June 19, 2018

Submitted Electronically: FederalRegisterComments@cfpb.gov

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, Docket No. CFPB-2018-0011

Dear Acting Director Mulvaney:

The Consumer Bankers Association ("CBA")[1] appreciates the opportunity to provide the Bureau of Consumer Financial Protection ("BCFP" or "Bureau") with our comments in response to the notice and request for information ("RFI") on Adopted Regulations and New Rulemaking Authorities.[2]

We applaud the Bureau's openness to receiving public input regarding the substance of the adopted regulations.[3] A robust assessment of these regulations is timely and CBA's members welcome changes to the rules that will allow them to serve their customers in a more efficient and effective manner. As the BCFP carries out its review, CBA encourages the Bureau to evaluate the adopted regulations in light of its statutory objectives, which are to ensure that:

- Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

---

[1] The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

[2] Bureau of Consumer Prot., Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, 83 Fed. Reg. 12286 (Mar. 21, 2018).

[3] The Bureau's definition of Adopted Regulations "include rulemakings adopted under Federal consumer financial law and issued by the Bureau since the designated transfer date in 2011, including rules that were adopted pursuant to specific instructions from Congress. The term also includes new rulemaking authorities given to the Bureau by the Dodd-Frank Act under the Federal consumer financial laws. The Adopted Regulations generally include all final rulemakings that the Bureau issued after providing notice and seeking public comment, including any accompanying Official Interpretations (commentary) issued by the Bureau." *Id*. at 12287-88.

- Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;
- Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;
- Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and
- Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[4]

Our comment letter provides specific recommendations below to amend, clarify or eliminate certain provisions of the adopted regulations to enhance the customer experience and improve the functioning of the consumer financial markets.

Mortgage-Related Rules

I. Ability-to-Repay ("ATR") Rule and Qualified Mortgage ("QM") Standards

A. Agency or GSE QM Standard

The Bureau's ATR Rule provides a QM standard for loans eligible for sale to the Government Sponsored Enterprises ("GSE") so long as they otherwise meet GSE-eligibility requirements.[5] The Agency/GSE QM standard (often referred to as the "QM patch") actually expands the types of loans that are treated as QM because GSE eligibility requirements can be quite different (*e.g.*, higher debt-to-income levels and more flexible documentation requirements) than those presented under the general QM standard.[6] The asymmetry of these standards creates a regulatory burden for lenders of privately-originated mortgages, and it raises competition issues as well. The QM patch is scheduled to lapse in January of 2021.

<u>Recommendation</u> – The Bureau should consider crafting a permanent solution. This would provide certainty to the marketplace and give federal policymakers time to make a final determination about the future of the GSEs and their role in the housing-finance system. Our recommendation would be to make the QM patch permanent. In addition, the general QM standard should be amended to provide greater flexibility for borrowers and lenders. For instance, loans that meet most of, but not all, the QM requirements should still be treated as a QM loan if compensating factors would give them the same

[4] 12 U.S.C. § 5511(b).
[5] 12 C.F.R. § 1026.43(e)(4).
[6] *See* Urban Institute, Has the QM Rule Made It Harder to Get a Mortgage? (March 1, 2016).

risk profile as a QM loan. The ultimate goal should be a uniform QM standard that applies to all mortgage loans, whether they are held in portfolio or sold to the GSEs or other secondary market entities.

B. Appendix Q of the ATR Rule

Appendix Q is contributing to a tighter lending environment. Its narrow focus on cash flow negatively affects the ability of lenders to provide certain borrowers, including the self-employed, small business owners, seasonal workers, or retirees, with QM loans even when these borrowers hold significant assets in reserve.

Recommendation – Appendix Q should be simplified and the Bureau should release much clearer, binding guidance for its use and application. The BCFP should, in particular, review Appendix Q standards for determining borrower debt and income levels to mitigate overly prescriptive and rigid requirements and to provide greater latitude to offset debts with readily available liquid assets. Review of these requirements should be sensitive towards self-employed and non-traditional borrowers who do not ordinarily prepare profit-and-loss statements or balance sheet statements.

