

August 21, 2020

The Hon. Kathleen Kraninger  
Comment Intake  
Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

***Re: Advisory Opinions Proposal (Docket No. CFPB-2020-019)***

Dear Director Kraninger:

The American Financial Services Association (AFSA)<sup>1</sup> supports the Consumer Financial Protection Bureau's (CFPB) advisory opinion program (Proposed AO Program). AFSA agrees with the CFPB that clear and useful guidance to regulated entities is an important aspect of facilitating markets. Timely, written guidance can enable compliance by resolving outstanding regulatory uncertainty and decrease the time, money, and need for enforcement actions. Supporting compliance fulfills the CFPB's statutory purpose of ensuring consumers have access to markets for consumer financial products and services and that those markets are fair, transparent, and competitive.

AFSA strongly supports the allowance for trade associations to submit requests for Advisory Opinions (AOs) on behalf of one or more members, who would not be named. Allowing trade associations to submit AOs will: (a) help requestors with limited legal resources, (b) potentially reduce the number of AOs by consolidating similar requests from multiple parties, (c) encourage submissions by allowing parties anonymity, and (d) avoid unnecessary and costly enforcement actions.

Below, we respond to the six aspects of the Proposed AO Program on which the CFPB is soliciting comment.

*(1) Application elements the Bureau should require from parties requesting AOs, and accommodations that should be made for requestors with limited legal resources.*

AFSA believes that the proposed application elements, which include: the name of the requestor; the material facts and circumstances; a proposed interpretation; the identification of the potential uncertainty or ambiguity that such interpretation would address; and an explanation of why the requested interpretation is an appropriate resolution of that uncertainty or ambiguity. The CFPB explains that requestors may choose to offer additional information, including, as applicable, an explanation of the potential consumer benefits and risks associated with resolution of the interpretive questions and the proposed interpretation.

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<sup>1</sup> AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with closed-end and open-end credit products including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

*(2) How the Bureau should prioritize requests for AO guidance.*

The CFPB states that it will prioritize open questions within the Bureau's purview that can legally be addressed through an interpretive rule, where an AO is an appropriate tool relative to other Bureau tools for resolving the identified uncertainty. AFSA agrees. Beyond that, AFSA suggests that the Bureau consider AO requests regarding rules whose implementation date is approaching first.

*(3) How the Bureau should quantify the benefit to consumers when evaluating AO requests.*

First, the Bureau should identify whether or not the AO request would even have an impact on consumers. There are many questions regarding compliance procedures that do not affect consumers at all. Second, if the AO would have an impact on consumers, the Bureau already suggests that requestors could provide an explanation of the potential consumers benefits and risks associated with the resolution of the interpretive question as part of the application. Third, we suggest that the Bureau ask for comment on AOs, as explained below.

*(4) Improvements that could be made to the Proposed AO Program to further enhance compliance.*

AFSA believes the Bureau should open advisory opinions to formal Administrative Procedures Act (APA) notice and comment.

AOs will hold the weight of interpretive rules and be applied not only to the stakeholder which requests the advisory opinion, but also to similarly situated parties. Input from such potentially affected stakeholders is particularly important because AOs could be applied retroactively. Accordingly, interested stakeholders should receive an opportunity to comment on any AOs before they become final.

As the Bureau already plans to publish advisory opinions in the Federal Register, AFSA recommends the Bureau publish AOs first in a proposed state and allow for comments 30 days after publication. This will allow interested stakeholders who may be affected by the new Bureau interpretation the opportunity to provide feedback where they would otherwise be absent from the conversation.

Limiting the comment period to 30 days will still allow the Bureau to execute AOs in a timely and efficient manner. We further urge the Bureau to set definitive timelines for review of all comments and publication of the final AO.

(5) *How the Bureau should handle sensitive information submitted by requestors.*

The CFPB states in its Proposed AO Program that where information submitted to the Bureau is information the requestor would not normally make public, the Bureau intends to treat it as confidential pursuant to its rule, Disclosure of Records and Information,<sup>2</sup> to the extent applicable. AFSA believes that approach is appropriate.

(6) *How the Bureau can make AO guidance that has not been incorporated into the Official Interpretations codified in the Code of Federal Regulations (or Commentary) available to the public in a useful format.*

The Bureau should publish AOs in the Federal Register and on *consumerfinance.gov*.

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AFSA appreciates the CFPB's attention to these issues. Please do not hesitate to contact me at 202-776-7300 or [cwinslow@afsamail.org](mailto:cwinslow@afsamail.org) with any questions.

Sincerely,



Celia Winslow  
Senior Vice President  
American Financial Services Association

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<sup>2</sup> 12 CFR 1017.