MORTGAGE BANKERS ASSOCIATION

March 26, 2018

The Honorable Steve Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

**Re: FinTech Regulation of Non-Depository Institutions**

Dear Mr. Secretary:

The Mortgage Bankers Association[1] (MBA) appreciates the opportunity provided by the Department of the Treasury to engage in discussions over financial innovation and the appropriate regulation. As a follow up to our discussion on our principles for FinTech regulation attached in Appendix A, we are providing this letter to offer further thoughts on how to best support emerging financial technologies and innovation policy in the mortgage market. As the financial markets continue to grow in an era with technological breakthroughs, it is necessary for regulators to coordinate on how to thoughtfully promulgate sound innovation policy.

We understand the focus of the upcoming report to be the regulation of non-bank financial institutions and how they utilize financial technology. MBA members, including independent mortgage companies, are enthusiastic innovators of technological solutions and seek to improve the customer experience by adopting process improvements reliant on emerging vendor solutions or homegrown ideas. All MBA members seek to balance the need to develop or fund technological evolutions with the regulatory framework that has been implemented, often at great cost, since the passage of the Dodd-Frank Act. We note that independent mortgage companies are subject to the same consumer protection laws as depositories and must work with state regulators in all states that they are licensed.

Consumer protection regulations and prudent supervision, consistently applied, are key features of the mortgage regulatory scheme. MBA supports thoughtful regulation as it benefits our

[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.mortgagebankers.org.

members who seek to follow the rules. We do hope, however, that the rules are frequently reassessed in light of technological developments or consumer preference changes to ensure that the regulatory regime does not stifle potential innovations. The following thoughts are offered in that spirit.

## I. Modernization of Regulatory Framework

Over the last several years, investments in financial technology and compliance management systems have increased dramatically.[2] The pace of innovation in the mortgage market, however, has been slowed by various regulatory bottlenecks. Current financial regulations do not necessarily account for the impact of relevant technological developments. Outdated rules create liabilities and lock-in inefficiencies that stifle growth. The modernization of these existing financial regulations would address several issues created by the emergence of new technologies.

At its most foundational level, financial technology has shortened transaction times, invited greater competition, and increased convenience for consumers. From e-mail to electronic signatures, electronic documentation has nearly eliminated the need for paper records. Executing legal documents and immediate reviews of documentation can be accomplished with ease. Market participants are increasingly utilizing web-based solutions to provide greater choice and accessibility to consumers.

Unfortunately, the current regulatory structure frequently prevents adoption of new technology, increases implementation costs, or otherwise delays beneficial change. Much of the current regulatory framework was established before the widespread adoption of many modern technologies.[3] The framework is based on outdated assumptions about how businesses operate. For instance, regulations often assume transactions occur in-person, using hardcopies and paid postage, generally failing to account for the increasing prevalence of electronic channels.

The effect of dated regulations on technological innovation is significant. It restrains the ability of industry to develop consumer-friendly solutions by limiting investments in new products and services. Experimenting with solutions to common problems becomes impractical. Operational inefficiencies, which could otherwise be addressed by innovation, become locked-in. In this way, many of the benefits made possible by technological advances are unintentionally negated or adopted more slowly.

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[2] Investment in U.S. startup fintech ventures between 2010 and 2017 reached over $50 billion, approximately 54 percent of the total global investment of $97.7 billion. "Global Venture Capital Investment in Fintech Industry Set Record in 2017, Driven by Surge in India, US and UK, Accenture Analysis Finds." Accenture. February 28, 2018. https://newsroom.accenture.com/news/global-venture-capital-investment-in-fintech-industry-set-record-in-2017-driven-by-surge-in-india-us-and-uk-accenture-analysis-finds.htm.

[3] Several key mortgage rules, such as the Real Estate Settlement Procedures Act, the Truth in Lending Act, and the Equal Credit Opportunity Act were all enacted prior to 1975. 12 USC § 2601-2617, 12 USC § 1601 et seq., 15 USC § 1691 et seq. While they have been amended subsequently, the regulatory regime and the assumptions underpinning it pre-date the issuance of the first mobile phone patent. US 3,906,166.