C. QM Cure

The ATR Rule does not provide a method of correcting any inadvertent breaches of the QM requirements. As a result, any breaches of the QM threshold or documentation requirements will take a loan out of the QM safe harbor even if the error was made in good faith.

Recommendation – Provide a means to cure inadvertent breaches of the ATR Rule's QM thresholds and documentation requirements.

D. Points and Fees Cap

Many origination fees traditionally associated with mortgage transactions are generally not dependent on the loan amount, including credit reports, tax services, and processing fees. As a result, the points and fees cap disproportionally affects loans with smaller balances.

Recommendation – Raise the points and fees cap to account for the inelasticity of certain mortgage transaction fees.

II. Mortgage Servicing

A. Loss Mitigation

The Mortgage Servicing Rule contains extensive loss mitigation requirements that are triggered each time a mortgage loans goes into delinquency. Although our members recognize the need for these protections, they provide diminishing benefits for borrowers when the underlying loan undergoes multiple cycles of delinquency.

1. Live Contact Requirement

The Mortgage Servicing Rule requires servicers to try to obtain "live" contact with a borrower no later than 36 days after each missed payment to discuss loss mitigation options.[7] However, this requirement does not permit lenders to adjust for different situations. Borrowers that are a day late with payment are treated the same as borrowers who are seriously delinquent. The inflexibility of the requirement results in complaints from borrowers who are annoyed by the constant reminders of delinquent payments and the multiple attempts at contact.

Recommendation – Provide clear exemptions from the live contact requirement for customers in foreclosure or bankruptcy; customers who have already been evaluated for loss mitigation during a delinquency cycle; customers who are consistently within 30 days late with payment; and customers who have requested a cease and desist on contacts.

2. Early Intervention Notice

The Mortgage Servicing Rule requires servicers to send early intervention notices not later than 45 days after each payment, but no more than once during any 180-day period.[8] While helpful for borrowers with short-term delinquencies, the benefits of this notice rapidly diminish each additional time it is presented to a delinquent borrower. Furthermore, there is a high likelihood that borrowers who have been denied loss mitigation options, or those in foreclosure proceedings, will be confused and/or angered by receiving such a notice.

Recommendation – Amend the rule to require only one early intervention notice per delinquency cycle.

---

[7] 12 C.F.R. § 1024.39(a).
[8] *Id*. § 1024.39(b)(1).

B. Loan Modification Application

The Mortgage Servicing Rule provides lenders only 5 days (excluding weekends and legal holidays) to acknowledge a borrower's request for a loan modification.[9] It is unclear why there is such a strict deadline for acknowledgements as there is little risk of harm to the borrower if a lender provides a delayed response.

Recommendation – Provide more flexibility for lenders regarding the acknowledgment of loss mitigation applications. We recommend a safe harbor for, at minimum, 5 days (excluding holidays and weekends) from stated guidance to cover situations which require additional time for servicer review, or to address underwriting modifications for borrowers who are self-employed or receive non-traditional income.

C. Periodic Statements for Open-End Accounts

The Mortgage Servicing Rule requires lenders to provide periodic statements to borrowers in bankruptcy for closed-end accounts.[10] However, the rule does not address whether a similar requirement applies to open-end accounts.

Recommendation – Issue a clear statement on whether the requirement to provide periodic statements to borrowers in bankruptcy is applicable to open-end accounts.

D. Prescriptive Communication Requirements

The Mortgage Servicing Rule contains prescriptive communication requirements related to the formatting and content of notices and other communications to borrowers.[11] These requirements impede the ability of servicers to develop better ways of delivering the rule's mandatory information to borrowers based on their experience and customer feedback.

Recommendation – Permit servicers to deviate from the Mortgage Servicing Rule's prescriptive communication requirements in order to provide borrowers with better, clearer forms, notices and disclosures.

E. Non-Specific Form Letters

Unfortunately, CBA members regularly receive overly broad or unduly burdensome letters from some borrowers that are couched as information requests.[12] These letters are often downloaded form letters that are designed to impede or delay collection or

---

[9] *Id*. § 1024.41(2)(i).
[10] *Id*. § 1026.41(f).
[11] *Id*. § 1026.41(d).
[12] *Id*. § 1026.36(f)(1)(iv).

foreclosure proceedings. They are burdensome for servicers to review and respond, and they take limited resources away from borrowers with legitimate requests for information.

