



MORTGAGE BANKERS ASSOCIATION

May 12, 2014

The Honorable Sylvia Matthews Burwell  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

**Re: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities**

Dear Director Burwell:

The Mortgage Bankers Association (MBA),<sup>1</sup> appreciates the opportunity to comment on the proposed revision (the Proposal) issued by the Office of Management and Budget (OMB) to Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (the Circular). The Circular provides important guidance for federal agencies use and adoption of standards. In light of the developments that have taken place in the world of regulation, standards, and conformity assessment since the Circular was last revised in 1998, MBA commends OMB for undertaking this effort to evaluate possible changes to the Circular and for seeking feedback from affected parties. This letter offers MBA's comments on the proposed revisions to the Circular.

**1. MBA agrees with the OMB directive that all federal agencies should utilize voluntary consensus standards developed within various industry sectors.**

MBA strongly believes in the value of uniform standards within the mortgage finance industry. In 1999, MBA created the Mortgage Industry Standards Organization (MISMO®)<sup>2</sup> to develop standards for the residential and commercial real estate finance industries. MISMO includes participants from lenders, vendors, Government Sponsored Enterprises (GSEs), and multiple government agencies. MISMO standards are widely used across the industry, including within government agencies. The use of these uniform standards enables mortgage lenders, investors, servicers, vendors, borrowers, government agencies and other parties to exchange real estate finance-related information more securely, efficiently, and economically.

Government entities, whether they are GSEs, Housing Finance Agencies, or regulatory bodies, require significant information from industry participants. An agency's collection of

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mba.org](http://www.mba.org).

<sup>2</sup> The Mortgage Industry Standards Maintenance Organization, Inc. (MISMO®) is a 501 (c) 6 not-for-profit corporation, a wholly owned subsidiary of the Mortgage Bankers Association.

data using existing voluntary consensus standards significantly reduces the possibility of transformation errors that might otherwise occur when translating data from existing industry voluntary consensus standards to proprietary formats defined by government entities. The use of the common industry vocabulary also helps improve communication between industry and government agencies, and between agencies.

MBA strongly endorses the objective of the Circular and its proposed revisions, which direct agencies to utilize existing voluntary consensus standards.

**2. MBA agrees with the provisions that encourage agency participation in the development of standards.**

MBA believes that participation by government agencies in the development of standards should be strongly encouraged. We agree with the provisions of the Proposal that indicate that government agency participation can and sometimes should extend beyond participation in efforts to create the standards. Other roles for agencies in developing standards can include official membership in standards organizations and permitting agency employees to assume leadership roles, where appropriate. Significant knowledge is shared during the development of standards that can help improve the quality of the end product, as well as providing the significant side benefit of improving agency understanding of industry practice and vernacular. Given the government's important role in the mortgage market, particularly in the residential market, agency participation in the standards development process is welcome.

**3. MBA believes incentives to utilize voluntary consensus standards should exceed costs.**

MBA believes that certain provisions in the proposed revision might have the unintended effect of discouraging agencies from using standards and/or participating in the development of the standards.

- In Section 10, Part b, the Proposal indicates that agencies are not required to report to the National Institute of Standards and Technology (NIST) if voluntary consensus standards do not exist. There does not appear to be a requirement for an agency to document the steps it performs to validate that no voluntary consensus standard already exists. MBA believes agencies should be required to perform and document some form of due diligence, perhaps by communicating with relevant industry organizations. The Circular contains a provision relating to regulations in Section 11, Part a, Subsection (i) that states that agencies should include a discussion of "Which bodies or organizations the agency consulted with to determine whether there are relevant voluntary standards in use in the marketplace (or completion of relevant voluntary standards is imminent)." A similar provision could be included in Section 10, Part b.
- In Section 10, Part c, agencies are required to report annually to NIST "on the nature and extent of agency participation in the development and use of voluntary consensus standards from the previous fiscal year." This provision includes several detailed reporting components. We understand that this provision is likely intended to permit government tracking on the use of voluntary consensus standards across all agencies. However, this provision could have the unintended consequence of discouraging the use of voluntary consensus standards. This is contrary to the major goal of the Circular, which is to encourage their use. The

tracking and reporting provisions could be considered onerous by agencies. Although we acknowledge the desire for the government to produce reports detailing the use of standards, we believe the required tracking and reporting might create resistance within agencies to the use of standards and/or the participation in standards organizations. We suggest that OMB revisit this section and consider removing it or significantly revising it.

