

March 16, 2020

Russell Vought  
Acting Director  
Office of Management and Budget  
725 17th St NW  
Washington, DC 20503

*Via regulations.gov*

**Re: Improving and Reforming Regulatory Enforcement and Adjudication;**  
**Docket No: OMB-2019-0006**

Dear Mr. Vought,

The 16 undersigned consumer, civil rights, community, investor, and other public interest organizations submit these comments in response to the Office of Management and Budget (OMB)'s Request for Information (RFI) on Improving and Reforming Regulatory Enforcement and Adjudication. Our organizations represent the consumers, investors, workers, seniors, servicemembers, veterans, students, people of color and underrepresented communities across our country who rely on the consumer and civil rights protections that regulators are tasked with enforcing, and we draw from our experience working with these groups. In general, our experience over the years with regulatory enforcement by the financial regulators is that rather than being too aggressive, they have often been unduly deferential to the companies charged with violating the law and as a result, have often failed to adequately protect consumers. Their actions in the lead-up to the financial crisis serve as just one powerful example of this failure to hold financial firms accountable. Any further weakening in agencies' administrative enforcement authority would be extremely unwise, posing a serious threat to the public interest.

I. Objections to the Framing of the Questions Raised in this RFI

We must first note our objections to the scope of the questions posed in this RFI, which only ask for the perspectives of those suspected of breaking the law and request input on what additional protections they should receive while they are being investigated. The framing of these questions presumes that regulatory agencies treat companies unfairly when they are examining legal violations that may have caused injury to a large number of Americans or put them in danger. The RFI fails to mention the extreme harm that these companies may have caused that led to an enforcement action, or the implications for the American public if those violations are allowed to continue. It also fails to take into account the already greater ability of corporate actors to shape and respond to these processes in comparison to harmed members of the public. Instead, it assumes that corporate wrongdoers are the ones in need of greater government protection and provides companies with an open platform to air their grievances with administrative processes that are put in place to hold them accountable. The one-sided framing of the questions will inhibit responses other than the one-sided ones.

The RFI also provides no source or legal authority as the basis for issuing this RFI. The OMB provides no context or description of underlying problems that led to the development of this RFI, and it is unclear what evidence exists for its underlying presumption that agencies do not behave fairly and properly. Given the one-sided nature of the RFI's questions and lack of clarity on authority, we are especially concerned about the RFI's answers being used to improperly hamstring the government's ability to pursue corporate wrongdoing and protect the American people.

## II. Crucial Role of Administrative Adjudications

Regulatory agencies are the respective experts in their subject areas, and they use their expertise to protect people from harm and make sure the rules put in place to protect them are being followed. Administrative adjudications provide faster resolution and relief, and allow agencies to use their expertise to address problems. Unlike individual lawsuits, the purpose of regulatory enforcement is to protect the public at large. Regulatory enforcement is particularly helpful in confronting the types of problems that an individual may not be able to identify or tackle, especially when facing a corporate wrongdoer with many more resources at their disposal. It provides a more efficient method to combat illegal company practices causing large scale harm or affecting matters of public health and safety.

For example, in 2014, the Consumer Financial Protection Bureau (CFPB) reached a settlement with Synchrony Bank (formerly GE Capital), which resulted in \$225 million in relief for approximately 746,000 people who were harmed by the bank's deceptive advertising and discriminatory practices in violation of the Equal Credit Opportunity Act. This significant amount of relief was particularly important in making victims whole. This administrative adjudication efficiently stopped a company's deception and discrimination and provided a faster avenue for harmed consumers to obtain relief. As part of the settlement, Synchrony Bank was also required to halt its illegal behavior and pay a \$3.5 million civil money penalty.

Similarly, in 2013, the CFPB took enforcement action against Cash America International for overcharging servicemembers in violation of the Military Lending Act, robo-signing court documents in debt collection lawsuits and destroying records to interfere with the CFPB exam process. As a result of the settlement, all pending improper lawsuits were dismissed immediately and customers were provided with refunds.

