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April 25, 2018

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Via email: FederalRegisterComments@cfpb.gov

Re: Request for Information, Civil Investigative Demands/Docket No. CFPB-2018-0001

Dear Executive Secretary Jackson,

On behalf of more than 400,000 members and supporters of Public Citizen, we offer the following comment in response to the Request for Information (RFI) regarding the Consumer Financial Protection Bureau's (Bureau, CFPB, agency) Civil Investigative Demand (CID) processes.

At the outset, we object to this foundational exploration of both the CID process and the other elements of the Bureau's basic operations. Currently, the Bureau lacks a director that has been confirmed by the Senate. Congress conceived the Bureau as an agency independent of political interference. Instead, this RFI comes at the direction of Mick Mulvaney, who serves as a caretaker at the pleasure of the President and is otherwise the Director of the Office of Management and Budget. This is the opposite of independence. Further, as a member of Congress, Rep. Mulvaney objected to the existence of the Bureau, calling it a "sad, sick joke."¹ Since then, many of his actions at the Bureau have reversed the course of the mission of consumer protection that Congress mandated.²

We nevertheless offer the following comments to emphasize the important role that CIDs play in protecting consumers.

¹ Emily Stewart, *Mick Mulvaney once called the CFPB a "sick, sad" joke. Now he might be in charge of it*, Vox (Nov. 16, 2017)

<https://www.vox.com/policy-and-politics/2017/11/16/16667266/mick-mulvaney-cfpb-cordray-omb-joke>

² *Letter From Sen. Elizabeth Warren to OMB Director Mick Mulvaney*, OFFICE OF SEN. WARREN (March 16, 2018)
<https://www.warren.senate.gov/imo/media/doc/2018.03.16%20Letter%20to%20Mulvaney1.pdf>

Background

Congress created the Bureau in response to the financial crash of 2008. This crash followed massive abuse of consumers in the lending market. This abuse and subsequent calamity stripped millions of Americans of their homes, jobs and savings. While bank regulators might have arrested this misconduct, they subordinated their mandate to protect consumers to their additional mandate to protect the safety of the financial system. These regulators apparently viewed Wall Street profits as a proxy for safety, even when those profits ultimately derived from consumer abuse. Congress created the Bureau with a singular purpose: “to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”³ In doing so, Congress made the CFPB the first federal regulator to supervise both banks and non-bank financial companies, including mortgage companies, private student lenders, and payday lenders.⁴

Congress drew from a number of practices in government through extensive congressional hearings and other expert input when it devised the Bureau. It crafted investigative tools so as to help the Bureau detect, prosecute and win recompense for wrongdoing. By July 2017, the Bureau’s enforcement and supervision actions had netted roughly \$12 billion in ordered relief for more than 29 million consumers victimized by unlawful activity.⁵ Other consumers likely benefit from the deterrence value of these actions.

The Civil Investigative Demand

One of these investigative tools is the CID. A CID, similar to a subpoena, is a tool for the agency to gather information in investigating potential wrongdoing. It is expressly authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act and that statute, in combination with the Bureau’s regulation, establishes appropriate parameters for the Bureau’s CID processes.⁶ The Bureau issues CIDs to entities and persons whom the CFPB believes may have information relevant to a violation of laws the Bureau enforces. These demands require recipients to provide the Bureau with information in varying forms, including written answers to questions, documents, and testimony. Recipients are required to produce the requested information to the Bureau, which uses such information to further investigations of potential violations of Federal consumer financial laws. Under 12 U.S.C. § 5562, each civil investigative demand must state the nature of the conduct constituting the alleged violation that is under investigation and the provision of the applicable law. That provision also requires, for example, that demands for documents prescribe a return date that is “reasonable”, and that those for

³ 12 U.S.C. § 5511(a)

⁴ See 12 U.S.C. §§ 5514-15

⁵ Zixta Martinez, *Six Years Serving You*, CONSUMER FINANCIAL PROTECTION BUREAU (July 21, 2017) <https://www.consumerfinance.gov/about-us/blog/six-years-serving-you/>

⁶ See 12 U.S.C. § 5562; see also 12 CFR § 1080.6

written reports or answers “propound with definiteness and certainty the reports to be produced or the questions to be answered.”

The RFI asks about the “processes for initiating investigations, including the . . . delegation of authority.” We support the current process whereby senior staff at the Bureau issue CIDs. A CID bears the signature of either the enforcement director or the deputy enforcement director. Authority for this important tool should not be politicized by requiring approval from the Director. Requiring additional approvals can impede the efficiency of an investigation.

The RFI further asks about ways to “improve CID recipients' understanding of investigations,” including the nature, purpose and scope of the query. The Bureau’s policies already require a clear declaration of purpose, including the alleged violation. Initial requests may be and are often narrowed following the course of communication between the Bureau and a firm. [Of note, consumers who may be victims of these firms are not accorded the same time with enforcement staff about the purpose of the CID.] The Bureau’s manual regarding CIDs directs staff to “consider the burden the CID will impose on the recipient. A CID should be narrowly tailored to solicit the information necessary for the investigation.”⁷ Providing additional information could lead abusive firms to conceal or destroy evidence. Further, as some CIDs go to third parties, even the subject firm may not wish for the Bureau to expand on this information for fear of potential reputational harm.

The Inspector General examined the CID process in 2017. It concluded that its CID processes were sound. It provided several suggestions, such as for record keeping, and noted that the Bureau had implemented these recommendations.⁸

Conclusion

Finally, we express concern about the nature of this review of CIDs. The RFI seeks this information, the Bureau explains, to identify ways that the “CIDs may be . . . streamlined . . . while minimizing burdens.”⁹ In fact, the RFI uses the term “burden” five times in its two-page request. It does not use the term “protection” at all, other than to name the Bureau.

Further, the request makes clear that the Bureau is most interested in hearing from recipients of CIDs, that is, firms that the Bureau has some reason to believe are violating the law. It asks to hear from firms that “have received one or more CIDs from the Bureau, or members of the bar who represent these entities.” Many of these companies will be ones that the CFPB believed

⁷ *Policies and Procedures Manual, Office of Enforcement*, CONSUMER FINANCIAL PROTECTION BUREAU (May 2017) https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201710_cfpb_enforcement-policies-and-procedures-memo_version-3.0.pdf

⁸ The CFPB Generally Complies With Requirements For Issuing Civil Investigative Demands But Can Improve Certain Guidance And Centralize Recordkeeping, OFFICE OF INSPECTOR GENERAL, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM CONSUMER FINANCIAL PROTECTION BUREAU (Sept. 20, 2017), <https://oig.federalreserve.gov/reports/cfpb-civil-investigative-demands-sep2017.pdf>

⁹ *Request for Information: Civil Investigative Demands*, CONSUMER FINANCIAL PROTECTION BUREAU/REGULATIONS.GOV (website visited February 19, 2018) <https://www.regulations.gov/document?D=CFPB-2018-0001-0002>

violated the law. Building a record based on complaints by abusive firms can only debase the CFPB's important investigative tools, and certainly undermines the mission of the agency. In 1950, the Supreme Court recognized this natural antagonism to investigative questions when it recognized, in a related context, an agency's "power to get information from those who best can give it and who are most interested in not doing so."¹⁰

We recognize that a CID imposes some responsibilities on firms. That is the nature of oversight. It is the duty of firms and individuals to comply with Bureau questions where there are suspicions of misconduct. The cost to consumers of financial industry abuse far outweighs these compliance duties.

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

Sincerely,

Public Citizen

¹⁰ *United States v. Morton Salt Co.*, 338 U.S. 632, 640 (1950).