



MORTGAGE BANKERS ASSOCIATION

November 8, 2019

Via Electronic Submission

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

**Re: Request for Information Regarding Tech Sprints;
Docket No. CFPB-2019-0048**

The Mortgage Bankers Association¹ (“MBA”) appreciates the opportunity to comment on the Bureau of Consumer Financial Protection’s (“CFPB” or the “Bureau”) Request for Information Regarding Tech Sprints. We support the Bureau’s efforts to encourage responsible innovation and offer our assistance to help implement this proposal if finalized.

Like the Bureau, our members believe in the promise of technology and recognize its potential to transform the housing finance industry in ways that benefit consumers by improving access, affordability, transaction speed, and choice. We applaud the Tech Sprint proposal, as well as other recently announced efforts such as the revised No-Action Letter Policy and “Product Sandbox” program, which demonstrate the Bureau’s commitment to fulfilling its statutory mandate to foster innovation.² We look forward to working with the Bureau on these and other initiatives to promote innovation, with the goal of creating more opportunities for sustainable mortgage lending.

The Bureau’s RFI identifies specific objectives that may be served by Tech Sprints, such as more efficient supervision and transfer of data from regulated entities, improved HMDA submissions, and reduction of unwarranted regulatory burdens. These are all worthwhile objectives, and well-designed Tech Sprints could identify potential solutions on how to achieve them.

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 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, 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.

² 12 U.S.C. 5511(b)(5).

1. *What other suggestions do you have for how the Bureau could plan, organize, and conduct a Tech Sprint, including its participants, duration, and location?*

Recommendation: Encourage broad stakeholder participation in Bureau Tech Sprints.

MBA appreciates the Bureau's willingness to engage industry stakeholders through its Tech Sprint initiative. We believe that such collaboration offers a good process for identifying opportunities to leverage technology to resolve regulatory compliance challenges. Indeed, MBA encouraged innovative solutions in a prior government Tech Sprints by sponsoring a prize for an IRS led effort.³

To maximize the value of stakeholder engagement, we encourage the Bureau to ensure Tech Sprint participants are representative of industry stakeholders. For the housing finance industry, this means participation should include depositories, such as banks and credit unions, as well as non-depository lenders and servicers. The Bureau should also encourage participation from businesses of varying sizes. Encouraging participation from a broad mix of businesses will increase the likelihood of a productive Tech Sprint by ensuring all viewpoints are considered.

In addition to a diverse mix of business types, the Bureau should seek to involve participants with legal and compliance backgrounds. Involving participants who understand the legal implications of proposals generated during a Tech Sprint should increase the likelihood that Bureau Tech Sprints produce practical solutions.

Finally, the CFPB should engage other financial regulators to participate in the Tech Sprint initiative. The Bureau has been a leader in collaborating and aligning with other agencies with jurisdiction over consumer facing rules. We encourage the Bureau to exercise similar leadership in bringing other agencies along in the Tech Sprint effort. Broad regulator participation will encourage the creation of technology solutions with wide applicability.

Successful technology solutions require both first-movers and broad-based adoption. MBA would be happy to assist the Bureau in identifying industry issues that are ripe for Tech Sprints, and in identifying potential participants with the breadth and depth of experience needed to make them successful.

Recommendation: Consider potential burden of technology solutions to compliance challenges.

The Tech Sprint process should assess the implementation burden associated with proposed technology solutions. As new regulatory compliance processes are considered, the Bureau must be cognizant of the regulatory burden associated with requiring, or even encouraging, regulated parties to use new software or portals to facilitate compliance. Software whose functionality dictates the only acceptable methods of compliance are de facto regulations. Thus, to the extent new software is required to achieve compliance with a future regulatory regime, that software must be treated as part of the broader regulatory regime. Software requirements should receive thorough testing and be subjected to public comment similar to rulemaking under the

³ *Public Invited to Imagine the Taxpayer Experience of the Future*, IR-2016-53 (March 30, 2016) at www.irs.gov/newsroom/tax-design-challenge-begins-soon.

Administrative Procedures Act. These and similar considerations should be part of the Tech Sprint assessment process.

2. *Other than organizing Tech Sprints, what else might the Bureau do to encourage innovation in financial products and services? For example, could advances be encouraged by changes to certain Bureau rules or policies?*

Recommendation: To foster innovation, the Bureau should update the regulatory framework to reflect the impact of technology.

While vastly expanded over the years, the general regulatory framework governing mortgage lending and servicing was established in the 1970s. Since that time, developments in technology have undermined many of the basic assumptions underpinning this framework. Unfortunately, while the regulatory framework has generally not adapted to technology, the same cannot be said for consumer expectations. As a result, mortgage lenders and other consumer financial service providers must balance the legal necessity to comply with outdated rules against the business necessity to meet consumer demand for speed and efficiency.