In both these cases, if criminal law standards had been inserted into the process, the cases would have taken longer to investigate, and at a higher price, making it more difficult to curb the companies' illegal behavior and delaying relief to the harmed consumers.

Administrative adjudications provide faster and more efficient resolutions for harmed consumers and firms alike, and save taxpayer funds and reduce backlogs in the federal court system, while still preserving the rights of all parties. Regulators often use the adjudication process as a faster and more cost-effective way to resolve matters and put a settlement in place after both parties

have agreed to its terms on public record. The majority of the CFPB's adjudications are stipulated settlements.

The results of an administrative adjudication can always be appealed through the judicial system. Parties are not in need of greater due process rights because they already have access to the courts, and adding more requirements to the administrative adjudication does not add more due process rights. It just adds additional steps to slow down what is already a cumbersome process.

Research also shows that when taken as a whole, administrative adjudication does not favor regulators or result in greater fines or worse outcomes for companies when compared to the court system. For example, a study comparing securities defendants before administrative law judges and the court system revealed that the Securities and Exchange Commission (SEC) did not have any particular advantage in administrative proceedings, and administrative law judges regularly ruled against the SEC in their decisions.<sup>1</sup>

Monetary relief for victims and financial penalties are important considerations in regulatory enforcement, but fees and penalties in administrative adjudications are not disproportionately high. In fact, there are many instances of regulatory enforcement with little or no restitution and limited or no penalties, which often raise consumer protection concerns. Nonetheless, these actions and settlements are important for addressing legal violations and setting a corrective path forward. For example, the CFPB brought an action against Freedom Mortgage for violations of Home Mortgage Disclosure Act (HMDA) reporting requirements in 2019. The agreed-upon settlement required Freedom Mortgage to pay a fee and to improve its HMDA compliance going forward, protecting the accuracy and completeness of information about lending patterns for all entities that rely on HMDA data. In 2018, the CFPB entered into a stipulated settlement with State Farm Bank for Fair Credit Reporting Act violations. The settlement did not come with a monetary penalty, and only required the company to stop its illegal behavior and create a comprehensive compliance plan and recordkeeping requirements to prevent future violations.

### III. Improper Conflation of Criminal Law Standards with Regulatory Enforcement

Several questions in this RFI try to import criminal prosecution evidentiary standards and due process into regulatory investigations. For example, there is a question about whether there should be an "initial presumption of innocence," and whether investigated parties should be able "to require an agency to 'show cause' to continue an investigation." It is inappropriate and impractical to apply criminal prosecution standards to regulatory action. Requiring a regulatory agency to meet the standards for a show cause hearing before proceeding with an investigation would slow down the process, create unnecessary hurdles, and needlessly raise costs.

Unlike in the criminal context, what is at stake here is not a loss of liberty, but most often a monetary penalty and a directive to follow the law. There is no question that administrative

---

<sup>1</sup> David T. Zaring, *Enforcement Discretion at the SEC*, Zaring, David T., *Enforcement Discretion at the SEC* (August 26, 2015). *Texas Law Review*, Vol. 94, No. 3, 2016.

adjudication is a civil matter, and civil law is the appropriate standard. Any conflation of criminal law and regulatory enforcement is improper, inappropriate, and ineffective.

Regulatory enforcement and administrative adjudication are vital for agencies to do their job to protect the American public, and we urge you not to make it any more difficult, time-consuming or costly for agencies to hold wrongdoers accountable, provide relief to victims, and deter unlawful behavior.

Sincerely,

Americans for Financial Reform Education Fund  
Allied Progress  
Better Markets  
Center for Community Progress  
Center for Digital Democracy  
Center for NYC Neighborhoods  
Consumer Action  
Consumer Reports  
Georgia Watch  
Interfaith Center on Corporate Responsibility  
NAACP  
National Association of Consumer Advocates  
National Consumer Law Center (on behalf of its low income clients)  
New Jersey Citizen Action  
Public Law Center  
Texas Appleseed