

**CONSUMER MORTGAGE COALITION  
INDEPENDENT COMMUNITY BANKERS of AMERICA**

December 15, 2014

Consumer Financial Protection Bureau  
Office of the Executive Secretary  
1275 First Street, NE  
Washington, DC 20002  
[www.regulations.gov](http://www.regulations.gov)

Re: Policy on No-Action Letters  
Docket No. CFPB-2014-0025

Dear Sir or Madam:

The undersigned trade associations appreciate this opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB”) notice of proposed policy on no-action letters. The CFPB states:

“The Bureau recognizes that, in certain circumstances, some may perceive that the current regulatory framework may hinder the development of innovative financial products that promise substantial consumer benefit because, for example, existing laws and rules did not contemplate such products. In such circumstances, it may be substantially uncertain whether or how specific provisions of certain statutes and regulations should be applied to such a product—and thus whether the federal agency tasked with administering those portions of a statute or regulation may bring an enforcement or supervisory action against the developer of the product for failure to comply with those laws. Such regulatory uncertainty may discourage innovators from entering a market, or make it difficult for them to develop suitable products or attract sufficient investment or other support.”<sup>1</sup>

We agree that regulator uncertainty limits the financial products and services that are available to consumers, and regulatory uncertainty increases the costs to consumers. We are therefore pleased that the CFPB proposes what it calls a “dedicated mechanism” for reducing regulatory uncertainty. The CFPB proposes that parties could submit to the CFPB a request for a no-action letter describing a consumer financial product or service about which there is substantial uncertainty about how specific Federal consumer financial laws would apply. The CFPB would not necessarily grant each request for a no-action letter. Some requests would be denied, and others would be neither granted nor denied, with or without explanation. The no-action letters would not be binding and the CFPB could withdraw them at any time.

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<sup>1</sup> 79 Fed. Reg. 62118, 62120 (October 16, 2014).

We suggest that regulations and other forms of guidance would frequently be the best approach to providing regulatory certainty. Nevertheless, no-action letters would be helpful in reducing regulatory uncertainty in some cases.

The proposal states that the CFPB “does not anticipate no-action treatment of UDAAP matters.”<sup>2</sup> We believe the CFPB should clarify through rulemakings what is and what is not unfair, deceptive, or abusive, because this remains one of the areas of continuing uncertainty that is restricting the products and services available to consumers. The CFPB could provide regulatory certainty through individual rulemakings relating to specific financial products or services, or the CFPB could provide certainty through more general rulemakings. Absent a rulemaking or other agency guidance, no-action letters would apparently be the only method for discovering the CFPB’s thinking. We urge the CFPB to consider offering regulatory certainty in some form about the ambiguity of, especially, what the agency believes constitutes “unfair” or “abusive” acts or practices.

We request that the CFPB state in its policy how it will protect trade secrets so submitters will know how best to protect their proprietary information. We suggest that the CFPB, in accepting submissions for no-action letters, permit applicants to identify the portions of their applications that they consider to be confidential, proprietary, or trade secrets under the Trade Secrets Act.<sup>3</sup> If the CFPB does not agree that the materials are protected from public disclosure, it should provide the applicant an opportunity to withdraw the materials, even if it means withdrawing the application in its entirety. This approach would promote full communication between the CFPB and those who wish to expand the financial products and services from which consumers can choose.

Sincerely,

Consumer Mortgage Coalition  
Independent Community Bankers of America

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<sup>2</sup> 79 Fed. Reg. 62118, 62121 (October 16, 2014).

<sup>3</sup> The Trade Secrets Act is at [18 U.S.C. § 1905](#).