Recommendation – Amend the Mortgage Servicing Rule so servicers are not required to shift through an overly broad or unduly burdensome letter in order to respond to a non-specific information request.

F. Foreclosure Referral and Sale

The Mortgage Servicing Rule's provisions prohibiting foreclosure referral and sale[13] are beneficial for borrowers that are living in their homes. However, they are an impediment for borrowers who are more interested in resolving their mortgage loan delinquencies and moving on with their lives. And these provisions can contribute to neighborhood blight as homes sit vacant and abandoned while the servicer works through the loss mitigation requirements and foreclosure proceedings.

Additionally, there are jurisdictions that disfavor foreclosure delays. In situations where a court refuses to postpone a foreclosure proceeding, the servicer is forced to dismiss a foreclosure action. This may harm the servicer's future ability to collect on a secured debt due to procedural limitations, such as a statute of limitations or court rules on the number of times an action may be voluntarily dismissed.

Recommendation – The Bureau should provide exemptions for:

- Properties deemed vacant and abandoned by a servicer using commercially reasonable and practical standards;
- Late-stage foreclosures;
- Customers with extensive delinquencies;
- Cases where good faith efforts are made to postpone but the court or other authority will not grant postponement; and
- Cases where dismissing a foreclosure action would negatively affect the ability of servicers to collect on a secured debt due to the statute of limitations or judicial limits on the number of times an action can be voluntarily dismissed.

G. Incomplete Applications

Servicers may offer loss mitigation options to a borrower who has submitted an incomplete application, which has remained incomplete for "a significant period of time under the circumstances."[14] However, servicers remain confused about the meaning of the phrase, "a significant period of time under the circumstances."

[13] *Id*. § 1024.41(f) & (g).
[14] *Id*. § 1024.41(c)(2)(ii).

Recommendation – Issue an interpretation of "a significant period of time under the circumstances."

H. Bankruptcy Trustee, Request for Assistance

In some situations, a bankruptcy trustee will file a motion in bankruptcy court to sell the property securing a loan on behalf of the borrower.

Recommendation – Provide guidance on whether a bankruptcy trustee filing a motion in bankruptcy court to sell the property securing a loan on behalf of the borrower constitutes a request for assistance.[15]

I. Solicitation Offers

Servicers are permitted to offer a loss mitigation option to a borrower who has applied for assistance before receiving a complete application, as long as they do not take any information provided by the borrower into account. The regulation is silent on whether the underlying application stays open if the borrower accepts the offer.

Recommendation – Clarify that a loss mitigation application has been withdrawn when the borrower accepts a solicitation offer.

J. Foreclosure Holds after First Legal

After receiving information from a borrower with respect to a loss mitigation application, servicers need time to review this information to determine if they complete the application and, if so, place a hold on foreclosure. However, the Mortgage Servicing Rule does not stipulate any period of time for servicers to evaluate the borrower's submissions.

Recommendation – Issue an interpretation under 12 C.F.R. § 1024.41(g) stating that a servicer has five business days after receipt of a complete loss mitigation application to halt the foreclosure process.

K. Loan Modification Denials

Servicers are required to provide borrowers with an explanation for why they were denied a loan modification option.[16] However, the regulation does not provide a definition for "loan modification option," which has resulted in differing interpretations within the industry.

---

[15] Comment 1024.41(b)(1)-4.
[16] 12 C.F.R. § 1024.41(d).

Recommendation – Servicers should be allowed to use investor definitions of what constitutes a loan modification option.

L. Denial Appeals, Time Limit

Servicers must provide borrowers with a decision within 30 days of receiving a request for an appeal.[17] This accelerated timeline provides servicers with little opportunity to gather additional information from the borrower or a third party to evaluate an appeal.

Recommendation – Issue an interpretation stating that servicers have 30 days to decide an appeal after receiving all borrower and third-party information necessary to fairly evaluate the request.

