Consumer Advisory Board
Consumer Lending Subcommittee
April 18, 2018

Subcommittee input on the Bureau of Consumer Financial Protection's (Bureau) Request for Information (RFI) on External Engagements and RFI on Adopted Regulations and New Rulemaking Authorities

Overview

On January 17, 2018, Acting Director Mulvaney issued a call for evidence[1] to ensure the Bureau is fulfilling its proper and appropriate functions to best protect consumers. In a series of Requests for Information (RFIs), the Bureau seeks comment on enforcement, supervision, rulemaking, market monitoring, and education activities. These RFIs will provide an opportunity for the public to submit feedback and suggest ways to improve outcomes for both consumers and covered entities.

During the April 18, 2018 Consumer Advisory Board (CAB) Consumer Lending subcommittee conference call, the subcommittee focused on providing feedback on two of the Call for Evidence RFIs, the RFI on External Engagements and the RFI on Adopted Regulations and New Rulemaking Authorities. The purpose of this document is to summarize subcommittee conversations on the two RFIs. This document does not reflect consensus by subcommittee members, but simply demonstrates the various member views and opinions. This summary document does not reflect the views of the Bureau.

Request for Information on External Engagements

- I've served on the CAB for over a year now. I'm on the industry side, but I've learned a lot from the stories of consumer advocates and I've incorporated a lot of their feedback into our thinking. I like the added transparency of these public subcommittee meetings and think it is a nice start. The research the Bureau has produced has been invaluable. On some of the topics the Bureau works on, it would be helpful if advisory group members are brought in earlier to the conversation.

- I have found the CAB to be very helpful. The three meetings a year have provided for a great opportunity to engage with the Bureau and give timely feedback. The CAB should continue to have lots of engagement with the Bureau's senior leaders and the Director. In terms of other types of engagements, I think the Bureau has done a fantastic job of getting feedback from many different stakeholders from across the country. I was personally part of a field hearing and it was so helpful to have both advocates and industry representatives come together to discuss the issues.

- The CAB is a great stage for meeting many different types of experts from industry to academia to advocacy. The Bureau's Project Catalyst is an extremely effective program for outreach to industry. Staff with the Project Catalyst program have been highly

[1] https://www.consumerfinance.gov/about-us/newsroom/acting-director-mulvaney-announces-call-evidence-regarding-consumer-financial-protection-bureau-functions/

available, open, and receptive to listening to feedback. In the spirit of transparency, the Bureau should consider allowing Project Catalyst to share a regular update on the takeaways they have received during their office hours with the public.

- This is my second year on the CAB. I have learned a lot just by sitting next to CAB members. It's a level of conversation that doesn't occur on a regular basis and is very important. I also think it is important that the CAB travel at least once a year into the field to hear the perspectives of different communities. Additionally, in 2002, I served on the Federal Reserve's advisory group. We raised issues we were seeing in the mortgage market with the Federal Reserve on a regular basis and we were told that the market would eventually correct itself. However, when we meet during CAB meetings, it feels like we are able to share this feedback and staff at the Bureau are listening and reacting.

- I was working in the last 90's on a foreclosure prevention project in New York. We had mostly African American women coming in who had clearly been targeted by predatory lending. As we gathered extensive information on these patterns, we tried to share with the seven federal banking regulators who might have been able to take action at the time that this was a systemic and growing problem and those federal regulators were dismissive.. The bank regulators were talking to banks and not looking at problems from a community or consumer perspective. The result of this regulatory inaction was that many communities were destroyed by the housing market collapse and the great recession. The CFPB is the first regulator to focus on the impact of bank and financial practices on communities and families, and has done great work to protect consumers. In terms of external engagements, the Bureau is very focused on getting feedback from so many different stakeholders groups – not just industry. The Bureau has been great about acting in real time. That's because the CFPB has had an open door policy for feedback and acted on that feedback. My hope is that the CFPB will continue to have an open door to all stakeholders and not just industry going into the future.

<u>Request for Information on Adopted Regulations and New Rulemaking Authorities</u>

- The following statement was read by a CAB member on behalf of another CAB member who was unable to attend the call. "The adopted rules RFI asks that any arguments for maintaining the status quo be supported by data on the benefits and costs of the rules. Assessing the costs and benefits of rules is critical to ensuring that the CFPB is making rules that are in the best interests of the society. It is also true that redundant cost: benefit analyses drain agency resources and impose unnecessary costs on taxpayers. The CFPB's rule-making RFI is an example of such redundancy. Before any rule is finalized, the CFPB assesses the benefits and costs to the financial industry and consumers of all proposed rules. That means that rules governing, for example HMDA reporting, payday loans and prepaid cards, have all gone through cost: benefit analysis already. In addition to the cost: benefit analysis that has been done prior to final rule-making, the Dodd-Frank Act requires that the CFPB assess most of its rules five years after implementation. The assessments must examine the costs and benefits of the rules to, in part, assure the public that the Bureau was accurate in its initial cost: benefit analyses and that the rules have been effective. Now the CFPB is invoking a third cost: benefit analysis to justify the rules that are in effect. For many reasons, this is a wrongheaded move. First, it is redundant. Second, it will require pulling staff and money way from protecting consumers, which is the mission of the agency. Third, the current administration has lauded fiscal responsibility. For the Director of the OMB to charge taxpayers for unnecessary cost: benefit analysis is to repudiate the values of the people that elected this administration. Lastly, the stated purpose of the RFI on adopted rules appears disingenuous. The CFPB has brought no enforcement actions since November 2017, and has taken many steps to protect the financial services industry, including eviscerating the fair lending division, dropping enforcement actions, giving huge raises to the people who have been working to dismantle the agency, and soliciting input from industry—but not the public-- on prepaid cards. These actions suggest that acting director Mulvaney is absolutely committed to destroying the agency that he is known to call a sad, sick joke."

- I do think the increased transparency in the subcommittee meetings is important. The cost benefit analysis the Bureau has been doing is also important. However, it is also very difficult to do this. The Bureau should consider adding additional transparency to how the cost benefit analysis was conducted. It is difficult to weigh certain things with response to cost/benefits, i.e. what is the tangible value on a consumer getting a house? Additionally, and on a slightly different topic, there are certain market participants that operated on a lot of regulatory oversight, i.e. the big guys. But then there are financial technology companies that might not always get the same scrutiny. This creates regulatory disadvantages. There are industry standards that get developed over time that often go beyond the regulations. Federal regulators should look at plays that go around industry standards as well. Finally, any research the Bureau does should be backed up with data points that provide industry with the ability to replicate the same results.

- Speaking more generally about the RFIs, this particular RFIs feels like it has a more general anti-regulatory bent. Strong rules are critical to ensure there is a level and fair playing field for all Americans. When sound consumer financial rules are referred to as tyrannical by the Acting Director, it is an insult to families. These rules that the Bureau put out had hundreds of hours of research and thought put into them, and there was extensive engagement with all stakeholders. My hope moving forward is that the Bureau's new leadership isn't using these Call for Evidence RFIs to give industry a platform to undo the strong rules and processes that the CFPB has put into place.

<u>Subcommittee Membership</u>

- Subcommittee Chair Josh Zinner
- Kathleen Engel
- Max Levchin
- Ohad Samet
- Lisa Servon
- Dr. Howard Slaughter
- James Wehmann
- Chi Chi Wu

<u>Additional CAB members that participated:</u>

- Brent Neiser
- Ruhi Maker