



May 14, 2018

Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

**Via: <http://www.regulations.gov>**

Re: Docket No. CFPB-2018-0003, CFPB-2018-0003-0361

**Comments to the Consumer Financial Protection Bureau's (CFPB) Request for Information Regarding Bureau Enforcement Processes**

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, respectfully submits these comments responding to the Consumer Financial Protection Bureau's (CFPB or bureau) Request for Information Regarding Bureau Enforcement Processes (RFI).

As we similarly stated in our response to the bureau's RFI relating to Civil Investigative Demands, NACA is concerned that the CFPB has issued this and other public Requests for Information as an opening to revamp its internal processes and functions to hinder activities meant to protect consumers and the financial markets, and consequently, shield financial institutions from accountability for wrongdoing and harm they cause.

CFPB investigations and ensuing enforcement actions have benefitted tens of millions of consumers across the country. The bureau must reject any changes that would interfere with the ability of its professional staff to continue their work enforcing consumer protection laws and fulfilling the agency's statutory mission to protect consumers in the financial marketplace.

**Enforcement RFI Hints at Muted Approach to Future Enforcement**

In the RFI at issue, the CFPB calls its enforcement processes into question. The RFI seems to disregard consumer relief and redress caused by harmful financial industry practices, and appears to view the fair treatment of consumers, i.e. the core purpose of its enforcement authority, as a secondary matter. The first phrase in the bureau's description of its request states that it is "seeking public comment on how best to achieve meaningful burden reduction."<sup>1</sup> While the description continues with a faint nod to enforcement of

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<sup>1</sup> Consumer Financial Protection Bureau (CFPB), *Request for Information Regarding Bureau Enforcement Processes*, Docket No. CFPB-

laws and fulfillment of statutory objectives, it is evident from its solicitation that the bureau seeks to reduce the “burden” of its enforcement activities on covered entities.

Among other things, the bureau requests information on communications between the agency and entities, views on a civil penalties matrix, coordination of enforcement, and in-person presentation before legal proceedings –items that involve interactions between entities and the bureau, with little reference to harmed consumers’ treatment or avenues for redress during the enforcement process. Indeed, the underlying tone of the Request implies that covered entities are not treated fairly; that the bureau would support an enforcement program that proceeded at a slower, lengthier pace; and that it would consider diminishing the vigorous application of penalties against bad actors. This approach may contravene with the agency’s statutory mission and responsibilities.

### **Fairness and Accountability to the Public are Built into the Bureau’s Enforcement Process**

The CFPB’s Office of Enforcement is designed to be meticulous and fair in its treatment of corporate actors that it considers for enforcement actions.<sup>2</sup> For example, before the CFPB even begins to research or subsequently investigate a potential enforcement matter, the bureau considers numerous factors including the impact on: the potential subject, the financial market, the bureau and enforcement resources, the bureau’s strategic plan, other CFPB divisions, and “law enforcement partners.”<sup>3</sup>

The CFPB’s publicly available policy and procedures manual for enforcement describes the extensive research that must occur before an investigation is opened, and sets forth requirements relating to ensuring that bureau staff comport themselves in an ethical manner.<sup>4</sup> The bureau also has issued reasonable rules to govern its enforcement processes, including its investigations and adjudication proceedings.<sup>5</sup> Throughout its more than six years of pursuing enforcement actions, the agency’s commitment to stopping and addressing consumer financial harm through a fair and open process has been unmistakable.

The CFPB also has established a record of informing the public of enforcement actions and outcomes. The public information, typically communicated through press releases along with copies of complaints and/or consent orders, has been accessible and easily understandable. Up until the recent past, CFPB press releases included detailed descriptions of the respective enforcement action, including the entity’s misconduct, the penalties imposed against it, and remedies available to harmed consumers.

The bureau should not take any steps to close critical parts of the enforcement process to the public. For example, the press release for its recent enforcement action against Wells

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<sup>2</sup> See, CFPB, *Policies and Procedures Manual, Office of Enforcement*, version 3.0, (May 2017), [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201710\\_cfpb\\_enforcement-policies-and-procedures-memo\\_version-3.0.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201710_cfpb_enforcement-policies-and-procedures-memo_version-3.0.pdf).

<sup>3</sup> CFPB, *Policies and Procedures Manual, Office of Enforcement*, version 3.0, at 34.

<sup>4</sup> *Id.* at 37.

<sup>5</sup> Ori Lev, *New rules governing the CFPB’s enforcement work*, CFPB Blog, (June 6, 2012), <https://www.consumerfinance.gov/about-us/blog/new-rules-governing-the-cfpbs-enforcement-work/>.

Fargo, despite the significant penalty, gave little information about the bank's severe and widespread misconduct.<sup>6</sup> It shared no information about the harm suffered by Wells Fargo's victims, and it presented no avenues for them to take steps to obtain redress. While the consent order contained more detail and direction, a CFPB press release is a major communications tool for the agency to make vital information about its activities accessible to the press and the public. The bureau should continue to use the press release, its blog, and other outreach tools to adequately inform the public and share useful and practical information about its enforcement actions.