M. Error Resolution, Time Limits

Servicers are required to respond to a notice of error no later than 45 days after receiving the notice. [18] However, it may be impossible to resolve an error within the given time limit due to actions taken by a third-party outside of the servicer's ability to control or influence.

Recommendation – Issue an interpretation stating that a servicer is in compliance if it has taken all actions within its ability to control within the given time limits. Alternatively, amend the rule to grant servicers the ability to issue additional 15-day extensions.

N. Servicing File, Time Limit

Servicers must have processes in place to create a servicing file within five days.[19] Most, if not all, servicers are currently able to meet this requirement as it went into effect in January of 2014, on a forward-looking basis. However, CBA members have informed us that these servicing files will grow to be thousands of pages in length after only a few years, and they will continue to expand over time.

Recommendation – Servicers should be granted more time to compile the required documents and data into a servicing file. And this time period should be correlated to the age of the servicing file.

[17] *Id*. § 1024.41(h)(4).
[18] *Id*. at § 1024.35(e)(3).
[19] *Id*. at § 1024.38(c)(2).

O. Adjustable Rate Mortgage (“ARM”) Loans, Advance Payment

Our members have stated that it is impossible to calculate the next payment due for an ARM loan that is paid in advance, but after the next interest rate and payment adjustment date.

Recommendation – Provide the industry with guidance on what to do about the billing statement in the situation described above.

P. Reinstatement Amount

For loans in delinquency or foreclosure, servicers are required to provide the borrower with the total payment amount needed to bring the account current. [20] However, because late fees, as well as other fees and costs, continue to accrue, the amount disclosed will not always be the most current figure.

Recommendation – Clarify that additional amounts incurred or billed after the periodic statement is delivered may still be collected by the servicer.

Q. Multiple Statements

CBA members have noted that borrowers who consistently make their mortgage payment after the end of the grace period, but before the next payment due date, receive two statements each month.[21] This has been a source of much confusion on the part of the borrower.

Recommendation – Issue an interpretation that delivery of multiple statements to the borrower are not required in this type of situation.

R. Interest Rate Adjustment Notices

The Mortgage Servicing Rule requires borrowers be notified regarding the initial reset of an ARM loan and each time an interest rate adjustment results in a payment change. [22] The effective date of the interest rate adjustment commonly precedes the new payment due date. The disclosures must be in the same order and substantially same format as the forms provided in Appendix H. CBA members have noted that disclosing changes in

[20] *Id*. at § 1026.41(d)(8).

[21] When a customer does not make a payment by the end of the grace period, a statement will be generated around the 17th of the month that will advise the customer of the total amount due for the next month. This amount will include the past due payment from the prior month and the next payment due. However, if the customer makes a payment before the first of the next month, another statement will be automatically generated that will show the application of that payment and that advises of the amount now due.

[22] 12 C.F.R. § 1026.20(c) & (d).

the interest rate and payment due dates in this way is a source of borrower confusion and complaints.

Recommendation – Provide guidance stating the new payment due date may be presented in the banner and body of the disclosure.

S. Disclosures Related to Credit Report Impacts

CBA has been informed by its members that providing borrowers with loan modifications, forbearance, repayment plans, debt cancellations, or debt settlements for less than full payment may have an impact on their credit reports. A negative credit history outcome can often result in consumer complaints. However, many of our members are uncertain about how to communicate to consumers about the potential negative effects of different loss mitigation options.

Recommendation – Provide guidance on how to communicate to consumers about the possible effects of different loss mitigation options on their credit reports.

III. Loan Originator Compensation Rule

A. Compensation Adjustments for Errors and Mistakes

When a loan originator fails to inform a customer that a rate lock is expiring or has expired, the lender must provide the promised rate notwithstanding any changes to the rate environment. However, the lender is prohibited from adjusting the loan originator's compensation as it is related to the loan's interest rate.[23] As a result, the lender ultimately bears the burden of the loan originator's error.

Recommendation – Issue an interpretation stating that changes to a loan originator's compensation due to their error or mistake on a loan transaction is not an adjustment in compensation based on the loan's transaction terms.

