March 9, 2020

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Crapo and Ranking Member Brown:

The Consumer Bankers Association (CBA) submits the following comments for the hearing entitled, "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." We appreciate the Senate Committee on Banking, Housing and Urban Affairs' continued oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and its activities to safeguard consumers. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository assets.

It has been ten years since the Dodd-Frank Act passed Congress and nine years since the CFPB opened its doors with "the purpose of providing a single point of accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace." Today's banking industry is vibrant and strong, working diligently to meet the credit needs of the consumers and communities they serve. As financial markets evolve, regulation must be reviewed to ensure it is reflective of current market conditions that ensures consumers have continued access to safe and affordable financial services products. In this letter, we offer legislative and regulatory suggestions to lawmakers and the Bureau for the purpose of ensuring consumers continue to have access to highly regulated financial products that enable them to achieve their financial goals.

Bipartisan Commission at the Consumer Financial Protection Bureau

Since its inception, the CFPB has been the center of political and legal debates about the legitimacy of its leadership structure. In fact, this hearing comes as the Supreme Court is preparing to hear arguments this March regarding a challenge to the structure of the CFPB and whether its single director leadership model is constitutional. We are concerned the Seila Law v. CFPB case[1] could result in a Supreme Court ruling that would create a governance structure where the director is removable at-will; inviting increased political turmoil at the Bureau, further undermining the mission and operations of the CFPB.

We share the concern stated in your October 4, 2019 Bipartisan Legal Advisory group motion before the Supreme Court that recommends safeguarding the CFPB from executive and political interference, and suggest that the appropriate and sensible remedy for the question at issue in the Seila case is for Congress to swiftly pass legislation to ensure the CFPB's independence and constitutionality by replacing the single director

[1] Seila Law v. Consumer Financial Protection Bureau, 923 F.3d 680 (9th Cir. 2019), *petition for cert. filed* (U.S. June 28, 2019) (No. 17-56324).

structure with a five-person, bipartisan commission, as originally intended by the House when it first passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.[2] In total, bipartisan legislation establishing a commission has passed the House Financial Services Committee six times and passed the House of Representatives four times with both Democrats and Republicans voting in favor.

The CFPB director is currently a single officer responsible for leading the CFPB and is the chief decisionmaker over all rulemakings, enforcement and supervisory actions that affect millions of Americans' everyday financial lives. This high level of authority is unparalleled when compared to other regulatory agencies. The potential of a court ruling that could install a removeable at-will director would bring increased confusion to financial services providers who have been asking that Congress inject stability and transparency into the Bureau. An at-will Director, removable every four years, or sooner, would leave financial instructions with few assurances that the rules they are complying with today would remain in place. When regulatory stability is eroded by changing political dynamics, the consumer suffers from financial institutions' inability to rely upon a consistent regulatory environment.

Replacing the sole director model with a bipartisan, Senate confirmed, five-person commission would depoliticize the CFPB while increasing stability, accountability and transparency for all consumers and industry stakeholders. As we saw after the departure of Director Cordray, the CFPB's current governance structure is subject to dramatic political shifts and strains with each change in presidential administration. Unpredictable political shifts make it difficult for the financial services industry to plan for the future, ultimately stifling innovation and limiting access to credit.

It is crucial that appropriate checks and balances are in place given the scope and importance of the CFPB. It is also important to insulate the Bureau from political shifts with each new director that could reduce its ability to impartially ensure a fair and competitive marketplace. Congress should act before the Supreme Court decides the CFPB's fate by sending legislation to the President's desk that would create a bipartisan commission governance structure – bringing the bureau in line with other regulatory agencies.

Regulatory Actions

Enforcement and Supervision

Director Kraninger has emphasized the need to use all the CFPB's tools to prevent consumer harm. This includes properly educating consumers and establishing clear regulations in addition to ensuring compliance through supervision and holding bad actors accountable through enforcement. A directive to utilize all of the Bureau's facilities marks a departure from how the CFPB has historically emphasized the enforcement process as a regulatory tool and focused a large portion of industry interaction through enforcement actions. CBA appreciates Director Kraninger's charge to use all four of the Bureau's tools that allow the financial services industry to serve customers while ensuring consumers are protected. However, CBA members continue to raise concerns that the new directive has not worked its way throughout the Bureau, as many CFPB examiners continue to present new issues on previously settled matters of law, lookback periods, and issues remediated by other government agencies through their supervision processes.

