

May 25, 2018

***By electronic delivery to:***  
**[www.regulations.gov](http://www.regulations.gov)**

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

**Re: Request for Information Regarding Bureau External Engagements; Docket No. CFPB-2018-0005**

Dear Acting Director Mulvaney:

The American Bankers Association (ABA)<sup>1</sup> and undersigned state bankers associations (collectively, the Associations) appreciate the opportunity to respond to the Bureau of Consumer Financial Protection's Request for Information (RFI) on how to engage the public and receive feedback on the work of the agency. This is the fifth in a series of RFIs announced as part of the Bureau's call for evidence to ensure that the Bureau is fulfilling its proper and appropriate functions to protect consumers. We appreciate your leadership in establishing the RFI process, which provides a transparent and efficient opportunity for all of those affected by the Bureau's work to identify how the Bureau might improve the way it pursues its important mission.

Our goal is to provide constructive feedback on the Bureau's policies and procedures. Our intent is that the Bureau implement programs and policies that are transparent, fully consistent with the law, and focused on promoting a strong, vibrant, and innovative market that offers the variety of financial products and services that consumers want. This comment letter provides several recommendations for improving how the Bureau engages external stakeholders to inform its policy and rulemaking functions.

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend nearly \$10 trillion in loans.

## I. Summary of Comment

Since its creation in 2011, the Bureau has issued numerous final and interim final rules, many of which were required by the Dodd-Frank Act. Rulemakings by the Bureau are an important undertaking, one that carries significant responsibility.

Experience has shown that Bureau rulemakings have lacked clarity or created market impacts that have not served consumers well. The Bureau has issued frequent amendments to the new rules to address the problems the rules created. For example, the Bureau has amended its mortgage-related rules 31 times. The need for such a large number of revisions reflects a lack of understanding about how mortgage markets function, particularly with regard to portfolio lending, rural markets, and timing considerations that drive the mortgage lending process.

While the amendments were necessary so as to avoid, or in some cases correct, market disruptions and better serve consumers, frequent regulatory revisions created significant uncertainty and complicated work to develop software and interfaces necessary to implement the rules. Much of the difficulty could have been avoided if the Bureau had not significantly discounted much of the feedback offered by stakeholders earlier in the rulemaking process, including vendors and community banks that the Bureau does not directly supervise but which are directly affected by Bureau rules. Appendix A, *Select Bureau Rules That Required Revisions*, illustrates how consultation with these groups and recognition of the value of their feedback could have prevented the need for numerous revisions.

Where the Bureau has offered bankers opportunities to provide feedback on regulatory policy initiatives, the concerns expressed and information provided was frequently dismissed. For example, throughout the rulemaking process for the remittance rule, former Director Cordray discounted banker concerns that their inability to gather fee information from many correspondent banks would make it impossible to comply with the disclosure rules. Similarly, Bureau staff expressed skepticism about banker concerns that the Ability to Repay/Qualified Mortgage (ATR/QM) rules would limit their ability to serve creditworthy customers. After these rules were finalized the Bureau recognized the need to revise the rules to address these concerns, which were previously disregarded.

With these lessons learned in mind, we recommend that the Bureau improve its engagement with external stakeholders by (1) conducting outreach that is timely and reflects a genuine desire to learn about industry practices and concerns about potential unintended consequences, and (2) communicating in a manner that is fair, balanced, and builds trust—even when the involved parties do not agree. In particular, the Bureau should—

- Maximize the value of advisory councils and committees;
- Structure outreach meetings to inform policy and regulations;
- Consider industry meetings as an opportunity, not merely a procedural obligation; and
- Enhance outreach to the vendor community.

## **II. Maximize the Value of Advisory Councils and Committees**

Section 1014(a) of the Dodd-Frank Act requires that the Bureau establish a Consumer Advisory Board (CAB) to “provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.” The Bureau also established the Community Bank Advisory Council (CBAC) to advise the Bureau in the exercise of its functions under federal consumer financial laws as they pertain to community banks.<sup>2</sup> We strongly support the Bureau’s formation of CBAC. Because the Bureau does not directly supervise community banks, CBAC serves as an important means to help the Bureau understand community bank practices and operations and hear firsthand about how Bureau regulations and policy impact these institutions and their customers. We note that the FDIC and the Federal Reserve have prioritized gathering input from community banks and have established useful advisory committees to obtain feedback from these institutions.

### **A. Re-Work Agendas to Gather Timely Input**

CAB and CBAC participants have observed that many Bureau staff members appeared uninterested in leveraging the knowledge and experience of bankers assembled in these groups. In fact, bankers who participated in the first CBAC meetings reported that the Bureau did not take their feedback into account, especially when crafting the mortgage origination, mortgage servicing, and escrow rules.

We also note that a disproportionate number of CAB and CBAC meeting agenda items have been little more than staff updates about recently completed research. While this educational component provides value to bankers who participate in these groups, devoting an inordinate amount of time to such reports is not consistent with Dodd-Frank’s requirement that CAB “advise and consult with the Bureau,” nor does it fulfill the purpose of CBAC, which is “to advise the Bureau in the exercises of its functions.” Consulting and advising are not passive activities.

