The Consumer Financial Protection Bureau ("CFPB" or "Bureau") issued a series of twelve requests for information ("RFIs") aimed at soliciting comments on Bureau practices and consumer financial laws throughout 2018. MBA responded to these RFIs with detailed recommendations on how the Bureau can better align both its supervisory practices and the regulations it administers with its statutory mandate and generally accepted principles of sound prudential regulation. This paper uses MBA’s recommendations from those specific RFIs to construct a plan, or “road map,” to guide the Bureau in making much needed reforms. In offering this “road map,” we seek to create a safe and inclusive mortgage market with clear rules of the road and robust consumer protections.
Executive Summary

On July 21, 2011, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) assumed broad authorities under the Dodd-Frank Act (“Act”) to “implement and... enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.” Since that time, the Bureau has exercised its authorities to drastically change the regulatory regime over consumer financial products and services. No industry has been more impacted by this transformation than the housing finance industry.

The CFPB’s rulemaking completely overhauled the regulatory framework governing mortgage lending and servicing. The Bureau’s work administering these rules through enforcement actions, supervisory examinations and market monitoring has had an equally impactful effect on industry practices. While the Dodd-Frank Act required the Bureau to act quickly in some cases and the Bureau has arguably bolstered consumer financial protection, it has frequently done so in a manner that exceeds its statutory authority, that unnecessarily created significant costs or potential liability that has affected credit availability, and/or that is inconsistent with its statutory mandate. This has caused unnecessary regulatory burden and uncertainty which has hindered consumer access to mortgage credit and stifled innovation.

Several months after the release of CFPB 2.0, the Bureau signaled its intent to “critically examine its policies and practices to ensure they align with the Bureau’s statutory mandate.” This announcement was followed by a series of twelve requests for information (“RFIs”) aimed at soliciting comments on Bureau practices and consumer financial laws. MBA used the RFI initiative as an opportunity to follow-up on the broad principles described in CFPB 2.0 by identifying specific reforms that are consistent with the Bureau’s statutory mandate.

This paper distills the most important of these reforms into a “road map” of concrete, actionable steps the Bureau can take to effectuate

the principles described in CFPB 2.0. The key recommendations are detailed below. They are organized beginning with the Bureau’s primary functions of Rulemaking, Enforcement, Supervision, and Market Monitoring, followed by specific regulatory reforms.

**RULEMAKING**

**Rulemaking Processes**
- Create a “rule on rules” that promotes responsible rulemaking

**Guidance Processes**
- Adopt a clear guidance policy
  - Provide guidance in response to public feedback
  - Use guidance appropriately
  - Guidance should be clearly reliable
- The examination manual should not be used to announce “new” obligations
- The No Action Letter program should be improved so that they are more useful
- The Bureau should issue advisory opinions

**ENFORCEMENT**

**Civil Investigative Demands**
- Clarify the “reason to believe” standard for issuing a CID
- Provide specific notifications of purpose for the CID
- Petitions to modify or set aside a CID should be confidential
- Timelines need to be realistic
- Entities are entitled to know when an investigation concludes

**Enforcement Processes**
- End Regulation by Enforcement permanently
- Limit UDAAP Enforcement to clearly defined UDAAP standards
- Be transparent in the early stages of investigations
- Adopt transparent procedures for concluding an investigation
- Require fairness and consistency in the NORA process
- Establish a civil money penalties matrix

**Administrative Adjudications**
- Be transparent in forum selection decisions
- Allow for removal to federal court if respondent elects to do so
- Do not proceed with administrative adjudication until procedural deficiencies are addressed
SUPERVISION

Examination Processes

- Examinations should not “expect” perfection but rather a compliance management system that’s commensurate with the institution’s risk profile
- Examination priorities should reflect an entity’s risk
- Examinations should be coordinated with other regulators to minimize duplication
- Adopt a transparent process to govern the use and content of supervisory communications
- Appeals of supervisory findings should be public

MARKET MONITORING

Consumer Complaint Database

- Withdraw the public facing complaint database

REGULATIONS

Loan Originator Compensation

- Allow loan officers to make competitive concessions
- Allow companies to hold loan officers accountable for mistakes on particular loans
- Create an exemption to allow for variable compensation on housing finance agency loans

Ability to Repay / Qualified Mortgage Rule

- Allow for government regulated underwriting standards to replace Appendix Q
- Extend the GSE patch
- Raise the “cap” on points and fees

TILA-RESPA Integrated Disclosure Rule

- Clarify TRID liability

RESPA Section 8

- Issue guidance on the application of RESPA Section 8’s to common industry business arrangements

HMDA

- Eliminate the discretionary data elements
- Exempt business-to-business loans secured by multifamily properties
- Increase privacy protections with respect to publicly reported HMDA data
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Introduction

MBA supports the CFPB’s efforts to critically assess and, where appropriate, reform its practices. In MBA’s 2017 white paper, CFPB 2.0: Advancing Consumer Protection (“CFPB 2.0”), we explained how “[t]he CFPB can better protect consumers by publishing clear, consistent regulations and bright-line guidance” rather than using enforcement actions to announce new, binding standards — i.e., ‘regulation by enforcement’. CFPB 2.0 was intended to offer key principles for how the Bureau could pivot from an aggressive “start-up” agency guided by a singular Director’s vision into a neutral, depoliticized financial regulator that vigorously enforces clear rules of the road.

Following the release of CFPB 2.0, the CFPB on January 17th, 2018, announced plans for a comprehensive call for evidence regarding how the Bureau functions. The CFPB’s inquiry took the form of a series of twelve Requests for Information (RFIs). These RFIs solicited comments on all facets of CFPB operations as well as on the federal consumer financial laws and regulations within the Bureau’s jurisdiction. As explained by Bureau Acting Director Mick Mulvaney, the intent was “for the Bureau to critically examine its policies and practices to ensure they align with the Bureau’s statutory mandate.”1

MBA approached the RFI initiative as a timely vehicle to lay out the specific “action steps” needed to effectuate the high level reforms outlined in CFPB 2.0. We leveraged the experience of our membership to prepare responses to each of the Bureau’s twelve RFIs. Throughout this process we measured the CFPB’s prior actions against the mandate of the Dodd-Frank Act which requires the Bureau “implement and… enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”2

Taken together, our RFI comment letters form a comprehensive inventory of the reforms needed to recalibrate the Bureau according to its statutory mandate. While the concerns addressed in our RFI comment letters vary greatly, most can be broadly organized under two related themes — balance and clarity.

