



June 1, 2020

Hon. Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2020-0013, Request for Information: Taskforce on Federal Consumer Financial Law

Dear Director Kraninger:

The National Association of Consumer Advocates (NACA), a nonprofit organization actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means, submits its response to the Consumer Financial Protection Bureau's (bureau or CFPB) Request for Information (RFI) related to "the Taskforce on Federal Consumer Financial Law (taskforce)," established to examine "the legal and regulatory environment facing consumers and providers of consumer financial products and services."¹

NACA is a long time and ardent supporter of the CFPB's creation, its mission, and its efforts to make the financial marketplace fair for consumers and to ensure that financial products and services work better for ordinary people. Moreover, NACA's community, chiefly made up of advocates who represent consumers with financial disputes, including advocates who provide free, civil legal assistance to low-income people, regularly interacts with the bureau on behalf of and for the benefit of their consumer-clients.²

These comments will not respond directly to the substantive inquiries in the RFI. Instead, it sets forth the following reasons to support NACA's request for suspension of the activities of the CFPB's newly formed taskforce:

1) The taskforce's announcement, its creation, and subsequent activities have occurred at a rapid pace. The bureau first announced creation of the taskforce on October 11, 2019, and subsequently launched an application process for taskforce members. Three months later, in January 2020, the bureau published its selection of the taskforce's five members. On March 27, 2020, the taskforce posted its Request for Information to the public, two weeks after the country entered and remains in a virtual shut down and Americans were ordered to quarantine at home to combat the spread of the coronavirus. The RFI, which contemplates broad and wide-ranging issues related to consumer protection law and regulation, and invites responses to sweeping questions about possibly

¹ Bureau of Consumer Financial Protection, *Request For Information To Assist the Taskforce on Federal Consumer Financial Law, Notice and request for information*, 85 Fed. Reg. 18214, April 1, 2020.

² Nat'l Assoc. of Consumer Advocates, *CFPB in Our Communities, Advocates Reflect on the Consumer Bureau's Role in Achieving Justice for Consumers: An Online Survey*, Feb. 2018, <https://www.consumeradvocates.org/media/news/naca-survey-cfpb-fully-immersed-key-resource-and-partner-for-distressed-consumers>.

comprehensive changes to the law, afforded a mere two-month period – until June 1 – in which interested stakeholders could respond to the taskforce’s request.

2) Meanwhile, the extraordinary circumstances of the COVID-19 pandemic forced stakeholders to urgently re-prioritize their activities to respond to the crisis’ impact on consumers and the consumer finance market, leaving little time to respond to the RFI. The bureau itself has received record numbers of COVID-19 related complaints and is charged with assisting tens of millions of Americans devastated by the financial impact of the crisis and overseeing regulated entities’ responses to the unprecedented event.³ Stakeholders submitted requests to the bureau urging it to extend the deadline and provide a more reasonable time period in which the public can respond to the taskforce inquiries. The bureau denied multiple requests from stakeholders and members of Congress⁴ to extend the time period for public comments.

3) None of the members of the five-person taskforce has a history of supporting consumer protection. Instead, their past comments and associations all indicate affinity to financial industry priorities, including deregulation and restrictions on consumers’ access to justice.

The members of this taskforce have described regulations in the financial services context, using terms, such as “paternalistic” and “onerous.” Taskforce members who have spoken of regulation relating to consumer credit have called such regulations “restrictive.” Taskforce members have decried additional regulations to protect consumers who were victims of subprime mortgages during the financial crisis. Taskforce members have opposed expansion of federal agency authority to include consumer redress in certain contexts when tackling fraud, and have opposed monetary penalties against wrongdoers in other contexts. When they have contemplated privacy of unfair and deceptive advertising, taskforce members have minimized the importance of safeguards for consumers and advocated for limited enforcement. And most notably, publications have often quoted taskforce members’ unrelenting criticism of the CFPB and the Dodd-Frank Wall Street Reform and Consumer Protection Act, the 2010 financial reform law that created the agency.⁵

4) The bureau is already equipped to carry out the responsibilities granted to a taskforce. The bureau asserts that the taskforce is inspired by the National Commission on Consumer Finance a commission established in 1968 by the Consumer Credit Protection Act (CCPA), but the two are distinct. The CFPB’s five-member taskforce was not created or authorized by Congress, but by the director. The 12-member 1968 commission was bipartisan with members representing different interests, while the CFPB’s taskforce members hold similar views, including a clear lack of support for stronger consumer protection laws and regulation.

