

June 7, 2018

Kristine M. Andreassen
Owen Bonheimer
Senior Counsels
Office of Regulations
Consumer Financial Protection Bureau
1700 G St., NW
Washington, DC 20552

Re: Docket # - CFPB-2018-0009 - Request for Information Regarding Consumer Financial Protection Bureau Rulemaking Processes

Dear Ms. Andreassen and Mr. Bonheim:

The 45 undersigned consumer, community, civil rights and legal services groups submit these comments in response to the Consumer Financial Protection Bureau (“CFPB”)’s Request for Information (“RFI”) regarding its rulemaking processes. In its first several years of operation, the CFPB’s rulemaking process has been inclusive, transparent, evidence-based and comprehensive. It is essential to preserve this robust process.

1) Objections to the CFPB’s Request for Information Process

We must first note our objections to the burdensome RFI process. The amount of time and attention required to adequately address the CFPB’s numerous RFIs on a multitude of subjects in a very short amount of time has diverted valuable consumer advocacy and third-party resources to respond to these requests. The very structure of these RFIs, the nature of many of the questions, and the fact that many focus on processes known mostly to industry actors and their lawyers, favor financial institutions with greater resources at their disposal, and we are gravely concerned about any attempts to weaken consumer protection through this process.

These issues have prevented us from responding in more detail, seeking more input and signatories, or publicizing the comment opportunity more widely. The CFPB must not take the limited number of comments from the public as indicative of a lack of broad objections to changes the CFPB might make that would weaken its role in effectively protecting the consumer public.

These comments summarize in brief our vigorous support of the current rulemaking process.

2) The CFPB should maintain and expand opportunities for public input in its rulemaking process.

We applaud the CFPB for embracing an inclusive approach to public outreach and including additional opportunities for public input in its rulemaking processes. The CFPB should continue its efforts to hear from consumers as much as possible to inform its rulemaking at all stages of the rulemaking process.

The CFPB's field hearings and meetings provide a valuable avenue for the general public to share their experiences directly with the CFPB, and the agency should hold more field hearings and meetings with consumer groups to allow the public more direct access to the CFPB throughout the rulemaking process. The CFPB should continue to explore innovative ways to broaden opportunities for input, including online tools and social media. It is crucial that the CFPB preserve this strong tradition of inclusive public outreach because the agency needs information from a variety of different perspectives. Public input has helped the CFPB make informed decisions in its rulemaking, and outreach should be expanded to allow for even greater public participation.

In particular, we strongly urge the CFPB to seek broad public input in the early stages of identifying problems and potential solutions and as proposed rules are being developed. Once the CFPB has developed a Notice of Proposed Rulemaking ("NPRM"), we support continuation of the practice of first publishing the proposal on the CFPB website, before it is published in the Federal Register. This practice gives the public more time to respond, and often the public is more familiar with the CFPB website. We also strongly support publishing both proposed and final rules along with a press release, blog post, summaries, fact sheets, videos and other materials to make the rulemaking process more accessible and more comprehensible to a wider audience.

While the public should be encouraged to submit comments on a timely basis, the CFPB should not impose any hard rules against continuing input after the comment period closes. Many rulemakings take many years, during which new information can become available, new issues may arise, or the public may become newly aware about the importance of a rulemaking.

The CFPB should also be proactive about reaching out to consumer groups for additional input when new information has come to light, or circumstances have changed, and in particular when industry has provided new information. We also encourage the CFPB to hold more joint roundtables so that all parties can be in the room at the same time. These roundtables have encouraged helpful dialogue in the past.

The CFPB should not impose a formal reply period to comments. Doing so would burden consumers, industry, and other stakeholders with a double comment obligation and would burden CFPB staff with reading additional comments. Such an approach would also unduly favor industry, which has the resources to read and respond to numerous comments, whereas neither our organizations nor certainly the general public has comparable capacity to do so.

3) The CFPB should stay transparent in its rulemaking process to ensure that the agency stays accountable to the public.

Since its beginning, the CFPB made a strong commitment to transparency so that its rulemaking process would be impartial and fully informed. For example, while the CFPB is required by law to meet with small business representatives before commencing rulemaking, the CFPB's commitment to transparency is demonstrated in its practice of distributing the briefing materials to the general public before these meetings, which provide insight into what options the CFPB is considering and an opportunity for all sides to provide input before the rulemaking process begins. Another example is the agency's ex parte

policy. Recognizing the danger of undue influence from one-sided communications behind closed doors, the CFPB implemented a policy requiring ex parte communications to be documented in writing and publicized.