B. Exemption for Non-Loan Originator Employees of Affiliates

The Loan Originator Compensation Rule provides an exemption for non-loan originator bank employees (*e.g.*, branch tellers) who make mortgage loan referrals.

Recommendation – Extend the exemption to cover the employees of affiliates who are also not loan originators.

[23] *Id*. § 1026.36(d).

IV. TILA-RESPA Integrated Disclosure ("TRID") Rule

A. Transfer Taxes

Lenders have had difficulties in determining who is responsible for paying transfer taxes (*e.g.*, mortgage taxes, deed transfer taxes). The rules for disclosing transfer fees are subject to state laws or, when unclear or silent, to local rules or custom. However, the buyer and seller can shift the obligation to pay transfer fees in the purchase contract. These complexities in determining who is responsible for paying transfer fees can result in mistakes on the part of the lender. Unfortunately, the TRID Rule has set a zero tolerance for mortgage taxes and deed transfer taxes.[24]

Recommendation –

- Make transfer taxes a non-tolerance category like property insurance premiums, property taxes, and other charges paid to third-party service providers for services not required by the creditor.[25]
- The disclosure rule should assume the borrower is paying the transfer tax and then lenders would simply disclose this information. Alternatively, the Bureau could provide authoritative interpretations of state and local laws or local "common practice" regarding transfer taxes and place this information on its website for all lenders to use.

B. Three-Day Delivery Rule

The TRID Rule assumes closing disclosures delivered by U.S. mail or electronically are received three business days after they are sent.[26] In contrast, disclosures delivered in person or by courier are assumed to have occurred the same day.[27]

Recommendation – If a consumer has consented to receive electronic disclosures, we recommend that the electronic delivery of disclosures during business hours (*e.g.*, 8am to 5pm) be treated like in-person or by-courier deliveries, *i.e.*, the disclosure is assumed to have been received the same day as it is sent.

C. TRID Text Disclosures

Dynamic TRID disclosures (or disclosures which are only triggered in certain circumstances) require quality assurance and quality control measures. These

---

[24] Comment 1026.19(e)(3)(i)-1 and -4.
[25] *See* 12 CFR § 1026.19(e)(3)(iii).
[26] *Id*. § 1026.19(f)(1)(iii).
[27] *Id*.; Comment 1026.19(f)(1)(iii)-2.

disclosures, such as appraisal and foreclosure liability disclosures, can often be replaced with standard (non-dynamic) disclosures.

Recommendation – Simplify TRID dynamic disclosures in favor of non-dynamic disclosures.

D. TRID Financial Disclosures

Certain new TRID disclosures (*e.g.*, *Total Interest Percentage* and *In Five Years*) place operational, compliance, and liability burdens on lenders without much, if any, consumer benefit. In comparison, traditional disclosures (*e.g.*, APR, Total of Payments, Payment Schedule, etc.) already provide consumers with the tools they need to fairly assess transactions while shopping for a mortgage loan.

Furthermore, the *Total Interest Percentage* disclosure makes shorter-term mortgages appear to be better for consumers than longer term options. However, consumers already have the option to voluntarily make larger monthly payments without being locked into a shorter term loan with higher minimum monthly payments.

Recommendation – Eliminate the *Total Interest Percentage* and *In Five Years* disclosures.

E. Mandatory TRID Waiting Period

Certain mandatory waiting periods create artificial hold periods for well-documented and streamlined mortgage applications, where consummation of the mortgage loan could otherwise proceed. These waiting periods are not generally waivable by consumers except for *bona fide* emergencies.[28] Consumers are only very rarely able to meet these narrow requirements. As a result, prudent borrowers trying to avoid unfavorable delays with financial consequences are harmed.

Recommendation – Allow for a more flexible and streamlined manner of waiver for the mandatory TRID waiting periods.

F. Non-Escrow Fee Disclosure Requirements

For "no cost" transactions without pre-payment penalties, the disclosure of non-escrow fees and expenses on the Loan Estimate and Closing Disclosure is not beneficial or relevant information for the borrower.