³ Sylvan Lane, *Coronavirus drives record number of complaints to consumer bureau*, THE HILL, May 1, 2020, <https://thehill.com/policy/finance/495705-coronavirus-drives-record-number-of-complaints-to-consumer-bureau>

⁴ Brown Urges CFPB Director Kraninger to Extend Taskforce Deadline, May 28, 2020, <https://www.brown.senate.gov/newsroom/press/release/brown-cfpb-kraninger-extend-taskforce-deadline>

⁵ Rob Seal, *Subprime Mortgages: A Good Thing?*, UNIVERSITY OF VIRGINIA SCHOOL OF LAW NEWS AND MEDIA, April 3, 2008, https://www.law.virginia.edu/news/2008_spr/zywicki.htm; Todd Zywicki, *The Consumer Financial Protection Bureau and the Return of Paternalistic Command-and-Control Regulation*, THE FEDERALIST SOCIETY, Sept. 8, 2015; Todd J. Zywicki and Thomas A. Durkin, *Why Everything Elizabeth Warren Told You About Consumer Credit Is Wrong*, FORBES, Oct. 10, 2014, <https://www.forbes.com/sites/realspin/2014/10/10/why-everything-elizabeth-warren-told-you-about-consumer-credit-is-wrong/#45b08fed301f>; Bob Sullivan, *Five years after financial reform, new consumer agency still hasn’t won over critics*, BOBSULLIVAN.NET, RED TAPE CHRONICLES, July 23, 2015, <https://bobsullivan.net/gotchas/five-years-after-financial-reform-new-consumer-agency-still-hasnt-won-over-critics/>; Testimony of J. Howard Beales III, Before the Subcomm. on Commerce, Manufacturing, and Trade Comm. on Energy and Commerce, House of Representatives on *The FTC at 100: Views from the Academic Experts*, Feb. 28, 2014, <https://docs.house.gov/meetings/IF/IF17/20140228/101812/HHRG-113-IF17-Wstate-BealesH-20140228.pdf>; L. Jean Noonan, *Love Triangle or Bermuda Triangle?*, HUDSON COOK INSIGHTS, February 2012; Kelley Drye, <https://www.kelleydrye.com/Our-People/William-C-MacLeod> (“In his work with trade associations and their members, he has resolutely fought onerous regulations...”).

The establishment of the 1968 commission has more in common with the CFPB, than it does with the taskforce. The commission and the CFPB were both authorized by acts of Congress and granted clear mandates. The commission was created “to study and make recommendations to the Congress and to the President on the functions and structure of the consumer finance industry, as well as consumer credit transactions generally.” The CFPB, established by the Dodd-Frank Act, is charged with overseeing and enforcing federal financial laws that specifically protect consumers.

5) The taskforce could benefit from the CFPB’s legitimate and authoritative position, potentially using it to push harmful, deregulatory principles on the financial marketplace. As previously mentioned, the taskforce membership is entirely composed of individuals whose policy positions are in sync with the traditional positions of the financial industry. According to the RFI, the taskforce is “charged with (1) examining the existing legal and regulatory environment facing consumers and providers of consumer financial products and services; and (2) reporting its recommendations for ways to improve and strengthen Federal consumer financial laws, including recommendations for resolving conflicting requirements or inconsistencies, reducing unwarranted regulatory burdens in light of market or technological developments, improving consumer understanding of markets and products and services, and identifying gaps in knowledge that the Bureau should address through future research.” Any report from this taskforce no matter how dangerous or risky its recommendations could retain an air of legitimacy, which will potentially harm the honest development of consumer law and regulation.

It is always a useful activity to examine existing law and inquire about unexplored ways to achieve the purpose that Congress has set up as CFPB goals in its oversight of the financial marketplace. Legal and regulatory examination can and has been pursued within the CFPB’s current structure, through its ongoing research, rulemaking, and rule reviews. However, it is risky and inappropriate for CFPB leadership to deploy agency resources to hire outside parties who have a clear one-sided ideology to achieve ends that may be contrary to the agency’s mission and the statutory mandates of Title X of the Dodd-Frank Act.

The sudden creation of the CFPB taskforce, its predisposed policy positions, and its ill-timed and limited call for public comments during a national health and economic crisis, raises red flags about its legitimacy and purpose. Whether the taskforce was created in an effort to topple well-established consumer protection laws and regulation or not, the evidence so far in these early stages shows that the taskforce is not needed for the bureau to fulfill its statutory mandate. Accordingly, the bureau should suspend any further taskforce actions, and redirect its attention to critical work that it is already authorized to exercise in protection of American consumers and the safeguarding of the financial marketplace.

Sincerely,

Christine Hines
Legislative Director