



Via regulations.gov.

June 1, 2020

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

Re: Docket No. CFPB-2020-0013 - Request for Information To Assist the Taskforce on Federal Consumer Financial Law

Dear Director Kraninger,

Americans for Financial Reform Education Fund submits these comments in response to the Consumer Financial Protection Bureau (CFPB or the Bureau)'s Request for Information (RFI) to Assist the Taskforce on Federal Consumer Financial Law.

I. Objection to CFPB's Insistence on Moving Forward with this RFI During Ongoing COVID-19 Crisis

We must first note our objection to the CFPB's insistence on pressing forward with this RFI during the COVID-19 pandemic that is affecting every corner of life in our country and around the world. Two weeks after the President declared the COVID-19 pandemic a national emergency, the Bureau issued this RFI asking the public to comment on a broad series of fundamental questions about consumer financial protection, including how the CFPB should carry out its primary responsibilities of regulation, enforcement, supervision, and financial education, how to measure the effectiveness of consumer protection measures, and the extent to which markets should be regulated.

The present public health emergency and economic crisis have caused major unexpected disruptions for all groups, causing ongoing challenges to providing input and analysis, especially for those who work with or represent those people and communities most deeply affected by the crisis, who include a crucial set of stakeholders on the questions at issue. Two months after the national emergency declaration, we continue to see the deepening economic fallout and pressing need for greater consumer protections.

It is highly inappropriate for the CFPB to move forward with the sweeping scope of questions raised in this RFI instead of devoting all of its resources to protecting the public and enhancing their economic security during this ongoing crisis. Pushing forward with this RFI during this time signals disinterest in meaningful public engagement on these issues, which is particularly problematic in the case of this task force, whose goal to provide general recommendations to Congress is work that is outside of the CFPB's statutory functions.

We reiterate our earlier requests and urge that the CFPB refrain from any regulatory activity unrelated to addressing COVID-19, the health and safety of the U.S. population, or the financial and economic collateral damage of the emergency, including this RFI, unless those actions are responsive to the needs of consumers during the pandemic, necessary to maintain the status quo during the pandemic, or implementing pandemic-related congressional directives, until after the crisis has abated.

II. Illegitimacy of Taskforce

We contest the legitimacy of the CFPB’s Taskforce on Federal Financial Law (Task Force), its structure, and the process through which its members were selected. The membership of the Task Force solely consists of academics who have consistently taken anti-regulatory positions in their scholarship and industry lawyers who have represented payday lenders, auto dealers, and other covered entities in CFPB enforcement actions and litigation against consumers. The lack of diversity in views is striking. There is no representation of consumer advocates, consumer attorneys, or consumer protection legal scholars on a task force that the Bureau created to examine all aspects of consumer financial protection. Several well-qualified academics advancing consumer protections in their research and writing applied only to be rejected without explanation. Some applicants went through a hostile interview process that seemed essentially to be ideological litmus tests.¹

The CFPB references the 1968 National Commission on Consumer Finance (Commission) as its inspiration for the creation of the Task Force. In reality, the Commission was completely different in structure and function from this Task Force. It was specifically authorized and funded by Congress, and the bipartisan members were elected officials accountable to the public who represented a variety of perspectives on consumer finance issues.² The Commission also engaged with consumer advocates, consumers, lenders, and industry participants through multiple public hearings over the four years of its research and analysis.

In contrast, the Task Force’s five members are ideologically homogeneous and report only to the director of the CFPB. The Task Force’s charter³ describes its duties as providing “an objective and independent evaluation,” but almost all of the task force members have consulted for or represented financial companies. Two of the members received ethics waivers to participate in the Task Force despite owning stock in several financial companies under the Bureau’s supervision. The only source of public input for the Task Force has been asking the public to comment on this RFI in the middle of an unprecedented health and economic emergency.

¹ Evan Weinberger, Bloomberg Law, “Financial Watchdog’s Conflicted Task Force Earning Top Dollar.” May 11, 2020. Available at: <https://news.bloomberglaw.com/banking-law/financial-watchdogs-conflicted-task-force-earning-top-dollar>.

