

ConsumersUnion®

POLICY & ACTION FROM CONSUMER REPORTS

June 7, 2018

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

RE: Request for Information Regarding Bureau Rulemaking Processes [Docket No. CFPB-2018-0009]

Dear Ms. Jackson:

Consumers Union,¹ the advocacy division of Consumer Reports, writes in response to the Consumer Financial Protection Bureau's (CFPB) Request for Information (RFI) on the Bureau's rulemaking process.² The CFPB is seeking public input as it assesses the overall efficiency and effectiveness of this process.³

Consumers Union has participated, through public notice and comment, in several rulemaking efforts at the CFPB. We have found these rulemakings to be meticulous and detailed, and to provide appropriate opportunities for comment and further input from a wide range of stakeholders at numerous points in the proceedings. We urge the Bureau to maintain this inclusive and deliberative approach that has produced reasoned rules that protect consumers while allowing for continued innovation in the marketplace.

¹ Consumers Union is the advocacy division of Consumer Reports, an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumers Union works for pro-consumer policies in the areas of financial services, as well as telecommunications, health care, food and product safety, energy, telecommunications, privacy and data security, and competition and consumer choice, among other issues, in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

² The RFI Regarding Bureau Rulemaking Processes is available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-03-09/pdf/2018-04824.pdf>.

³ *Id.*

Background – The Importance of the CFPB

The CFPB was established following the financial crisis a decade ago, when Congress recognized a gap in consumer protection and enforcement that allowed unfair, deceptive, and abusive practices in the financial sector to proliferate. Over the years, the CFPB has taken essential steps, long overdue, to protect consumers in this marketplace. Since it was launched in 2011, the CFPB has won almost \$12 billion in refunds and relief for an estimated 29 million Americans⁴ who were harmed by financial companies. Notable achievements by the CFPB on behalf of consumers include:

- Ensuring mortgages are affordable, by adopting rules to prevent the kind of reckless lending practices by banks that led to a record number of Americans losing their homes and that triggered the country's deep recession in 2008;
- Taking on deceptive credit card marketing, by ordering credit card companies to pay back \$3.48 billion to consumers who had been defrauded into accepting unnecessary and costly add-on products and services, such as debt protection and credit monitoring;
- Providing prepaid card users with strong protections, by adopting rules that require prepaid card issuers to provide better fee disclosures, as well as the same robust protections limiting a consumer's financial exposure to unauthorized and fraudulent use that come with traditional debit and credit cards;
- Challenging abusive student loan practices, such as by suing Navient, the nation's largest student loan servicer, for giving borrowers inaccurate information, processing payments incorrectly, and failing to take appropriate action to address consumer complaints;
- Protecting consumers from deceptive reverse mortgage ads that tricked consumers into believing they could not lose their homes with a reverse mortgage; and
- Combating misleading credit score ads and promotions, by holding TransUnion and Equifax accountable for deceiving consumers about the usefulness and cost of the credit scores they marketed.

These achievements were possible, in large part, because of the CFPB's ability to listen to and gain insight from a wide range of experts, consumers, and other stakeholders whose diverse experiences and perspectives help inform its work. And that input is reflected in the Bureau's rulemakings to date. Maintaining and enhancing the CFPB's rigorous and transparent rulemaking process is critical to ensuring that these achievements can continue.

⁴ See, Factsheet, Consumer Financial Protection Bureau: By the numbers (July 2017).

Discussion

Public Outreach is Essential

As we noted in response to a previous RFI, the external engagements conducted by the CFPB ensure that consumers and other interested parties have visibility into the Bureau's work, and have meaningful opportunities for public input. That in turn ensures that the CFPB's work is informed by regular input from varied perspectives representing distinct points of view. Public engagements give a voice to individuals and communities who might otherwise have difficulty accessing the regulatory process. They increase the public's understanding of financial issues and the role the CFPB plays in ensuring a safe marketplace.⁵

The CFPB has relied on these engagements to great effect in developing rules. For the Payday loan rule, for example, the Bureau spent five years gathering information, including through:

field hearings, and hundreds of meetings with both consumer and industry stakeholders on the issues raised by small-dollar lending. In addition to meeting with lenders and other market participants, trade associations, consumer groups, community groups, and others, the Bureau has engaged with individual faith leaders and coalitions of faith leaders from around the country to gain their perspective on how these loans affect their communities and the people they serve. And the Bureau has met frequently with Federal, State, and Tribal officials to consult and share information about these kinds of loans and their consequences for consumers.⁶

