



*Advancing Economic Security
and Community Prosperity*

June 7, 2018

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

Re: Docket No. CFPB-2018-0009 -- Request for Information Regarding Consumer Financial Protection Bureau Rulemaking Processes

Dear Ms. Andreassen and Mr. Bonheimer:

Woodstock Institute submits 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. About Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of equitable lending and investment, wealth creation and preservation, and access to safe and affordable financial products and services. We work locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. Our key tools include: applied research; policy development; coalition building; and technical assistance.

In recent years, Woodstock played a leading role on reforms regarding payday and other high-cost lending, currency exchanges/check-cashers, debt collection, public fines & fees, children's savings accounts, and retirement savings programs for private sector workers. Woodstock also plays a leading role in helping to ensure banks invest in and provide safe and affordable services to low- and moderate-income communities, communities of color, and older people.

2. Objections to the CFPB's Request for Information Process

This RFI is one of a litany of RFIs that have been issued under the direction of Acting Director Mick Mulvaney. The number of RFIs and their frequency is overly burdensome to small not-for-profits like Woodstock. Industry, with its greater resources in terms of staff and otherwise, is far more capable than the consumer advocacy community in developing thorough responses to this flood of RFIs. The amount of time and attention required to try to address the flood of RFIs has diverted scarce nonprofit resources that might otherwise be spent on other issues like the gutting of Dodd-Frank or the multitude of Congressional efforts to repeal agency rulemakings through the Congressional Review Act. The information provided through this RFI process will be inherently skewed in industry's favor simply because it has the necessary resources to create an official record reflecting its position. Accordingly, at the end of the day, the official record that will have been established through this process is not an accurate reflection of the variety and force of opinions on the many issues covered by the RFIs. We anticipate the need to raise objections insofar as this process is used to back off enforcement, lessen oversight, or gut the CFPB itself.

3. 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 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 consumer protection is the core the agency's mission. Public input has helped the CFPB make informed decisions in its rulemaking, and outreach should be expanded to allow for even greater public, i.e., consumer, participation. Field hearings and roundtable discussions should take place as a complement to, and not as a substitute for, regular in-person meetings of the duly constituted Consumer Advisory Board.

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 receiving 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. Commenting on any relevant topic, including comments submitted by others, should be encouraged, but a formal reply period unduly favors 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.

4. 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. Transparency is one of the CFPB's greatest strengths, and it should be preserved and expanded to protect the credibility of the rulemaking process.

5. 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. These qualitative data, including individual stories, are a fundamentally important part of meaningful research into the impact of consumer financial products and services, and must not be disregarded. Examples of consumer experiences 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 consumers' 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.

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,

WOODSTOCK INSTITUTE