² See National Commission on Consumer Finance, “Consumer Credit in the United States.” (December 1972). Available at: <https://babel.hathitrust.org/cgi/pt?id=uc1.31822024338451&view=1up&seq=1>.

³ Consumer Financial Protection Bureau Charter of the Bureau’s Taskforce on Federal Consumer Financial Law, available at: https://files.consumerfinance.gov/f/documents/cfpb_taskforce-charter.pdf.

Congress specifically mandated that all of the CFPB's advisory committees follow the Federal Advisory Committee Act (FACA)⁴, but the Bureau structured the Task Force to evade FACA requirements. The Task Force has not opened any of their meetings to the public or provided notice about them. Unlike all other CFPB advisory committees, where the members serve voluntarily, the Task Force members are also paid an hourly rate, and if the members worked full time for the days allotted, their combined total compensation would be over \$600,000.⁵

The Task Force's lack of ideological diversity, evasion of FACA requirements, and unusual pay structure make it illegitimate, one-sided, and unqualified to provide an objective and independent evaluation of federal financial law, and is a particularly inappropriate use of taxpayer resources at a time Americans are facing great economic distress that the CFPB could and should help mitigate.

III. Unsuitable RFI Questions

The questions raised in this RFI are policy questions about the core of consumer protection. Such questions are best suited for and already addressed by Congress. It is not appropriate to entrust these questions to a small group of ideologically homogeneous, unaccountable outsiders to consider on a part-time basis for one year. Congress already made decisions about how to balance the competing interests on many of the questions the Bureau has posed. Any thoughtful consideration of these questions would require incorporation of a diversity of perspectives, a transparent process, and robust public engagement, which are all absent here.

The questions asked in the RFI reveal the Task Force's ideological preconceptions to deregulate and undo consumer protections rather than strengthen and improve them. Competition, access, and choice are an inadequate framework for consumer protection. Consumers have no ability to choose their mortgage servicer or debt collector, or how their information is reported to the credit reporting bureaus, and the CFPB receives the highest number of complaints about these issues. Access to credit is harmful if the available credit is unaffordable and does not consider a consumer's ability to repay, or if the terms of the credit are discriminatory and violate fair lending laws. Although disclosures could be improved, and financial education plays a part, education and disclosures will never be a sufficient model for consumer protection without accountability. Substantive regulation, careful supervision, and vigorous enforcement will always be necessary to curb abusive and predatory behavior, address and prevent harms, and effectively protect consumers.

Congress recognized the need for all of these tools for consumer protection when it created the CFPB and established its six primary functions: "(1) conducting financial education programs; (2) collecting, investigating, and responding to consumer complaints; (3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such

⁴ 12 USC 5493(h).

⁵ Evan Weinberger, Bloomberg Law, "Financial Watchdog's Conflicted Task Force Earning Top Dollar." May 11, 2020. Available at: <https://news.bloomberglaw.com/banking-law/financial-watchdogs-conflicted-task-force-earning-top-dollar>.

markets; (4) subject to sections 5514 through 5516 of this title, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law; (5) issuing rules, orders, and guidance implementing Federal consumer financial law including exemptions from rules, and updating rules to address modern technology; and (6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.”⁶

It is not appropriate for the Task Force to predetermine that some of these statutory functions are less important, as it has in the framing of its questions in this RFI. We will not engage with questions designed to minimize the Bureau’s crucial role in promulgating regulations to protect consumers and using its supervision and enforcement authority to prevent further harm and provide restitution to harmed consumers.

IV. Previous RFIs

In 2018, under Acting Director Mulvaney, the CFPB issued a series of 12 RFIs covering a wide range of the Bureau’s work, including requests for comments on the laws and regulations in its jurisdiction. Along with our partners, we previously submitted several comments in response to these requests, including the following:

- Civil investigative demands;⁷
- Administrative adjudications;⁸
- Enforcement processes;⁹
- Supervision program;¹⁰
- External engagements;¹¹
- Consumer complaint information;¹²
- Rulemaking process;¹³

⁶ 12 USC § 5511b.

⁷ Overview comments at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/coalition-cid-rfi-2018.pdf>; detailed comments at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/cfpb-crl-cfa-rfi-2018.pdf> (April 26, 2018).

