



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

May 14, 2018

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

Re: Request for Information Regarding Bureau Enforcement Processes (Docket No. CFPB-2018-0003)

Dear Ms. Jackson:

I write as Superintendent of the New York State Department of Financial Services (NYDFS) in response to the Consumer Financial Protection Bureau (Bureau)'s Request for Information regarding Bureau enforcement processes. I appreciate the opportunity to offer NYDFS's thoughts on the significant and vital role of the Bureau's enforcement work.

The NYDFS supervises approximately 3,800 institutions with assets of approximately \$7 trillion, including state-chartered, domestic, and foreign banks operating in New York; U.S. and foreign insurance companies operating in New York; and licensed lenders, money transmitters, and other non-bank financial companies, some of which are also supervised by the Bureau. NYDFS has worked with the Bureau since its creation on many matters, and has strongly supported the Bureau in its effective work in protecting financial markets and consumers.

I write to encourage the Bureau to continue with the vigorous enforcement of federal consumer financial laws, consistent with its Congressional mandate. The importance of the Bureau's role in enforcing federal consumer financial laws can be traced directly to the financial crisis of 2007–2009, which precipitated the Bureau's creation. The financial crisis had a profound effect on Americans, reshaping the lives of millions and, for some, the consequences last to this day. Indeed, the independent Financial Crisis Inquiry Commission, comprised of experts in a number of fields, including banking, finance and consumer protection, described the crisis as “a fundamental disruption—a financial upheaval, if you will—that wreaked havoc in communities and neighborhoods across the country.”<sup>1</sup> The Commission found that nearly \$11 trillion in household wealth disappeared because of the financial crisis.<sup>2</sup> Other measures of the crisis's

<sup>1</sup> FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT, at xv (Jan. 2011).

<sup>2</sup> *Id.* Others opined that the loss was even larger. David Luttrell, Tyler Atkinson & Harvey Rosenblum, *Assessing the Costs and Consequences of the 2007–09 Financial Crisis and Its Aftermath*, ECONOMIC LETTER, FED. RESERVE

impact are equally astounding. According to published reports, in the fourth quarter of 2008 and the first quarter of 2009, U.S. gross domestic product fell by 5.4% and 6.4% at annual rates—the worst six months for economic growth since 1958.<sup>3</sup> Employment fell by 8.8 million between January 2008 and February 2010, the largest absolute decline since 1939 when the Bureau of Labor Statistics' Current Employment Statistics began tracking such numbers.<sup>4</sup> Foreclosures, already on the rise, rose even further when the housing bubble exploded in the fall of 2008: from September 2008 through 2014, approximately 5.5 million homes were lost to foreclosure across the country.<sup>5</sup> The crisis spread throughout America, hurting millions through lost jobs and wages, foreclosure, and emptied savings and retirement accounts.

Many studied the roots and causes of the financial crisis, and among them, a clear consensus emerged that our financial system needed better enforcement at the federal level of laws and regulations protecting consumers of financial products and services.<sup>6</sup> While many states, including New York, have vigorously enforced laws and regulations protecting consumers and markets, no single federal agency had an exclusive focus on consumer financial protection.<sup>7</sup> As the mortgage market began to heat up with riskier loans, federal agencies not only failed to stop the coming implosion, they also worked to preempt the application of state laws and regulations, preventing adequate protections for consumers and contributing to weakening federal standards in the mortgage market.<sup>8</sup>

Congress responded to the financial crisis by, among other things, passing the Consumer Financial Protection Act (CFPA) in 2010 and creating the Bureau. Congress gave the Bureau a clear mandate to “enforce Federal consumer financial law.”<sup>9</sup> Importantly, Congress appropriately made clear that the states would not be preempted in their enforcement of

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BANK OF DALLAS, vol. 8, no. 7, at 1 (Sept. 2013), <https://www.dallasfed.org/research/eclett/2013/el11307.cfm> (“U.S. household net worth plunged \$16 trillion, or 24 percent, from third quarter 2007 to first quarter 2009.”).