Additionally, it has been brought to our attention that self-reported issues are receiving unbalanced and overly punitive penalties. As the Bureau has stated, regulators should encourage financial institutions to "self-report, self-examine and provide restitution where appropriate." The CFPB's response to self-reported issues needs to

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 4103 (2010).

be consistent with this belief, within the scope of previous regulatory actions. Anything to the contrary would be counterproductive to furthering a well-regulated, consumer-focused banking system.

Sound supervision should prevent consumer harm while still allowing financial institutions the flexibility to develop new products and services to better serve customers. Examiners need to streamline procedures and work with other regulators to create an efficient supervisory regime that protects consumer interests and establishes clear rules of the road for financial institutions. CBA members still find examiner communication lacking as there seems to be a persistent disconnect from CFPB leadership. The result is more arduous, duplicative and inefficient exams for financial institutions that leave less time and resources to improve policies, procedures and serve our customers.

To this end, we strongly encourage the CFPB to ensure that coordination with other regulatory agencies remains a high priority and do more to streamline exam processes. CBA member banks are often supervised by multiple federal regulators as well as the state regulatory bodies that supervise state-chartered banks. A single financial services company can be examined by the Federal Reserve, the OCC, the FDIC, and the CFPB, among others. In some cases, more than one agency is examining a bank for similar or related issues, each with a slightly different set of lenses. The same or substantially similar documents are often sought by multiple entities, and repetitive inquiries are often made to the same people inside supervised institutions, requiring additional time and effort to respond to each duplicative inquiry. Better interagency coordination is needed to minimize the cost and burden to financial institutions, allowing them to better serve their customers.

In a similar vein, enforcement can be a multiple agency process, with each agency taking on the same issue and imposing its own penalties for related violations. The Treasury Department, in its 2017 report on financial services, recognized this as problematic and recommended a single entity act as a traffic cop or coordinator to minimize wasted effort by both public and private entities. CBA supports this approach to increased regulatory coordination.

Cost Benefit Analyses

The Dodd-Frank Act's standards for rulemaking require the Bureau to consider, among other things, "the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumer to consumer financial products or services resulting from such rule." Clear and rational regulations that are promulgated with an awareness of economic impact encourage better understanding for all stakeholders of the associated benefits and provide helpful data to ensure consumers' access to credit is not impeded with unnecessary and costly rulemakings. We believe these objectives are best met through a robust public comment process, firm adherence to formal rulemaking, and flexible implementation after a final rule is issued. Under this framework, we would encourage the Bureau to not focus solely on policy-based rulemaking, and to base new regulations on real-world data and rigorous economic cost-benefit analysis, as required by the Dodd-Frank Act.

Remittance

In April 2019 the CFPB issued a Request for Information Regarding Potential Regulatory Changes to the Remittance Rule ("Remittance RFI"). In the Remittance RFI, the Bureau sought comment on two aspects of its Remittance Transfer Rule, subpart B of Regulation E (the "Remittance Rule"): (1) the pending July 2020 expiration of a temporary exception that, if certain conditions are met, allows insured depository institutions to estimate the exchange rate and certain fees on remittance transfers, 12 CFR 1005.32(a) ("Temporary Exception"); and (2) the Remittance Rule's 100-transfer safe harbor that provides an exemption from the

Remittance Rule for institutions that send 100 or fewer annual remittance transfers, 12 CFR 1005.30(f)(2). CBA appreciates the Bureau's willingness to work with industry participants to find a solution to this impending problem. Bank-provided remittance transfers are an important service for bank customers. Without action by the Bureau, the Temporary Exception expiration will have the perverse effect of reducing consumer choice, forcing bank customers to use less convenient or more expensive services, and leave some consumers without alternative means of sending transfers that they send today through their banks. Accordingly, CBA requests that the Bureau:

- Recognize the distinct segment of the remittance transfer market that is served by banks; and

- Utilize its existing authority to permit banks to provide estimated disclosures so that they can continue providing remittance transfer services to their customers with the same worldwide reach that their customers are accustomed to today.

