

May 14, 2018

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Agency/Docket Number: Docket No. CFPB-2018-0003; Document Number: 2018-05784--Request for Information Regarding Bureau Enforcement Processes

Ms. Jackson:

The thirty-four undersigned consumer, community, civil rights, and legal services groups submit these comments in response to the Consumer Financial Protection Bureau's (CFPB's) Request for Information ("RFI") regarding Bureau enforcement processes.

The Consumer Bureau must retain efficient and effective law enforcement processes to deter violations of the law and provide restitution to consumers harmed by illegal consumer financial services practices. The bureau's investigation procedures must not involve political calculations, hinder the ability to act quickly when there is ongoing consumer harm, or give lawbreakers tools to delay, hide evidence, or hamstring the Bureau's investigations, litigation, or settlement negotiations. We elaborate on four main points below.

1. The severe consumer protection failures that led to the creation of the Bureau provide strong evidence that the Bureau should retain a firm and aggressive law enforcement program.

The CFPB was created in response to the severe financial crisis that devastated the nation and American families in 2008. This crisis began with fundamental problems in the mortgage and other consumer credit markets but spread to the entire economy, harming individuals and businesses alike. The financial marketplace was rife with deceptive, unfair, and abusive practices. Those practices did immense damage to countless consumers, while helping bring on a financial and economic meltdown in which tens of millions of Americans lost homes, jobs, assets, savings and economic security. Responsible businesses large and small also suffered from the fallout created by irresponsible companies.

Until the CFPB opened its doors in 2011, the responsibility of standing up for the fair treatment of consumers by banks and other lenders had been scattered across half a dozen federal regulators, and was often neglected. Other financial companies, such as debt collectors, credit reporting agencies and payday lenders, had faced little or no real federal

oversight. The clear inadequacy of that arrangement, and the enormous harm consumers suffered as a result, led Congress to establish an agency expressly dedicated to this one task.

The CFPB was created in order to have the focus, tools, information, speed, and flexibility to address existing and emerging problems in consumer financial markets. Congress held over 100 hearings and had extensive debate about possible ways to prevent similar consumer protection failures. Congress carefully considered how to craft an agency that would be independent of financial interests and politics, focus on consumer protection, and have the means and flexibility to address new problems quickly and responsibly as they arise. Many aspects of the Consumer Bureau's structure, including its investigative tools and procedures, were designed to serve these goals.

2. The Consumer Bureau has already built an effective and fair consumer law enforcement office.

Since it was established, the Consumer Bureau has wisely used its authority to protect the public. The agency's enforcement cases have resulted in nearly \$12 billion in relief for American families. Approximately 29 million Americans—almost 10 percent of the adult American population—have received some form of restitution in Bureau enforcement cases. Over 90 percent of this restitution came in cases where the defendant engaged in a deceptive act or practice. Nevertheless, in over two hundred enforcement cases, the Bureau has had very few losses or set-backs in litigation. Independent federal judges have agreed with nearly every position taken by the CFPB's enforcement office when given the opportunity to do so. Our organizations believe that some members of the financial services industry lobby have unfairly characterized the Bureau's enforcement track record. We support the Bureau's mission and believe that enforcement staff must continue to receive the resources and authority they need to do their job.

Bureau leadership should also bear in mind that some comments the Bureau receives about its law enforcement processes may originate from companies that were ultimately found to have broken the law or mistreated consumers. The Bureau should bear in mind that some businesses and individuals will attempt to exploit any changes to the Bureau's enforcement processes. If the Bureau makes it more difficult for enforcement staff to hold wrongdoers accountable for illegal business practices, some businesses will take advantage of these changes in bad faith. Both consumers, and businesses that are committed to lawful business practices, should prefer an efficient, effective Bureau enforcement program.