First, the Dodd-Frank Act created the CFPB with a two-part mission, with each equally critical to a successful agency. The Bureau must ensure markets for consumer financial products and services are fair, transparent, and competitive, while also ensuring all consumers have access to those markets. This dual mandate requires the Bureau to strike a careful balance, taking care that in exercising its broad authorities to protect consumers, it does not unduly limit consumer access. CFPB 2.0 detailed how many of the Bureau’s prior policies and the manner in which it implemented the laws it administers lacked this balance. Bureau practices and regulatory activity have been at times overly burdensome, inefficient, unfair and occasionally unnecessary or duplicative. This has the effect of draining resources that could be used to expand consumer access by lowering the cost of credit, expanding service offerings, or funding innovation.

Next, other concerns reflected in our RFI comments are rooted in a lack of clarity. The need for greater clarity extends both to the Bureau’s expectations for how businesses should act and what businesses

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can expect from the Bureau. Uncertainty around regulatory expectations hinders innovation and business development. As the Bureau acknowledged, "regulatory uncertainty may discourage innovators from entering a market, or make it difficult for them to develop suitable products or attract sufficient investment or other support." Consistent with the CFPB's mission to ensure market transparency and competitiveness, many of MBA's RFI comments seek greater clarity on the Bureau's expectations and greater predictability on how the Bureau will act to ensure those expectations are met.

To some degree, these concerns are not surprising given the immense initial task of building up an agency, particularly one with such wide-ranging powers and responsibility for the entire financial industry. The Dodd-Frank Act placed the Bureau at the center of an entirely new regulatory regime. While the Act included provisions outlining the basic contours of the new regime, the Bureau was tasked with developing regulations to complete the picture. Under an ambitious implementation schedule, the Bureau issued regulations for 17 of the Act's provisions. Interspersed among these regulations, the Bureau issued various regulations pursuant to its discretionary rulemaking authorities. Given the challenge of developing these rules, while simultaneously building a new agency, it is only natural that the end result requires some adjusting after the passage of time to assess the impact of these actions.

It is important to note that these critiques were offered in the spirit of improving Bureau operations. MBA wholeheartedly supports the Bureau's consumer protection mission. Our members benefit from a well-regulated marketplace with clear bright line rules and consistent enforcement. Deliberate regulatory ambiguity and capricious enforcement only benefits those willing to take on regulatory risk and disadvantages responsible companies. Bad actors harm our consumers and the reputation of our industry. MBA members thus support a CFPB that executes its dual mandate fairly and responsibly.

In this paper, we offer concrete suggestions on how to accomplish this vitally important task. This paper builds on the message of CFPB 2.0 by linking those general principles to the most crucial reforms from MBA's RFI comment letters. In so doing we intend to offer a "roadmap" for how the Bureau can realign its practices according to the statutory mandate articulated in the Dodd-Frank Act. Specifically, the recommendations that follow will provide clarity to market participants and facilitate a recalibration that ensures both effective consumer protection and safeguards consumer access by encouraging a robust housing finance industry. Taken together, these changes will improve the quality of consumer regulation and increase the efficiency and effectiveness of the financial services industry in providing consumers quality sustainable products.

This roadmap is organized based on the Bureau's core regulatory functions — rulemaking, enforcement, supervision and market monitoring — and the regulations it administers. It begins with Bureau rulemaking, a function treated broadly so as to include each of the several means by which the Bureau communicates its expectations to regulated entities. We follow rulemaking with recommendations related to the Bureau's supervision of regulated entities through examination. Next, the processes associated with Bureau enforcement are addressed. After enforcement we look at the Bureau's principal market monitoring tool: the consumer complaint database. The roadmap concludes by highlighting the urgent need for targeted reforms to several Bureau mortgage regulations including the Loan Originator Compensation (LO Comp) Rule, the Ability-to-Repay/Qualified Mortgage (ATR/QM) Rule, the TILA/RESPA Integrated Disclosure (TRID) Rule and RESPA.
Rulemaking

The Dodd-Frank Act vests the CFPB with broad rulemaking authority over federal consumer financial protection laws. Based on its considerable impact, rulemaking is an appropriate starting point for discussion on how the Bureau can achieve the necessary balance between the dual objectives of its statutory mandate and provide clarity to the marketplace around its expectations. Beginning in early-2012 and continuing to the present, the Bureau has exercised this authority to drastically restructure the regulatory framework governing consumer financial services. During its first five years — a period marked by intense rulemaking — the Bureau issued nearly 50 rules, reportedly making it the “fastest rulemaking body in the federal government” by a significant margin.

Understanding that many of Dodd-Frank’s provisions were self-executing, we acknowledge the tremendous effort expended by the Bureau to ensure that industry had a regulatory framework to look to beyond the statute. The rules required by Dodd-Frank, thirty of which were related to mortgage lending or servicing, had a particularly strong impact on the housing finance industry. The Bureau’s rulemaking directly affected nearly every aspect of mortgage lending. Regulations governing core functions such as underwriting (Ability to Repay/Qualified Mortgage Rule), loan disclosures (TILA-RESPA Integrated Disclosures Rule), and servicing (Mortgage Servicing Rules) underwent a full-scale rewrite.

Quantifying the costs associated with these changes is a difficult task. Results are imprecise and, many convincingly argue, understated. The estimates submitted by the Bureau for 2013’s TILA-RESPA Integrated Disclosures Rule and the 2015 HMDA amendments — two particularly costly rules — totaled more than 2.7 billion dollars.

Rulemaking Processes

Despite such extensive use of rulemaking authority, the Bureau’s rulemaking process has been highly inconsistent. This concern is most pronounced when assessing the extent of public involvement in the pre-and post-rulemaking phases. Some rules, such as the Ability-to-Repay/Qualified Mortgage Rule, were proposed after considerable outreach and public input, with timely post-issuance follow-up producing necessary amendments. In contrast, the TRID Rule offered far less timely follow-up rulemaking or authoritative guidance, even though the rule was exceedingly demanding and complex. Concerns identified prior to the rule’s 2013 issuance were not addressed in final form until 2017.

