



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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May 29, 2018

Monica Jackson
Office of the Executive Secretary
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 Ms. Jackson:

The U.S. Chamber of Commerce (the Chamber) is the world's largest business federation, representing the interests of more than three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness (CCMC) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. Strong and appropriate consumer protections are an important and necessary component of efficient capital markets. We appreciate the opportunity to respond to the Bureau of Consumer Financial Protection's (the Bureau) Request for Information (RFI) regarding external engagements.

In the past, the Bureau has repeatedly passed up opportunities to engage in robust and meaningful engagement with stakeholders. We applaud the Bureau for undertaking this review of its external engagements and believe that more effectively utilizing tools for engaging with the public is critical. We urge the Bureau to accomplish this vital goal envisioned by Congress by:

- Facilitating meaningful public dialogue with stakeholders;
- Providing accurate information to consumers; and
- Fostering appropriate congressional oversight.

Only with accurate, robust input from all stakeholders will the Bureau be able to establish the best policy outcomes. The importance of the consumer finance marketplace is so great that no one side should dominate the discussion or be the only viewpoint given access. We urge the Bureau to provide organizations and stakeholders with different viewpoints with constructive forums that foster genuine policy debates so that the best solutions for American consumers and small businesses can be found.

Discussion

Congress has long recognized the importance of public participation in the regulatory process and reiterated the importance of such public engagement when creating the Bureau. For example, in addition to requiring the Bureau to engage in notice-and-comment rulemaking, Congress also required the creation of a Consumer Advisory Board and consumer complaint portal to ensure the Bureau had a mechanism for hearing from the public. Public input was a principal consideration when creating the Bureau.

(1) Facilitate Meaningful Public Dialogue with Stakeholders.

CCMC has been disappointed by the Bureau's public outreach since its creation. Although we participated in countless meetings and wrote dozens of comment letters, our viewpoint did not seem to be heard, and often it appeared that the conclusion had been made before a request for input was released. It did not seem as if the Bureau was truly searching for collaboration and compromise.

Meaningful public engagement with stakeholders is a critical tool that the Bureau must use to reach sound policy outcomes. Moreover, only truly transparent engagement with the public can support a broad understanding of the Bureau's plans and priorities, and allow a sense of trust to develop between the Bureau and its various stakeholders. Thus, the Bureau should base its approach to public engagement on the principle that public dialogue fosters trust, transparency, and better policy. We recommend three specific steps that the Bureau should take to achieve this goal:

1. Allow substantive engagement at Bureau field hearings;
2. Provide real opportunities for stakeholder input before promulgating a new regulation; and
3. Broaden participation on the Consumer Advisory Board.

a. Allow Substantive Engagement at Bureau Field Hearings.

The Bureau should facilitate effective engagements among stakeholders and policymakers. An honest exchange of views may not always lead to agreement, but it at least can build trust and foster understanding among the parties. In contrast, the failure to engage in a meaningful way can cause a breakdown in communication and the relationship between stakeholders and policymakers, which ultimately harms policy outcomes.

A critical place to improve in external engagements is in the Bureau's "field hearings." Although meetings across the country on different topics seem like they can be a helpful way to bring together diverse experiences and viewpoints on a topic, the Bureau's field hearings were often too tightly controlled by the Bureau press office to allow for a meaningful dialogue. Further, the panelists in the field hearing often would receive the information from the Bureau they were supposed to discuss only hours before the event. It has been incredibly difficult for panelists to provide meaningful feedback in such a tight timeframe, especially if the discussion was based on a complex topic covered in a several-hundred-page rulemaking.

Moreover, the Bureau press team has used multiple tactics to ensure its message was controlled and diverse opinions were muffled. Specifically, the Bureau would use a tactic deemed "midnight embargoes" where it would release the information it wanted to get picked up by the press – a rule, proposal, study, etc. – at midnight before a field hearing while most panelists were sleeping. For years, we asked the Bureau to halt the practice of "midnight embargoes," but it persisted. These types of regulating in the night tactics eroded trust between industry and the Bureau because it appeared like the Bureau wanted to catch the panelists flat-footed. Only with ample time and appropriate analysis should a regulator hold a discussion about a complex study or rulemaking that can shape the consumer finance marketplace.