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<sup>2</sup> The Bureau established the CBAC under agency authority in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2 (2012).

These weaknesses are addressed by restructuring the agendas for CAB and CBAC meetings. Specifically, the Bureau should—

- *Develop forward-looking agendas.* The Bureau should structure meetings to encourage commentary and feedback on emerging issues—*before* the Bureau reaches a conclusion or publishes an Advance Notice of Proposed Rulemaking (ANPR) or a Notice of Proposed Rulemaking (NPR).
- *Focus on gathering input rather than pushing out information.* Agendas should increase the amount of time dedicated to soliciting input from members. This could include issue spotting as well as discussing challenges that consumers and their banks are encountering.
- *Engage committee members in agenda-setting.* The Bureau should work with CAB and CBAC members to develop meeting agendas. Collaboration would help the Bureau to identify emerging trends and issues of concern.
- *Limit the number of agenda items.* The Bureau should reduce the number of agenda topics and dedicate more time to each topic. This approach would provide Bureau staff the time to ask questions, and council and committee members would have the opportunity to offer commentary and input.

## **B. Expand Subcommittee Work**

CAB and CBAC subcommittees are an additional source of information and expertise from which the Bureau should draw. Each subcommittee could focus on a project that culminates in a deliverable that could inform Bureau policy and rulemaking. For CAB in particular, this approach would enable industry representatives, consumer advocates, and academics to work together, find common ground, and identify lessons learned regarding consumer financial products and services. The Bureau should then give due weight to these deliverables to inform rulemaking and policy development.

## **C. Encourage Open Dialogue Through Careful Calibration of Open vs. Closed Meetings**

In the early years of CAB and CBAC, Bureau staff provided the public with information about these groups, such as membership data, meeting notices, and meeting summaries. In 2018, the Bureau announced that it would open all segments of CAB and CBAC meetings to the public and provide an option for online viewing. Members of the public may also participate in conference calls of CAB and CBAC subcommittees.

We are a strong proponent of transparency. However, we are concerned that opening all meetings to the public will have the unintended effect of discouraging banks from engaging in candid conversations with other CAB and CBAC members and Bureau staff. Being upfront about challenges and business practices in open forums that are broadcast over the internet could expose banks to risk. Indeed, securities laws may preclude publicly traded banks from sharing information that they have not disclosed in public filings.

For CAB and CBAC to serve their purpose, the Bureau must balance transparency with the need to cultivate an environment that encourages candid dialogue and the exchange of information. A hybrid approach to CAB and CBAC meetings could promote both of these important goals. For example, council and committee meetings could be closed, with Bureau staff providing a summary that would subsequently be made available to the public. Another option would be to structure the meetings with an open session and a closed session.<sup>3</sup> Both of these options would encourage more candid dialogue and information sharing—which should inform and improve Bureau policy decisions.

#### **D. Involve a Wide Range of Industry Expertise and Perspectives**

We support recent efforts by the Bureau to involve a wider range of industry expertise in CBAC, including expertise and perspectives represented by CEOs, operational experts, business unit leaders, and compliance professionals. We also recommend that CAB and CBAC include a geographic mix of banks operating in urban, suburban, and rural areas. With respect to CAB, we suggest that the Bureau provide greater representation of financial institutions in general and more mid-tier banks than it has heretofore.

#### **E. Provide Longer Terms**

Individuals appointed to CAB typically serve a three-year term, and individuals appointed to CBAC usually serve for two years. However, the Director may amend the respective Board and

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<sup>3</sup> Both of these options would be permissible pursuant to § 552b(c) of the Government in the Sunshine Act, which provides that certain portions of a meeting are not required to be open to the public if disclosure of the information is likely to –

- (1) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;
- (2) disclose information the premature disclosure of which would—
  - (A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or
  - (B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action.

Council charters from time to time during the charter terms, as the Director deems necessary to accomplish the purpose of CAB and CBAC.

We suggest that CBAC members be appointed to a minimum 3-year term. There are typically two in-person meetings per year, and bankers who have participated on this council report that it took approximately one year to orient to the group and learn the “lay of the land.”

### **III. Structure Outreach Meetings to Inform Policy and Regulations**

#### **A. Field Hearings: Incorporate Input into Reports and Rulemakings**

The Bureau has hosted several field hearings in cities across the country. The field hearings were organized around a specific topic and were open to the public. They typically began with introductory remarks by a Bureau staff member and state/local officials and were followed by a panel discussion with industry representatives, consumer advocates, academics, or other subject matter experts. After the panel discussion, previously identified members of the audience were invited to ask questions or provide input about the topic being discussed.

Meaningful field hearings *could* be an effective and efficient way for the Bureau to gather information on consumer financial services issues. However, to date the Bureau’s field hearings have been little more than a public relations stunt. Instead of using field hearings to gather information for the purpose of informing the Bureau’s priorities, policy, and rulemaking, these events were used as a stage on which to announce—and garner media attention for—white papers, reports, and proposed rules. The Bureau held the field hearings to announce research and policy actions on which the Bureau had *already* reached a conclusion.