The Remittance Rule implementing section 1073 of the Dodd-Frank Act (codified at section 919 of the Electronic Fund Transfer Act ("EFTA")) established a comprehensive consumer protection system for consumers sending remittance transfers from the United States to individuals and businesses in foreign countries. The Remittance Rule requires consumer disclosures that include the price of a remittance transfer (including most fees and the exchange rate), the amount of currency to be delivered to the recipient, and the date the funds will be available to the recipient.

Although disclosures are generally required to be exact, section 1073 of the Dodd-Frank Act provided a time-limited exception allowing insured depository institutions that satisfy specified conditions to estimate certain fees and the exchange rate. The Remittance Rule incorporated this exception. Congress initially set the exception to last for five years, until July 2015, and authorized the Bureau to extend the exception further, to July 2020, if the expiration "would negatively affect the ability of [insured institutions] . . . to send remittances." In 2014, the Bureau made such a determination and extended the exception to July 21, 2020. In doing so, the Bureau explained insured institutions were, for some transfers, unable to disclose exact exchange rates or fees and that the Bureau did not expect solutions to this problem to emerge before July 2020.

Recently, the Bureau assessed the Remittance Rule ("Assessment"). The Assessment found that, in 2017, bank and credit union-initiated remittance transfers made up less than 5 percent of the total volume of remittance transfers but accounted for 28.2 percent of the total value of remittance transfers. The Assessment also found that, although the percentage of banks using the Temporary Exception dropped since the Remittance Rule took effect 11.6 percent of banks reported using the Temporary Exception in 2017 for 10.2 percent of their transfers (or 6.4 percent of all bank remittance transfers).

Small-Dollar Bank Lending

On February 6, 2019, the CFPB issued a proposed rule to revise its controversial November 2017 small-dollar loan rule (2017 Rule). The proposal would effectively rescind the 2017 Rule's requirement that lenders determine a borrower's ability to repay prior to extending small-dollar and certain other types of covered loans. The CFPB has also finalized a delay of the compliance date for the 2017 Rule's existing ability to repay provisions to November 19, 2020. According to the proposal, the CFPB believes that the 2017 Rule's ability to repay provisions would have the effect of eliminating lenders willing to participate in the market, thereby decreasing consumer access to credit and competition in credit markets. We agree with the Bureau's assessment of the 2017 rule and applaud the proposal that will help depository institutions offer short term credit products.

The proposed rescissions would substantially decrease the significant burdens on lenders that would be imposed by the existing ability to repay requirement. The 2017 Rule would require lenders to obtain extensive information about a consumer's finances and use the information to project whether the consumer will be able to make payments for his or her existing payment obligations and the payments under the covered loan and still meet basic living expenses for a period of thirty days. The changes in the proposed rule may encourage lenders previously discouraged by the requirements under the 2017 Rule to engage in small-dollar, short-term loans.

Lenders would still be subject to the 2017 Rule's payment provisions, which require a lender to obtain a new customer authorization to attempt to withdraw funds from a consumer's account following two consecutive failed attempts to withdraw payments from that account. The provisions also require lenders to provide consumers with a written notice prior to a first attempt to withdraw payment from a checking, savings, or prepaid account and before subsequent attempts to withdraw payments if the payment amounts, dates, or payment channels differ from the first attempt.

We greatly appreciate the Bureau's interest in revisiting the rule to ensure consumers have options in the marketplace for small dollar credit needs. Because we expect the rulemaking will likely identify other problems with the Final Rule, we have urged the Bureau to grant an immediate extension of the compliance date for the entire 2017 Rule. Without an immediate extension, banks will expend resources unnecessarily to achieve compliance with a rule the Bureau is reconsidering and may materially change.

The Bureau's small dollar rule has greater impact on products outside of the short-term lending space. The Bureau should strongly consider exempting traditional consumer loan products, which do not raise consumer protection concerns, and which this rulemaking was not intended to address. In the 2017 Rule, the Bureau expansively defined "covered loans" — i.e., the loans subject to the Final Rule's restrictions — without regard to the loan's amount or duration. Consequently, the 2017 Rule captures many loans that are not short-term, small dollar loans, including some wealth management products and bridge loans just to give two examples. To address this concern, the Bureau should also clarify the financing of any product or service in connection with a purchase money loan is included in the Rule's exemption for these loans and thus avoid restricting access to open-end lines of credit.