<sup>3</sup> Phillip Swagel, *The Cost of the Financial Crisis: The Impact of the September 2008 Economic Collapse*, PEW CHARITABLE TRUSTS FIN. REFORM PROJECT, at 8 (Apr. 28, 2010), <http://www.pewtrusts.org/~media/assets/2010/04/28/costofthecrisisfinal.pdf>.

<sup>4</sup> Christopher J. Goodman & Steven M. Mance, “Employment loss and the 2007–09 recession: an overview,” *Monthly Labor Review*, BUREAU OF LABOR STATISTICS, at 8 (Apr. 2011), <https://www.bls.gov/opub/mlr/2011/04/art1full.pdf>.

<sup>5</sup> Erin Carlyle, “2014 Foreclosure Filings Hit Lowest Level Since 2006, RealtyTrac Says,” FORBES (Jan. 15, 2015), <https://www.forbes.com/sites/erincarlyle/2015/01/15/foreclosure-filings-drop-by-18-in-2014-hit-lowest-level-since-2006-realtytrac-says/#34382f748e56>.

<sup>6</sup> See FIN. CRISIS INQUIRY COMM’N, *supra* note 1, at xviii (“We conclude widespread failures in financial regulation and supervision proved devastating to the stability of the nation’s financial markets.”); U.S. DEP’T OF THE TREASURY, FINANCIAL REGULATORY REFORM: A NEW FOUNDATION, at 7–8 (Oct. 8, 2009); U.S. DEP’T OF HOUSING & URBAN DEV., REPORT TO CONGRESS ON THE ROOT CAUSES OF THE FORECLOSURE CRISIS, at xiii–xiv (Jan. 2010).

<sup>7</sup> FIN. CRISIS INQUIRY COMM’N, *supra* note 1, at 75–76; U.S. DEP’T OF THE TREASURY, *supra* note 6, at 7 (“[O]ur regulatory framework proved inadequate in important ways....[T]he supervisory framework for enforcing those regulations had significant gaps and weaknesses.”); Christopher L. Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review*, 90 TUL. L. REV. 1057, 1064–66 (2016) (discussing U.S. federal consumer protection laws and various agencies responsible for supervision and enforcement); Adam J. Levitin, *Hydraulic Regulation: Regulating Credit Markets Upstream*, 26 YALE J. ON REG. 143, 148–51 (2009).

<sup>8</sup> FIN. CRISIS INQUIRY COMM’N, *supra* note 1, at 111–13, 126; U.S. DEP’T OF HOUSING & URBAN DEV., *supra* note 6, at 34–37; Binyamin Appelbaum & Ellen Nakashima, *Banking Regulator Played Advocate over Enforcer*, WASH. POST, Nov. 23, 2008, at A1.

<sup>9</sup> 12 U.S.C. § 5511(a).

consumer protection laws, and provided for cooperation among states and the Bureau – a partnership welcomed in New York. Among the Bureau’s enumerated objectives are protecting consumers from unfair, deceptive, or abusive acts and practices and from discrimination, and to enforce federal consumer financial law consistently to promote fair competition.<sup>10</sup> Congress provided the Bureau with the ability to do this in several ways, including provisions setting forth the Bureau’s enforcement powers, namely: the Bureau’s authority to conduct investigations and administrative discovery; authority to conduct hearings and adjudication proceedings to ensure or enforce compliance with the CFPB or other enumerated federal consumer financial laws; the Bureau’s litigation authority; the broad relief available in an action or administrative proceeding; the Bureau’s power to make referrals for criminal proceedings; and, to incentivize reporting on wrongdoing, a provision providing protection to employees who perform tasks related to the offering or provision of consumer financial products or services.<sup>11</sup> Taken together, this broad grant of enforcement authority and the means to implement it demonstrates that Congress wanted a federal agency devoted to investigating and prosecuting violations of federal consumer financial laws.