To be clear, the reports and proposals were commonly released *on the same day* as the field hearings and therefore did not incorporate input received *during* the field hearings (See Appendix B, *Examples of Bureau Documents Released in Conjunction with Field Hearings*). As a result, industry representatives speaking at the field hearings were given little to no time to read, analyze, and respond thoughtfully to these documents. For example, during the March 10, 2015 field hearing on arbitration, panelist Alan Kaplinsky noted that he received the Bureau’s 711-page arbitration report three hours before the field hearing began.<sup>4</sup> This order of events is the antithesis of transparent and effective external engagement. For this reason, ABA and several state banking trade associations declined to participate in field hearings.

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<sup>4</sup>Consumer Fin. Protection Bureau (“The Bureau”), *Field hearing on arbitration in Newark, NJ* (Mar. 10, 2015) (Testimony of Alan Kaplinsky), <https://www.consumerfinance.gov/about-us/events/archive-past-events/field-hearing-on-arbitration/>.

Field hearings could be a valuable tool to develop a better understanding of industry, to identify the likely impacts that regulations will have on the financial services marketplace, and, significantly, to identify potential alternatives. Going forward, the Bureau should ensure that field hearings are appropriately balanced and that these forums are used to *gather* information for the purpose of informing policy and rulemaking.

For example, the June 6, 2013 roundtable co-hosted by the Bureau and the Federal Trade Commission in Washington, D.C., was an effective mechanism for generating input from multiple points of view. There were no splashy announcements by the agencies. Rather, it was a well-balanced, moderated discussion that allowed participants to present their various perspectives. We recommend that the Bureau consider this roundtable as a possible model for future events.

In summary, we recommend that the Bureau—

- Conduct field hearings and related events early on—when the Bureau is in early stages of thinking about a problem;
- Structure the forums to be educational by including participants with various perspectives;
- Use forums to solicit input *prior to* releasing reports;
- Release white papers or reports *after* incorporating information and feedback received at these events; and
- Provide participants sufficient time to speak.

#### **IV. Consider Industry Meetings and Conferences as an Opportunity, not Merely a Procedural Obligation**

##### **A. Accept Invitations to Visit Community Banks**

We are aware of a few instances when the Bureau accepted invitations by community bankers to visit their institutions and learn about the banks' consumer programs and products. We are aware of other instances where the Bureau declined such invitations or assigned the visits to External Relations—rather than policy—staff.

We recommend that policymakers give priority to accepting invitations to visit community banks. Onsite visits are critical to helping the Bureau to understand a community bank's day-to-



day operations, its products and practices, and the challenges that community banks face that larger institutions do not. Even though the Bureau does not supervise community banks, these institutions are subject to the agency's regulations. Developing a thorough awareness of how its rules impact community banks will help the Bureau craft regulations that are workable in real-world situations and permit institutions of all sizes to serve their customers.

## **B. Cultivate Mutual Trust and Respect at Industry Conferences**

We recommend that the Bureau view industry conferences as an opportunity to engage with regulated institutions. Bureau staff are in high demand to serve as speakers and panelists for industry events. Bankers want to hear from agency staff who can address numerous questions about the rules that remain unanswered and who can offer information about future policy initiatives. In the past, some Bureau staff provided thoughtful responses to inquiries and comments from the attendees. In other situations, Bureau representatives were combative or unable to address banker questions without clearing the responses through lawyers in the Washington, D.C., office.

In the latter scenario, bankers left these meetings feeling frustrated, and the Bureau lost opportunities to enhance its knowledge about banking practices and build trust with regulated institutions. Many bankers reported this experience over the years, pointing to fundamental weaknesses in the Bureau's leadership and culture as well as a rushed rulemaking process that did not gather sufficient input from regulated institutions.

## **C. Productively Use Time with State Trade Associations**

Throughout the year, bankers and their state trade associations visit Washington, D.C., to meet with regulators—including the Bureau—to exchange information regarding how policy affects their ability to serve their customers, discuss banking trends, and consider economic conditions. We suggest that the Bureau make more effective use of these meetings.

These visits are a high-opportunity, low cost way for the Bureau to gather input from banks. They do not require staff travel and are relatively brief (60-90 minutes). However, in many cases in the past, the Bureau has not taken these meetings seriously and seemed disinterested in bankers' recommendations and concerns. Some associations stopped including the Bureau in their Washington visits because of the disinterest that the Bureau exhibited.

We recommend that the Bureau—

- *Become familiar with attendee lists in advance.* State trade associations represent banks of all sizes. In spite of this fact, *multiple* state trade associations report that Bureau staff



were under the impression that they were meeting with community banks only and suggested that participants need not concern themselves with requirements from which certain small banks were exempt. In reality, multiple regional banks participated in these meetings. Bureau staff should review attendee lists in advance of state trade association visits and be familiar with the banks who will be represented.

- *Ensure that relevant policy staff are in the room.* On many occasions, External Relations staff have been the only Bureau representatives to attend meetings with state trade associations. While these individuals play an important role in helping to build relationships with the industry, they are not subject matter experts. It is important that policymakers, rule writers, and other decision makers attend these meetings. Relying on External Relations staff to be note takers does not allow meaningful policy engagement.