Recommendation – Eliminate non-escrow fee disclosure requirements for "no cost" transactions without pre-payment penalties.

[28] 12 C.F.R. § 1026.19(e)(1)(v).

G. Escrow and Non-Escrow Home Ownership Association ("HOA") Assessments

As a no-tolerance fee category, escrow disclosures require considerable operational and compliance reviews and often require the re-disclosure of the Closing Disclosure. These re-disclosures result in delays for the borrower over what are often small amounts.

HOAs often do not provide advance notice of annual assessments, and the TRID Rules do not provide a safe harbor for relying on prior year assessments that are reasonably accurate. The HOA assessment may be unavailable when the mortgage application is filed but charged prior to consummation. As a result, HOA assessments often require the re-disclosure of the Closing Disclosure, resulting in delay for the borrower.

Recommendation – Offer greater fee tolerances and a safe harbor for lenders to rely on prior year HOA assessments.

H. Closing Disclosure Delivery

Under the TRID Rule, lenders are required to deliver the Closing Disclosure to the non-borrower spouse of the mortgage transaction at least three days before closing. However, our members often find that the non-borrower spouse has not provided E-Sign Act consent and lacks access to the electronic origination platform. As a result, lenders have to mail the Closing Disclosure to the non-borrower spouse, which may lead to unnecessary delays in the closing process.

Recommendation – Regulation Z should be amended back to the previous rule, which allowed lenders to deliver relevant disclosures, including the Closing Disclosure, to the non-borrowing spouse at closing.

Non-Mortgage Rules

I. Remittance Rule

A. Scope of the Rule

The Remittance Rule suffers from an issue of overbreadth, as it covers a range of cross-border transactions which were never contemplated by Congress when it enacted the Dodd-Frank Act.[29] In contrast to the ambit of the Remittance Rule, which lacks any dollar cap on the application of the rule, Congress intended the rule to protect

[29] The Senate Report on the Senate version of the Dodd-Frank Act notes that immigrants who send funds cross-border to their families in their home countries "are not currently provided with adequate protections under federal or state law." S. Rep. 111-176, at 179 (2010).

remittance senders – predominantly immigrants – who were sending about $300,[30] on average, back to their home countries. In contrast, our members note that their high-net worth and wealth customers, who may be sending thousands to hundreds of thousands of dollars cross border, are caught within the Rule's net to their great frustration.

Recommendation – The Bureau should use its authority under section 904(c) of the Electronic Fund Transfers Act to limit the scope of the rule to traditional remittances. Based on the data on average remittance transfers, we suggest a dollar cap for the application of the rule be set at $1,000.

B. Estimates of Third-Party Fees and Exchange Rates

To date, CBA members have relied on the temporary exception[31] to provide consumers with estimated third-party fees when they are unable to determine the exact amounts for these fees for reasons that are beyond their control. And we believe the conditions warranting the temporary exception still exist, *e.g.*, the difficulties of obtaining accurate fee information for low-volume remittance transfer countries.

Recommendation –

- Continue to allow financial institutions to provide estimated third-party fees past the July 21, 2020 sunset date. This may be accomplished by making the temporary exception permanent or by including open-network transfers to low-volume countries in a permanent exception.[32]

- Preserve and expand the list of "safe harbor" countries for which the provision of exchange-rate estimates would be permitted. The expanded list of countries should include those where local practices do not permit the determination of actual costs.

C. Disclosure Requirements

The Remittance Rule's disclosure requirements present operational challenges for our members and are frustrating for our customers, who often receive redundant disclosures in written and oral formats. A few simple changes could greatly improve the customer experience and meet the intent of the rule to provide consumers with material information regarding their transactions.

---

[30] *See* U.S. Department of the Treasury, The Dodd-Frank Wall Street Reform and Consumer Protection Act Provides Federal Oversight for Remittance Transfers With the Creation of the Consumer Financial Protection Bureau (Oct. 2010).
[31] 12 CFR § 1005.32(a).
[32] *Id*. at § 1005.32(b).