For instance, with the continued growth of big-data and machine learning, the appraisal process has enormous potential for innovation. Today's technology allows for comprehensive and reliable automated appraisal engines with the potential to dramatically reduce costs to the consumer in many markets. Moreover, an automated appraisal process — or use of that technology as a first line appraisal — would go far in alleviating the shortage of licensed appraisers present in many markets. Unfortunately, the current regulatory framework leaves often provided limited space for automated appraisal engines. Instead, guidance rooted in safety and soundness concerns generally requires the involvement of a licensed professional appraiser. While this requirement was, at one time, prudent, it now stands in the way of an achievable technological advancement that could significantly improve efficiency and generate additional areas of market competition.

Another example is the current form of the Telephone Consumer Protection Act (TCPA). While the TCPA was originally designed to protect consumers from expensive unwanted mobile phone charges or intrusive telemarketing, it has increasingly been used as a tool to attack legitimate business communications for inadvertent contact. This issue lies squarely on the FCC's failure to modernize TCPA regulations to address increasing integration of computer and phone systems and the issue of reassigned telephone numbers.[4] While the intentions of the TCPA are understandable given the context of when it was passed, technology has evolved significantly without the regulations catching up. If TCPA regulations were tailored to accommodate the necessary communication technologies businesses use today, it would lower the risk of high-cost, often frivolous, lawsuits for emerging innovators that seek to meet consumers in their preferred communication channels.[5] The D.C. Circuit recently vacated much of the FCC's 2015 Omnibus Order, and it is imperative that the FCC promulgate new rules that recognize modern communication realities.

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[4] On June 16, 2016, the Mortgage Bankers Association filed a petition with the Federal Communications Commission, requesting an exemption for mortgage servicing calls from the prior express consent requirements of the Telephone Consumer Protection Act. *In the matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278 (June 16, 2016). The petition sought to encourage communication with mortgage loan borrowers and early engagement with financially struggling homeowners, an issue that was also taken up by many federal regulators who mandated protocols for reaching out to borrowers through outbound communications when a homeowner is delinquent. The TCPA frustrates these communications by imposing the threat of significant liability, uncapped statutory penalties, for making outbound communications to cell phones.

[5] On August 31, 2017, the Institute for Legal Reform released a macro-level analysis of TCPA litigation that reviews all TCPA federal complaints and a segment of electronically-available state complaints from a 17-month period after the FCC issued its July 2015 Omnibus Declaratory Ruling. "TCPA Litigation Sprawl: A Study of the Sources and Targets of Recent TCPA Lawsuits." The research therein confirmed a litigation boom following the FCC's 2015 declaratory ruling. Further, the lawsuits examined sought aggregated statutory damages from legitimate American companies not engaged in the kinds of cold-call telemarketing the TCPA was designed to limit.

## II. Barriers to Innovation & Regulatory Arbitrage

### Reduce Barriers to Innovation: Space for Innovation

Barriers to innovation must be reduced. Regulatory uncertainty is one such barrier. As regulations accumulate, they add complexity and, as a result, uncertainty to the marketplace. In such an environment, it becomes increasingly unclear how a new technology will be received. Will regulators approve of new innovation? What regulatory hurdles must be overcome? These can be a difficult and consequential questions to answer. Rather than sinking limited resources into innovation, many businesses take a "wait and see" approach. This decision is particularly consequential in the heavily regulated mortgage industry that has shouldered large increases in costs due to system and process changes to accommodate sweeping new regulations. Under this regime, potential innovators and early-adopters may find the potential returns on investment in innovation difficult to justify given the uncertain regulatory landscape. Simply put, the unknown regulatory risk may be too great.

In this way, regulatory uncertainty discourages innovation. It limits the number of potential innovators and users, which means less innovation. With less innovation, the benefits of innovation – including greater efficiency and credit accessibility – are less likely to accrue.

