent data protection requirements harms both financial institutions and consumers. For financial institutions, fragmented data protection laws hinder innovation, cause unnecessary compliance burden, restrict the flow of information, and incentivize regulatory arbitrage. Ultimately, these consequences have a negative effect on market competition, reducing consumer choice and depriving the public of the benefits of innovation. Moreover, a patchwork data protection regime is unfair to consumers who expect and deserve consistent protections regardless of where they reside or where their data is stored.

For these reasons, MBA recommends that the Taskforce both review the statutes under the Bureau's jurisdiction to see where updates are appropriate as well as take up the issue of national consumer data standards. On this topic, we encourage the Taskforce to consider

MBA's Data Protection Principles, a document which discusses the issue from the perspective of the housing finance industry.²

II. CFPB Regulations

The RFI includes several questions focusing on CFPB regulations. Among other issues, these questions ask respondents to identify regulatory requirements that may be unclear or outdated. Both issues—clarity to address regulatory uncertainties and updates to outdated requirements—are very important to MBA members. For a comprehensive assessment of unclear or outdated regulatory requirements affecting mortgage lenders and servicers, we encourage the Taskforce to review comments submitted by MBA in response to the CFPB's RFIs on Adopted Regulations and Rulemaking Authorities and Inherited Regulations and Rulemaking Authorities.³

We highlight three pressing issues both as priorities and exemplars of the types of the issues we believe it would be very helpful for the Task Force to engage with:

a. RESPA Section 8

Online marketing plays a critical role in the modern economy. To remain competitive, mortgage lenders, like many businesses, must engage consumers through online advertising. While online marketing has become essential, the Bureau's past treatment of these activities and its history of RESPA guidance and enforcement has caused significant uncertainty over how to structure RESPA compliant online marketing agreements. Given the importance of online channels in allowing lenders to connect with consumers, we believe the Bureau should amend Regulation X and its official interpretations to address online advertising, provide clear illustrations of what is and is not permissible, and provide a safe harbor for companies that comply with such guidance.

b. Ability-to-Repay/Qualified Mortgage Rule's Appendix Q

This issue is obviously likely to be addressed in some fashion through a forthcoming Bureau rulemaking but is worth discussing in response to the Task Force's RFI both due to its impact and as a case study in the challenges presented by detailed, static regulations. The standards for calculating consumer income and debt detailed in Appendix Q are misaligned with established industry standards, resulting in unnecessary difficulties for consumers seeking non-GSE, non-government-insured loans. The standards are particularly harmful for consumers with non-W-2 income, such as rental income, retirement income, or income from self-employment. Unlike, for example, GSE eligibility standards, Appendix Q is static,

² Available on MBA's website at <https://www.mba.org/advocacy-and-policy/residential-policy-issues/financial-innovation-policy/data-security-and-privacy-laws>.

³ Both comment letters can be found on MBA's website at <https://www.mba.org/advocacy-and-policy/residential-policy-issues/cfpb-consumer-laws-and-regulations>.

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lacking the flexibility needed to respond to changing market conditions or consumer trends. This inflexibility means Appendix Q is poorly suited to accommodate changes to consumer employment profiles, such as those likely to occur as consumers attempt to replace income sources lost during the pandemic. The Bureau should revise Appendix Q so that mortgage lenders can make credit available to self-employed borrowers and others who have been excluded by its unnecessarily strict requirements. For a more comprehensive analysis of the weaknesses of Appendix Q and possible fixes, we encourage the Taskforce to review MBA's comments submitted in response to the CFPB's Advance Notice of Proposed Rulemaking on the Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z).⁴

c. Loan Originator Compensation Rule

State and local housing finance agency ("HFA") bond programs provide critical access to home ownership for consumers in low-to-moderate income ("LMI") areas. Unfortunately, the rigid requirements of the Bureau's Loan Originator Compensation Rule have made these loans less available in LMI communities. Under the rule, lenders are prohibited from reducing loan originator compensation to offset production costs. This is particularly problematic for HFA loans which, due to robust underwriting, tax law-related paperwork, yield restrictions, and other program requirements, are often more expensive to produce. The inability to reduce loan originator compensation to offset HFA production costs means lenders that offer these loans often do so at a loss. This has the effect of reducing the availability of HFA loans, thereby raising prices for loans in LMI communities.

Conclusion

Again, MBA appreciates the opportunity to comment. We welcome future opportunities to provide feedback to the Taskforce and help inform its recommendations on matters impacting the housing finance space. If you have any question or concerns, please do not hesitate to contact my colleague Justin Wiseman at (202) 557-2854 or JWiseman@mba.org.

Sincerely,



Pete Mills
Senior Vice President Residential Policy & Member Engagement
Mortgage Bankers Association

⁴ Available on MBA's website at <https://www.mba.org/advocacy-and-policy/residential-policy-issues/cfpb-consumer-laws-and-regulations/atr/qm-issues>.