## **V. Enhance Outreach to the Vendor Community**

Banks and other financial services providers are not the only industry stakeholders with whom the Bureau should consult. Many banks (community banks in particular) are highly dependent on the ability of vendors to deliver technology-related services that are critical to bank compliance efforts. These vendors can play an important role in helping the Bureau to develop regulations that are workable and that have realistic effective dates.

### **A. Establish a Formal Vendor Advisory Group**

There have been breakdowns in the ability of vendors to provide systems upgrades necessary for banks to implement rulemakings in a timely manner. In some cases, these delays were caused by ambiguous requirements and successive amendments to the rules. In other situations, delays were compounded by unrealistic effective dates. This problem occurred with the Bureau's 2013 mortgage rules, and a similar pattern emerged with the TILA-RESPA Integrated Disclosure Rule. As of April 2018, some vendors—including a large Loan Origination Service (LOS) provider—had still not delivered systems changes necessary for banks to collect data required by the new HMDA rules. This is well-past the January 1, 2018 date on which the data collection was to begin.

It is important to note that a bank cannot hire a vendor and simply plug that vendor's product into the bank's computer systems. Even if a *vendor* is "ready" by a rule's effective date, specialized employees within a bank need time to implement and customize the vendor's product, devise internal processes and procedures, train staff, and conduct transaction testing.

To avoid such implementation problems in the future, the Bureau should increase its knowledge and awareness of how vendors develop and deploy technological upgrades. It is important that

the Bureau understand the practical implications that contemplated rulemakings could have on service providers.

This outreach could take the form of a new advisory group consisting of service providers. Alternatively, the Bureau could appoint vendors to the CAB and CBAC. Regardless of the approach it takes, the Bureau's outreach and engagement with the vendor community should include public notices of those meetings, the meeting agendas should be made public, and the Bureau should provide a summary of the meetings.

## **B. Utilize Vendors to Inform Cost Benefit Analysis**

The Dodd-Frank Act requires that the Bureau consider the potential benefits and costs of a regulation, including the potential reduction of access by consumers to financial products or services; the impact on depository institutions with \$10 billion or less in total assets; and the impact on consumers in rural areas.<sup>5</sup>

When a new regulation is proposed, it is difficult for banks to estimate associated vendor fees. For example, ABA sought banker feedback on the Bureau's cost-benefit analysis associated with the Servicing Rules that the Bureau proposed on September 17, 2012. At that time, our members reported that their mortgage servicing vendors had not communicated pricing changes for 2013 and 2014. We believe that this was because (1) the servicing requirements had not been finalized; (2) the Bureau was engaging in a high volume of other mortgage-related rulemakings, which could have impacted pricing; and (3) the Bureau's servicing proposals were lengthy and involved a large number of requirements that were not expressly required by the Dodd-Frank Act. Our members' best estimate was that they would likely incur one-time assessments, a significant increase in their contract rates at renewal, or a combination of both.

As will be discussed in greater detail in ABA's comment letter to the RFI on Rulemaking Processes, over the years, we have expressed concern that the Bureau's cost-benefit analyses have been insufficient and have relied too heavily on qualitative information.<sup>6</sup> Therefore, we strongly support your commitment to utilizing quantitative analysis to assess the costs and benefits of proposed and final rules.<sup>7</sup> We also are encouraged by recent media reports regarding

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<sup>5</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5512(b)(2)(A) (2012).

<sup>6</sup> See, e.g., Robert R. Davis, *2012 Truth in Lending Act (Reg. Z) Mortgage Servicing*, 2, 8-12 (Nov. 9, 2012), <https://www.aba.com/Advocacy/commentletters/Documents/ABACommentstoCFPBon2012TILARegZMortgageServicing1092012.pdf>; see also U.S. Dept. of the Treasury, *Limiting Consumer Choice, Expanding Costly Litigation: An Analysis of the CFPB Arbitration Rule* (Oct. 23, 2017) (criticizing the Bureau's study of arbitration, which was based on "incomplete estimates" and failed to "meaningfully evaluate" whether prohibiting mandatory arbitration clauses in consumer financial contracts would serve either consumer protection or the public interest).

<sup>7</sup> E-mail from Mick Mulvaney, Acting Director (Jan. 23, 2018, 12:59 CST), <https://bankingjournal.aba.com/wp-content/uploads/2018/01/Mulvaney-Memo.pdf>.

your plans to create an “office of cost benefit analysis” that will help to establish the Bureau’s supervision and enforcement priorities.<sup>8</sup> We urge you to utilize this office, or a similar organization, to consult with bank vendors for the purpose of projecting costs associated with regulatory implementation. The Bureau should then work with banks to gather feedback about these cost estimates, making this process a regular part of the agency’s external engagement function.

## **Conclusion**

Thank you for the opportunity to comment on this RFI. Engaging in meaningful dialogue with stakeholders early in the policy and rulemaking process and taking their feedback into account will help the Bureau to craft rulemakings that are clear and protect consumers while minimizing unintended consequences. Improved outreach will also help to reduce the need for repeated regulatory amendments and will build trust and respect between the Bureau and financial institutions.