Businesses would be less reluctant to invest in innovation if they were able to develop and test new technologies without fear of incurring liability after crossing an unknown and unclear regulatory line. One way to address this issue would be to create a regulatory sandbox, an approach that has become increasingly popular internationally.[6] While the specific characteristics vary, in its most basic form, a regulatory sandbox is a space where businesses can test innovative products and processes without risk of regulatory consequences from non-compliance while under supervision to ensure consumers are not harmed.

While the Consumer Financial Protection Bureau's Project Catalyst is a sandbox-like program, its regulatory waiver through 'no-action' letter falls short. The CFPB's 'no-action' letters, which only exempt recipients from Title X of the Dodd-Frank Act, do not provide a sufficiently broad or reliable regulatory waiver. The letters leave open the possibility of liability for other consumer protection laws in suits brought by other federal regulators, the Department of Justice, state attorneys general or private parties.

In addition to the CFPB's Project Catalyst, the US Office of the Comptroller of the Currency (OCC) intends to launch bank-run "pilots." While details are limited, the OCC initiative appears to be

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[6] Zetzsche, Dirk A. and Buckley, Ross P. and Arner, Douglas W. and Barberis, Janos Nathan, Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation (August 14, 2017). 23 Fordham Journal of Corporate and Financial Law 31-103 (2017); European Banking Institute Working Paper Series 2017 - No. 11; University of Luxembourg Law Working Paper No. 006/2017; University of Hong Kong Faculty of Law Research Paper No. 2017/019; UNSW Law Research Paper No. 71; Center for Business and Corporate Law (CBC) Working Paper Series 001/2017. Available at SSRN: https://ssrn.com/abstract=3018534 or http://dx.doi.org/10.2139/ssrn.3018534

another sandbox-like program. Here too, the effort falls short in that it would only be available to banks operating under a national bank charter.

Both the CFPB and OCC attempts are too narrow. To provide meaningful clarity, any sandbox-like approach must be more broadly applicable. We recognize that the U.S. system – with multiple regulators over both state and federal charters – is more complex than European systems. The diversity of charters and regulators is both a strength and a challenge. In the context of an innovation sandbox, it puts a premium on establishing a common framework across agencies. It should create a comprehensive regulatory waiver and be open to more than just national banks. Actual risk to the public can be limited by pre-determined guardrails (e.g. limits on the number of test consumers, market exposure or test period) and through reasonable participation requirements whereby participants must first demonstrate appropriate risk management systems.

Mortgage lending, a field where new product development is often prevented by regulatory constraints, is one area that could benefit from a regulatory sandbox. This is particularly true for non-QM loans or loans that do not fall within the Consumer Financial Protection Bureau's (CFPB) qualified mortgage standards.[7] The CFPB has yet to provide clear guidance on non-QM products. As a result, non-QM loans are subject to uncertain regulatory risk, a fact which has prevented many lenders from offering these products. Without bright-line, reliable guidance, lenders are unable to determine risk models and levels of participation. This restricts lenders who could offer these products and consumers who could benefit from them — particularly those that may not be able to access safe, sustainable mortgage credit. A regulatory sandbox could be used to resolve this problem by providing a safe environment to test non-QM loan products.

The benefits of an effective sandbox are many. By limiting regulatory risk for innovators, a regulatory sandbox encourages innovation. Greater innovation would increase the availability of credit and/or lower the cost, thereby fueling economic growth. A regulatory sandbox would also benefit regulators by creating a window to review and assess the risk of new technologies, products and services. The ability to test new concepts doesn't have to be one-sided. Properly designed, a regulatory sandbox could provide regulators with an opportunity to test new supervisory techniques, a valuable benefit given the rapid pace of innovation.

**Reduce Barriers to Innovation: Streamline Regulatory Review**

In addition to regulatory uncertainty, regulatory delay can be a barrier to innovation as it limits the speed of technology adoption. Businesses with the "wait and see" approach are unlikely to adopt a new technology without being certain of the regulatory implications of doing so. In addition to the obvious impact of delaying the diffusion of beneficial technology, regulatory uncertainty can negatively affect competition. While some businesses will wait until the regulatory implications are clear, others will adopt despite the regulatory uncertainties. During the period before the regulatory implications become clear, the initial adopters will not face

[7] 12 CFR Part 1026 (Regulation Z).

normal competitive pressures. This may allow them to develop an unfairly strong position in the marketplace or create competitive pressures on other industry participants to engage in similar behavior.