**4. We encourage the development of a process where individuals, groups or other agencies could challenge or appeal an agency decision not to utilize voluntary consensus standards.**

There are times when an agency decision not to use voluntary consensus standards may have a direct effect on parties outside the government agency. A simple example would be where an agency requires that data be provided as part of a regulatory reporting requirement. In such an instance, an agency decision not to utilize existing or pending voluntary consensus standards could result in significant costs for affected groups or industries. These costs include expenditures to develop and maintain agency specific reporting formats as well as additional data quality and compliance controls to validate the proprietary formats. Although the Circular requires an agency to report on the reasons for their decision to NIST, there does not appear to be a mechanism by which agency decisions can be challenged by affected parties. MBA believes that some form of appeal process should be included.

**5. Other Concerns**

MBA offers comments below on several other provisions within the Proposal.

- Section 3, Part d attempts to define voluntary standards. MBA believes voluntary standards refer to the voluntary nature of participation in the standards development process as well as the voluntary adoption of the resulting standards. The current proposed wording excludes any explanation of the term voluntary in this context. We believe the wording should be revised to focus on the nature of the term "voluntary." The current wording of this provision could also be construed to limit the functions of organizations that develop standards, as the wording appears to define the role of organizations that develop standards. These organizations may have other objectives in addition to the development of standards. MBA proposes revised wording that could include the following:

*"Voluntary standard" is a standard as defined above that is developed through the voluntary participation of individuals and organizations in a defined and open process whereby any resulting adoption of the standard by affected parties is voluntary.*

- Section 3, Part f(ii) discusses balance of representation. The current wording indicates that a voluntary consensus standards development process requires a balance of representation. This wording could be used by any entity that chooses not to participate as a lever to indicate that the balance of representation was not adequate. MBA believes the wording should be revised to focus on the openness of the process to participation from all interested parties, including a process for public

comment, rather than having to prove that all affected parties actually participated in the process.

- Section 6, Part a(ii) discusses an agency's ability to decline to use a voluntary consensus standard when the standard is "impractical." This section indicates agencies can avoid the use of voluntary consensus standards when there is an interpretation that the use of said standards creates more of a burden than the use of other standards. The section seems to imply burden on the agency but does not address the possible burden on other entities affected by the decision. MBA is concerned that this provision could be construed by an agency as a reason to avoid using voluntary consensus standards. MBA believes this section should include a provision that ensures that the burden on affected parties is evaluated during the decision making process. For example, in the arena of electronic data standards, the burden could include costs for adopting a new government standard in addition to or in substitution of a voluntary industry consensus standard, extra staffing or training costs, and extra costs associated with errors if two different systems need to be maintained.
- Section 6, Part m indicates what an agency should do if no voluntary consensus standards exist. MBA recommends that the wording be revised to encourage an agency to first work with standards organizations and/or affected parties to determine if existing best practices might already exist. These best practices could be used as the basis either to refine existing best practices or to develop new standards that could meet the needs of the agency. Building standards based on existing best practices rather than creating agency specific proprietary requirements would likely result in a more effective and efficient standard for both industry and the agency.
- Section 6, Part p(iv) discusses the need for a freely available non-technical summary of standards that can be understood by the public. It may be difficult for members of the public who are not involved in the standard's area of focus to understand the intent of a standard. It is important for entities affected by the standard to understand the standard. MBA recommends that the wording be revised to indicate that the non-technical summary be understood by affected parties rather than the general public.

**Conclusion:**

MBA again appreciates OMB's work to develop this proposal and the opportunity to provide comments. Should you have questions or wish to discuss any aspect of these comments further, please contact Rick Hill, Associate Vice President for Industry Technology at (202) 557-2718 or [rhill@mba.org](mailto:rhill@mba.org) or Joe Gormley, Associate Regulatory Counsel, at (202) 557-2870 or [jgormley@mba.org](mailto:jgormley@mba.org).

Sincerely,



Mike Fratantoni

MBA Senior Vice President and Chief Economist