We especially emphasize the need for the Bureau to enhance its understanding of community banks and the impact that regulations have on them. Similarly, bank vendors are critical to the ability of banks to offer financial products and services and should be formally included in the Bureau’s outreach process.

If you have any questions about these comments or would like to discuss anything further, please contact Krista Shonk at [kshonk@aba.com](mailto:kshonk@aba.com) or 202-663-5014.

Sincerely,

American Bankers Association  
Alabama Bankers Association  
Alaska Bankers Association  
Arizona Bankers Association  
Arkansas Bankers Association  
California Bankers Association  
Colorado Bankers Association  
Connecticut Bankers Association  
Delaware Bankers Association  
Florida Bankers Association  
Georgia Bankers Association  
Hawaii Bankers Association  
Idaho Bankers Association  
Illinois Bankers Association

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<sup>8</sup> Lalita Clozel, *Mulvaney to Prioritize Business Costs in CFPB Reorganization*, THE WALL ST. J. (May 18, 2018).

Illinois League of Financial Institutions  
Indiana Bankers Association  
Iowa Bankers Association  
Kansas Bankers Association  
Kentucky Bankers Association  
Louisiana Bankers Association  
Maine Bankers Association  
Maryland Bankers Association  
Massachusetts Bankers Association  
Michigan Bankers Association  
Minnesota Bankers Association  
Mississippi Bankers Association  
Missouri Bankers Association  
Montana Bankers Association  
Nebraska Bankers Association  
Nevada Bankers Association  
New Hampshire Bankers Association  
New Jersey Bankers Association  
New Mexico Bankers Association  
North Carolina Bankers Association  
North Dakota Bankers Association  
Ohio Bankers League  
Oklahoma Bankers Association  
Oregon Bankers Association  
Pennsylvania Bankers Association  
Puerto Rico Bankers Association  
Rhode Island Bankers Association  
South Carolina Bankers Association  
South Dakota Bankers Association  
Tennessee Bankers Association  
Texas Bankers Association  
Utah Bankers Association  
Vermont Bankers Association  
Virginia Bankers Association  
Washington Bankers Association  
West Virginia Bankers Association  
Wisconsin Bankers Association  
Wyoming Bankers Association

## Appendix A: Select Bureau Rules That Required Revisions

*This chart illustrates situations where the Bureau dismissed industry feedback, only to later incorporate that input in subsequent amendments. Inclusion of banker feedback at the outset could have prevented the need for multiple regulatory revisions.*

BCFP Rule	Problem with the Rule	ABA Recommended Fix	BCFP Response/Amendments
<b>Select Mortgage Origination Rules</b>			
<b>Small Creditor QM</b> 12 CFR 1026.35(b), (d)	<u><a href="#">January 2013 ATR/QM Rule</a></u> <ul style="list-style-type: none"> <li>Creditors who originated 500 or fewer first lien mortgages (including affiliates) and had assets of less than \$2 billion qualified as a “small creditor” for purposes of the QM special provisions.</li> </ul>	<u><a href="#">ABA Comment Letter 2/25/13</a></u> <ul style="list-style-type: none"> <li>Stated that the \$2 billion asset limit and the 500 loan limit are too low. Recommended \$10 billion in assets and 2,000 loans.</li> </ul> <u><a href="#">ABA Comment Letter 7/7/14</a></u> <ul style="list-style-type: none"> <li>Reiterated that the definition of small creditor is too narrow. Recommended \$10 billion in assets and 2,000 loans.</li> </ul> <u><a href="#">ABA Comment Letter 3/30/15</a></u> <ul style="list-style-type: none"> <li>Supported expanding the small creditor loan limit to 2,000 loans per year.</li> </ul> <u><a href="#">ABA Comment Letter 4/26/16</a></u> <ul style="list-style-type: none"> <li>Recommended increasing the asset threshold for the small creditor exemption to \$10 billion in assets.</li> <li>Urged the Bureau to develop a tool to track “rural area” designations.</li> </ul>	<u><a href="#">6/12/13 Amendments</a></u> <ul style="list-style-type: none"> <li>Adopted a new QM category for certain loans originated and held in portfolio by small creditors for at least three years, even if those creditors do not operate predominantly in rural or underserved areas.</li> </ul> <u><a href="#">10/1/13 Amendments</a></u> <ul style="list-style-type: none"> <li>Revised two exceptions available to small creditors operating in “rural” or “underserved” areas.</li> </ul> <u><a href="#">10/2/15 Amendments</a></u> <ul style="list-style-type: none"> <li>Raised the loan origination limit from 500 to 2,000 and excluded loans held in portfolio.</li> <li>Included in the calculation of the \$2 billion asset limit the assets of affiliates that regularly extend covered transactions.</li> <li>Adjusted the time period used in determining whether a creditor is operating predominantly in rural or underserved areas.</li> </ul>