Not only is this contrary to healthy competition, it rewards businesses with the greatest appetite for regulatory risk. Rather than impeding healthy competition and unnecessarily incentivizing regulatory risk taking, regulators should implement steps to reduce the amount of time needed to resolve regulatory uncertainty. To do so, regulators must first accept that innovation and technological change can occur quickly. An effective regulatory framework must be able to accommodate and adapt to rapid change. Regulators should review existing regulations to determine where past processes create future barriers and revise them to create space for innovation. Such a framework will create a level playing field for existing market participants with the added benefit that responsible innovators would be able to follow existing consumer protections by staying within clear, bright line rules.

One way to reduce regulatory delay is to create a streamlined review process. Current regulatory review processes, such as the assessment of significant rules created by the Dodd-Frank Act[8], are too infrequent to keep up with the rapid pace of innovation. Further, the existing review processes take too long to implement change or provide clarification when change or clarity are needed. A more streamlined process — perhaps through a formalized petition regime — would provide for timely review and, if necessary, tailoring or clarification of financial regulations. The review framework should be designed to accommodate the compressed technology development cycle while still respecting the need for only making changes prospective and responding to stakeholder feedback.

**Regulatory Arbitrage**

A different barrier to innovation stems from the lack of regulatory alignment. National and state level regulators are each subject to unique jurisdictional limitations and regulatory responsibilities. Jurisdictional boundaries can be unclear, making it difficult for businesses to determine the applicable regulatory standard.

Given these differing regulatory frameworks, businesses are encouraged to structure their activities, business model or geographic locations in a way which minimizes their regulatory burden. This practice, commonly referred to as regulatory arbitrage, has become more prevalent with the increased costs attributable to compliance, consumer lawsuits and enforcement actions. Recent technology-driven trends, such as “marketplace lending”, also contribute to the potential for regulatory arbitrage by giving businesses greater operational flexibility. In some cases, inconsistent regulatory frameworks may encourage innovation designed to exploit these inconsistencies rather than innovation that improves existing processes, creates more value, or benefits consumers.

[8] 12 USC § 5512(d)

Regulatory arbitrage is unfair and creates perverse incentives for innovation. It both weakens regulatory standards and creates an unequal playing field. Businesses engaged in substantially similar behavior should not be subject to different regulatory requirements.

An area that is in dire need of immediate attention is cyber security. While there are no federal requirements,[9] states are moving to create their own rules and guidelines. Cyber security threats are often transnational, affecting millions of individuals and companies, and are best addressed by the federal government to ensure uniformity. With the possibility of individual states undertaking separate rulemakings, there is significant potential for a negative effect on the market and consumers. An inconsistent regulatory framework incentivizes arbitrage, as vendors and affiliates will be forced to address varying and often misaligned requirements or seek to structure their business in response to regulatory concerns.

To address this issue and increase regulatory coherence, regulators must eliminate the incentive for regulatory arbitrage. Regulators need to coordinate efforts to create and apply rules based on the nature of a transaction rather than type of regulatory charter or license of the entity involved. In addition, regulators should work to eliminate overlapping or inconsistent authority across regulatory agencies where possible. Going forward, regulatory alignment and consistency can be maintained if regulators remain fully responsive to technology developments which have the potential to alter industry costs, manner of operation and competitive structure.