MBA Recommendations

The lack of a process to ensure consistent drafting and implementation of rules burdens regulated entities by failing to ensure that the rules contain bright lines that are clearly understood by regulated entities. The TRID Rule’s implementation demonstrates unnecessary regulatory uncertainty can impede effective functioning of the mortgage

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market. Such a result is inconsistent with the Bureau’s mandate to minimize unnecessary burden and ensure markets operate fairly and transparently. To address these concerns, MBA proposes the following recommendation:

★ **Create a “rule on rules” that promotes responsible rulemaking.** The Bureau should, through the rulemaking process, develop, present for public comment, and adopt standards and requirements to govern its rulemaking process (a “rule on rules”). This rule should require the Bureau present its views on rulemaking vehicles—including on interim, emergency rules—describing the circumstances under which their use is appropriate. Such a “rule on rules” should operate in conjunction with formal standards and requirements for regulatory guidance.

### Guidance Processes

The ability to issue guidance is an essential component of the CFPB’s rulemaking authority. While CFPB guidance materials take many forms, each serves the same basic function: to communicate the Bureau’s positions on interpretive and policy questions arising under the statutes and regulations the Bureau administers. Used appropriately, effective guidance facilitates compliance by clarifying regulator expectations, highlighting best practices and providing insights into supervisory policy. These functions make guidance particularly valuable, even critical, during times of heightened regulatory change, shifting consumer expectations or evolving technology—characteristics which accurately describe the housing finance industry in the years since the Dodd-Frank Act became law.

Despite repeated requests, the Bureau has yet to articulate consistent guidance practices. The increasing complexity and overlapping jurisdiction of the current regulatory landscape has only increased the need for such a policy. Another important concern relates to the question of guidance reliability. When guidance is issued, it’s frequently rendered unreliable by extensive Bureau disclaimers. Conversely, there is the Bureau’s troubling history of inappropriately using guidance to create legally binding obligations. Guidance must not be used as a vehicle to avoid the formal notice-and-comment procedures necessary for rulemaking under the Administrative Procedures Act (“APA”) or to create new, binding obligations not rooted in an authorizing statute in the Bureau’s jurisdiction with implementing regulations.

There have been times when the Bureau forgoes guidance entirely, relying instead on enforcement actions to announce its expectations. Widely referred to as “regulation by enforcement,” this legally suspect approach turns compliance into a guessing game. Regulated entities are offered consent orders—each based on highly particularized facts and often the product of complicated negotiations—from which to distill generally applicable rules. Rather than clarity, “regulation by enforcement” causes more confusion and uncertainty. MBA applauds Acting Director Mulvaney’s statements indicating an end to “regulation by enforcement”


7 CFPB guidance has included interpretive rules and policy statements adopted through formal notice-and-comment procedures, and a wide variety of implementation support materials including compliance guides, rule summaries, FAQs and webinars.


and believes that refraining from such behavior in the future is crucial to ensuring the Bureau is a neutral, non-political and vigorous regulator.\footnote{Mick Mulvaney, The CFPB Has Pushed Its Last Envelope, WALL STREET JOURNAL (Jan. 23, 2018 7:40 p.m. ET), available at https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561 (“I intend to exercise our statutory authority to enforce the laws of this nation. I intend to execute the statutory mandate of the bureau to protect consumers. But we will no longer go beyond that mandate.”)}

Absent an effective guidance function, regulated entities are unsure precisely where the line is between permissible and impermissible conduct. Regulatory uncertainty is an obstacle to compliance and business planning. This is especially true for participants in the heavily-supervised housing finance industry where there is little appetite for legal risk. When these businesses are unable to predict the Bureau’s response to a particular action, they will avoid that action. The consequences of inadvertently violating a rule are simply too great, particularly with assignee liability in many rules impacting market participants that are not the originator of the mortgage. This discourages innovation and undermines market efficiency.

Adopting a standardized process to produce reliable guidance offers the possibility for substantial burden reduction, facilitates compliance and expands consumer access to mortgage credit. After years focused on meeting the rulemaking deadlines imposed by the Dodd-Frank Act, now is the time for the Bureau to focus on resolving the uncertainty those rules have caused. Used appropriately, guidance can remedy this uncertainty, thereby improving market efficiency and eliminating a significant obstacle to innovation that benefits consumers. Greater clarity through guidance facilitates compliance and thus promotes consumer protection. Easing the burden of compliance frees resources businesses can use to expand consumer access to credit. These benefits are substantial and entirely consistent with the Bureau’s statutory mandate to exercise its authorities to ensure “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.”\footnote{U.S. § 5511(b)(5).} MBA therefore urges the Bureau to consider the following recommendations:

\section*{MBA Recommendations}

\begin{itemize}
  \item \textbf{Adopt a clear guidance policy.} Adopt a guidance policy through notice-and-comment rulemaking. The policy should reflect the guidance principles outlined in the Office of Management and Budget’s \textit{Agency Good Guidance Practices} bulletin, and should clearly define the various types of guidance and the circumstances in which each will be used.\footnote{See OMB, \textit{Final Bulletin for Agency Good Guidance Practices}, 72 Fed. Reg. 3432 (Jan. 25, 2007).} At minimum, the guidance policy should address the following items:
\end{itemize}
• **Provide guidance in response to public and supervisory feedback.** Market developments, often driven by advances in technology, frequently cause regulatory uncertainty. It is therefore crucial that the Bureau’s guidance policy include a mechanism to receive public input to identify where guidance is necessary. As part of this mechanism, MBA recommends the Bureau create a formal Housing Finance Advisory Council to provide mortgage industry participants, regardless of size or business model, the ability to provide ongoing feedback to the Bureau. Consistent with the recent joint statement issued by the federal financial regulators, the Bureau should encourage stakeholder involvement in the guidance creation process so as to ensure guidance is effective and not unduly burdensome.  

Areas of uncertainty identified through public or supervisory feedback should be resolved as part of a transparent guidance process. The guidance process previously used by the Federal Reserve Board of Governors to update Staff Commentaries serves as an instructive model. While imperfect, the Board’s annual updates addressed ‘what questions have agency staff been asked this year’ as well as issues identified through targeted outreach to relevant stakeholders (e.g., practitioners, trade associations, etc.).

• **Use guidance appropriately.** Guidance should be used to clarify regulatory ambiguity, communicate CFPB supervisory priorities and describe best practices. It should not be used to create binding obligations. The Bureau should not initiate enforcement actions based solely on failure to follow guidance.  

To create substantive standards or impose binding obligations on regulated parties, the Bureau must utilize notice-and-comment rulemaking under the relevant statutory authority.