⁸ https://ourfinancialsecurity.org/wp-content/uploads/2020/06/Adjudication_RFI_Comment_Letter-05-07-2018.pdf (May 7, 2018).

⁹ Overview comments at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/coalition-34-cfpb-enforcement.pdf>; detailed comments at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/cfpb-enforcement-rfi-group.pdf> (May 14, 2018).

¹⁰ Overview comments at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/supervision-43-group-comments-cfpb-superv.pdf>; detailed comments at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/supervision-natl-group-detailed-comments-cfpb-superv.pdf> (May 21, 2018).

¹¹ <https://ourfinancialsecurity.org/wp-content/uploads/2018/06/Coalition-comment-on-external-engagements.pdf> (May 29, 2018).

¹² <https://ourfinancialsecurity.org/wp-content/uploads/2018/06/CFPB-Complaint-DB-RFI-Public-Reporting-Practices-and-Consumer-Complaint-Information.pdf> (June 4, 2018).

¹³ Overview comments at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/6.7.18-Rulemaking-RFI-Group-Letter-1.pdf>; detailed comments at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/6.7.18-FINAL-Rulemaking-RFI-Long-Comment.pdf> (June 7, 2018).

- Adopted regulations;¹⁴
- Inherited regulations;¹⁵
- Guidance materials;¹⁶
- Financial education programs;¹⁷ and
- Consumer complaints and inquiries.¹⁸

We have provided careful analysis and comments in our previous RFIs and direct you to review our earlier responses on many aspects of the Bureau’s work.

The CFPB should focus on protecting consumers from harm rather than using its resources to create a one-sided task force in defiance of proper procedures to promote ideas that weaken consumer protections currently in place. During the COVID-19 pandemic, it is especially important that the CFPB take action to prevent needless consumer confusion and harm. We again urge the CFPB to stop activity unrelated to COVID-19 and the resulting economic crisis. If the CFPB will not stop all regulatory activity, we ask that the Bureau to at least halt this RFI, which is fundamentally illegitimate and particularly inappropriate during this time, and instead direct all of its resources to provide greater guidance and strengthened protections for consumers during this crisis.

Sincerely,

Americans for Financial Reform Education Fund

¹⁴ Overview comments at <https://ourfinancialsecurity.org/wp-content/uploads/2018/07/Coalition-comment-on-adopted-regs.pdf>; debt collection at <https://ourfinancialsecurity.org/wp-content/uploads/2018/07/Coalition-comment-on-Debt-collection.pdf>; mortgages at <https://ourfinancialsecurity.org/wp-content/uploads/2018/06/Coalition-Comment-on-Housing-Adopted-Regulations.pdf>; remittances at <https://ourfinancialsecurity.org/wp-content/uploads/2018/07/Consumer-Coalition-Comments-RFI-Accepted-Rules-Remittances-6-21-2018.pdf>; prepaid cards at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/comm-cfpb-rfi-adopted-rules-prepaid-cards.pdf> (June 19, 2018).

¹⁵ Overview comments at <https://ourfinancialsecurity.org/wp-content/uploads/2018/06/Coalition-Comment-on-Inherited-Regs.pdf>; electronic communications at <https://ourfinancialsecurity.org/wp-content/uploads/2018/06/Coalition-Comment-on-Electronic-Communications.pdf>; Reg E at <https://ourfinancialsecurity.org/wp-content/uploads/2018/06/Coalition-Comment-on-Regulation-E.pdf>; mortgages at <https://ourfinancialsecurity.org/wp-content/uploads/2018/06/Coalition-Comment-on-Mortgages.pdf>; PACE loans at <https://ourfinancialsecurity.org/wp-content/uploads/2018/06/Coalition-Comment-on-PACE-Loans.pdf>; disparate impact and Reg B at <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/cfpb-inherited-regs-disparate-impact.pdf> (June 25, 2018).

¹⁶ <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/coalition-comm-guidance-cfpb-rfi.pdf> (July 2, 2018).

¹⁷ <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/Comments-CFPB-on-Financial-Education-RFIs.pdf> (July 9, 2018).

¹⁸ <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/grp-comments-rfi-cfpb-cons-inquiry-process.pdf> (July 16, 2018).