



July 2, 2018

**Submitted via regulations.gov**

Monica Jackson, Office of the Executive Secretary  
Bureau of Consumer Financial Protection  
1700 G Street NW

**Re: Request for Information Regarding Bureau Guidance and Implementation Support**

Dear Ms. Jackson,

The Consumer Bankers Association<sup>1</sup> (“CBA”) appreciates the opportunity to comment on the Bureau of Consumer Financial Protection’s (“Bureau”) guidance and implementation support.<sup>2</sup> CBA’s members frequently rely on the Bureau’s guidance and implementation support to navigate a complex world of regulations while trying to best serve the financial needs of consumers.

The Bureau recognized the various challenges presented by issuing “Guidance,” as stated in the Bureau’s Request for Information Regarding Bureau Guidance and Implementation Support (“RFI”).<sup>3</sup> CBA agrees that the guidance process has various tradeoffs, yet emphasizes that often, various forms of interpretive guidance can greatly help financial institutions better comprehend and work within the rules and regulations governed by the Bureau. Still, the world of financial services is constantly evolving, and all financial services stakeholders would benefit from having up-to-date guidance on Bureau rules that adequately reflect changes in financial institutions’ business models and operations. As such, the Bureau should establish methods to review Bureau guidance on a regular basis to determine if updates or changes to the guidance are necessary.

Establishing procedures for the Bureau to re-examine previously issued guidance will help the Bureau establish guardrails for the financial services industry without the need for new and burdensome rulemaking, while affording financial institutions the opportunity to better

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<sup>1</sup> The Consumer Bankers Association is the only national trade focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.

<sup>2</sup> Request for Information Regarding Bureau Guidance and Implementation Support, 83 F.R. 13959 (Apr. 2, 2018).

<sup>3</sup> *Id.* at 13961, stating: “The Bureau faces tradeoffs that it must consider when issuing guidance. Where the Bureau does not use notice-and-comment procedures, it can act more quickly to issue or update guidance materials to address industry interpretive questions and respond to developments in the marketplace. However, the more expedited the process is in developing guidance, the more likely that an agency may find a need over time to revise or adjust its initial guidance statements and address related legal, factual, and policy issues, even though revisiting such materials can impose additional costs on both the agency and regulated entities.”



tailor their individual programs to both adhere to Bureau rules and serve consumers in the best way possible.

In addition to establishing a procedure to re-examine the various guidance materials the Bureau publishes on a regular basis, financial institutions, consumers, and other stakeholders would greatly benefit if the following recommendations are implemented.

### **I. Improve the Bureau's Regulatory Inquiries Function**

CBA members greatly value the Bureau's willingness to answer regulatory inquiries via telephone. This process is frequently used by financial institutions with targeted questions concerning the Bureau's various rules and regulations. However, each call begins with a disclaimer stating that the information provided on the call cannot be relied upon by the institution. This disclaimer effectively limits the usefulness of any response given via the telephone, and as such, should be removed so individuals calling the Bureau can rely on the information given to them on the call.

The Bureau should commit itself to considering and issuing timely, accurate, and helpful responses to inquiries sent through electronic means. CBA recommends the Bureau acknowledge receipt of inquiries within two days of receipt, and establish and publish a service level agreement for responses.

Additionally, the Bureau should issue cumulative "Frequently Asked Questions" ("FAQs") on a monthly basis reflecting the inquiries made by financial institutions, and the responses to those inquiries. As is the case with those inquiries made via telephone, a disclaimer would greatly limit the use of the Bureau responses, and as such, no disclaimer should be attached to the FAQ responses. This will help financial institutions interpret the Bureau's various regulations. Additionally, the Bureau would benefit because releasing cumulative FAQs will help cut down on duplicative inquiries. A process should also be established to memorialize the cumulative FAQs into more formal guidance documents. Finally, the Bureau should closely monitor the inquiries submitted, and the Bureau's responses to determine what rules and regulations may need more interpretive guidance.

### **II. Enhance Compliance Aids Usefulness**

While CBA members utilize the Bureau's various webinars and implementation aids, these tools are currently of limited value because they merely restate the rule and applicable commentary. The Bureau should include regulatory developments and other information in webinars and implementation aids to provide meaningful context and insight for rules and Bureau activities. Financial institutions could leverage these insights to enhance their respective compliance and regulatory management systems to further compliance with the Bureau's rules and regulations, and increase protections for consumers.

The Bureau should also frequently revise FAQs, examination manuals, and implementation aids to reflect Bureau regulatory actions, judicial decisions, and regulatory actions by other federal regulators to ensure these materials are of improved use to financial institutions and consumers. Additionally, implementation aids should provide specific examples of means to comply, and should be frequently updated to account for the use of new technology, especially as consumers meet many of their financial needs through mobile channels.

Finally, the Bureau should continue to improve on its efforts to reach out to financial institutions, trade associations, and interested stakeholders on a regular basis to foster an environment of better understanding around regulatory compliance requirements.