3. Bureau enforcement staff should have flexibility and discretion over how they conduct investigations and litigation.

We believe that the Bureau's current enforcement processes are appropriate. Many of the changes that the RFI questions appear to contemplate could unduly delay investigations or

litigation, allowing consumer harm to continue. The Bureau should not modify its procedures in a way that could give lawbreakers tools to thwart the Bureau's work on behalf of the public. Existing Bureau policies and procedures already provide sufficient guidance on how to communicate, whether to use the Notice and Opportunity to Respond and Advise process, and when staff should meet with investigation subjects. Bureau leadership should not micromanage day-to-day operations of the Enforcement Office in a way that creates delays or limits the effectiveness of staff. Our organizations believe Bureau investigations should proceed as quickly as possible. However, we also believe that investigations should not be closed or hindered simply because uncovering evidence of illegal conduct in some cases takes longer than expected. Moreover, we are concerned that financial institutions may use changes in the Bureau's enforcement processes to lobby for special treatment, favors, or other inappropriate accommodations. Bureau leadership should bear in mind that families harmed by unlawful financial practices too often do not have a voice in consumer law enforcement cases.

Every defendant in a CFPB enforcement matter has the right to seek review by a judge. Bureau policies and procedures should not be revised to create further decision-making hurdles that decrease the likelihood of enforcement actions or create administrative bottlenecks in pursuing justice. Similarly, Bureau staff should have considerable discretion in determining when coordinating enforcement efforts with other state and federal agencies is appropriate. In some cases, coordinating enforcement actions can lead to broader, more effective relief for consumers. But in others, the costs and complexity of coordinated enforcement can slow down relief and create lowest-common-denominator cases that leave many borrowers insufficiently compensated. Bureau leadership should focus on recruiting and retaining talented, dedicated career professionals that will engage in steady, effective law enforcement in the long-term.

4. The Bureau should not adopt policies that could limit the ability of Bureau staff to obtain remedies that benefit the public.

We are concerned that a civil money penalty matrix could artificially tie the hands of Bureau staff and diminish their ability to negotiate settlements on behalf of American consumers. Although other federal banking regulators have adopted a penalty matrix, prudential regulators also failed to engage in sufficient enforcement efforts to prevent the financial crisis. Similarly, we believe that Bureau consent orders and monetary relief provisions should not impose additional burdens on harmed consumers in demonstrating that they may be entitled to relief. The burden and cost of providing relief to harmed consumers should be borne by the businesses that violated the law rather than the consumers that suffered as a result of those violations. The Bureau's standard consent order template prior to 2018 has been sufficient to balance consumer and defendant rights. Any changes to the Bureau's

procedures that would minimize restitution or civil money penalties would harm the public and lead to less efficient use of public resources.

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All companies and individuals have a civic duty to cooperate with law enforcement investigations. Although we believe the Bureau works to minimize the burden of investigations, any investigation can impose some costs. This is inevitable if the Consumer Bureau is to fulfill its role in protecting the public. Maintaining a robust, flexible, and efficient enforcement processes is essential to the Consumer Bureau's mission. We urge the Bureau to refrain from altering its enforcement processes in a way that will inhibit the ability of the Enforcement Office to protect American consumers from illegal consumer financial practices. Thank you for the opportunity to submit these comments.

Sincerely,

Allied Progress

Americans for Financial Reform

Arizona Community Action Association

California Reinvestment Coalition

Center for Economic Integrity

Center for Popular Democracy

Center for Responsible Lending

Connecticut Fair Housing Center

Consumer Action

Consumer Federation of America

Delaware Community Reinvestment Action Council, Inc.

Demos

Georgia Watch

Heartland Alliance for Human Needs & Human Rights

Interfaith Center on Corporate Responsibility

Jacksonville Area Legal Aid, Inc.
Kentucky Equal Justice Center
Maryland Consumer Rights Coalition
Montana Organizing Project
National Association of Consumer Advocates
National Consumers League
National Fair Housing Alliance
New Jersey Citizen Action
The North Dakota Economic Security and Prosperity Alliance
Public Citizen
Public Good Law Center
Reinvestment Partners
South Carolina Appleseed Legal Justice Center
South Carolina Christian Action Council
Tennessee Citizen Action
Texas Appleseed
Tzedek DC
U.S. PIRG
Woodstock Institute