BCFP Rule	Problem with the Rule	ABA Recommended Fix	BCFP Response/Amendments
<b>Balloon Payment QM</b> 12 CFR 1026.35(d), (e)	<a href="#">January 2013 ATR/QM Rule</a> <ul style="list-style-type: none"> <li>Certain balloon-payment mortgages were eligible for QM status if they were originated and held in portfolio by small creditors (\$2 billion in assets; 500 loans) operating predominantly in rural or underserved areas.</li> </ul>	<a href="#">ABA Comment Letter 2/25/13</a> <ul style="list-style-type: none"> <li>Supported expanding the balloon QM safe harbor to balloon loans with higher interest rates due to the higher costs and risks associated with such loans.</li> <li>Recommended increasing the \$2 billion asset cap to \$10 billion.</li> <li>Advocated expanding the balloon QM to accommodate borrowers and properties with specialized needs in markets across the nation, not just in rural or underserved areas.</li> </ul>	<a href="#">6/12/13 Amendments</a> <ul style="list-style-type: none"> <li>Raised the threshold defining which QMs receive a safe harbor under the ATR rules for loans that are made by small creditors under the balloon-loan QM.</li> <li>Provided a two-year transition period during which small creditors that do not operate predominantly in rural or underserved areas can offer balloon QMs for loans held in portfolio.</li> </ul> <a href="#">3/25/16 Amendment</a> <ul style="list-style-type: none"> <li>Allowed a small creditor to qualify for balloon QM if the lender originates at least one covered mortgage loan on a property located in a rural or underserved area in the prior calendar year. Implemented the HELP Act.</li> </ul>
<b>ATR/QM Debt-to-Income Ratios</b> 12 CFR 1026.43(e)(2)(vi)(A) and (B)	<a href="#">January 2013 ATR/QM Rule</a> <ul style="list-style-type: none"> <li>Required that loans meet a maximum 43% DTI ratio to qualify for QM status.</li> </ul>	<a href="#">ABA Comment Letter 7/9/12</a> <ul style="list-style-type: none"> <li>Warned that a 43% DTI cut-off would greatly affect borrowers' ability to qualify for loans—particularly low-income and minority borrowers. Stated that a 50% DTI would be a more appropriate standard.</li> </ul>	<p><i>Note:</i> The 43% DTI limit has become the most significant impediment to qualifying for QM. Under the GSE special "QM category," the GSEs have expanded underwriting limits to 50% DTI. This expansion is extraordinary, as it expands the GSE Patch beyond the limits imposed by regulation. Recent market studies reflect that a full 20% of GSE loans are at the 50% DTI levels.</p>
<b>TRID Implementation</b>	<a href="#">12/31/13 TRID Rule</a> <ul style="list-style-type: none"> <li>Fundamentally altered Federal forms relating to mortgage finance and mortgage settlement</li> </ul>	<a href="#">ABA Comment Letter 11/6/12</a> <ul style="list-style-type: none"> <li>Requested that the Bureau pause rulemaking until all reform rules are finalized, and thereafter re-issue</li> </ul>	<a href="#">2017 TRID Technical Amendments</a> <ul style="list-style-type: none"> <li>Revised and clarified the TRID Rules in a rulemaking that spans 560 pages.</li> </ul>



BCFP Rule	Problem with the Rule	ABA Recommended Fix	BCFP Response/Amendments
	disclosures. As mandated by Dodd-Frank, the rule combines disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act.	another proposed disclosure integration rule that takes into full account all the regulatory changes being effectuated.	
<b>TRID Construction Lending Rules</b> 12 CFR 1026.17(c)	<a href="#">12/31/13 TRID Rule</a> <ul style="list-style-type: none"> <li>Extended certain disclosure requirements to construction financing, which had been historically exempt from RESPA disclosure coverage.</li> </ul>	<a href="#">ABA Comment Letter 11/6/12</a> <ul style="list-style-type: none"> <li>Warned that the complexity of the TRID rules risked affecting the availability of construction loans in the market.</li> </ul> <a href="#">ABA Comment Letter 10/18/16</a> <ul style="list-style-type: none"> <li>Observed that the regulatory uncertainty sparked a flight from construction financing.</li> <li>Noted that regulatory uncertainty continued, offered technical advice on how to fix, and stated that excluding construction loans from KBYO coverage would be the best alternative.</li> </ul>	<a href="#">2017 TRID Amendments</a> <ul style="list-style-type: none"> <li>Included significant amendments and clarifications on at least 12 different disclosure provisions related to construction loans alone.</li> </ul>
<b>TRID's "Black Hole"</b> 12 CFR 1026.19(e)(4)	<a href="#">12/31/13 TRID Rule</a> <ul style="list-style-type: none"> <li>Permitted revisions of fee estimates provided to consumers only under certain circumstances, and in observance of time limitations and delays. The rules harmed consumers by forcing settlement delays and postponements even when consumers benefitted from the changes to the fee estimates.</li> </ul>	<a href="#">ABA Comment Letter 11/6/12</a> <ul style="list-style-type: none"> <li>Criticized the timing requirement and settlement delays. Noted that the delays would be required even if changes are advantageous to the consumer. The final rule did not address these concerns.</li> </ul> <a href="#">ABA Comment Letter 10/18/16</a> <ul style="list-style-type: none"> <li>Supported the Bureau's attempt to resolve the Black Hole problem.</li> </ul>	<a href="#">5/2/18 Amendment</a> <ul style="list-style-type: none"> <li>Fixed the Black Hole by (1) removing the four-business day limit between fee revisions and consummation, (2) permitting creditors to reset tolerances with either an initial or corrected Closing Disclosure, and (3) permitting revisions regardless of when the Closing Disclosure is provided relative to consummation.</li> </ul>



