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June 1, 2020

Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Via email--<https://www.regulations.gov/document?D=CFPB-2020-0013-0001>

Re: Request for Information from Taskforce on Federal Consumer Financial Law, Docket No. CFPB-2020-0013

Dear Director Kraninger,

On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comment in response to the Consumer Financial Protection Bureau (CFPB) Request for Information (RFI) dated April 1, 2020.

In brief, we protest the creation of a taskforce with such a breathtakingly inapposite agenda, its inappropriate make-up, its use of public funding, and its opacity.

Breathtakingly Inapposite Agenda

The Federal Register notices that these and other public comments received will “assist the Taskforce on Federal Consumer Financial Law (Taskforce).” Further, it is explained, “The Taskforce is an independent body within the Bureau and reports to the Bureau’s Director. The Taskforce is charged with developing recommendations on harmonizing, modernizing, and updating the Federal consumer financial laws, as well as identifying gaps in knowledge that should be addressed through research, ways to improve consumer understanding of markets and products, and potential conflicts or inconsistencies in existing regulations and guidance.”

Admittedly, the evolution of consumer financial law has been path-dependent; if the task force were parachuting into a new country and charged with establishing legal protections in consumer finance, it might make sense to start from scratch and embark on such an analysis. But this is not a new country. Consumer finance protection law derives from years of experiment, from response to an evolving consumer demographic, from evolving technologies, from the back and froth of politics. That’s how all laws come to be. Instead, this taskforce is a one-year, unneeded sham exercise by a corporate-captured

administration. Whatever product emerges from this taskforce should eventually molder on the dusty shelves where overpriced, neglected government reports are warehoused.

While it might be useful to marshal experts to address a discrete, urgent problem, such as the need for low interest small dollar loans to be more accessible to low income citizens,¹ the creation of public accounts at the Federal Reserve,² or enabling banking through the U.S. Postal Service,³ this taskforce and the associated RFI address foundational questions about virtually all of consumer finance protection.

The RFI asks about essentially forms of credit:

- Automobile financing (credit or lease)
- Credit cards
- Credit repair
- Consumer reporting
- Debt collection by third parties (collection agencies)
- Debt collection by creditors (inhouse collections)
- Debt settlement
- Deposit accounts (checking or savings)
- Electronic payments
- Money transfers
- Mortgage origination and servicing
- Prepaid cards
- Small-dollar loans (installment, payday, vehicle title loans)
- Student loans and student loan servicing

The RFI also asks how to approach consumer protection. Should it be through enforcement, or education?

Surely, any one of these individual items deserve a textbook-sized response.

The RFI asks for input on “[h]ow well financial markets are functioning for consumers.” Again, such a broad and encompassing question demands textbook-length consideration, extensive polling, focus groups, a latitudinal survey, and more. It is simply not possible in 60 days for any thoughtful expert to provide a complete, responsible response. Even with a longer timeframe, given the current COVID-19 pandemic and its associated pressing financial problems facing American families, it would still not be possible for consumer advocates and personal finance experts to provide suitable comment.

Inappropriate Make-up of Task Force Members

¹ *Payday and Other Small Dollar Loans*, CENTER FOR RESPONSIBLE LENDING (website visited May 27, 2020) <https://www.responsiblelending.org/issues/payday-other-small-dollar-loans>

² Andrew Cockburn, *Forget Checks, How About Giving Everyone A Federal Reserve Account?* THE AMERICAN CONSERVATIVE (March 21, 2020) <https://www.theamericanconservative.com/articles/forget-checks-how-about-giving-everyone-a-federal-reserve-account/>

³ Mehrsa Baradaran, *It's Time for Postal Banking*, HARVARD LAW REVIEW (Feb, 24, 2014) <http://www.campaignforpostalbanking.org/news/its-time-for-postal-banking/>

In addition to the overwhelmingly broad purview of this taskforce RFI, the proposed makeup of the taskforce is also cause for great concern. The foundational, existential questions posed by this RFI are those that should be addressed by the elected representatives of Americans, that is, Congress. Instead, these comments will funnel to a tunnel-minded, ideologically homogenous, unaccountable “taskforce” of fringe agents of corporate interests.⁴ Observed Ed Mierzwinski, senior director at US PIRG, “To my knowledge, none have worked for consumer protection organizations yet all have worked as industry consultants or been aligned with industry views.”⁵ A quick glance at members’ biographies shows the extent of the task force’s corporate capture:

- Dr. J. Howard Beales, III, former Professor of Strategic Management and Public Policy at the George Washington University and former Director of the Bureau of Consumer Protection at the Federal Trade Commission. A Public Citizen report described his curricula vitae this way: “A conservative economist, Beales directed the FTC’s Consumer Protection Bureau between 2001 and 2004 and worked in the bureau for four years in the Reagan administration. Beales consulted for tobacco company R.J. Reynolds and authored a study concluding that ads featuring the Joe Camel character did not encourage children to smoke. Since leaving the FTC, he has primarily worked as a professor at George Washington University. Other corporate clients Beales served in private practice include, according to his curriculum vitae, America Online, Walt Disney Company, Pepsico, American Express, Visa, Exxon Mobil and Primerica. More recently, Beales has acknowledged the financial support of his work from the Association of National Advertisers and the Digital Advertising Alliance, a self-regulatory consortium of businesses engaged in online advertising including Amazon, Facebook, IBM, Google, LinkedIn, Microsoft, Netflix, Comcast and Yahoo.”⁶ Bloomberg reported that “Beales has also provided expert testimony for CashCall, a payday lender, in a 2015 CFPB enforcement action, and served as an expert witness for Think Finance, another payday lender, in the course of its bankruptcy proceedings following the CFPB’s case against it.”⁷
- Dr. Thomas Durkin, Senior Economist (Retired) at the Federal Reserve Board. In a letter challenging the narrow ideological spectrum from which this taskforce was selected, Sens. Elizabeth Warren (D-Mass.) and Sherrod Brown (D-Ohio), noted that “since retiring from the Federal Reserve Board, Thomas Durkin has partnered with [taskforce chair Todd] Zywicki to pen articles and op-eds advocating for the rollback of financial regulation and in favor of payday loans, or as he called them, ‘legal, high-cost’ credit options.”⁸

⁴ Ed Mierzwinski, *CFPB Appoints Task “Farce” On Consumer Law*, US PIRG (Jan 12, 2020)

<https://wispirg.org/blogs/eds-blog/usp/cfpb-appoints-task-farce-consumer-law>

⁵ Ed Mierzwinski, *CFPB Appoints Task “Farce” On Consumer Law*, US PIRG (Jan 12, 2020)

<https://wispirg.org/blogs/eds-blog/usp/cfpb-appoints-task-farce-consumer-law>

⁶ Rick Claypool, *The FTC’s Big Tech Revolving Door Problem*, PUBLIC CITIZEN, (May 23, 2019)

<https://www.citizen.org/article/ftc-big-tech-revolving-door-problem-report/>

⁷ Evan Weinberger, Lydia Beyoud, *Financial Watchdog’s Conflicted Task Force Earning Top Dollar*, BLOOMBERG (May 11, 2020) <https://news.bloomberglaw.com/banking-law/financial-watchdogs-conflicted-task-force-earning-top-dollar>

⁸ Press Release, *Brown, Warren Request Answers from CFPB Director Regarding Federal Consumer Law Taskforce*, US SENATE (Feb 5, 2020)

<https://www.banking.senate.gov/newsroom/minority/brown-warren-request-answers-from-cfpb-director-regarding-federal-consumer-law-taskforce>

- William Mc MacLeod, partner of Kelley Drye, former Director, FTC Bureau of Consumer Protection and Bureau of Competition. Noted Sens. Warren and Brown, MacLeod “also traded in his FTC experience to work at a law firm where he defends corporations from government investigations, and, in his words, has ‘resolutely fought against onerous regulations.’”⁹
- L. Jean Noonan, Partner at Hudson Cook, former General Counsel at the Farm Credit Administration, and former Associate Director of the Bureau of Consumer Protection's Credit Practice at the Federal Trade Commission. Of Noonan, Sens. Brown and Warren observed, “Jean Noonan traded in her work at the Federal Trade Commission to work as an attorney at a corporate law firm that represents payday lenders that the Bureau has investigated or sued for ripping off consumers.”¹⁰
- Todd J. Zywicki, Professor of Law at George Mason University (GMU) Antonin Scalia Law School, Senior Fellow of the Cato Institute, and former Executive Director of the GMU Law and Economics Center.¹¹ The aforementioned senators noted, “Todd Zywicki . . . has called the Bureau a ‘tragic failure’ and has argued that the 2008 financial crisis was ‘not a crisis of consumer protection.’ He has been a director of Global Economics Group, a consulting firm hired by Visa, Bank of America, and Citigroup to influence the Bureau and other regulatory agencies. Mr. Zywicki also was paid \$500 an hour to help defend . . . a debt relief company . . . from a Bureau investigation. That company eventually shut down after it was caught fabricating evidence, but not before it had scammed consumers out of more than \$130 million.”¹²