Financial Innovation

Financial services innovation benefits consumers by promoting financial security, inclusion, and well-being. New and innovative financial products and services can greatly expand access to credit for all consumers, while providing improved access to important financial information, and increased customer safeguards. Congress recognized the great utility financial services innovation has for consumer protection in Title X of Dodd-Frank when it charged the CFPB with ensuring "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation".[3]

The Bureau's finalized innovation policies within the Office of Innovation are vital steps in ensuring that financial institutions are able to best serve their customers with innovative products and services that require a flexible and accessible regulatory environment. The recently finalized changes to the No-action letter (NAL) process has opened the door for more financial institutions to innovate to better serve and protect their customers, as well as bring new, financially underserved customers into the fold. For instance, in January 2020, the CFPB granted a NAL to Bank of America to facilitate the bank's funding arrangements with housing counseling agencies (HCAs)

[3] 12 U.S.C. § 5511(b)(5) (2012).

certified by the U.S. Department of Housing and Urban Development (HUD). There are more than 1,600 HUD-certified HCAs serving more than one million households annually. These agencies offer pre-purchase homeownership counseling to potential borrowers looking to purchase their first home.

CBA believes this NAL reflects well on the CFPB's recently revised NAL policy, which is intended to complement enforcement. Bank of America based its application on the template from the CFPB's previously issued NAL to HUD in September 2019. This NAL also reflects the CFPB's commitment to use the NAL as a safe-harbor tool. As a result, Bank of America has entered into a limited type of third-party relationship to facilitate consumer counseling and education without fear of counterproductive RESPA concerns.

However, CBA remains concerned about the data aggregators and the consumer data security. We recognize the importance of customers having the ability to choose which apps to share their financial information with to manage their financial health. CBA believes consumers should be able to use their apps in a safe and secure manner, and we urge the CFPB to take a more proactive role in making sure consumers are educated about how to manage their data security and privacy.

Debt Collection

CBA recognizes the important role debt collection plays in proper functioning consumer credit markets, reducing credit losses from non-repayment and promoting overall access to affordable consumer credit. We support the Bureau's goals of updating the Fair Debt Collection Practices Act (FDCPA), modernizing its communication standards, and generally enhancing consumer protections.

As the Bureau has acknowledged, the FDCPA is limited to third-party debt collectors and does not provide a valid legal basis for regulating creditors enforcing loan agreements. Congress enacted the FDCPA to establish ethical guidelines consumer debt collection by third-party debt collectors. As such, CBA strongly opposes placing FDCPA-like restrictions and requirements directly on creditors outside FDCPA authority. They are unwarranted and incongruent with the lender-borrower relationship, which is usually a long standing one motivated by strong business incentives on the part of creditors to help borrowers successfully repay their debt obligations.

One example of why revisions to the FDCPA should apply only to third-party debt collectors are contact frequency limits. "One size fits all" call frequency limits create significant consumer harms if applied to creditors collecting their own debts. Of chief concern, "one size fits all" call frequency limits do not recognize the differences between individual consumers and different portfolios and will negatively impact consumers that need financial assistance. "One size fits all" call frequency limits placed on creditors will result in more late fees, negative credit reporting, account closures, repossessions, foreclosures, litigation, and fewer consumer benefits from hardship programs, and as such, should not be applied to creditors.

We strongly urge Congress and the CFPB to work with industry to establish debt collection regulations for third-party debt collectors that strike the right balance between consumer protection and consumer engagement.

Home Mortgage Disclosure Act

Our members are dedicated to responsibly and fairly serving the housing needs of their communities and are committed to the purposes of the HMDA, which are to: "1. help determine whether financial institutions are serving the housing needs of their communities; 2. assist public officials in distributing public-sector investment

so as to attract private investment to areas where it is needed; and 3. assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes."[4]

The Dodd-Frank Act mandated expanding the information collected under Regulation C, HMDA's governing regulation. In 2015, then-Director Cordray used the Bureau's discretionary authority to increase the number of loan-level HMDA data fields reported and publicly disclosed, further increasing the complexity and costs of HMDA reporting beyond those fields mandated by Dodd-Frank. This new data set, collected for the first time in 2018, was reported to the government on March 1, 2019.