Recommendation –

- Permit remittance transfer providers to offer consumers alternative disclosure delivery options. Instead of requiring consumers to receive disclosures in a prescriptive manner, they should be empowered to elect the form of delivery that is most convenient for their circumstances. For instance, a consumer should not be required to sit through an oral recitation of the disclosures, when they could choose to receive the disclosures in written form, either by mail or through electronic delivery.

- Eliminate duplicative disclosure requirements to senders making multiple, concurrent transactions by phone. Similar to the recommendation given above, consumers are frustrated with having to receive redundant oral recitations of the mandated disclosures when they are batching several transactions during a single telephone session with their provider. The consumer should be given the option to waive the reading of subsequent oral disclosures.

- Simplify disclosure requirements for preauthorized transfers. Preauthorized remittance transfers involves a clunky process whereby providers are required to monitor third-party fees assessed by multiple intermediaries on a daily basis to provide the mandated preauthorized remittance transfer receipt. The complexity of this process has caused many providers to stop offering preauthorized transfers. The Bureau should simplify the disclosure requirements by limiting the obligation of providers to delivery of the transaction receipt, as set out in 12 CFR § 1005.31(b)(2).

D. Cancellation and Resend Rights

CBA members have stated that the requirement to re-send funds in cases of error imposes unnecessary expenses to the provider, particularly in situations where the provider reasonably believes that a resend attempt will fail. In addition, providers should not be forced to incur costs for resending funds related to small-amount errors when the sender can be made whole through a refund.

Recommendation – Providers should be allowed to limit error resolution to refunds when an error occurs due to the sender's mistake; the amount of the error is less than $15; and the error has no effect on the amount of funds actually received by the designated recipient.

E. Error Resolution Provisions

The Remittance Rule's error resolution provisions are in need of recalibration. The current requirement to provide consumers with 180 days to discover and assert an error related to a remittance transfer is operationally challenging for our members and may

be incentivizing consumers to be less observant about asserting errors in a timely fashion.[33] Furthermore, the 180 day error resolution period is three times as long as the 60 day period offered in Subpart A of Regulation E.[34]

Recommendation – Shorten the error resolution period from 180 days to 60 days.

F. Prepaid Card Coverage

The Remittance Rule unnecessarily imposes restrictions on mailing cards outside of the United States or restricts the ability to load to cards that are sent abroad. The Remittance Rule also poses significant compliance issues when a consumer purchases a card in the United States, then moves or travels to a foreign country, and then requests a replacement card. Because these cards could potentially be reloaded by a consumer, the technical reading of certain provisions of the Remittance Rule indicates the Bank cannot send the requested replacement card. The Rule also imposes similar restrictions on joint accounts when one of the joint cardholders is not in the United States.

Recommendation – Reloadable prepaid cards should be treated as a debit card linked to a deposit account. As a result, location, for purposes of the rule, would be the location of the account where the funds are held, regardless of where the card is mailed or used.

II. Prepaid Accounts

A. Responsive Disclosures

The Prepaid Rule requires electronic short form and long form disclosures be provided in "responsive" form.[35] The imposition of a technology standard is unique to the Prepaid Rule, and is a costly mandate in relation to its perceived benefits. The common standard used in the consumer financial markets is PDF, as it supported across technology platforms and is familiar to consumers. In addition, responsive forms are not used by the majority of government agencies that offer prepaid options to benefit recipients, making the impact of this rule even more costly for state and local government agencies, whom many of our members serve.

Recommendation – Expand the technology standards available to government agencies and issuers supplying prepaid account disclosures to consumers.

[33] *See Id*. at § 1005.33(b)(1).
[34] *Id*. at § 1005.11(b)(1).
[35] *Id*. at § 1005.18(b)(6)(i)(B).

B. Oral Disclosures

Unlike the rules covering most deposit products, the Prepaid Rule requires the oral disclosure of the short/long form disclosures if consumers are applying for a prepaid account by telephone.[36] These forms are not designed for oral recitation, so their oral disclosure is frustrating for consumers, and issuers are negatively impacted by longer call and hold times.

Recommendation – Bring the Prepaid Rule in line with the other deposit product rules and permit more targeted oral disclosures followed by the delivery of full disclosures by mail or electronic channels.