Similarly, in developing the Prepaid rule, which was finalized in 2016, the Bureau started with an Advanced Notice of Proposed Rulemaking, on which it received 220 comments.⁷ It then began to conduct:

extensive and significant additional outreach and research following the Prepaid ANPR as part of its efforts to study and evaluate prepaid products. The Bureau's pre-proposal outreach included meetings with industry, consumer groups, and nonpartisan research and advocacy organizations. The Bureau also conducted market research, monitoring, and related actions pursuant to section 1022(c)(4) of the Dodd-Frank Act, which allows the Bureau to gather information from time to time regarding the organization, business

⁵ See, Comments to the CFPB on Request for Information Regarding Bureau External Engagement (May 29, 2018).

⁶ Payday, Vehicle Title, and Certain High-Cost Installment Loans (Payday Loan Rule). Text of the CFPB rule on payday loans is available at: http://files.consumerfinance.gov/f/documents/201710_cfpb_final-rule_payday-loans-rule.pdf.

⁷ Advance Notice of Proposed Rulemaking, <https://www.federalregister.gov/documents/2012/05/24/2012-12565/electronic-fund-transfers-regulation-e>.

conduct, markets, and activities of covered persons and service providers to aid the Bureau's market monitoring efforts. Further, the Bureau obtained information directly from consumers through focus groups and consumer testing.⁸

The Bureau's development of its arbitration rule is another particularly apt example. As detailed in Parts III and IV of the discussion in the published final rule,⁹ the CFPB conducted an extremely thorough examination of the use of forced arbitration clauses in consumer financial service contracts, soliciting and accepting input from the full range of parties and perspectives, in a particularly deliberative and inclusive multi-stage process, with extensive public outreach soliciting further comment at each stage. These public outreaches included:

- an April 2012 request for information on proposals for the study directed by Congress in section 1028 of the Dodd-Frank Act;
- a 168-page preliminary report on the ongoing study in December 2013, with a detailed roadmap of the Bureau's plans for future work;
- invitations to interested stakeholders for in-person meetings in February 2014;
- notices in June 2013 for a proposed consumer survey, soliciting feedback, followed by meetings in July 2013, and two focus groups, and another notice in May 2014 soliciting further comment on the proposed survey; a 700-page Report to Congress on the study in March 2015;
- a series of roundtables with interested stakeholders following release of the report;
- a Small Business Review Panel convened in October 2015, to discuss proposals under consideration, with a detailed outline of proposals and questions published in advance, as well as other roundtables and meetings with interested stakeholders during this period;
- a report on the Small Business Review Panel findings in December 2015;
- a public field hearing in early May 2016; and
- following publication of the proposed rule in late May 2016, an additional three-month public comment period, during which more than 100,000 comments were received and numerous stakeholders met with Bureau officials to present their views.

This outreach and consultation is essential to the CFPB's development of rules that are appropriate to the marketplace, and we urge the Bureau to continue this diligent and focused information gathering that can be useful to all of the Bureau's work, including rulemaking.

⁸ Prepaid Accounts Under the Electronic Fund Transfer Act (regulation E) and the Truth in Lending Act (Regulation Z) (Prepaid rule). The prepaid rule is available on the Federal Register at: <https://www.federalregister.gov/documents/2016/11/22/2016-24503/prepaid-accounts-under-the-electronic-fund-transfer-act-regulation-e-and-the-truth-in-lending-act>.

⁹ Arbitration Agreements. The Final Rule is available on the Federal Register at: <https://www.federalregister.gov/documents/2017/07/19/2017-14225/arbitration-agreements#citation-420-p33246>.

Requests for Information Are Useful if Well-Targeted and Deliberate

With respect to Requests for Information, we agree that they can be useful for “gathering information on market conditions or issues, particularly regulatory options” as noted in this RFI. Consumers Union has commented on numerous such RFIs in the past, including on the use of alternative data and modeling techniques in the credit process,¹⁰ consumer use of reverse mortgages,¹¹ mobile financial services,¹² an initiative on safe student banking,¹³ and the need for clear rules regarding student loan servicing.¹⁴ All of these RFI processes enabled stakeholders from all perspectives to provide input to the Bureau as it considered questions about the consumer impact of practices in the financial marketplace.