• **Guidance should be clearly reliable.** Because guidance is not binding on the regulated entity, it should be understood as establishing an acceptable method of compliance, but not the

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only acceptable method of compliance. On the other hand, guidance should be binding on the issuing agency. The Bureau should not penalize a party who, in good faith, relies on the Bureau’s guidance. Disclaimers should not be used to dissuade parties from relying on guidance to achieve compliance. Changes to guidance should be accompanied by appropriate notice so regulated parties have the opportunity to adjust their conduct accordingly. The Bureau should implement steps to ensure guidance reflects the current regulatory landscape including relevant regulatory actions and instructive judicial decisions.

★ The examination manual should not be used to announce “new” obligations: As with other contexts, it is important that guidance used in the examination context — the CFPB Supervision and Examination Manual — be used appropriately. The Examination Manual should not be used to communicate new regulatory policy or guidance. If the CFPB believes there are practices that constitute an unfair, deceptive, or abusive practice necessitating special attention during the examination process, the Bureau should indicate this in stand-alone guidance rather than within the Examination Manual.

★ No-action letters and advisory opinions: Through a process of public notice-and-comment, the Bureau should adopt practical robust no-action letter (NAL) and advisory opinion policies.16

• The No Action Letter program should be improved so that they are more widely sought. The Bureau can minimize the burden of regulatory uncertainty on innovation by enhancing the NAL component of Project Catalyst. Improvements should be such that they enable, through a reasonably achievable process, the procurement of reliable NALs. Once issued, NALs should be reliable for the recipient and other similarly situated entities. The Project Catalyst NAL process should accept applications for established products as well as for products in the development phase. NALs should provide meaningful protection from liability for UDAAPs and shield recipients from enforcement actions or suits brought by private litigants. The application process should be transparent, with clear, publicly available decision-making criteria. Denials of NAL applications should be explained.

• The Bureau should issue advisory opinions. The Bureau should follow the example of other regulators responsible for administering complex regulatory schemes and create a robust advisory opinion mechanism.

Enforcement

The Dodd-Frank Act provides the CFPB with a complete toolkit to administer consumer protection. The Bureau can initiate an investigation by issuing a Civil Investigative Demand (CID), bring an enforcement action seeking an array of penalties, and determine the outcome of an enforcement action through an administrative adjudication. When considered alongside the Bureau’s mostly exclusive rulemaking authority and its supervisory function, these authorities represent a significant concentration of power, blending what are typically independent legislative, prosecutorial, and adjudicative functions. This concentration of power can have important consequences for regulated entities including the imposition of monetary penalties and other sanctions. Regardless of an entity’s ultimate culpability, experience has shown involvement in any of these processes, including merely being the subject of a CID, can impose substantial costs that are disproportionate to the alleged wrongdoing. It is therefore critical that these processes operate fairly, transparently, and efficiently so as to reduce their burden on regulated entities.

Civil Investigative Demands

Through a CID, the Bureau has the ability to solicit information from anyone believed to have information or documents related to a potential violation of federal consumer protection law. From the perspective of regulated entities, receipt of a CID frequently marks the beginning of an expensive, uncertain process of indeterminable duration. CIDs share many of the consequences of a formal legal action — legal costs, reputational harm, business disruption — but offer few of the protections. In this way, CIDs represent a significant burden. MBA’s recommendations seek to minimize this burden by improving the fairness and transparency of the CID process.

MBA Recommendations

★ Clarify the “reason to believe” standard for issuing a CID. Establish a standard that clearly articulates what constitutes sufficient “reason to believe” to initiate an investigation by issuing a CID.

★ Provide specific notifications of purpose for the CID. At a minimum, notification of purpose statements should clearly describe the specific conduct under investigation including the relevant time period. Broad references to all consumer financial protection laws should be replaced by references to the exact statutory provisions of law alleged to have been violated.

★ Petitions to modify or set aside a CID should be confidential. At a minimum, notification of purpose statements should clearly describe the specific conduct under investigation including the relevant time period. Broad references either to operational areas or to general consumer financial protection laws should be replaced by references to the specific conduct and the exact statutory provisions of law thought to have been violated.

★ Timelines need to be realistic. The Bureau should adopt more flexible petition filing and meet-and-confer timelines, because in many cases, the CID will implicate information and individuals in multiple areas, and may implicate legacy computer systems no longer in use.
Entities are entitled to know when an investigation concludes. The Bureau should provide prompt written notification when it decides to end an investigation.

Enforcement Processes

Pursuant to the Dodd-Frank Act, the Bureau may initiate enforcement actions under federal consumer laws seeking a variety of legal and equitable remedies including civil money penalties. Enforcement actions are the Bureau’s most powerful tool to enforce compliance. Being subject to an enforcement action imposes tremendous costs on the subject, and many of these are borne before a determination of guilt or innocence of the alleged violation. Thus, it is extremely important that Bureau enforcement actions are well-founded and grounded in commonly understood legal principles.

While an effective enforcement mechanism is a necessary component of the overall regulatory framework, it must be used appropriately. Enforcement actions must not be used to set new policy. As MBA explained in CFPB 2.0, “regulation by enforcement” is strikingly unfair to the ‘example’ business. Moreover, the resulting “new interpretation” — based on the unique facts of an enforcement action — causes market uncertainty that undermines consumer protection by obscuring the path to compliance. This confusion has the effect of dissuading efforts by businesses to expand consumer access to mortgage credit for fear of potential exposure to unknown legal risk. Finally, using enforcement actions to set regulatory policy is contrary to administrative law under the Administrative Procedures Act because it robs stakeholders of the opportunity to contribute to rulemaking.

While enforcement should not be used to dictate policy, it is an appropriate tool for remedying actual — as opposed to speculative — consumer harm stemming from an established legal violation. Given the significant consequences of a Bureau enforcement action, including the imposition of potentially ruinous civil money penalties, enforcement is not appropriate in all instances of noncompliance. It should be used judiciously and only when alternative avenues to procure corrective action, such as those available through the Bureau’s direct supervision authority, would not be effective. As stated by Acting Director Mulvaney, an enforcement action must be “the most final of last resorts[.]”

When an enforcement action is necessary, the enforcement process must be fair and transparent and the redress sought under a CFPB enforcement action should be proportional to the severity of the potential risk involved, or to the damage caused. The enforcement process should

17 See supra note 12.
conform to clear standards that ensure parties are provided procedural protections that are commensurate with the stakes of the proceedings.