The bureau should continue to support all avenues to research and investigate potential enforcement actions, and allow for public accountability. The bureau's supervisory program is essential to monitoring the activities and business practices of covered entities to assess their compliance with consumer financial protection laws. However, many aspects of supervision are confidential and closed to the public. If the process reaches a stage where enforcement proceedings become necessary, the bureau must ensure that it is not further insulated or unnecessarily closed off from public scrutiny and inspection.

### **A Vibrant Enforcement Program Encourages Stronger Compliance with Laws, Deters Wrongdoing, and Decreases Harm To Consumers**

Overwhelmingly, CFPB enforcement actions and resulting consent orders or other outcomes are not close calls. They are mostly cases of clear wrongdoing. With its investigative and enforcement authorities, the CFPB has taken legal actions against credit card companies for engaging in unfair, deceptive, and abusive practices related to marketing, billing, and enrollment for credit add-on products and services; banks for charging overdraft fees to consumers who had not agreed to overdraft services; payday lenders for pressuring borrowers into debt traps; for-profit colleges for exploiting students and pushing them into unaffordable loans; debt collectors for using illegal tactics to intimidate consumers into paying debts they may not owe; mortgage companies for wrongly foreclosing on consumers' homes.

Covered entities know when they are violating consumer laws. Yet, industry players have complained that the bureau's enforcement program amounts to "regulation by enforcement." They claim they would prefer written rules to follow rather than the bureau's enforcement of the law and imposition of injunctive relief against individual entities that may impact the future conduct of financial institutions with similar products, services or business practices. Even the CFPB "acting director" Mick Mulvaney commented publicly that he seeks to end "regulation by enforcement,"<sup>7</sup> indicating that he intends to temper the bureau's vigorous and effective enforcement process.

The assertions behind the industry complaints are disingenuous. First, the CFPB should never bend to the industry's repeated suggestion that the agency abandon its role to

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<sup>6</sup> CFPB, *Bureau of Consumer Financial Protection Announces Settlement with Wells Fargo for Auto-Loan Administration and Mortgage Practices*, (April 20, 2018), <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-settlement-wells-fargo-auto-loan-administration-and-mortgage-practices/>.

<sup>7</sup> Matt Egan, *Trump official denies he's trying to destroy the CFPB*, CNN MONEY, (April 11, 2018), <http://money.cnn.com/2018/04/11/investing/mulvaney-cfpb-hearing/index.html>

investigate and take action against illegal activities in the financial marketplace. Law enforcement is a critical part of the agency's mission. Second, consent orders resulting from enforcement actions, including the consumer relief and remedies provided, are based on the facts of each individual case. Where as, regulations are offered to address broader industry conduct. Admittedly, certain business practices are common to other entities in the industry. In these circumstances, covered entities can and should look to the consent orders for guidance. It is well established that a failure by an industry player that is met with some accountability has led other players in the marketplace to implement or improve compliance measures to prevent similar failures.

CFPB enforcement actions have a significant role to play. Without disrupting the marketplace, consent orders can serve as a guide to deter others from making the same or similar errors. From the perspective of harmed consumers, enforcement actions are late because the illegal actions and harm have already occurred. However, a vigorous enforcement program incentivizes compliance to prevent future harm from occurring.

Finally, the CFPB should not implement changes, including the content of its consent orders, that would effectually water down incentives to comply with consumer protection laws. The CFPB also provides guidance to businesses on how to act responsibly and receive favorable treatment during enforcement proceedings in certain circumstances.<sup>8</sup> But if companies know the costs of violating the law compared to the profit or benefit, then they would lack incentive to stay in compliance.

In addition, CFPB enforcement actions and detailed consent orders with injunctive provisions can inform courts about lawful conduct in the marketplace. For example, in a recent decision, a court refused debt collectors' motion to exclude from trial evidence in a consent order between the bureau and the defendants.<sup>9</sup>

## **Recommendations**

As it evaluates its enforcement processes, the bureau must refrain from adding burdens, such as new meeting requirements, to the already thorough and comprehensive enforcement process. As much as it is feasible, enforcement proceedings must be clear and transparent and regarded as a mechanism that is ultimately accountable to the public. It must refrain from granting industry players more opportunities to delay or to avoid investigations and other essential components of enforcement proceedings.

Further, it must allow professional staff attorneys to fulfill their duties with the vigor and independence required to enforce multiple consumer protection laws. The CFPB must refrain from turning the process into a political instrument susceptible to corporate lobbyists. Eliminate opportunities that would allow corporations to advocate before leadership or engage in other political machinations to damage the process. Instead the

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<sup>8</sup> CFPB, *CFPB Bulletin 2013-06, Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation*, (June 25, 2013), [https://files.consumerfinance.gov/f/201306\\_cfpb\\_bulletin\\_responsible-conduct.pdf](https://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf)

<sup>9</sup> *Verburg v. Weltman, Weinberg & Reis Co., L.P.A.*, Case 1:13-cv-01328-RJJ (W.D. Mich. Nov. 17, 2017).

bureau must build on the foundation of its experience by continuing to enforce laws, protect consumers, and hold bad actors accountable.

Sincerely,

Christine Hines  
Legislative Director