



Kyle J. Burgess
Consumers' Research
1801 F Street, NW
Washington, DC 20006
(202) 898-0542
kburgess@consumersresearch.org

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By electronic delivery to:

www.regulations.gov

The Honorable J. Michael Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, D.C. 20552

Re: Request for Information Regarding Bureau External Engagements; Docket No. CFPB-2018-0005

Document Number: 2018-03788

Consumers' Research appreciates the opportunity to respond to the Bureau of Consumer Financial Protection's (CFPB) request for comment on its external engagements. Consumers' Research is a 501(c)(3) organization advocating for the general interests of consumers. This comment does not represent the views of any particular affected party or special interest group.

Improving the Bureau's "Field Hearings"

The CFPB has held a series of "field hearings" on topics of general interest as well as on a number of topics where the Bureau has issued rulings. In the recent past, the Bureau has exhibited a pattern of holding only a small number of field hearings for momentous rule changes that could potentially impact the lives of millions of Americans.

The Bureau held four hearings on the use of mandatory arbitration clauses in financial product and services agreements: Dallas, TX (December 2013), Newark, NJ (March 2015), Denver, CO (October 2015), and Albuquerque, NM (May 2016). The Bureau published its request for comment on the rule in the Federal Register on May 24, 2016 and finalized its Arbitration rule in July 2017. This means that the Bureau neither held field hearings on Arbitration after it had formally announced its intention to promulgate a rule on Arbitration, including during the public comment period, nor did it hold hearings after finalizing the rule.

The Bureau held three hearings on small-dollar, short-term loans: Richmond, VA (March 2015), Nashville, TN (March 2013), and Kansas City, MO (June 2016). The Bureau published its request for comment in the Federal Register on July 22, 2016 and finalized its "Payday Rule" in October 2017. As with the Arbitration rule, the Bureau again chose to hold field hearings before

announcing its formal intention to create new rule on small-dollar lending and has not held hearings since finalizing the rule.

We believe that this practice may limit the ability of the public, the industry, and other relevant stakeholders to weigh in on CFPB rulemaking in a way that gives their views sufficient visibility.

Consumers' Research recommends that the Bureau expand the number field hearings in the future when considering a major rule change that will affect millions of consumers. Furthermore, the CFPB should not go without a field hearing between the time a rule is formally noticed and finalized. The lack of hearings during the public comment periods and after the finalization of the rule limits public engagement. Important perspectives shared during field hearings but not expressed during the formal comment period could be neglected, and the full impact of these rules on consumer well-being may be obscured.

We also recommend the Bureau hold hearings on a wider range of topics. Field hearings need not be limited to areas of consumer finance over which the CFPB has rulemaking authority, or in areas where it is considering a rule change.

The Bureau has not held field hearings to allow the public, industry, or other stakeholders to weigh in on the effects of the Durbin Amendment or on issues surrounding FinTech or cryptocurrencies. The Durbin Amendment has led to a contraction in free checking account offerings in the United States,¹ and FinTech has great potential to expand financial access to unbanked and underbanked Americans.

Consumers' Research also recommends the Bureau hold hearings with more diverse panel participants. At the Bureau's hearing on Arbitration in Albuquerque, NM, three of six panelists were attorneys from major law firms, who had a vested interest in the restricting of arbitration agreements and the expected resultant increase in class-action suits. This demonstrates bias toward a predetermined conclusion in its rulemaking and also calls the Bureau's credibility into question. Consumer interests are harmed when consumer protection measures are not grounded in data-driven or evidence-based support or when they fail to account for broader scope considerations, such as potential long-term or unintended consequences. In cases such as mandatory arbitration, it is important for the Bureau to remain agnostic to the dispute resolution mechanism, and instead concentrate primarily on outcomes and long-run impacts, so that the focus remains consumer welfare instead of a policy objective. When regulatory bodies depart from their given mandates and pursue policy objectives, consumer confidence is shaken.

Strategies for Including Diverse Stakeholders and Perspectives outside of Washington, D.C.

¹ <https://www.federalreserve.gov/econres/feds/files/2017074pap.pdf>

Consumers' Research believes that incorporating diverse viewpoints is key to formulating rules that serve the CFPB's mandate while enhancing consumer well-being. We recommend that the Bureau seek to pursue voices on consumer issues outside of the established mainstream.

A number of the hearings that are held outside of Washington, D.C. are held in large cities such as Richmond, VA, Dallas, TX, or Denver, CO. However, the Bureau should seek to pursue hearings and round tables in more rural regions or smaller but more economically diverse cities, in order to capture a more complete picture of consumer finance in the United States.

In addition to featuring consumer groups, industry representatives, and other stakeholders in these hearings and round tables, we believe it would be productive to seek the input of academics and experts on financial access and financial inclusion, in order to ensure that the Bureau's rulemaking does not restrict access to credit for the most vulnerable consumers or compromise consumer choice.

Transparency for Selecting Topics, Location, and Other Aspects of Public Events

The location, topic, panelists, and other features of a public meeting can shape the perspectives of those present at that hearing, and can therefore indirectly influence the nature or perception of Bureau rulemaking. To this end, Consumers' Research recommends the Bureau pursue a more thorough process for including public feedback on these aspects of public meetings.

Transparency procedures could include informing the public of how the CFPB selects external panelists for hearings and round tables or how it determines the cities and topics it considers for hearings and round tables. Such procedures guarantee that the Bureau's decisions regarding its interactions with the public, industry, and other stakeholders are subject to scrutiny, which is an important step toward ensuring diversity of viewpoints.

Communications and External Engagements with Congress

In the past, the Bureau has not always engaged in transparent or clear communications with Congress. Under the previous Director, requests for information sometimes saw slow turnaround. At the Congressional hearings in which the Director would present the Bureau's Semi-Annual Report to Congress, hearings would often become contentious and requested information would not materialize. While the current Acting Director has shown significant progress in this regard, we believe that the Bureau must remain diligent in ensuring transparency with Congress.

A worthwhile addition to the Bureau's current program of meetings, hearings, and advisory boards could be CFPB events dedicated specifically to interfacing with Members of Congress and their staffs. This would go a long way towards improving the relationship between the Bureau and Congress while improving the transparency of the Bureau's actions and its accountability to the American people.

Consumers' Research recommends robust communication with *all* parties in Congress. The Bureau's current structure means that an appointee nominated to the directorship and confirmed by the Senate may hold their office when the political majority in Congress changes, which can lead to a contentious relationship between the Director and Congress. Regular and open communication between all parties can help mitigate the partisan nature of the Director's position and the Bureau's operations.

Commission on Consumer Finance

In addition to the recommendations on external engagements discussed above, Consumers' Research believes the CFPB should establish an independent, bipartisan commission to study the structure and state of consumer finance in the U.S. as well as assess the impact of consumer financial regulation post-Dodd Frank. The commission could gather and analyze consumer credit data and case studies, providing a common understanding of market realities and empirical support for policies that ensure consumers left behind by the current system have access to a robust financial market that works for them. This results of such a comprehensive study could help remove the uncertainty surrounding consumer financial challenges and aid the Bureau in identifying what truly serves the best interest of consumers.

Sincerely,



Kyle Burgess, Executive Director

Consumers' Research