We look forward to a better, more inclusive approach. Other agencies host highly substantive roundtables and day-long conferences that permit longer presentations and extended, educated exchanges among panel members as well as with agency staff, with an opportunity for all interested persons to submit written comments. For example:

- In 2011, the FTC conducted three roundtables to learn about automobile financing. It began this process with a notice in the Federal Register, solicited public comments (100 were received and docketed), and invited thirty-one speakers representing consumers, industry, and

other government agencies (including the Bureau) to participate in even-handed discussions at each of the three events.¹

- In 2014, the SEC hosted a cybersecurity roundtable that featured 29 panelists, permitted notice and comment (14 comments were received), and published the resulting transcript.²
- The FTC has also started holding annual privacy forums to discuss emerging concerns and solutions with interested stakeholders and experts.
- Throughout the years, the prudential regulators have also held numerous constructive dialogues to dissect complex policy issues with the appropriate stakeholders, including assessing the Community Reinvestment Act.

The Bureau should apply these practices in its own deliberative process to achieve more balanced and informed policy outcomes.

b. Provide Real Opportunities for Stakeholder Input Before Promulgating a New Regulation.

The Bureau should embrace the benefits of providing stakeholders notice and opportunities to comment on proposed policies, whether developed through rulemaking or less formal processes. We urge the Bureau to ensure that stakeholders have meaningful opportunities to comment at all appropriate times during a policymaking process, whether in a formal comment, small business panel review process, or more informal meeting.

In particular, we urge the Bureau to allow public comment before proposed rules are issued and to solicit comments on the evidence on which the Bureau intends to rely in developing a rule. Receiving comments at an early stage would allow for more ideas to be considered before conclusions are drawn, challenge assumptions, and create a more open-minded rulemaking process. Soliciting comments on the evidence underlying a rulemaking would give the Bureau and the public confidence that the rule is based on the best available information. We applaud the Bureau for

¹ See generally Fed. Trade Comm'n, *The Road Ahead: Selling, Financing & Leasing Motor Vehicles* (Aug. 2011).

² See generally Secs. & Exch. Comm'n, *SEC Announces Agenda, Panelists for Cybersecurity Roundtable* (Mar. 24, 2014).

establishing this “Call to Evidence” with 12 RFIs to hear from the public, and conduct an “audit” of the agency. Nowhere in the Bureau’s enabling statute does it mandate that the Director must do so, but through this exercise, the policymakers will be better informed about the agency they are governing. In doing so, the Bureau will strengthen its governing rulemaking processes, leading to better policy outcomes for American consumers and small businesses.

c. Broaden Participation on the Consumer Advisory Board.

Congress tasked the Bureau with creating a Consumer Advisory Board (CAB) to “advise and consult with the Bureau in the exercise of its functions” and to “provide information on emerging practices in the consumer financial products or services industry.”³ Congress directed the Bureau to “assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services,” including through “representation of the interests of covered persons and consumers.”⁴ In directing the Bureau to incorporate the expertise of financial institutions and other covered persons, Congress recognized that financial services companies can offer the Bureau enormously valuable insights from their experience serving consumers.

Companies have expertise on the products that consumers actually want and use, how consumers choose to access products and services, how consumers respond to educational materials, how product access will be affected by regulatory policies, and much more. Incorporating these perspectives into the CAB not only would have the direct benefit of informing the Bureau, but also would allow for a candid exchange of ideas among the range of stakeholders who work on consumer financial protection issues, allowing the CAB to help build trust among the diverse groups who work on the shared goal of ensuring consumer access to safe financial products.

To date, the Bureau has failed to utilize the full potential of the CAB to take advantage of the enormous expertise that companies that provide financial products and service every day have to offer. Instead, the Bureau has often used the CAB to release the Bureau’s initiatives, give policy speeches, and create press attention, instead of truly assessing complicated consumer finance issues. Under previous leadership, there was limited open public dialogue between the CAB members, and there was a lack of time for members to prepare because the materials were not given to them much in advance.

³ Dodd-Frank Act § 1014(a).

⁴ Dodd-Frank Act § 1014(b).

We believe that the Bureau will be served best by receiving perspectives from diverse viewpoints. In particular, the Bureau should expand opportunities for companies to provide their relevant expertise to the CAB and make the CAB more inclusive to represent different stakeholders. We urge the Bureau to make appropriate changes to welcome more disparate views to the table, provide briefing materials beforehand to prepare the CAB members, and restructure its meetings to achieve these goals.

(2) Provide Accurate Information To Consumers.

