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Elizabeth Mendenhall
2018 President

Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP

William E. Malkasian
Chief Advocacy Officer/Senior Vice President

Jerry Giovaniello
Chief Lobbyist

500 New Jersey Ave., NW
Washington, DC 20001-2020
Ph. 202-383-1194
WWW.NAR.REALTOR

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

Re: Request for Information Regarding Bureau Rulemaking Processes; Docket No. CFPB-2018-0009 submitted electronically via:
<https://www.regulations.gov/comment?D=CFPB-2018-0009-0001>

Dear Acting Director Mulvaney,

On behalf of over 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information (RFI) Regarding Bureau Rulemaking Processes. The Bureau of Consumer Financial Protection (Bureau) has issued many rules through formal notice and comment procedures as well as non-rule guidance through informal processes, each affecting the real estate industry and consumers in different ways. As the Bureau reviews these procedures, it is important to maintain focus on necessary feedback and adequate transparency, to ensure the benefits of a resulting regulation outweigh any potential burdens imposed to achieve compliance.

The National Association of REALTORS® (NAR) is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. NAR is encouraged by the Bureau's interest in assessing the overall efficiency and effectiveness of its rulemaking processes and incorporating meaningful changes as offered through the RFI.

Formal Rulemakings - Initial Outreach, Information Gathering, Notice of Proposed Rulemaking, Final Rules

The Bureau's rulemaking procedures follow the *Administrative Procedures Act* (APA), the *Regulatory Flexibility Act* (RFA), and the *Dodd-Frank Act*, which outline necessary requirements for formulating, amending, or repealing a regulation. These laws impose important steps for the Bureau to adhere to when disclosing relevant information in the Notice of Proposed Rulemaking (NPRM), conducting significant economic impact analyses (such as the Small Business Review Process or SBREFA panels), and obtaining imperative public feedback. Each of these procedures, as well as requirements for reporting to Congress and other Federal regulators, are necessary protections to ensure Bureau rules are lawfully designed and reflective of public policy needs.

NAR appreciates the Bureau's increased willingness to engage outside stakeholders on feedback through the RFI and NPRM process and supports continuation of this outreach to gather information necessary to implement specific rulemakings. RFIs not only provide industry with the opportunity to preview the Bureau's perspective on a particular issue, but it also allows for necessary feedback on market and business impact as a result – all in an effort to design the potential rule in a more careful manner. NPRMs following RFIs should reflect the feedback provided during the RFI comment



period with explanations on interpretations. The inclusion of appendices, model or sample forms, examples or illustrations, in an NPRM are also useful to explain the Bureau's reasoning and goals of a particular rule.

Transparency is key and the more information and detail the Bureau can provide about a new regulation or amendment to a regulation in advance and during the rulemaking, including posting online and in the Federal Register, will facilitate a more robust and productive process. To this effect, longer comment periods, extensions of comment periods, and "reply periods" for the public to provide feedback will produce more thoughtful and deliberative regulations. Additionally, increased communication from the Bureau on the feedback submitted through the open comment periods and external engagements, such as stakeholder meetings, will offer beneficial advice on the practical implications of formal rules.

NAR has always been willing to provide the Bureau with research and analysis on issues under consideration and would recommend even further outreach by the Bureau to solicit such information. Oftentimes under previous leadership, the Bureau pursued an action with little foundational corroboration to justify a decision that could have been bolstered by additional outside market research. Such outreach is especially important as the Bureau looks at updating existing regulations, where regulated entities can provide anecdotal and objective evidence based on practical experience or research to supplement the Bureau's review. When soliciting such feedback, the Bureau must be specific in the requests for information and also explain how such data was interpreted when incorporated in future proposed and final rules.

It is important that the Bureau continue consulting with other Federal agencies prior to proposing a rule and before issuing a final rule to ensure consistency with the objectives of those other agencies. This is especially important as regulations impacting the broader financial and housing market participants are implemented or reviewed, such as the qualified mortgage (QM) rule. Rules crossing the jurisdiction of multiple agencies must be properly vetted to reduce any potential compliance uncertainty. The Bureau should also communicate any and all public feedback solicited on such rules to those agency partners, particularly in the broader context of housing finance reform efforts.

Informal Rulemakings

While the subject of a subsequent RFI on Bureau Guidance and Implementation Support, it is important to note the interplay between formal rules issued by the Bureau and non-rule guidance, supplementing APA final regulations. Oftentimes, final rules are accompanied by informal guidance, which may be supportive of the final rule and useful for regulated entities to follow in their business practices. However, sometimes informal guidance or implementation support is contradictory to a final rule, offering minimal insight and instead only confusing regulated entities regarding their compliance obligations. This is typically the case when a final rule is extremely complex, such as the Know Before You Owe (KBYO) mortgage disclosure rule, which resulted in substantial uncertainty for the real estate industry, some of which remains today.

NAR applauds the Bureau's efforts to reduce the confusion stemming from the KBYO rulemaking, including the clarity on the ability to share the Closing Disclosure (CD) with third parties and the recent final rule addressing the so-called "blackhole" impacting timing of CDs being issued. However, as the Bureau evaluates formal rulemaking procedures, proper consideration must be given to how a final rule and supplementary guidance will achieve the overall goal of reducing ambiguity and confusion to ensure regulatory compliance across the industry.

Conclusion

NAR is hopeful the Bureau will make appropriate changes to its rulemaking procedures as a result of the comments provided through the RFI and appreciates the ability to offer such feedback. Ensuring rulemaking procedures follow all applicable laws, including the APA, is instrumental in driving effective change. NAR will continue to provide feedback to the Bureau on these processes and specifically through the RFIs to ensure the needs of REALTORS® and consumers are adequately protected.

Sincerely,



Elizabeth Mendenhall
2018 President, National Association of REALTORS®