

May 29, 2018

Comment Intake  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

To Whom It May Concern:

The American Financial Services Association (AFSA)<sup>1</sup> appreciates the opportunity to comment on the Bureau of Consumer Financial Protection's notice and request for information (RFI) to assist it in assessing its public and non-public external engagements. AFSA commends the effort the Bureau has made, both recently and over the last several years, to engage with members of the public, consumer advocates, and industry representatives.

Our letter will address the Bureau's external forums (*e.g.*, field hearings, town halls, roundtables, and advisory boards and councils), as well as the questions asked in the RFI. Specifically, we emphasize: that Bureau should improve field hearings so they provide more meaningful feedback, that the Bureau's roundtables have been a successful way to gather information, that the Bureau's advisory boards and councils should be more balanced, and that the Bureau should request comments on the studies it conducts and the methodologies it intends to use.

## **I. Field Hearings**

The Bureau's field hearings are organized around a specific topic and take place in different locations around the country. Field hearings are open to the public and are livestreamed on the Bureau's website.

AFSA appreciates that the field hearings are livestreamed and that the panels are made up of a mix of participants representing different constituencies. Field hearings can be a useful way of showcasing different viewpoints. However, AFSA has concerns regarding the way field hearings are staged.

As employed thus far, field hearings appear intended to be well-attended and lengthy press conferences designed to justify a proposed rule, as opposed to attempts to gather meaningful insight and perspectives from concerned or affected persons or entities. We make this conclusion based upon two predominant observations.

First, the documents being discussed at a field hearing generally are not given to panelists sufficiently far in advance for meaningful study by the panelists. The documents may be several hundred pages in length. For example, on multiple occasions, panelists were given a several hundred page document either the night before or the day of a field hearing—and were then supposed to discuss the document with meaningful input during the hearing a few hours later. No reasonable person could argue that panelists were given sufficient time to read and reflect on that much material, as well as be prepared to discuss it thoroughly, at the field hearing. If the true purpose of the field hearing is to solicit feedback about a proposal, rather than to perform the function of a well-attended press conference, there would be no need to keep the proposal secret until the day of the field hearing.

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<sup>1</sup> Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

Of course, if the Bureau’s intent is to hold the field hearing as a press conference (as appears from most past field hearings), then such secrecy makes sense. In that case, though, the field hearing should be correctly marketed as a press conference and not a fact-gathering field hearing.

Second, the arrangement of the field hearings more closely aligns with a press conference and political photo opportunity, as opposed to a calculated attempt to obtain perspective and information useful to the Bureau in evaluating a proposed rule. Field hearings typically begin with introductory remarks by a Bureau staff member, state or local officials and the Bureau Director, followed by a panel discussion with industry representatives, nonprofit organizations, academics, or other subject matter experts. After the panel discussion, a Bureau staff member invites audience input about the specific topic and/or discussion. This format, with remarks from various officials, is more like a press conference.

Therefore, in order to more fully examine the different perspectives surrounding an issue, AFSA respectfully recommends that the Bureau make the following changes to the field hearings: (1) shorten the remarks by Bureau staff and the Director, (2) limit or eliminate remarks by state or local officials, and (3) refocus the field hearings on the panelists.

## **II. Town Halls**

Town halls are generally organized around a specific topic or financial education. They may be open to the public or invitation-only and are sometimes co-hosted by another organization. Town halls typically include remarks by the Bureau Director or a Bureau staff person, followed by an audience comment period.

AFSA does not have a comment on the town halls.

## **III. Roundtables**

Roundtables are invitation-only events with the Bureau Director or Bureau staff to discuss particular issues. Roundtables have historically included industry representatives, nonprofit organizations, academics, or other interested parties.

AFSA finds the roundtables very valuable. They have been a good forum to provide feedback on issues. Our only comment is that the roundtables should not be a “check the box” exercise. Comments from industry representatives, nonprofit organizations, academics, and other interested parties should all be taken seriously and evaluated as the Bureau proceeds with the issue being discussed.

## **IV. Advisory Boards and Councils**

The Bureau has organized four formal advisory groups: the Consumer Advisory Board (CAB, required by section 1014(a) of the Dodd-Frank Act), the Community Bank Advisory Council, the Credit Union Advisory Council, and the Academic Research Council (ARC). AFSA’s comments focus on the CAB and the ARC.

The purpose of the CAB is “to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or

services industry, including regional trends, concerns, and other relevant information.”<sup>2</sup> The CAB is a source of market intelligence and expertise for the agency; the CAB also advises and consults with Bureau staff about various aspects of the Bureau’s work.

AFSA has three suggestions for the CAB. First, the Bureau should involve the CAB and its members at the beginning of rulemakings. CAB input should be considered throughout the rulemaking process so that it can be meaningful. Involving the CAB after a rule has been finalized (as the Bureau did this fall with the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule) turns the CAB meeting into a press conference. The CAB could be an interesting and important tool if its input was used to help seek common ground on new ideas, as CAB members are currently doing with the project on mobile financial services.