This disconnect has had the effect of blunting the benefits of technology and in some cases discouraging altogether innovations with concrete consumer benefits. The regulatory framework should be updated to reflect the impact of technology on the mortgage market. The need to modernize is particularly acute in the areas of marketing and disclosure practices, the loan application process, and data privacy and information sharing.

Marketing and disclosure practices

In the marketing and disclosure context, today's regulatory requirements and standards reflect a time when businesses mailed advertisements or published them in newspapers. These practices differ greatly from those of the modern world where the Internet dominates. Advertisements have become ubiquitous in email, online, and smartphone applications. The contrast between the practices contemplated by the rules and modern realities will only increase as the trend toward digital continues. It is therefore crucial for the Bureau to begin the process of modernizing the marketing and disclosure requirements so as to account for the prevalence of digital communications. For example, comprehensive updates must cover Regulations B, V, X, and Z to clarify that a link from a 'trigger term' (e.g. "only 20% down") to the required language can satisfy the "clear and conspicuous" standard set forth in Regulation Z. The Bureau should also consider permitting electronic disclosure of privacy notices, disclosures required under the Homeowners Protection Act, and the requirement to display the Equal Housing Lender logo.

We also encourage the Bureau to revisit the "prominence" and "proximate" standards. These standards should reflect the manner in which today's consumers receive information. Language should satisfy the "prominence" standard (i.e. be considered prominent) when it is at least the same size as a trigger term or, where it is provided through a separate link to another website, when the link is as prominent as the trigger term. Instructions should satisfy the proximity standard when a link to the website containing the full disclosure is located in close proximity to the trigger term or is hyperlinked to the trigger term. Such updates are consistent with consumer expectations and the growing use of smartphones, tablets, and computers.

Application process

Given society's evolving expectations on privacy and information sharing, the Bureau should update the rules regarding which parties must receive certain disclosures. For instance, Regulation V requires that, if a consumer's credit score is used in a credit decision and more than one consumer applies for credit, each consumer must receive separate risk-based pricing notices separately.⁴ When customers apply for credit on a mobile or web platform and consent to electronic disclosures, the lender still must mail paper versions to ensure each co-applicant can privately view their individual notice. Despite the borrower's choosing to submit an electronic application, the rule prevents the lender from providing the disclosures electronically. This results in a poor consumer experience and needlessly adds to the lender's regulatory burden. The Bureau should revisit these requirements and adopt a rule similar to that applicable to adverse action notices under Regulation B. For multiple applicants, Regulation B states, "notification need only be given to one of them but must be given to the primary applicant where one is readily apparent."⁵

Data privacy and information sharing

Along these same lines, the Bureau should revisit guidance on the secondary use of account review data for marketing purposes, which allows credit data to be used only to offer an improvement or upgrade to an existing account. For FCRA purposes, the Bureau should deem a refinance or a home equity line of credit to be an improvement or upgrade to an existing mortgage loan, which will help lenders better tailor product offers to their customers.

The preceding examples represent a small sample of the numerous rules that were crafted at a time when lenders advertised on paper, took applications in person (or via telephone), maintained paper files, and communicated with customers via snail mail. Refreshing the regulatory framework to reflect the immense technological advances in communication over the past 40 years—while maintaining the core protection principles set forth by Congress in the 1970s—will enable mortgage lenders and services to better leverage technology to serve consumers and expand access to credit.

Recommendation: Encourage innovation in regulatory compliance by adopting a uniform decision modeling notation standard to express regulatory language.

To foster innovation, the Bureau should use common data and decision standards, such as those used by the Mortgage Industry Standards Maintenance Organization (MISMO), to express its regulatory language. For example, expressing regulatory requirements through the OMG® Decision Model and Notation® standard adopted by MISMO would simplify the automation of compliance processes and allow for greater collaboration across the industry.

⁴ See 12 C.F.R. § 2255.75(c) which requires separate notices except in circumstances where the notice does not include the applicant's credit score and the applicants have the same address.

⁵ 12 C.F.R. § 1002.9(f).

MBA appreciates consideration of these comments and the Bureau's willingness to collaborate with stakeholders on its Tech Sprint initiative. MBA strongly supports the Bureau's efforts to promote innovation and look forward to working with the Bureau to identify technology-based solutions to regulatory compliance challenges. Should you have any questions or wish to discuss any aspect of these comments, please contact Justin Wiseman, Associate Vice President and Managing Regulatory Counsel (jwiseman@mba.org), or Rick Hill, Vice President, Information Technology, Executive Vice President, MISMO (rhill@mba.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is fluid and cursive, with a large initial "P" and "M".

Pete Mills
Senior Vice President
Residential Policy & Member Engagement