The CFPB should continue these practices and publish as much information as possible to stay accountable to the public about the information it is considering in its rulemaking deliberations. We urge the CFPB to complete and publish ex parte memoranda promptly and to post a log of each ex parte contact that occurs regarding a rulemaking process. Consistent with prior practice, we also recommend that the Acting Director and Deputy Director post their complete daily calendars to the website to further improve the CFPB's transparency. If the CFPB considers information after the comment period ends for a rulemaking, this information should be made public too. Transparency is one of the CFPB's greatest strengths, and it should be preserved and expanded to protect the credibility of the rulemaking process.

4) The CFPB should continue to rely on all types of objective empirical research to inform its decisions in rulemaking and should not politicize the analytical process.

The CFPB has prioritized empirical research by integrating its Research and Markets team's impartial research into its rulemaking process. One major source of quantitative data used in this research is the information the CFPB collects through its examinations, enforcement actions, and consumer complaint database. It is important for the CFPB to continue collecting this data so that it can do its own empirical analysis, which preserves its impartiality.

Moreover, recognizing that numeric fields may not tell an entire story, the CFPB enhances its analysis with qualitative data and field insights. This qualitative data, including individual stories, is a fundamentally important part of meaningful research into the impact of consumer financial products and services, and must not be disregarded. Examples of consumer problems play a valuable role in alerting the CFPB to new issues, possible trends, emerging types of consumer harm, and gaps in or evasions of existing protections.

Disregarding consumer stories as unrepresentative "anecdotes" is particularly dangerous because it encourages one-sided decision-making. Consumers are well-equipped to describe their personal experiences with financial institutions, but in many cases neither consumers nor consumer advocates are likely able to assemble quantitative data that could show how widespread any problems are. Nor are they likely to have access to quantitative data from industry or third-party vendors. Without access to industry data, consumers are also in no position to respond to one-sided presentations. Yet their descriptions of their experiences can point to market trends, and to areas where further scrutiny is needed, and should not be ignored. As the agency has done throughout its history, it should use consumer stories as a starting point for further inquiry and an essential part of its analysis.

For the same reasons, while the CFPB is required to consider costs and benefits, it is not required to conduct a quantitative net benefit analysis and should not be required to do so. Industry will provide projections of costs, which may be overstated, while many benefits are inherently not quantifiable. Any requirement to quantify benefits downplays the very real but often unquantifiable benefits that CFPB

regulations provide, including enhanced disclosures for consumers, stability and soundness in mortgage markets, and preventing abusive and deceptive practices that harm consumers.

Similarly, the CFPB should not politicize the analytical process. The CFPB is by design independent from the White House and is not required to, and should not, submit its rules to the Office of Management and Budget (“OMB”) for review. An OMB review would be a fundamental violation of the CFPB’s independence and contradictory to congressional intent in maintaining the agency’s independence from the executive branch. We also object to moving the cost-benefit analysis section into the director’s office and urge that the function remain in the hands of non-political staff.

To its credit, the CFPB has always relied on a broad range of both quantitative and qualitative data in its analyses to inform its rulemaking. It is imperative that the CFPB continue to draw from a variety of sources for this type of research going forward.

The CFPB rulemaking process is thoughtful and thorough. From beginning to end, the CFPB’s rulemaking process provides all stakeholders with the opportunity to weigh in and allows for the CFPB to have data and information from a wide variety of sources in order to make informed decisions. This robust and responsive rulemaking process is effective in producing rules that carry out the consumer protection mission of the agency and should be maintained for the CFPB’s future rules.

Sincerely,

30th District Democrats
Allied Progress
American Consumer Justice Fellowship
Americans For Financial Reform
Arizona PIRG Education Fund
Arkansans Against Abusive Payday Lending
Boston Tax Help Coalition
Center for NYC Neighborhoods
Center for Responsible Lending
Chaudhri Group
Citizens For Honest Government
Common Cause
Connecticut Fair Housing Center
Consumer Action
Delaware Community Reinvestment Action Council, Inc.
Dragonfly Financial Solutions LLC
The Financial Clinic
Florida Consumer Action Network
Green Party of Taos County
Heartland Alliance for Human Needs & Human Rights
Interfaith Center on Corporate Responsibility

Mac's Transit Authority, LLC
Main Street Alliance
Massachusetts Communities Action Network
Mobilization for Justice Inc.
MoBo Bicycle Cooperative
Montana Organizing Project
NAACP
Naples Florida League of Women's Voters
National Active and Retired Federal Employees Association
National Alliance of Community Economic Development Associations - NACEDA
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
NEA/CTA
New Jersey Citizen Action
Oregon Food Bank
Prosperity Now
Public Justice Center
Self-Help Federal Credit Union
Society of Saint Vincent DePaul
South Carolina Appleseed Legal Justice Center
Tennessee Citizen Action
U.S. PIRG
Virginia Organizing
Wilshire Baptist Church