Expanded data collection and reporting poses serious risk to consumer privacy by introducing even more sensitive loan data into the public domain.[5] Specifically, the expanded set of publicly available HMDA data provides ample data scraping opportunities for companies to piece together information related to the loan and borrower to "re-identify" the consumer and engage in unsolicited targeted marketing. There is no mechanism for consumers or lenders to opt-out or protect disclosure of this sensitive personal and financial information from entering the public domain.

CBA has long been concerned about the sensitive nature of HMDA data and believes the discretionary data fields added by the CFPB in 2015 pose privacy risks to consumers while also mandating extraordinarily high annual compliance costs. CBA applauds the CFPB's decision to revisit the 2015 Rule to closely review the data fields that will be collected, stored and ultimately made available to the public. CBA encourages the CFPB to eliminate those discretionary data fields that are not required by statute, that are unduly onerous to collect and report, that provide present marginal value in furthering HMDA's objectives, and that create or contribute risk of consumer re-identification.

Complaint Database

CBA supports recent initiatives to make the CFPB complaint database more usable for the public and industry. Efforts to clearly disclose unverified complaints are a helpful first step in level-setting data contained in the database. Further, encouraging consumers to work with their financial institution prior to submitting a complaint will lead to more consumer issues being resolved in a timely and efficient manner. Establishing tools to contextualize complaint data and recognizing the massive amount of inquiries that financial institutions ably and efficiently redress each day will leave consumers informed and better position financial institutions to combat consumer issues.

Banks and credit unions have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. Our members have robust complaint management procedures regardless of the CFPB's database to ensure that disputes are resolved as quickly and easily as possible to keep the customer happy with their financial services provider. Furthermore, federal regulatory agencies already regularly examine every depository institution to ensure their strong and effective complaint management systems are functioning properly.

CBA urges the Bureau to continue to review consumer complaint data for accuracy and validity before publication to protect consumer privacy and prevent dissemination of misleading information.

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[4] CFPB Bulletin 2013-11 "Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement" (October 9, 2013) http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf

[5] If a consumer wishes to purchase a home, he/she must provide confidential financial data that lenders in turn must report for HMDA purposes; most of which the CFPB releases to the public.

Section 1071 Small Business Rulemaking

CBA supports H.R. 5574, the "Preserving Small Business Lending Act of 2020" that would repeal Dodd Frank Act Section 1071 and ensure robust small business lending operations at depository institutions continue to main street businesses. Understanding the political realities of H.R. 5574, CBA strongly urges the Bureau to take a cautionary approach to rulemaking under Section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity Act ("ECOA") to require financial institutions to compile, maintain, and report information concerning credit applications made by women-owned, minority-owned, and small businesses. Under the section, every financial institution must inquire of any business applying for credit whether the business is a small business, or a women- or minority-owned business, maintain a record of the information separate from the application, and report the information along with related information about the application to the CFPB. The information must be made public on request in a manner to be established by regulation and will be made public annually by the Bureau.

CBA and its member institutions strongly believe that Section 1071 is not as simple as data collection for other lending products, such as residential mortgages. Business lending parallels is not comparable to residential mortgage lending. Home Mortgage Disclosure Act ("HMDA")-like reporting for business lending activity intended to reveal potential discrimination is a flawed premise because the two transactions are inherently different in many key aspects:

- Residential lending all shares the same type of collateral. Business lending may not be secured at all, and when secured, the type of collateral varies tremendously. Therefore, comparing terms between loans is problematic.

- HMDA-reported mortgage loan applicants are all consumers. Business lending involves loans to all types of applicants, ranging from mom-and-pop businesses to sophisticated corporate structures; from sole-proprietors to corporations.

- Business loans are often renewals rather than new loans. These renewals are not akin to refinances in the residential world.

- Business loans often have much shorter and varied durations, where mortgages tend to be more uniform.

- The appropriate property address for a business loan to use for reporting and analysis can be debated with no easy or right answer.