## III. Regulatory Diversity & Federal Preemption

It is necessary that regulators recognize and address the diversity of the U.S. financial regulatory system. Given the nature and inherent interstate functionality of financial technology, Federal regulators have a responsibility to ensure the marketplace is not inhibited by conflicting constraints and high-cost barriers to entry. Currently, nascent financial technology companies are unable to obtain a Federal charter,[10] without resorting to large investments focused on

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[9]Though there does exist a "Framework" the lack of Federal regulations addressing this issue is concerning. The National Institute for Standards and Technology (NIST) is currently drafting a revision to its white paper, "Framework for Improving Critical Infrastructure Cybersecurity," in which they continue to acknowledge the global risks associated with cyber security and the necessity of scalable standards. Proposed Update to the Framework for Improving Critical Infrastructure Cybersecurity. 82 FR 8408. National Institute of Standards and Technology. Published January 25, 2017, revised December 5, 2017.

[10]In December, 2016, the Office of the Comptroller of the Currency (OCC) released a paper outlining a special purpose national bank charter for "fintech" companies. "Exploring Special Purpose National Bank Charters for Fintech Companies, December 2016. In response, the MBA expressed its support of the spirit of the charter while acknowledging a need for more detailed information about the charter, the chartering process and how potential grantees would be evaluated. The proposed special purpose national bank charter is currently facing litigation from the Conference of State Bank Supervisors (CSBS), while the Southern District of New York has dismissed the New York Department of Financial Services' (NYDFS) suit for lack of Article III standing. CSBS has argued that the OCC does not have statutory authority to charter non-depository companies without specific Congressional authorization, while also raising issues of constitutionality under the Supremacy Clause and the Tenth Amendment of the U.S. Constitution. The OCC has filed a motion to dismiss for lack of Article III standing and continues to assert its authority to issue special purpose bank charters and that its interpretation of the National Bank Act deserves

regulatory arbitrage and are thus relegated to seeking licensure from each individual state. While incumbent market participants have made strong strides in innovation, they face severe burdens in broadening their audience and reaching a larger consumer base. The same can be said for startup ventures. These companies are forced to engage with more than 50 different regulators, incurring licensing costs in each state, if they seek to operate nationally.

While some states have started to develop a regulatory regime to address financial innovation, the nature of the regulatory system is such that progress is uneven across different states. This has the effect of preventing firms from offering potentially beneficial products or services to consumers in states that may not have made the necessary enabling changes. A system of reciprocity would provide the harmony necessary to meld regulatory regimes, avoid the current patchwork regulation and extend the benefits more broadly.

Remote online notarization is an area where conflicting regulatory regimes have prevented the widespread adoption of a beneficial technology. While notarization requirements vary from state to state, they generally require in-person attestations. Technology has made it possible for individuals to engage "in-person" from great distances to execute documents via electronic signatures and perform notarizations via digital channels. Remote online notarizations allow businesses to communicate through a digital medium, instantaneously and efficiently and with reliable identification verification procedures. However, due to the current restrictions, businesses and consumers both continue to experience delays due to legacy requirements in closing a mortgage. While some states have taken steps to adapt to available technologies, more progress is necessary.

At times, Federal and State financial regulators impose varying, and in some instances conflicting, regulations. This unfairly increases the burden on certain market participants, raising economic and technological hurdles. Federal and state regulators must coordinate their efforts to ensure innovation pathways are available to all market participants, regardless of charter, license or business model. Incentivizing this collaboration between states, and encouraging alignment with federal rules where appropriate, would alleviate the burden placed on companies that do not have the benefit of national preemption, thereby lowering a significant barrier to entry.

Additionally, consumer facing regulations are nationwide, comprehensive, and apply to all mortgage companies. This includes non-banks, irrespective of any charter or license. The imposition of conflicting regulatory regimes on participants only raises costs for companies and, inevitably, consumers without providing significant additional protection. Acknowledging the comprehensive scheme which already exists in mortgage finance must be at the forefront of homogenizing regulations.

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deference. While these jurisdictional issues remain, the OCC has not yet signaled its intention to issue special purpose national bank charters to non-depository fintech companies.

The need for alignment is particularly necessary to accommodate innovation in e-Closings. Consumer demands for greater convenience and digital services continue to increase. While states move forward on remote online notarization, e-Closings remain subject to varying, inconsistent protocols across Federal, state and local jurisdictions. Alignment of the rules governing e-Closings would increase predictability, efficiency, and consumer credit access.