MBA’s recommendations seek to ensure enforcement is used appropriately. This means an end to “regulation by enforcement.” In addition, we recognize that Bureau enforcement actions are a significant burden to target businesses. They can disrupt business operations, consume time and resources, and, if public, cause tremendous damage to a business’s reputation. Therefore, consistent with the Bureau’s mandate to minimize undue burden and to promote market fairness and transparency, we propose ways to improve the efficiency of the enforcement process.

MBA Recommendations

★ End Regulation by Enforcement permanently. Acting Director Mulvaney recently acknowledged enforcement should not be used as a tool to press an industry to adopt “best practices” or other standards that are not required by law or regulation. While this and other comments suggest current leadership has abandoned the “regulation by enforcement” approach, nothing prevents future Bureau leadership from returning to it. Therefore, as communicated in CFPB 2.0, MBA once again urges the Bureau to decisively abandon “regulation by enforcement” by establishing a policy on the appropriate use of the Bureau’s enforcement authority through the formal rulemaking process. The Bureau should commit to using enforcement actions to address clear violations of established law.

★ Limit UDAAP Enforcement to clearly defined UDAAP standards. The Bureau should not initiate enforcement actions to pursue novel theories of liability under the “abusive” prong of the Bureau’s UDAAP authority. Instead, the Bureau should, through rulemaking or public guidance, establish the circumstances under which the Bureau will bring “abusive” cases under its UDAAP authority.

★ Be transparent in the early stages of investigations. The Bureau should clarify the nature and scope of investigations early in the investigative process and provide regular updates on the status of the action.

★ Adopt transparent procedures for concluding an investigation. Although the Bureau’s September 2018 bulletin distinguishing between matters required attention (MRAs) and supervisory recommendations (SRs) was a helpful first step, the Bureau should publish risk-based standards for determining when to issue potential action and request for response letters (PARR letter) rather than MRAs. These supervisory communications should incorporate all relevant factual details, the legal basis for the underlying violation, and the requirements for remediation. Recipients should be regularly updated on the status of outstanding PARR letters and MRAs and the Bureau’s opinion on any efforts at resolution.

★ Require fairness and consistency in the NORA process. Initiated in anticipation of the Bureau filing public charges, the Notice and Opportunity to Respond and Advise (NORA) process serves as a critical protection against entities suffering undue reputational and financial burden from Bureau enforcement actions. Given its importance, the NORA process should be applied consistently.

To both improve transparency and facilitate a prompt resolution of Bureau investigations, MBA recommends that the Bureau:

18 Quoting Acting Director Mick Mulvaney’s comments at an October 15, 2018, Mortgage Bankers Association conference in Washington, D.C., where the Acting Director stated the Bureau would seek to formally define “abusive.”
and made available to all entities facing the possibility of public charges. As part of the NORA process, the Bureau should ensure institutions receive adequate written notification of the factual and legal basis for the planned charges. Reply deadlines and length restrictions should be extended to provide NORA recipients with adequate flexibility in preparing their response. Finally, institutions should not be restricted from disclosing the existence of a NORA.

Establish a civil money penalties matrix. Much like prudential banking regulators, the Bureau should promote the appearance of impartiality in its assessment of civil money penalties and adopt a matrix outlining tying statutory criteria to civil money penalty amounts.

MBA Recommendations

★ Be transparent in forum selection decisions. As an initial matter, the Bureau should adopt a transparent process for determining when it will bring an administrative proceeding rather than proceed in federal court.

★ Allow for removal to federal court if respondent elects to do so. Through formal rulemaking, the Bureau should create an automatic removal mechanism to provide respondents with the ability to remove a pending matter to an appropriate federal district court.

★ Do not proceed with administrative adjudications until the procedural deficiencies are addressed. The Bureau should commit to bringing contested matters in federal court until steps are taken to address the most significant concerns with the current adjudication process — i.e., lack of adjudicator independence, constitutionality of Administrative Law Judge (ALJ) appointment, fairness in the appeal process, severe restrictions on discovery, and the compressed timeframe.
Supervision

MBA recognizes that an effective supervisory function is a critical component to a healthy housing finance system. In the years since its establishment, the CFPB has made significant progress developing robust supervisory processes. While the Bureau should be commended for these efforts, there remains meaningful opportunities to improve the supervisory function with targeted reforms to the examination process.

Examination Processes

Unlike other consumer financial product and service sectors where the Bureau’s examination authority is relatively limited, the Dodd-Frank Act vests the Bureau with extensive authority to examine participants in the housing finance industry. The examination authority extends to depository institutions with more than $10 billion in assets, non-depository mortgage originators, brokers, and servicers, regardless of asset size; and businesses that provide material mortgage-related services to any of these entities.

Given the examination focus on the housing finance industry, improving the examination process is a particularly important issue for MBA members who allocate substantial time and resources to prepare for, accommodate, and respond to Bureau examinations. The recommendations listed below will improve examination efficiency and reduce this burden. In addition to improving examination efficiency, MBA’s recommendations also seek to improve examination effectiveness. An improved examination process fosters compliance and reduces the Bureau’s reliance on enforcement actions. This should result in a more-appropriate balance where supervision serves as the primary means by which the Bureau administers consumer protection.

MBA Recommendations

First, it bears repeating that greater regulatory clarity through guidance and improved rulemaking directly benefits the Bureau’s supervisory function. When the Bureau’s expectations are clear it is easier for examiners to assess whether compliance has been achieved. This allows examinations to proceed more efficiently.

Along with greater regulatory clarity, the following recommendations seek to reduce regulatory burden by improving the efficiency and effectiveness of Bureau’s examination processes.
★ Examinations should not “expect” perfection. The goal of the Bureau’s supervision should be to ensure entities have compliance management systems that are commensurate with the entity’s risk profile, as opposed to the enormous expense of seeking perfect compliance.

★ Examination priorities should reflect an entity’s risk. The Bureau should promulgate a rule to establish a multi-factor approach toward determining supervisory priorities as well as procedures for determining examination scope based on an entity’s risk profile. The rule should formalize a program of diagnostic examinations for compliance with new regulations.¹⁹

★ Examinations should be coordinated with other regulators to minimize duplication. Agencies participating in a joint examination should coordinate their efforts so as to minimize burden by establishing a single point of contact, submitting consistent production requests, and aligning their supervisory goals.

★ Adopt a transparent process to govern the use and content of supervisory communications. The Bureau should publish risk-based standards for determining when to issue potential action and request for response letters (PARR letter) and matters requiring attention (MRA). These supervisory communications should incorporate all relevant factual details, the legal basis for the underlying violation, and the requirements for remediation. Recipients should be regularly updated on the status of outstanding PARR letters and MRAs and the Bureau’s opinion on any efforts at resolution.