- Capturing business loan applicants for reporting and analysis can be debated with no easy or right answer given the various ownership and structures.

We believe the CFPB must be keenly aware that the dissimilar nature of business lending presents two serious challenges for Section 1071 rulemaking:

1) Determining which data fields to require collection for, developing standard values to be reported, and proposing workable rules for collecting and reporting the data will be tremendously difficult if the goal is to have a thoughtful, achievable rule that yields useful data.

2) Constructing fair lending analyses that will yield meaningful and appropriate conclusions for business lending is even more challenging.

In light of these issues and the need to streamline the credit process for qualified applicants, CBA and its member institutions cannot stress enough the importance of well-balanced rules under Section 1071. Overly burdensome data collection requirements will stifle small business lending, greatly increase compliance costs for small business lenders, and lead to costly litigation. Key to this rulemaking is lenders' ability to address 1071 reporting compliance with already existing reporting systems (e.g., Community Reinvestment Act, etc.) in order to ensure minimum market disruption. These systems will need to be automated and accurate. Adherence to systems already in place will allow lenders to streamline data collection.

TRID Assessment

The TRID Rule implemented the Dodd-Frank Act's directive to combine certain disclosures that consumers receive under TILA and RESPA in connection with applying for and closing on mortgages. As such, this rule advances a very important mortgage-related reform of the Dodd-Frank Act, laying out the key informational documents that consumers receive in the mortgage lending process.

Pursuant to section 1022(d) of the Dodd-Frank Act, the Rule's assessment that is currently underway must address, among other relevant factors, the Rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals of the TRID Rule as stated by the Bureau. Sections 1098 and 1100A of the Dodd-Frank Act set forth two goals for the TRID Rule: "to facilitate compliance with the disclosure requirements of [TILA and RESPA]" and "to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures."

CBA supports clear and accurate disclosures and well-regulated markets where well-crafted rules provide effective information and consumer protections. We share the Bureau's goals of assuring that these disclosure regulations succeed in providing consumers with information needed to navigate the mortgage origination and settlement process. Consumer protection is only part of the focus, however, because the Bureau must also observe the dual responsibility of simplifying compliance, and ensuring that markets for consumer financial products and services operate "transparently and efficiently to facilitate access and innovation," and that "responsible, affordable mortgage credit remains available to consumers."[6] The assessment must be guided by these twin objectives: facilitating consumer protection *and* improving market operations.

Accordingly, CBA supports the Bureau's efforts to gather relevant cost data via structured interviews and surveys with industry participants in order to assess firms' implementation and other ongoing costs. However, consultation with our members suggests that that precise cost data attributable to implementation efforts will be very difficult to obtain. These discussions reveal that historical cost data from the TRID implementation period dating from 2013 to 2015 (and beyond) were not identified as TRID-specific implementation costs. At that time, mortgage lenders faced multiple compliance deadlines, including implementation of new Ability-to-Repay, Loan Officer Compensation, and Home Mortgage Disclosure Act (HMDA) regulations. Mortgage lenders did not attribute implementation expenses on a per-regulation basis; instead, they generally apportioned costs to overall "mortgage compliance." This is particularly true for the TRID Rule, which established a disclosure "grid" that affected other mortgage-related requirements. For instance, efforts to comply with new HMDA requirements regarding application outcomes or changes to the Uniform Residential Loan Application (URLA) and valuation disclosure forms under Equal Credit Opportunity Act would have been tightly intertwined with

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[6] 15 U.S.C. 1639b(a)(1).

TRID's LE and CD implementation processes. Because all these requirements had to work in tandem in lenders' loan origination systems, dissecting only TRID-related costs was unfeasible, if not impossible.

We believe that the assessment must attempt to quantify the TRID Rule's benefits with rigor. The Bureau should have concrete metrics demonstrating the existence of, or degree of "improvement," that the TRID Rule achieved over the previous RESPA and TILA regimes. To that end, we believe the Bureau's consumer benefit analysis should not only seek to measure purported improvements in individual understanding of the new disclosure forms, but also must seek to identify consumer behavior changes. Consumer surveys should determine if more borrowers shop for mortgages after TRID. If so, what is the scale of the difference, and is it possible to isolate the impact of disclosure changes from the evolving access to online information and availability of digital consumer facing applications that have occurred over the past 10 years? Quite simply, the Bureau's consumer survey should measure whether TRID changed consumer understanding or behavior in a manner that justifies the tremendous costs of the rule.