BCFP Rule	Problem with the Rule	ABA Recommended Fix	BCFP Response/Amendments
		<ul style="list-style-type: none"> <li>Recommended additional solutions and clarifications to Black Hole problems that the proposed amendments did not address.</li> </ul>	
<b>TRID's TOP Disclosure</b> 12 CFR 1026.23(g) and (h); 1026.38(o)(1)	<a href="#">2012 TRID Proposal</a> <ul style="list-style-type: none"> <li>Lacked clarity in the calculation of a novel "Total of Payment" disclosure, or "TOP," particularly where origination charges were to be itemized. The proposal also had confusing tolerance requirements for itemized fee entries.</li> </ul>	<a href="#">ABA Comment Letter 11/6/12</a> <ul style="list-style-type: none"> <li>Warned that descriptions of computations applicable to "Calculation of Total of Payments" were ambiguous. The final rule was issued without clarifications on this issue.</li> </ul>	<a href="#">2017 TRID Amendments</a> <ul style="list-style-type: none"> <li>Added tolerances for the total of payments disclosure, including tolerances that apply for purposes of rescission.</li> </ul>
<b>TRID's Good Faith Requirements</b> 12 CFR 1026.19(e)	<a href="#">12/31/13 TRID Rule</a> <ul style="list-style-type: none"> <li>Established fee disclosure and accuracy requirements that imposed tolerance limits and hampered creditors' ability to correct fees.</li> </ul>	<a href="#">ABA 11/6/12 Comment Letter</a> <ul style="list-style-type: none"> <li>Criticized the interplay of tolerances, "good faith," and re-disclosure requirements.</li> <li>Recommended a pause in the regulations until all issues were properly resolved.</li> <li>The TRID rule was issued with significant confusion on re-disclosure and tolerance standards.</li> </ul>	<a href="#">2017 TRID Amendments</a> <ul style="list-style-type: none"> <li>Clarified at least 8 significant issues on the topic of tolerances and re-disclosures, including issues pertaining to written list of providers, affiliate fees, instances where consumers shop outside of the written list, informational LEs, and interest rate locks.</li> </ul>
<b>TRID's Cash to Close Calculation</b> 12 CFR 1026.37(h)	<a href="#">2012 TRID Proposal</a> <ul style="list-style-type: none"> <li>Offered new "Cash to Close" calculations and summaries. These new items contained numerous calculation problems. Also, the application of limits and tolerances was uncertain.</li> </ul>	<a href="#">ABA 11/6/12 Comment Letter</a> <ul style="list-style-type: none"> <li>Identified the problems to the cash to close calculations. Stated that the method of calculating "Cash to Close" was unclear and the disclosure was not understandable. The final rule was issued without clarifications on these points.</li> </ul>	<a href="#">2017 TRID Amendments</a> <ul style="list-style-type: none"> <li>Amended and clarified various calculations used to complete the Calculating Cash to Close table.</li> <li>At least 10 amendments/clarifications had to be issued at that time.</li> </ul>



BCFP Rule	Problem with the Rule	ABA Recommended Fix	BCFP Response/Amendments
<b>Select Mortgage Servicing Rules</b>			
<b>Rolling Delinquencies</b> 12 CFR 1024.31 and 1024.41	Many ABA members inquired how the “120-Day Rule” applies to “rolling delinquencies.” The 1/10/13 Servicing Rules did not specify how a servicer should calculate delinquency for purposes of the 120-Day Rule.	<a href="#">ABA Advocacy Letter 7/29/14</a> <ul style="list-style-type: none"> <li>Requested guidance on how the 120-Day Rule applies to rolling delinquency situations.</li> </ul> <a href="#">ABA Advocacy Letter 10/24/14</a> <ul style="list-style-type: none"> <li>Provided results of ABA rolling delinquency survey and reiterated request for clarification.</li> </ul> <a href="#">ABA Comment Letter 3/16/15</a> <ul style="list-style-type: none"> <li>Recommended that the Bureau incorporate into official commentary unofficial guidance suggesting that a servicer could accelerate the mortgage loan of a rolling delinquency and commence foreclosure after 120 days if the borrower does not pay the accelerated amount.</li> <li>Cautioned against establishing a bright line rule whereby banks would be precluded from initiating foreclosure on a rolling delinquency in certain situations.</li> </ul>	<a href="#">10/19/16 Amendment</a> <ul style="list-style-type: none"> <li>Added commentary clarifying that creditors are not precluded from accelerating the loan for breach of contract (if permitted by state law) and that failure to pay the amount due after acceleration would begin or continue delinquency.</li> <li>Clarified the definition of delinquency.</li> <li>Stated that if a servicer applies payments to the oldest outstanding periodic payment, a payment by a delinquent borrower advances the date the borrower’s delinquency began.</li> </ul>
<b>Periodic Statements for Charged-Off Loans</b> 12 CFR 1026.41	<a href="#">2/14/13 Servicing Rule</a> <ul style="list-style-type: none"> <li>Requires that servicers provide a periodic mortgage statement. In October 2013, the Bureau provided unofficial, oral guidance stating that servicers must provide periodic statements for mortgage loans that have been charged off. This caught</li> </ul>	<a href="#">ABA Comment Letter 11/22/13</a> <ul style="list-style-type: none"> <li>Requested that servicers not be required to provide periodic statements for mortgage loans that have been charged off.</li> </ul> <a href="#">ABA Advocacy Letter 7/29/14</a> <ul style="list-style-type: none"> <li>Reiterated request that charged-off loans not be subject to the periodic statement rule.</li> </ul>	<a href="#">10/19/16 Amendment</a> <ul style="list-style-type: none"> <li>Provided that a servicer is not required to provide periodic statements for loans that have been charged off if (1) the servicer will not charge any additional fees or interest on the account and (2) the servicer provides a periodic statement labeled “Suspension of Statements &amp; Notice</li> </ul>