★ Appeals of supervisory findings should be public. To address the uncertainty surrounding the appeal process, the CFPB should follow the practice of the prudential regulators and publish anonymized descriptions of actual appeals.

Market Monitoring

Along with its responsibility for rulemaking, supervision and enforcement, the Dodd-Frank Act tasks the CFPB with “collecting, investigating, and responding to consumer complaints[,]” as well as sharing complaint data for certain specified purposes. More so than with other Bureau functions, the Act offers considerable detail on the mechanics of these processes, including detailing exactly where data sharing is required. The Act provides that the Bureau must share complaint data with certain state and federal regulators to “facilitate preparation of the [reports to Congress]... supervision and enforcement activities, and monitoring of the market for consumer financial products and services[,]”

Consumer Complaint Database

Having opted to include these specifics, Congress’s failure to include a requirement for complaint publication is telling. This omission weighs against the Bureau’s decision to push beyond the limited statutory authorization in its current public facing complaint database. By publishing individual consumer complaints, including complaint narratives and business names, the Bureau makes data the Act intended to be shared in a limited fashion — i.e., shared only with specific parties, for specific purposes — available to anyone. This disregard for statutory boundaries undermines consumer protection and therefore cannot be justified under the Bureau’s discretionary authority. Contrary to the CFPB’s stated position, publishing unverified complaint data does not promote consumer financial education or market transparency. The opposite is true. The CFPB’s public-facing complaint database cloaks unreliable, non-representative complaint data with the imprimatur of the federal government. In this way, publishing consumer complaint data distorts market transparency and consumer understanding. Consumer submissions are permanently labeled “complaints” — a term with obvious negative implications — despite rarely describing actual business errors or misconduct. In fact, most are simple misunderstandings, with the Bureau’s most recent annual complaint report finding that more than 80 percent of mortgage-related complaints are resolved

22 CFPB, Disclosure of Consumer Complaint Narrative Data, 80 Fed Reg 15572, 15575 (March 24, 2015).
with a simple explanation.\textsuperscript{23} Justified or not, any report of dissatisfaction, regardless of the objective truth of the facts submitted, is treated as a complaint.

Despite the questionable accuracy of the complaint data, the Bureau has yet to implement procedures to verify the information included in the complaint. As a result, businesses’ reputations are unfairly damaged and consumers are misled. Rather than mitigate these harmful consequences, the Bureau has chosen to amplify them by promoting monthly complaint reports with taglines announcing the top “most-complained-about-companies.”\textsuperscript{24}

The Bureau expects businesses to strictly adhere to both the letter and spirit of federal consumer financial protection laws. The Bureau should reconsider whether a public complaint database is consistent with the letter and spirit of its authority.

\begin{itemize}
  \item \textbf{Withdraw the public facing complaint database.} Withdraw the public-facing consumer complaint database and, going forward, limit sharing of consumer complaint data to instances which are specifically authorized by the Dodd-Frank Act (i.e., sharing with specific federal and state regulators to facilitate Congressional reporting and Bureau supervision, enforcement and market monitoring activities). Alternatively, implement steps to verify the accuracy of the complaint information before it is publicly disclosed.
\end{itemize}


Regulations

Immediately after its formation and continuing to the present, the Bureau has exercised its rulemaking authority to drastically transform the regulations governing housing finance. The impact these changes have had on the industry is difficult to overstate. The Bureau’s prescriptive, complex mortgage regulations often result in unnecessary burdens for businesses which has the effect of making it more difficult for consumers to access mortgage credit or increases its cost. Experience has shown that many regulations are unclear on how to achieve compliance and the potential liability for failing to do so. While many of the CFPB’s regulations implement statutory requirements, the Bureau has broad authority to make adjustments to facilitate compliance by regulated entities.\(^{25}\)

MBA engaged extensively with the Bureau on each mortgage-related rulemaking, and will continue to do so. We strive to help the Bureau create an effective regulatory infrastructure that protects consumers and facilitates their access to mortgage credit. To achieve this goal, the Bureau must correct the flaws in the current framework. In fact, the need to periodically assess and, where necessary, refine these regulations is one of the Bureau’s core statutory objectives. The Dodd-Frank Act directs the Bureau to ensure that “outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens.”\(^{26}\)

While a comprehensive list of necessary reforms can be found in our Adopted and Inherited Rules comment letters, we submit the following as the top-priority reforms most needed by industry. Whether due to changing industry technology or other market factors, urgent action is necessary on each of these items to ensure consumers have access to a robust mortgage market.

Loan Originator Compensation

The Bureau’s Loan Originator Compensation Rule ("LO Comp Rule" or "Rule") was intended to prevent ‘steering,’ where loan originators direct borrowers into riskier, higher-cost loans in order to secure greater compensation. While the LO Comp Rule imposed many restrictions on compensation practices to accomplish this goal, it does so in a manner that’s both unnecessarily complex and overly restrictive. This has the effect of restricting lenders’ ability to offer affordable credit, weakening market competition, and discouraging loan originator accountability.

Despite the substantial impact the LO Comp Rule has had on the mortgage market, the Bureau determined it did not qualify for treatment as a “significant” rule for purposes of the Section 1022(d) assessment.\(^{27}\) Therefore, unlike similarly impactful regulations, there are no plans for an assessment of the LO Comp Rule. This is unfortunate given the Rule’s effect on the availability and cost of mortgage credit.

For example, the Rule’s inflexible approach to changes to loan originator compensation prevents reductions to originator compensation — frequently the largest component of total loan origination costs — when presented with a competitive offer. This means fewer lenders can compete to serve the consumer. A more nuanced rule would allow voluntary reductions to compensation that benefit the consumer. Other consequences of the Rule’s

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27 We urge the Bureau to reconsider this decision and conduct a Section 1022(d) assessment of the LO Comp Rule.
inflexibility include reducing the availability of housing finance agency loans and less loan originator accountability for errors or violations of lender policy.

It is now five years since the LO Comp Rule first went into effect. Since that time, the impact of rising interest rates, compressed margins, growing regulatory burden and legal risk have combined to substantially reduce the number of mortgage lenders. Fewer lenders means fewer options for consumers. Addressing the Rule’s various shortcomings would work against this trend and allow more lenders to remain competitive, benefiting consumers who shop for lower rates. To have a real effect, the Bureau must act quickly. For this reason, reforms to the LO Comp Rule are our top priority. MBA urges the Bureau to utilize its authority under TILA to adopt the following targeted reforms to the LO Comp Rule that benefit consumers and industry.