Lastly, we urge the Bureau to make targeted TRID reforms to benefit all mortgage stakeholders, including consumers, by reducing compliance burden while also promoting simplicity and clarity in the mortgage process. The list of targeted reforms has been submitted to the Bureau via requested comments on January 21, 2020.

Consumer Advisory Boards

The Dodd Frank Act established various advisory boards at the Bureau to "provide information on emerging practices in the consumer financial products or services industry", and the Consumer Advisory Board (CAB) has often been the leader on many of these initiatives. However, despite its mission outlined in Dodd-Frank and under the CAB's charter, very few financial institutions serve on the CAB. Financial institutions are often the experts on emerging consumer financial practices, products and services, yet their voice is quite muted at these important CAB functions. More financial institution representation is necessary to give a more rounded and full opinion on the vital issues the CAB is statutorily mandated to address.

Similarly, CBA applauds the efforts of the Taskforce on Federal Consumer Financial Law. CBA believes the new Taskforce presents a good opportunity for the Bureau to conduct an objective, holistic review of consumer financial laws and eliminate outdated, redundant and wasteful red tape. The new Taskforce's efforts should allow the CFPB to focus its resources where consumer protections are most needed and remain alert for new and emerging threats. CBA looks forward to working with the Director on this promising initiative.

Qualified Mortgage

CBA applauds the Bureau's recent decision to propose an amendment to the Qualified Mortgage (QM) rule. The Bureau's position is consistent with a coalition representing the mortgage industry, relevant trades, including CBA, and consumer and civil rights groups. Together these groups advocated for leveraging and bolstering existing underwriting standards, eliminating the 43% debt-to-income ratio (DTI) cap and Appendix Q, and maintaining an explicit safe harbor. CBA supports the Bureau's temporary extension to the effective date of the proposed alternative, which will help to ensure a smooth transition for the home loan market.

The Bureau is well-positioned to improve the QM rule to better protect borrowers and the financial system from excessive risk, while responsibly preserving access to homeownership for credit-worthy borrowers. CBA differs from critics who over-inflate the importance of DTI in a borrower's ability to repay (ATR). Pursuant to the Dodd-Frank Act, DTI is a mandatory element of the ATR statutory requirement, which means lenders must document a borrower's income, assets, employment, credit history and monthly expenses. The Bureau's position simply

retains the ATR requirements, while not making DTI the sole indicator of a borrower's ability to repay. Mortgage loans are evaluated using a wide range of factors which provide a multidimensional measurement of risk. Borrowers with a history of successfully managing larger debt burdens should not be precluded from the home loan market due to a single, simplistic measurement.

CBA looks forward to working with the Bureau on this issue to ensure a smooth transition and to create a safer and more inclusive mortgage market for all consumers. With the patch set to expire January 2021, CBA supports the Bureau's continued efforts to make appropriate adjustments to the QM rule and ensure a smooth introduction into the home loan market.

Conclusion

Improving the financial lives of consumers is a goal that unites lawmakers, regulators and industry. Achievement of this shared goal occurs when there is a stable and even-handed regulatory framework that produces clear and reasonable rules of the road to protect consumers and allow for a robust financial services market.

The Supreme Court decision on Seila Law v. CFPB could have dramatic and lasting ramifications on the future of the Bureau. Regulatory stability and transparency will not be realized until the Bureau's governance structure allows for the debate and deliberation of multiple stakeholders with diverse experiences and expertise. Congress should immediately pass legislation to create a bipartisan commission of five, Senate-confirmed commissioners that would provide a balanced and deliberative approach to supervision, regulation, and enforcement of rules and regulations that oversee the financial services sector and provide consumers needed safeguards.

CBA stands ready to work with Congress and the CFPB to implement the suggested legislative and regulatory improvements to the Bureau, and we appreciate the opportunity to submit this statement for the record.

Sincerely,

Richard Hunt
President and CEO
Consumer Bankers Association