### **III. Formalize and Standardize Official Interpretations and Standalone Rules**

The Bureau should establish a process to formally memorialize Bureau interpretations conveyed in various advisory opinions and other standalone guidance documents in the Bureau's Official Interpretations. Further, when issuing standalone interpretive rules, the Bureau should establish notice and comment periods for interested stakeholders to provide input to the Bureau. When the Bureau requests feedback from interested stakeholders, the Bureau should be sure to review all information received, and incorporate the feedback into any guidance issued, or at least issue comprehensive explanations for why feedback was not incorporated. Finally, the Bureau should establish a procedure for the Bureau's commentary on rules and regulations to be updated on a regular basis.

### **IV. Better Utilize Fair Lending Guidance and the Division of Supervision Enforcement**

The Bureau's quarterly supervisory highlights related to fair lending are useful for financial institutions, but these supervisory highlights should not be used to provide regulatory interpretations. Instead, the Bureau should issue periodic regulatory guidance that financial institutions can rely on.

The Bureau's Office of Fair Lending and Equal Opportunity's frequent open dialogue with industry stakeholders has proven to be a useful tool, but it has historically been difficult for Bureau staff to provide direct feedback on specific issues to those who inquire. Often, financial institutions cannot discern details from the feedback received from the Office of Fair Lending and Equal Opportunity. As such, if the Office of Fair Lending and Equal Opportunity published regulatory guidance on specific issues on a periodic basis, financial institutions and consumers would greatly benefit from the increased clarity this guidance could bring.

### **V. Improve Other Forms of Written Guidance**

Frequently, when the Bureau releases new rules, regulations, or guidance, operational difficulties or certain unintended consequences result. As such, the Bureau should establish



procedures to quickly provide guidance and establish safe-harbors in the case of an operational difficulty arising as a result of a new rule to allow financial institutions to engage in practices that best benefit the consumer, pending a formal rulemaking process to remediate any issues.

While CBA appreciates the Bureau establishing Project Catalyst to encourage consumer-friendly innovation, the Bureau should provide more information on how financial institutions can apply to be a part of the Project, how the Bureau will review applications, and what reliance applicants can place on the no-action letter issued pursuant to the Project. As Project Catalyst stands now, the application and approval process is vague, with no standard application form, and just having language on the Bureau's website stating interested entities should submit information to a Bureau email address.<sup>4</sup> Addressing the issues above will encourage more institutions to submit proposals to Project Catalyst, and overall, improve the Project's utility.

Additionally, the Bureau's no-action letter procedures should be extended to financial institution's existing products and services. Importantly, no-action letters should be binding on the Bureau, as long as the financial institution acting on the letter has done so in good faith. Currently, no-action letters provide no clarity about the possibility of future enforcement actions and are firm specific, giving no guidance to third-parties and partners of no-action letter recipients. The Bureau should use the no-action letter process, or a similar advisory opinion process, to provide clarity regarding the application of a specific provision of law to a product or activity, similar to how the OCC issues Interpretive Letters.

Accordingly, no-action letters should be published publically, and the Bureau should redact the name of the institution requesting the letter, as warranted. No-action letters should not be firm specific, thereby allowing third-party partners and other similarly situated providers to gain legal comfort from the Bureau's determinations. Finally, the Bureau should address Unfair, Deceptive, and Abusive Acts or Practices ("UDAAP") issues via no-action letters, and provide greater transparency through explanations when no-action letters are approved or denied.

While advisory opinions can serve as a useful tool to help financial institutions gain clarification about the feasibility of specific acts and practices, often financial institutions cannot rely on these advisory opinions because they can create uncertainty around a practice. As such, the Bureau should monitor requests for advisory opinions to identify areas of uncertainty where additional formal guidance is needed. The Bureau should also more broadly publish advisory opinions so the entire industry can benefit from the information they contain. Advisory opinions should also be anonymized, and describe the institution that requested the opinion in broad terms that only serve to identify the characteristics material to the Bureau's

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<sup>4</sup> The Bureau of Consumer Financial Protection, *Project Catalyst*, <https://www.consumerfinance.gov/about-us/project-catalyst/> (last visited June 26, 2018).



advisory opinion. A process should be established by the Bureau to incorporate the decisions made in advisory opinions into formal policy. Finally, as many financial institutions also rely on the advisory opinions of other federal regulators, the Bureau should give deference to these opinions, and not interfere with these opinions without appropriate notice to the public.

#### **VI. Limit the use of Disclaimers**

Much of the Bureau's guidance mentioned above includes disclaimers on the utility of the language provided in the guidance. These disclaimers can render much guidance effectively useless, as financial institutions feel unable to rely on the decisions rendered in guidance with a disclaimer attached. As such, disclaimers should be used sparingly by the Bureau, if at all.

#### **VII. Conclusion**

CBA greatly values the Bureau's call for evidence and examination of the Bureau's guidance and implementation support. The Bureau should consider procedures to re-examine all forms of guidance it issues on a regular basis to ensure the Bureau's guidance reflects the ever-changing world of banking. If you require any more information on the principles contained herein, please do not hesitate to contact the undersigned directly.

Sincerely,

A handwritten signature in black ink that reads "Stephen Congdon".

Stephen Congdon  
Regulatory Counsel  
Consumer Bankers Association  
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