C. Foreign Language Disclosures

Government agency clients of our member banks sometimes include *Google Translate* as a feature on their websites, which allow consumers to apply for benefits that are provided on prepaid cards. This *Google* product is easy to add to websites, and it offers consumers access to more than 100 language options. However, it is unclear how *Google Translate* is characterized under the Prepaid Rule. While *ad hoc* or informal translations do not trigger the rule's requirement that pre-acquisition disclosures be made in a specific foreign language,[37] these provisions do not squarely address this situation.

Recommendation – Provide more clarity on the use of *Google Translate* or similar services. We recommend *Google Translate* be treated as an *ad hoc* or informal translation service, rather than a foreign language disclosure, as *Google Translate* is not being offered to advertise, solicit, or market to consumers in a foreign language.

III. Larger Market Participant Rules

One of the key rationales for the creation of the BCFP was to supervise and regulate nonbank consumer financial services companies.[38] Over the last decade, new technology-based financial services companies (or "fintech") have begun offering a multitude of different products and services to consumers, including lending products, without supervision.

Recommendation – Issue a larger market participant rule[39] for fintech companies or, alternatively, for fintech lending companies. This would empower the Bureau to exam fintech companies for compliance with the consumer financial rules and regulations.

[36] *Id*. at § 1005.18(b)(6)(i)(C).
[37] *See* Comment 1005.18(b)(9)-1.i-ii.
[38] *See, e.g.,* 12 U.S.C. § 5511(b)(4).
[39] *Id*. at § 5514(a)(2).

IV. No-Action Letter Policy

The No Action Letter ("NAL") Policy is intended to facilitate access and innovation in the consumer financial markets.[40] However, as crafted, the policy works at cross purposes with its goals. It sets too high a threshold for NAL requests; gives too much discretion to Bureau staff; and provides too little regulatory certainty even when petitions are granted.

Recommendation –

- A NAL request should be given strong consideration if it accomplishes one or more of the following goals:
    - Expands access to financial services;
    - Improves compliance with an existing Bureau rule or regulation;
    - Improves cybersecurity;
    - Provides a better user experience;
    - Reduces costs; or
    - Reduces risks
- The Bureau should respond to all NAL requests in a timely manner, and provide petitioners with a rationale for its decision to grant or deny a request.
- The approval of a NAL request should provide assurances against not only Bureau enforcement or supervisory actions, but also to such actions from other federal or state agencies.
- The NAL policy should be amended to provide greater protection for confidential or proprietary data and information shared by petitioners with the Bureau during the application process.

V. Data Aggregation Principles

CBA is supportive of data aggregation services, and the ability of consumers to access their personal data to manage their financial lives. However, data aggregation done poorly can result in increased risk of fraud, data breaches, and liability. The Bureau's *consumer protection principles for data sharing* was a good first attempt to capture the breadth of issues related to data aggregation.[41] However, more work must be done to clearly assign responsibilities and liabilities to different actors in relation to data aggregation.

---

[40] Bureau of Consumer Prot., Policy on No-Action Letters; Information Collection, Final Policy Statement, 81 Fed. Reg. 8686 (Feb. 22, 2016).

[41] Bureau of Consumer Prot., Consumer Protection Principles: Consumer-Authorized Financial Data Sharing and Aggregation (Oct. 18, 2017), *at* https://files.consumerfinance.gov/f/documents/cfpb_consumer-protection-principles_data-aggregation.pdf.

Recommendation – Issue a rulemaking proposal on data sharing and aggregation for public review and comment. At minimum, the proposal should consider requiring third-party data aggregators to provide consumers with disclosures on how their data is being collected, used, or shared. And consumers should be required to provide their banks with express consent to share their data with third-party data aggregators.

* * * *

Thank you for the opportunity to share our comments with you about the Bureau's adopted regulations and the new authorities created under the Dodd-Frank Act. Please reach out to us if you have any questions about our letter or any of our recommendations.

Sincerely,

Dong Hong
Vice President, Senior Counsel
Consumer Bankers Association
dhong@consumerbankers.com