MBA Recommendations

★ Allow loan officers to make competitive concessions. To help borrowers get lower rates or fees, the Bureau should amend the Rule to permit loan originators to reduce their compensation to match a demonstrated better offer from a competitor.

★ Allow companies to hold loan officers accountable for mistakes on particular loans. The Bureau should amend the Rule to allow reductions to compensation in response to loan originator errors or instances of non-compliance with lender policy.

★ Create an exemption to allow for variable compensation on housing finance agency loans. The Bureau should expand access to affordable mortgage credit for low-income and underserved consumers by amending the Rule to allow variable compensation for housing finance agency loans.

While less lengthy than many Bureau rules, the LO Comp Rule is nonetheless incredibly complex. Rather than specifically articulating prohibited compensation practices, the Rule adopts a vague test (i.e., the proxy analysis) for determining the permissibility of a given method for determining compensation. For many compensation practices, the correct application of the proxy analysis remains unclear. This has caused an unequal playing field as lenders with greater tolerance for regulatory uncertainty are rewarded with more flexibility in compensation practices. After making the targeted changes listed above, and to its mandate to foster a competitive and transparent mortgage market, the Bureau should explore ways to simplify the Rule, including but not limited to specifying a clear list of impermissible compensation practices.

Ability to Repay/Qualified Mortgage Rule

The Bureau’s Ability to Repay/Qualified Mortgage Rule (“ATR/QM Rule”) creates liability when a borrower defaults and is able to show the lender failed to adequately assess the borrower’s ability to repay. A safe harbor from liability is available for loans that satisfy the rule’s “qualified mortgage” standards (“QM loans”). These standards have had enormous consequences for the mortgage market and have become the de facto “credit box” in most cases. Uncertainty surrounding the potential liability associated with non-QM lending has impeded the development of a robust secondary market for non-QM loans, motivating most lenders to concentrate, often exclusively, on QM lending.

Unfortunately, time has revealed various issues with the ATR/QM Rule, the impact of which has been amplified by the market’s focus on QM lending. First, the rule applies a “one-size-fits-all” approach to determining whether a loan meets the qualified mortgage standard. This inflexibility makes it difficult for many lenders to provide mortgage credit for borrowers with non-traditional income sources who are often unable to satisfy the rule’s qualified mortgage requirements. In addition, the rule’s temporary “GSE patch” exemption, whereby loans...
eligible for purchase by the GSEs receive qualified mortgage status, remains a source of market uncertainty due to the exemption’s expiration on the date the GSEs exit conservatorship or on January 10, 2021, whichever is earlier. Finally, the QM limits on points and fees function as an unnecessary barrier to credit access for borrowers seeking smaller loans. We urge the Bureau to facilitate greater consumer access to mortgage credit by improving the ATR/QM Rule.

MBA Recommendations

★ Allow for government regulated underwriting standards to replace Appendix Q. The Bureau should adopt alternatives to Appendix Q that reflect established industry underwriting standards. Specifically, MBA recommends the Bureau amend Regulation Z to permit the use of specific alternatives to Appendix Q including the guides or handbooks maintained by FHA, VA, USDA, or those of any entity supervised by the Federal Housing Finance Agency (“FHFA”), subject to approval by FHFA.

★ Extend the GSE patch. To provide certainty for markets and to expand access to credit, the GSE patch should be extended indefinitely. In addition, the Bureau should expand the GSE QM designation to jumbo loans that meet GSE purchase or guarantee criteria except for the loan amount (i.e., loans too large for GSE purchase or guarantee).

★ Raise the “cap” on points and fees. The Bureau should raise the loan amount threshold for the 3 percent points and fees cap from the current amount of $105,158 to $200,000, an amount that more closely reflects the average loan size of approximately $260,000. The current threshold has the effect of raising the rate or limiting the availability of small balance loans which frequently have “fixed” origination costs. It is often very difficult to do these loans within the current QM cap due to fixed production costs and margin compression. This has forced many lenders to avoid small balance loans due to fear of liability and lack of saleability of non-QM loans. This disproportionately impacts low and middle income consumers, groups that are more likely to seek small balance loans.

TILA-RESPA Integrated Disclosure Rule

The Bureau’s TILA-RESPA Integrated Disclosure (“TRID”) Rule established a new, highly-technical mortgage loan disclosure regime. The rule creates numerous complicated disclosure requirements, delivery timeframes and accuracy tolerances. Applying these requirements to even the most simple mortgage transactions is a challenge. Unique transactions such as construction to permanent loans or transactions involve shifting settlement costs and uncertain time frames.

Uncertainty on the TRID Rule’s requirements is compounded by the unclear liability associated with TRID errors. Depending on the underlying statutory basis for a particular TRID requirement, creditors or their assignees may be liable to borrowers for failing to satisfy that requirement. Despite repeated requests by industry for clarity, it remains unclear which TRID violations support a private right of action. This lack of certainty has unnecessarily hindered the sale of loans, resulting in reduced credit availability.

MBA Recommendation

★ Clarify TRID liability. Through a formal interpretation that codifies Director Cordray’s position in a December 2015 letter to MBA,28 the Bureau should clarify that errors on the initial Loan Estimate, or any Closing Disclosure other than the final Closing Disclosure provided to the consumer, do not provide for any TILA liability.

RESPA Section 8

Uncertainty surrounding the Bureau’s interpretation of RESPA’s anti-kickback provisions continues to impede mortgage market efficiency. In the past, the Bureau pursued enforcement actions under RESPA Section 8 for behavior widely considered permissible. For example, in its enforcement action against PHH Corporation, the Bureau argued that payments for services violate RESPA as “referral payments” even if the payments are equal to the reasonable market value for the services.29 On appeal to the D.C. Circuit, the court found the CFPB’s position was contrary to RESPA’s express statement that Section 8 does not prohibit “the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.”30 The court stressed that Section 8(c) “specifically bars the aggressive interpretation of Section 8(a) advanced by the CFPB” and was “designed to provide certainty to businesses in the mortgage lending process.”31

Other Bureau enforcement actions have called into question the permissibility of desk rentals, lead generators and joint advertising arrangements.32 A 2015 CFPB Compliance Bulletin had a similar impact on marketing service agreements (“MSAs”) by noting the Bureau’s “grave concerns” that industry’s use of MSAs evaded Section 8 of RESPA.33 Rather than responding to these “grave concerns” by providing guidance on what types of MSAs were permissible, the Bureau simply stated that “a more careful consideration of legal and compliance risk arising from MSAs would be in order for mortgage industry participants generally.”34 The same bulletin compounded the confusion by stating that there may be significant risk of a RESPA violation “even where the terms of the MSA have been carefully drafted to be technically compliant with the provisions of RESPA.”35

As these examples demonstrate, the Bureau’s approach to RESPA Section 8 has caused significant uncertainty for industry participants. Lacking a clear understanding on how to achieve compliance, many lenders have reduced their use of traditionally common business arrangements such as MSAs, joint advertising arrangements, and desk rentals. Others have expanded into this space with unclear understandings of what is currently permissible, creating instances of unfair competition.