Ideology has run the CFPB amok before.¹³

⁹ Press Release, *Brown, Warren Request Answers from CFPB Director Regarding Federal Consumer Law Taskforce*, US SENATE (Feb 5, 2020)

<https://www.banking.senate.gov/newsroom/minority/brown-warren-request-answers-from-cfpb-director-regarding-federal-consumer-law-taskforce>

¹⁰ Press Release, *Brown, Warren Request Answers from CFPB Director Regarding Federal Consumer Law Taskforce*, US SENATE (Feb 5, 2020)

<https://www.banking.senate.gov/newsroom/minority/brown-warren-request-answers-from-cfpb-director-regarding-federal-consumer-law-taskforce>

¹¹ Press Release, *CFPB Announces Membership of Taskforce on Federal Consumer Financial Law*, CONSUMER FINANCIAL PROTECTION BUREAU, (Jan, 9, 2020) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-membership-taskforce-federal-consumer-financial-law/>

¹² Press Release, *Brown, Warren Request Answers from CFPB Director Regarding Federal Consumer Law Taskforce*, US SENATE (Feb 5, 2020)

<https://www.banking.senate.gov/newsroom/minority/brown-warren-request-answers-from-cfpb-director-regarding-federal-consumer-law-taskforce>

¹³ Corporate Ideological fanaticism has undermined consumer protections already under the Trump CFPB. Threatening America’s most financially vulnerable, the Kraninger CFPB is in the process of gutting protections for payday loan victims. A former CFPB economist has accused the CFPB leadership of corrupting the research process for that led to undermining the payday victim protection rule fashioned under the Obama administration, according to a memo reported by the New York Times. Behind this corruption, reported American Prospect, was a political appointee named Christopher G. Mufarrige. “A staff attorney, alleged to have manipulated evidence that led to the gutting of the Consumer Financial Protection Bureau’s payday lending rule, operated a business in Texas for three years whose model has been criticized as predatory, according to records obtained by a watchdog group,” summarized American Prospect. See:

Squandering Taxpayer Dollars

Adding insult, consumers/taxpayers must fund this anti-consumer assault on our protections. Diane Thompson, a former top CFPB official and now an attorney at the National Consumer Law Center, told Bloomberg, ““This looks like a plan to draft a far-right wing agenda for gutting 40- to 50-year-old consumer protections, on the public’s dime.”¹⁴ Summarized Bloomberg, “The task force members’ prorated salaries are near the top of the pay scale for the CFPB, an agency frequently criticized by Republican lawmakers for paying its staff more generously than most other federal agencies.”¹⁵ Public Citizen filed Freedom of Information Act requests for details of pay for this group, and found “Zywicki’s salary of \$142 per hour comes to about \$226,944 for full time work at the 200-day maximum he’s permitted to work.”¹⁶

By statute, the CFPB already maintains four independent advisory committees.¹⁷ Members bring vast expertise to their assignments, engage in rigorous discussion in important topics, and more. The task of the Academic Research Council is to “provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions.” All are unpaid. [It may be noted that unpaid volunteers appointed under the Obama administration, versus those task force members enjoying generous remuneration, have been targets of conservative critics. For example, John Czwartacki, who served as CFPB spokesman under former acting CFPB Director Mick Mulvaney, released a statement responding to complaints by board volunteers whom Mulvaney had just terminated, stating, “The outspoken members of the Consumer Advisory Board seem more concerned about protecting their taxpayer funded junkets to Washington, DC and being wined and dined by the Bureau than protecting consumers.”¹⁸]

Nicholas Confessore, Stacy Cowley, *Trump Appointees Manipulated Agency’s Payday Lending Research, Ex-Staffer Claims*, NEW YORK TIMES (April 29, 2020) <https://www.nytimes.com/2020/04/29/business/cfpb-payday-loans-rules.html>

And David Dayen, *CFPB Attorney Who Helped Water Down Payday Lending Rule Operated a High-Cost Auto Lender*, AMERICAN PROSPECT (May 4, 2020) <https://prospect.org/power/cfpb-appointee-helped-water-down-payday-lending-rule/>