Second, some parts of CAB meetings should be non-public. While we believe the CAB should be transparent, having all CAB meetings public limits meaningful discourse. Some CAB members are far less candid during public meetings. To promote transparency, we suggest that the CAB release detailed minutes of what was discussed in the non-public portion of the meeting.

Third, the CAB should have a better balance of representatives. AFSA asks that the CAB be made up of equal numbers of industry and consumer advocates.

A balance of viewpoints would also help the ARC better advise the Bureau. The purpose of the ARC is to advise the Bureau about research methodologies, data collection, and analytic strategies and provides feedback about research and strategic planning. The Bureau should seek academics with differing views in order to develop robust feedback.

## **V. Questions**

### *1. Strategies for seeking public and private feedback from diverse external stakeholders on the Bureau’s work.*

AFSA has two suggestions for strategies for seeking feedback from stakeholders on the Bureau’s work.

First, the Bureau should ask for comment on the studies it has completed before proceeding with rulemaking. AFSA appreciates the effort the Bureau has made to study an area before issuing rules. However, even the most detailed studies benefit from public review. We ask that the Bureau issue completed studies for comment. For example, in the arbitration context, the Bureau completed a several-hundred page study on arbitration that contained much useful data. However, certain erroneous conclusions were highlighted in the study and the Bureau’s press releases. While the study demonstrated that arbitrations can benefit consumers, the headings in the study and the press releases announced the opposite. Before proceeding with a rulemaking that prohibited certain arbitration clauses, it would have been useful for the Bureau to have asked for comment on the study.

Second, the Bureau should seek feedback on the methodologies it uses in enforcement and supervision. The Bureau should publish the methodologies that it intends to use, and should ask for comment prior to their use. For example, after issuing Bureau Bulletin 2013-02 on indirect auto lending and compliance with the Equal Credit Opportunity Act, the Bureau began relying on a Bayesian Improved Surname Geocoding (BISG) proxy method in its fair lending assessments. However, the Bureau refused to publish exactly how it used the BISG method. Thus, for a while vehicle finance companies had to try and guess how the Bureau was using the proxy method.

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<sup>2</sup> 12 U.S.C. 5494(a).

Not only was that unfair to companies, but both industry and academics alike had legitimate critiques of the BISG proxy methodology actually employed. If the Bureau had released the BISG proxy it employed for comment before using it, problems with the methodology might have been addressed.

*2. Structures for convening diverse external stakeholders and the public to discuss Bureau work in ways that maximize public participation and constructive input, including but not limited to structures utilized by the Bureau to date, such as field hearings, town halls, roundtables, and meetings of the advisory groups.*

As discussed above, AFSA has found the Bureau's roundtables to be a good way to provide industry feedback to the Bureau.

*3. Processes for transparency in determining topics, locations, timing, frequency, participants, and other important elements of both public and private events.*

AFSA's answer to this question focuses on the timing and participants in events. As for timing, events should be held throughout the rulemaking process—as the Bureau considers engaging in a rulemaking, before and after studies are conducted, before a notice of proposed rulemaking, and while the rulemaking is on-going (although we understand the Administrative Procedures Act limitations to discussions on-going rulemakings). As for participants, the more feedback the Bureau can gather and include, the better the rule will be for both consumers and industry. The participants in these events should obviously be balanced between industry representatives and consumer groups.

*4. Vehicles for soliciting public and private perspectives from outside of Washington, DC on the Bureau's work.*

We understand the importance of soliciting perspectives from outside of Washington, DC on the Bureau's work. At the same time, many of those engaged on a regular basis with the Bureau work in Washington. Therefore, we appreciate that the Bureau has taken advantage of technology and livestreamed its public events. We ask that it continue to do so.

*5. Strategies for promoting transparency of external engagements, including Advisory Board and Council meetings, while protecting confidential business information and encouraging frank dialogue.*

AFSA does not have any additional strategies.

*6. Strategies and channels for distributing information about external engagements to maximize awareness and participation.*

AFSA suggests that the Bureau continue to send emails announcing all public engagements.

*7. Other approaches, methods, or practices not currently used by the Bureau that would elicit constructive input on the Bureau's work.*

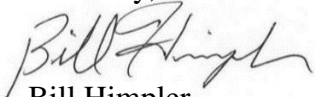
AFSA does not have any additional suggestions.

## **VI. Conclusion**

AFSA appreciates the effort the Bureau has made to engage with members of the public, consumer advocates, and industry representatives. We hope that the Bureau improves its field hearings, keeps holding roundtables, balances its advisory boards and councils, and asks for comment on its studies and methodologies.

Please contact me by phone, 202-466-8616, or email, [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org), with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive style with a large initial "B".

Bill Himpler  
Executive Vice President  
American Financial Services Association