In instances where appropriate, such as cyber security[11] or mortgage servicing,[12] regulators should consider Federal "field" preemption. This will allow greater predictability for market participants, increasing competition and providing consumers with greater choice. Uniformity in areas of high sensitivity involving data transmission warrants preemption to ensure consumer protection. It should also provide avenues for market participants to engage with their regulators to work collaboratively on data security needs.

## IV. Prioritization of Resources

Agencies should be required to prioritize their funding requests to address the need to modernize their technology infrastructure. This should include comprehensive reviews of their current infrastructure and communication with stakeholders who can provide feedback to the regulators of their technological inefficiencies. Agencies should consider the use of external experts to periodically conduct these assessments to ensure the process is well-informed and addresses the needs of the industry and its customers.

With the proper resources, agencies can increase the efficacy of their communications with the private sector. Regulators cannot be expected to regulate stakeholders whose technology they are incapable of properly assessing. This requires open communication in conjunction with modern infrastructure. The field of financial innovation is rapidly expanding and agencies should place resources into developing relationships with these experts, internally and externally.

Regulators should be aware of and recognize the opportunities innovation may create to further regulatory objectives. Agencies around the world have begun working with their stakeholders to develop technology to assist in oversight and compliance. Growing from financial technology, regulatory technology has started to emerge in the market as a solution to increase harmonization and offer deeper insights between market participants and their regulating

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[11] See above FN9.

[12] There is a strong argument that preemption is appropriate here given the inclusion of numerous mortgage servicing provisions in Dodd-Frank, together with creation of a federal agency to add to and enforce them as well as RESPA's jurisdiction over *federally related* mortgage loans. See Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) ("So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose.")(internal citations omitted).

bodies. Regulatory agencies are exploring ways to leverage technology to better manage compliance matters, with some going as far as to consider digital coding of regulations[13] to assist market participants in the development of their own technology. Investment in internal processes to analyze the possible avenues for innovation will help both in developing internal solutions and assessing emerging technologies.

Finally, technology employed by government agencies should be modernized to ensure that it can efficiently communicate with partner systems as well as appropriately serve the mission of the agency. Systems in use at the Federal Housing Administration (FHA), Department of Veterans Affairs (VA), Department of Agriculture's (USDA) Rural Housing Service, and Ginnie Mae often remain in place for decades past their useful life, diminishing their effectiveness and efficiency. Issues with day-to-day operations can also arise, which lead to higher costs for consumers and lenders. Managing the federal guarantees provided by these agencies with outdated systems degrades their level of service and creates potential risk to taxpayers in the event of operational failures. With the proper resources dedicated to modernizing their systems, Federal agencies can avoid the risks inherent in coupling aging technology with increasing use.

## V. Authoritative Guidance

Finally, federal and state regulators should establish clear, authoritative guidance covering critical issues, particularly those relevant to innovation. Authoritative, reliable guidance from regulators would benefit potential innovators by defining clear rules of the road. Rather than correcting issues after a product has been released, authoritative guidance would allow all regulated entities to address foreseeable concerns at the development level. State-level regulators will also benefit, as written guidance would serve as an authoritative source for regulatory consistency.

Despite consistent industry pleas,[14] in the past the CFPB has been unwilling to provide authoritative guidance. While the arguments for additional guidance are many and varied, few are more convincing than the rapid pace of innovation in the financial space. Developments in technology have given businesses the ability to easily reach customers regardless of their physical location. These same developments have drastically transformed nearly all aspects of mortgage

[13]In November, 2017, the U.K.'s Financial Conduct Authority (FCA) held a two-week TechSprint (events held by the FCA with a commercial sponsor that brings together participants to develop technology based ideas or proof of concepts to address specific industry challenges) to examine how technology can make the current system of regulatory reporting more accurate, efficient, and consistent. Participants successfully developed a proof of concept which could make regulatory reporting requirements machine-readable and executable. This could potentially allow firms to map reporting requirements directly to their data, creating the potential for automated, straight-through processing of regulatory returns. The FCA subsequently released a Call for Input outlining the proof of concept and requesting feedback from the public. "Call for Input: Using technology to achieve smarter regulatory reporting." Financial Conduct Authority. https://www.fca.org.uk/publication/call-for-input/call-for-input-smarter-regulatory-reporting.pdf.