MBA Recommendation

★ Issue guidance on the application of RESPA Section 8 to common industry business arrangements. The Bureau should provide clear, reliable guidance on the permissibility and compliant operation of common industry business arrangements including marketing services agreements, joint advertising agreements, desk rentals, and lead generators.

HMDA (Regulation C)

The Bureau’s 2015 Home Mortgage Disclosure Act (HMDA) Final Rule greatly expanded the data collection and reporting requirements for mortgage loans originated after January 1, 2018. While certain new data points found in the 2015 HMDA Final Rule were explicitly required by the Dodd-Frank Act, others were included pursuant to the Bureau’s discretionary authority. The costs associated with collecting, centralizing, protecting and reporting these discretionary data points are substantial. When passed through to borrowers, these additional costs restrict consumer access to credit for those on the margins. Finally, the expanded dataset greatly increased the breadth of sensitive consumer information potentially open to the public.

31 PhH Corp. v. Consumer Fin. Prot. Bureau, 839 F.3d 1, 42 (D.C. Cir. 2016), reh’g en banc granted, order vacated (Feb. 16, 2017), on reh’g en banc, 881 F.3d 75 (D.C. Cir. 2018).
34 Id. at 5.
35 Id. at 4-5.
Significantly, reporting the discretionary data points does little to further the purpose of HMDA — i.e., to provide information on the availability of mortgage credit. Nor does it account for the invasion of privacy suffered by the borrower if re-identified — which is increasingly easy to do and therefore increasingly likely. Finally, many of the discretionary data fields are subject to variation between lenders that is not relevant to HMDA, affected by borrower choice, or otherwise not an appropriate metric by which a lender’s origination activity should be evaluated. Thus, the burden of collecting and protecting the data and the risk to individual privacy of the disclosure of such sensitive information does not warrant its collection and public dissemination.

The discretionary data points are not the only source of undue HMDA burden. Collecting and reporting HMDA data for multifamily loans is also unnecessarily burdensome. HMDA specifications were designed with single-family lending in mind. Applying these single-family, consumer-focused specifications to a multi-family business loan is a complicated, imperfect and therefore burdensome process. This burden cannot be justified as furthering the purpose of HMDA or any of the Bureau’s objectives. These business-to-business transactions are not “consumer financial products or services.” Therefore, exempting business-to-business loans secured by multifamily properties from mandatory HMDA reporting would reduce an unduly burdensome, unwarranted and unnecessary reporting requirement without impairing achievement of the Bureau’s statutory objectives.

Finally, the Bureau must act to address the outstanding privacy and data security issues surrounding the publication of consumer data under HMDA. With the addition of the discretionary data fields, lenders are now required to collect as many as 110 data points per mortgage loan application. The consolidation and possible publication of so much loan-level data represents an excessive risk to consumer privacy given the ease of re-identification. The current privacy policy does not adequately mitigate the risk of re-identification, nor the security concerns inherent in such data aggregation. A more robust policy, to include additional data field masking, is necessary. Given the importance of this issue, such a policy should be subject to notice and comment rulemaking as prescribed by the APA and required by Dodd-Frank’s amendment to HMDA. While MBA supports the Bureau’s decision to create a new privacy policy through APA rulemaking procedures in 2019, we continue to urge the Bureau to delay publication of the 2018 HMDA data until such a policy is in place.

**MBA Recommendations**

- **Reexamine the discretionary data points.** Given their significant burden, privacy risks and limited benefit, it is crucial for the Bureau to follow-through on its plans to reconsider the discretionary data points.

- **Exempt business-to-business loans secured by multifamily properties.** We recommend that the Bureau amend Regulation C to exempt business-to-business loans secured by multifamily properties from mandatory HMDA reporting.

- **Create a data publication privacy policy that appropriately mitigates consumer privacy risk.** The Bureau should create an appropriately robust privacy policy through public notice and comment procedures. Such a policy should be implemented before publication of the 2018 HMDA data.

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36 For example, many data fields are generally inapplicable to business-to-business loans secured by multifamily properties, including: Natural person borrower information — ethnicity, race, sex and age; preapproval; rate spread; HOEPA status; credit score; total loan points/total points and fees; origination charges; discount points; lender credits; prepayment penalty; debt-to-income ratio; manufactured home secured properties type; and manufactured home land properties interest.


38 See Id. (the Bureau’s statutory objectives include: “ensuring that... outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens”).

COMPLIANCE

RISK STRATEGY

ACCOUNT RULES

COMPLIANCE

STANDARDS SECURITY

MANDATE RESPECT

CONFORMITY YES
Conclusion

The CFPB is at a crossroads in its history with the installation of Kathleen Kraninger as the second Senate-confirmed Director. While the single Director structure of the Bureau necessarily makes such transitions very significant, markets and the consumers they serve benefit from regulatory expectations adjusted through public processes and the enforcement of clearly defined rules. Dramatic changes in philosophy or a large shifts in unwritten, uncommunicated “expectations” do not benefit our members or the consumers we serve.

MBA believes that consumer protection is a critical and worthwhile mission that benefits both the borrowers we serve and our members that seek to understand and honor their legal responsibilities. In the coming decades, the Bureau will best serve its dual statutory mandate by acting as a transparent, nonpolitical prudential regulator with judiciously applied enforcement powers. The Bureau has a “road map” to becoming a source of such clarity and consistency in the years ahead by adopting the reforms described here and in our RFI responses. These changes seek to retain strong and meaningful consumer protections while creating an infrastructure of rules, expectations and norms that will endure beyond any individual Director’s tenure.