Since July 2011, the Bureau has worked hard to carry out that mandate, and worked cooperatively with New York and other states to do so. The results are impressive.<sup>12</sup> Until the recent halt in new enforcement actions, it is estimated that one in ten Americans had received some kind of relief or reimbursement from the Bureau’s work.<sup>13</sup> During the Bureau’s first four years, its public enforcement actions generally involved mainstream financial products and services such as mortgage lending, debt collection, credit cards, ancillary products, and, notably, most consumer relief was awarded in cases in which the Bureau found the defendants had illegally deceived consumers.<sup>14</sup>

The Bureau’s enforcement successes have gradually helped restore trust in financial services, which has remained relatively low since the financial crisis. The crisis left Americans angry<sup>15</sup> and, along with the rest of the world, distrustful of the financial services industry.<sup>16</sup> Polls year after year show that the Bureau has “overwhelming and bipartisan support ... for regulation and oversight of the financial services industry.”<sup>17</sup> The Bureau’s work obtaining relief for consumers

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<sup>10</sup> *Id.* § 5511(b)(2), (b)(4).

<sup>11</sup> *Id.* §§ 5562–5567.

<sup>12</sup> *Consumer Financial Protection Bureau: By the numbers*, CFPB (Dec. 2017), [https://files.consumerfinance.gov/f/documents/201701\\_cfpb\\_CFPB-By-the-Numbers-Factsheet.pdf](https://files.consumerfinance.gov/f/documents/201701_cfpb_CFPB-By-the-Numbers-Factsheet.pdf).

<sup>13</sup> *Consumer Financial Protection Bureau enforcement actions halt under Mulvaney*, ASSOCIATED PRESS (Apr. 10, 2018), <https://www.cbsnews.com/news/consumer-financial-protection-bureau-enforcement-actions-halt-under-mulvaney/> (before November 21, 2017, Bureau brought average of two to four enforcement actions each month).

<sup>14</sup> Peterson, *supra* note 7, at 1087, 1095, 1089 tbl. 5.

<sup>15</sup> FIN. CRISIS INQUIRY COMM’N, *supra* note 1, at xvi (“There is much anger about what has transpired, and justifiably so.”).

<sup>16</sup> TRUST BAROMETER: 2016 ANNUAL GLOBAL STUDY, EDELMAN, at 11 (2016), <https://www.edelman.com/research/2016-trust-barometer-executive-summary> (financial services industry ranked lowest in trust of all sectors 2012–2016).

<sup>17</sup> *New Poll Reveals Strong Bipartisan Support for Financial Regulation; Americans Say Wall Street’s Influence in Washington is Too High*, LAKE RESEARCH PARTNERS, at 1 (July 18, 2017), <http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/lrp-poll-bipartisansupport-jul2017.pdf>.

has been credited with contributing to rising American trust in the financial services industry.<sup>18</sup> Finally, the hundreds of consumer comments already submitted in response to this request for information further confirm the public's wish for the Bureau to continue to take strong action against those that harm consumers.

All of this supports the Bureau continuing its enforcement activity and enforcement processes without change. As Congress provided by law, the Bureau's purpose is to enforce federal consumer financial law; its enforcement processes are essential for it to carry out that crucial work, and due process is provided for those investigated or sued by the Bureau. Any diminishment of these processes may prevent the Bureau from acting when necessary to ensure protections for consumers and markets, which recent history shows is needed. While states like New York are fully willing to fill in necessary voids, the importance of the Bureau's enforcement work at the federal level cannot be overstated. NYDFS is willing and able to continue to work with the Bureau to vigorously protect consumers.

Sincerely,



Maria T. Vullo  
Superintendent  
New York State Department of Financial Services

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<sup>18</sup> Deidre H. Campbell, *2017 Trust in Financial Services*, EDELMAN (Mar. 21, 2017), <https://www.edelman.com/post/accelerating-trust-in-financial-services>.