We do caution, however, against issuing multiple RFIs in quick succession — as the Bureau is now doing — seeking comment on all aspects of the Bureau’s work. This recent spate of RFIs stand in contrast to the deliberate pace of past Bureau requests for information. As part of a call for evidence described by the Bureau as being intended to “to ensure the Bureau is fulfilling its proper and appropriate functions to best protect consumers”, the Bureau issued 12 requests for information over the course of less than three months at the start of this year. Of those, six remain open as of June 5. This rapid pace does not leave enough time for full input by stakeholders, nor does it allow for thorough consideration by the CFPB. In contrast, in all of 2017, the Bureau issued 10 requests for information. The rush of recent RFIs seems to indicate a departure from the deliberate, considered pace of years past.

Final Rules Have Reflected Thoughtful Consideration

We have been impressed with the quality of the final rules issued by the Bureau. They have reflected thoughtful consideration of the comments submitted by the public and stakeholders, and have established clear and workable rules for the marketplace. And the Bureau has been

¹⁰ See, CU Response to the CFPB’s Request for Alternative Data in the Credit Process (August 1, 2017), <https://consumersunion.org/research/cu-response-to-the-cfpbs-request-for-information-on-the-use-of-alternative-data-in-the-credit-process/>.

¹¹ See, Comments to the CFPB on Request for Information Regarding Consumer Use of Reverse Mortgages (August 31, 2012), <https://consumersunion.org/research/comments-to-the-consumer-financial-protection-bureau-on-request-for-information-regarding-consumer-use-of-reverse-mortgages/>.

¹² See, CU Comment to the CFPB Regarding the Use of Mobile Financial Services (MFS)(September 10, 2015), https://consumersunion.org/wp-content/uploads/2014/09/CU_comments_CFPB_mobile_finance.pdf.

¹³ See, CU Comments to the CFPB on a “Safe Student Account Scorecard” (March 30, 2015), https://consumersunion.org/wp-content/uploads/2015/03/CU_Ltr_CFPB_Safe_Student_Account_Scorecard.pdf.

¹⁴ See, CU Comments to the CFPB on Student Loan Servicing Practices (July 3, 2015) https://consumersunion.org/wp-content/uploads/2015/07/CFPB_RFI_servicing_0715.pdf.

willing to make adjustments even after the issuance of the final rule, in response to reasonable concerns.

The final rule for prepaid accounts exemplifies the Bureau's flexibility and responsiveness. For more than a decade, Consumers Union advocated for consumer protections on prepaid cards. After a four-year process, the Bureau issued rules that extend a number of important protections to prepaid accounts, including uniform fee disclosures; protection against errors and loss, similar to legal safeguards currently available for debit and credit cards; prompt dispute resolution rights; free and easy access to account information; and clear rules of the road for the extension of credit.

As announced in October 2016, the prepaid rule was to be generally effective in October 2017. However, in April 2017, the Bureau, responding to industry feedback, extended the date to April 2018. A short while later, also in response to industry feedback, the Bureau re-opened aspects the rule for consideration, including error resolution rights for unregistered prepaid cards and linking credit cards to digital wallets. As Director Richard Cordray said at the time: "Today's request for comment shows we are listening closely to feedback on our rules to decide whether certain adjustments will help to achieve that goal."¹⁵ Six months later, the Bureau published its changes to the rule, which included adjusting error resolution rights to exclude cards that had not completed registration; clarifying rules to provide greater flexibility in instances where credit cards are linked to digital wallets that store funds; and extending the final date for compliance by a year to April 2019.¹⁶ As this example illustrated, the Bureau has shown that it can act quickly to address providers' concerns while still ensuring effective, protective rules for financial products and services.

Conclusion

As the RFI process moves forward, we urge the CFPB to keep its mission foremost in view: "implementing and enforcing Federal consumer financial law, for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."¹⁷

¹⁵ Consumer Financial Protection Bureau press release, June 15, 2017, CFPB Seeks Comment on Proposed Changes to Prepaid Rule, Proposal Would Adjust Error Resolution Requirements and Provide More Flexibility for Credit Cards Linked to Digital Wallets, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-comment-proposed-changes-prepaid-rule/>.

¹⁶ Consumer Financial Protection Bureau press release, January 25, 2018, CFPB Finalizes Changes to Prepaid Accounts Rule, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-changes-prepaid-accounts-rule/>.

¹⁷ 12 U.S.C. 5511(a).

We look forward to working with the CFPB to ensure that any changes to its rulemaking processes are carefully considered and advance the critical mission of the CFPB.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anna Laitin', with a stylized, cursive script.

Anna Laitin
Director, Financial Policy