[14] See CFPB 2.0: Advancing Consumer Protection, https://www.mba.org/issues/residential-issues/cfpb-20-advancing-consumer-protection (last visited March 6, 2018).

lending operations. In the few areas where technology hasn't made an obvious impact, change is on the horizon. Yet, the pace of adoption will be slowed significantly if market participants are left to divine the path forward through the unclear tea leaves of various enforcement actions rather than clearly articulated guidance.[15]

While guidance and regulatory reform can serve an important role, they should not be viewed as the tools to repair a broken regulation. Additionally, crafting bespoke exemptions for regulations that are found to be burdensome creates advantages for certain business models without addressing the problems inherent in the regulation. Rather than crafting specific carve outs that benefit a select few, regulators should work with stakeholders to improve the underlying regulation for all entities. Doing so will release any regulatory drag on the market and spur innovation across all business models.

MBA appreciates your consideration of these comments and the Department's willingness to engage with stakeholders on the important issue of financial innovation. MBA believes that if these matters can be well addressed, our mutual interest in serving the needs of greater competition, increased consumer choice, and greater technological innovation will be well served. Should you have questions or wish to discuss any aspects of these comments, please contact Justin Wiseman, Associate Vice President and Managing Regulatory Counsel, at (202) 557-2854 or jwiseman@mba.org.

Thank you for your consideration of these views.

Sincerely,

David H. Stevens, CMB
President and Chief Executive Officer
Mortgage Bankers Association

[15] Recent statements by CFPB Acting Director Mulvaney indicate a possible shift away from the regulation by enforcement approach. See The CFPB has Pushed its Last Envelope, Wall Street Journal (January 23, 2018), https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561

Appendix A: Principles for Enabling Financial Regulation

**Principles for Enabling Financial Innovation**

- Regulators should review and modernize existing financial regulations – many of which were developed before email, the internet, and mobile applications – so that old rules don't create liability or lock-in inefficiencies. Examples:
  - The Telephone Consumer Protection Act (TCPA)
  - Barriers to Remote Online Notarization
- Regulatory uncertainty shouldn't be a barrier to innovation. Regulators should remove barriers to innovation by emerging complementary and evolutionary financial technologies by reviewing existing rules and creating space for innovation within the rules.
  - Issue and maintain an open database of No Action Letters
  - Expand CFPB's Project Catalyst and No-Action Letter Program
  - Create a regulator supervised "sandbox" or other defined innovation space where businesses can pilot innovative products or services.
  - Mandate technology assessments for all new rulemakings
- Recognize the diversity of the US financial regulatory system and require federal and state financial regulators to coordinate their efforts so as to ensure innovation pathways are available to all market participants regardless of charter, license or business model.
- Ensure that the regulatory system does not incentivize regulatory arbitrage. Successful disruption should not be rooted simply in the ability to arbitrage governing regulations.
- Require agencies to prioritize in their funding requests the resources needed to modernize their infrastructure so it can efficiently communicate with private sector technologies and incorporate beneficial technological developments. Regulators should also be aware of and recognize the opportunities innovation may create to further regulatory objectives.

**Federal Principles for Nonbank Financial Regulation**

- Federal financial agencies should encourage and incentivize harmonization between the states and encourage alignment with federal rules where appropriate.
- The CFPB should provide clear, authoritative guidance to the market. Such guidance benefits potential innovators by defining clear rules of the road. It also benefits state regulators by providing a consistent and authoritative source for them to use in their examinations of their licensees.
- To the extent that consumers and market participants would benefit from uniform, market-wide regulations, in some instances Congress and federal regulators should consider federal "field" preemption. Examples:
  - Cyber security
  - Mortgage servicing