BCFP Rule	Problem with the Rule	ABA Recommended Fix	BCFP Response/Amendments
	banks and vendors by surprise because this requirement is not expressly set forth in the Servicing Rules and because it has not been industry standard to provide periodic statements for charged-off loans.	<a href="#">ABA Comment Letter 3/16/15</a> <ul style="list-style-type: none"> <li>Suggested that loans charged off prior to the effective date of the proposed amendments should not be subject to the periodic statement requirement.</li> </ul>	of Charge Off—Retain This Copy for Your Records.”
<b>ARM Reset Notices</b> 12 CFR 1026.20(c)-(d)	<a href="#">2/14/13 Servicing Rule</a> <ul style="list-style-type: none"> <li>Lenders must provide certain notices to borrowers with ARM loans. This includes an “Initial Rate Reset Notice” and a “Subsequent Rate Reset Notice.”</li> </ul>	<a href="#">ABA Comment Letter 10/9/12</a> <ul style="list-style-type: none"> <li>Requested that the Bureau clarify the effective dates of the ARM Rate Reset Notice requirements.</li> <li>The Bureau did not address ABA’s questions in the final 1/10/13 Servicing Rule.</li> </ul>	<a href="#">Amendment 7/24/13</a> <ul style="list-style-type: none"> <li>Clarified the timing for Initial and Subsequent Rate Reset Notices when loans are due to reset in close proximity to the rule’s effective date.</li> </ul>
<b>Select Remittance Rules</b>			
<b>Definition of Remittance Transfer Provider</b> 12 CFR 1005.30(f)	<a href="#">2/7/12 Remittance Rule</a> <ul style="list-style-type: none"> <li>The definition captured all providers, without taking into account the impact on small businesses.</li> </ul>	<a href="#">Joint Trades Comment Letter 7/22/11</a> <ul style="list-style-type: none"> <li>Requested the Bureau to provide an exemption for small volume providers.</li> </ul>	<a href="#">Amendment 8/20/12</a> <ul style="list-style-type: none"> <li>Created a safe harbor to exempt providers that sent 100 or fewer transfers in the previous year and 100 or less in the current year.</li> </ul>
<b>Ability to Estimate Some Fees &amp; Charges</b> 12 CFR 1005.31(d)	<a href="#">2/7/12 Remittance Rule</a> <ul style="list-style-type: none"> <li>Requires precise figures in calculating disclosures for consumers, despite the fact that the information may be beyond the control of providers.</li> </ul>	<a href="#">Joint Trades Comment Letter 7/22/11</a> & <a href="#">Joint Trades Comment Letter 6/6/14</a> <ul style="list-style-type: none"> <li>Urged the Bureau to recognize the limitations of information for providers to make disclosures.</li> <li>Requested that providers have the ability to estimate certain figures, particularly when the information is not available.</li> </ul>	<a href="#">Final Rule 9/18/14</a> <ul style="list-style-type: none"> <li>Permitted estimates in limited circumstances, but the ability will expire soon.</li> </ul>

**Appendix B: Examples of Bureau Documents Released in  
Conjunction with Field Hearings**

<b>Date</b>	<b>Reports, Proposals and Field Hearings</b>
3/10/15	<ul style="list-style-type: none"><li>• Arbitration report released</li><li>• Arbitration field hearing (Newark, NJ)</li></ul>
6/2/16	<ul style="list-style-type: none"><li>• Small dollar lending proposal</li><li>• Small dollar loan field hearing (Kansas City, MO)</li></ul>
7/28/16	<ul style="list-style-type: none"><li>• Outline of debt collection proposals released</li><li>• Study of third-party debt collection operations released</li><li>• Debt collection field hearing (Sacramento, CA)</li></ul>
5/10/17	<ul style="list-style-type: none"><li>• White paper on small business lending released</li><li>• Field hearing on small business lending (Los Angeles, CA)</li></ul>