¹⁴ Evan Weinberger, Lydia Beyoud, *Financial Watchdog’s Conflicted Task Force Earning Top Dollar*, BLOOMBERG (May 11, 2020) <https://news.bloomberglaw.com/banking-law/financial-watchdogs-conflicted-task-force-earning-top-dollar>

¹⁵ Evan Weinberger, Lydia Beyoud, *Financial Watchdog’s Conflicted Task Force Earning Top Dollar*, BLOOMBERG (May 11, 2020) <https://news.bloomberglaw.com/banking-law/financial-watchdogs-conflicted-task-force-earning-top-dollar>

¹⁶ Evan Weinberger, Lydia Beyoud, *Financial Watchdog’s Conflicted Task Force Earning Top Dollar*, BLOOMBERG (May 11, 2020) <https://news.bloomberglaw.com/banking-law/financial-watchdogs-conflicted-task-force-earning-top-dollar>

¹⁷ *Advisory Committees*, CONSUMER FINANCIAL PROTECTION BUREAU (website visited May 27, 2020) <https://www.consumerfinance.gov/about-us/advisory-committees/>

¹⁸ Chris Arnold, *Mick Mulvaney Effectively Fires CFPB Advisory Council*, NPR, (June 6, 2018) <https://www.npr.org/2018/06/06/617612219/mick-mulvaney-effectively-fires-cfpb-advisory-council>

For that matter, should Kraninger truly wish to explore foundational issues of consumer financial protection law, she already pays a staff of researchers, policy experts and others who work in offices very near hers. There is no reason to waste taxpayer dollars on this unneeded, duplicative taskforce.

Legitimacy

The CFPB appears to be evading the Federal Advisory Committee Act, which is designed to bring transparency and balance to committees like this one.

The CFPB claims the task force is exempt from FACA because it is an intra-governmental committee.¹⁹ But FACA's exemption for intra-governmental committees would only apply if the task force were composed "wholly of full-time, or permanent part-time" federal government employees or officers.²⁰ CFPB documents, which Public Citizen received in response to a Freedom of Information Act request, show that is not the case here. For instance, none of the task force's members are working full-time for the task force and at least four are in time-limited positions. Indeed, it appears that at least three of the task force members retain full time jobs elsewhere.²¹

Sens. Warren and Brown also challenge the task force's legitimacy.²²

Lack of Transparency

Presumably, the corporate-aligned ideological members of this task force hope to produce a report that pro-business lawmakers can cite when they press their anti-consumer agenda. They will theatrically loft the report in hearings, characterize it as a government report, point to the CFPB brand undoubtedly to be highlighted on the cover, perhaps note that it was produced on a taxpayer-funded commission, and dramatically declare that impartial experts advise thus and such deregulatory move.

What the taskforce produces will no doubt reflect libertarian ideology, not consumer protection goals. It will reflect the well-known views of its task force members. It will waste taxpayer dollars.

While none of this can be repaired now, the taskforce must make its deliberations open to the public. Only then can they make even the most tenuous claims that they are considering these foundational questions fairly. Only if the public can see debate, even it would be staged, about alternatives they considered, can this Kraninger project make even a slim claim that it hasn't precooked a recipe.

The taskforce must hold its meetings in public. Public Citizen wishes and intends to attend these meetings, and we wish access to task force records, including meeting materials and minutes.

¹⁹ Evan Weinberger and Lydia Beyoud, *Financial Watchdog's Conflicted Task Force Earning Top Dollar*, Bloomberg Law (May 11, 2020), <https://news.bloomberglaw.com/banking-law/financial-watchdogs-conflicted-task-force-earning-top-dollar>.

²⁰ 5 U.S.C. App. 2 § 3(2).

²¹ See CFPB, *Taskforce on Federal Consumer Financial Law* (Jan. 2020), https://files.consumerfinance.gov/f/documents/cfpb_taskforce-biographies.pdf.

²² Press Release, *Brown, Warren Request Answers from CFPB Director Regarding Federal Consumer Law Taskforce*, US SENATE (Feb 5, 2020)

<https://www.banking.senate.gov/newsroom/minority/brown-warren-request-answers-from-cfpb-director-regarding-federal-consumer-law-taskforce>

Again, we strongly oppose the existence of this task force—it's conception, the profile of its members, the abuse of public funding, its legitimacy and its apparent opacity.

For questions, please contact Bartlett Naylor at bnaylor@citizen.org.

Sincerely,

Public Citizen