Congress tasked the Bureau with ensuring that markets for consumer financial products or services function efficiently and transparently.⁵ Therefore, it is critical that consumers receive accurate and transparent information from both the financial services industry and its regulators. For example, complaint databases that are not verified, and hyperbolic press releases create a misleading public narrative and contradict the collaborative environment that promotes good policy.

a. Complaint Database

A notable example of Bureau practice that has created an unreliable narrative is publishing an unverified complaint database. As mentioned above, Congress gave the Bureau the power to create a complaint database so consumers could be heard. However, the Bureau has persisted in publishing complaint data even though it has acknowledged that the data can mislead consumers – and despite any statutory requirement to do so. This is an important example of an external engagement that has seemingly purposefully painted the financial services industry in a negative light. We plan to address the publishing of complaints in a forthcoming comment.

Further, the publishing of monthly reports that displayed the “top most complained about companies” had the potential to mislead consumers that these were the “worst” companies. In reality, a high number of complaints could merely indicate a company had a large customer base and therefore there were more people able to complain. Theoretically, the companies may have had a comparatively low percentage of complaints compared to smaller institutions, but that information was not conveyed to the public. We applaud the previous leadership at the Bureau for halting the practice of naming companies in these monthly reports in response to feedback

⁵ 12 U.S.C. § 5511(b)(5).

from CCMC and others in the industry. This change eliminated the potential for this kind of misinformation, and we hope the Bureau will make similar improvements to the overall complaint database.

b. Press Releases

Over the years, we have observed press releases that use hyperbolic language and misstate the terms of consent orders the Bureau has entered into with financial services companies. As discussed below, we urge the Bureau to instruct its press department to work closely with its lawyers to ensure public statements accurately and fairly represent the terms of agreements. Otherwise, the reputation of companies that seek to settle claims asserted by the Bureau may be unfairly tarnished and inaccurate information may be disseminated into the public.

Responsible financial services companies work hard to comply with the law, investing huge amounts of time and financial resources into complying with an exceptionally complex regulatory scheme, with multitudes of compliance officers, risk management procedures, regulatory attorneys, and auditors. As we explained in response to the RFI on enforcement processes, when enforcement actions arise, the Bureau should ensure that its public statements mirror the contents of the consent order. By doing so, the Bureau would align its public statements with the actual allegations and corrective actions, and adopt a practice consistent with those of other agencies such as the Department of Justice and the prudential banking regulators.

In the past, we have expressed our concern about the Bureau's practice of using press releases to describe consent orders – which almost always involve no admission of wrongdoing – in a hyperbolic manner that is likely to mislead customers. Even the Bureau's own Ombudsman has noted such misrepresentations. For instance, the Ombudsman noted that some press releases did not reflect that a challenged company practice had ended. Likewise, it observed that some press releases could lead to reader confusion because “there were some words with legal meanings or interpretations in the press releases that were not in the consent orders.”⁶ And the Ombudsman pointed out that “there was some summarization in the press releases that resulted in certain factual elements seeming more important than they otherwise might, even if factually correct.”⁷

⁶ CFPB Ombudsman, Annual Report to the Director 2015 at 23 (Nov. 15, 2016).

⁷ *Id.*

The reputational risks to an institution going through an enforcement action cannot be overstated. If a wrongdoing has occurred, it should of course be reported. Similarly, if certain wrongdoing *did not* occur, the press release should not be sensationalized to imply greater harm was done. We ask the Bureau to review the press release with the target institution when agreeing to the consent order and before making the press release public to ensure it is accurate and nothing is exaggerated.

(3) Facilitate Appropriate Congressional Oversight.

Despite the lack of true congressional oversight, we urge the Bureau to work with both sides of the aisle towards the common goal of consumer protection. We do not expect the Bureau to agree with every member of Congress all of the time, and are fully aware that deep policy disagreements will continue to persist. But other agencies have shown that it is possible to build relationships across Congress even on contentious issues, and we are hopeful the Bureau can do the same.

Providing additional transparency to Congress will be instrumental to proper oversight and increasing consumer protection. The Bureau too often has chosen to attempt to conceal, which breeds distrust. As noted above, candid discussion may not foster agreement, but it may at least foster trust. Congressional committees repeatedly requested details on how the Bureau performed its proxy analysis and what controls it considered in performing its regression analysis. The Bureau chose to conceal that information rather than have an open discussion about its methodology. As a result, the Bureau lost the chance to build confidence in its approach to the issue. We urge the Bureau not to repeat that mistake.

Evidentiary rulemaking and broad stakeholder input are important hallmarks of American government and necessary for any regulatory body to engage in informed rulemaking and meet its statutory obligations. Our suggestions are designed to constructively engage with the Bureau and correct previous shortfalls that have prevented stakeholder input.

We are happy to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Thomas Quaadman