CFPB Symposium:

Cost-Benefit Analysis in Consumer Financial Protection Regulation

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Written Statement of

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Discover Financial Services

I would like to thank the Consumer Financial Protection Bureau (CFPB or Bureau) for holding today's symposium on cost benefit analysis in consumer financial protection regulation, and for inviting me to be a part of the discussion. Over the last year, the Bureau's symposium series has illuminated many critical consumer finance issues, from the "abusive" prong of unfair, deceptive, and abusive acts and practices to behavioral economics to data aggregation, and provided a collaborative forum to hear various viewpoints. Only with diverse ideas and perspectives from the public and private sectors, academics, and consumer advocates will we be able to identify solutions for these complex topics and, in turn, assist the people we are all here to serve: consumers.

I. Cost Benefit Analyses are Critical to Identify the Best Policies for Consumers, while Mitigating Unintended Consequences.

During my 30 years of business experience, I have consistently found that cost benefit analyses are essential to unleash creative thinking and balance competing interests. While one can never quantify all of the potential costs and benefits, a good analysis will improve the overall outcome by helping identify the most important assumptions and allowing the decision makers to consider a comprehensive view of the issue. The importance of robust cost benefit analyses is why they are required by regulators and Boards of Directors. In both business and policy, robust cost benefit analyses help to: 1) promote the best outcomes, 2) mitigate unintended consequences, 3) provide greater transparency, and 4) enable inclusion of various viewpoints.

Cost benefit runs throughout every aspect of our business and every major decision we make at Discover to ensure we best serve our customers, the public, and our business. An illustrative example is when we became the first major credit card issuer to offer FICO® Scores for free to our customers on statements and online.[1] From consumer research, we had learned

[1] FICO® Credit Score, key factors and other credit information are based on data from TransUnion® and may be different from other credit scores and other credit information provided by different bureaus. This information is intended for and only provided to Primary account holders who have an available score. The score, key factors and other credit information are available on Discover.com and cardmembers are also provided a score on statements. Customers will see up to a year of recent scores online. FICO is a registered trademark of Fair Isaac Corporation in the United States and other countries.

that consumers wanted to better monitor and understand their credit scores, so we established a guiding goal to help consumers increase their financial awareness. Initially, we had a broad array of ideas of how to accomplish this goal, including financial wellness education, an app for personal finance, and rewards programs. In addition to the multiple ideas, we knew we wanted our program to be easily accessible and understandable so consumers would be more likely to use it. FICO® Scores were already a universally understood metric, could be easily delivered in monthly statements or online, and provided useful information in a brief format. By assessing our many ideas and weighing the costs and benefits, we were able to arrive at the best decision: launch "FICO® Scores for free" for our customers in 2013 and eventually to non-customers in 2016. Since our initial rollout, "FICO® Scores for free" has been widely used by consumers and become an industry standard with many institutions subsequently adopting similar programs.

This is just one example of how our daily decisions work toward products and services that improve the financial life of our customers and mitigate any societal or financial unintended costs. From decades ago when we were the first to launch cash back rewards to last year when we announced no fees on deposit accounts, we use cost benefit analyses as a guiding exercise to produce the best outcome for our customers and the public. Regulations, with their potentially broad sweeping consequences, should be no different.

II. Bipartisan Administrations have worked to Improve Cost Benefit Analyses.

Trying to achieve regulatory efficiency and accurate estimates of regulations' costs and benefits is no new challenge, nor is it an easy one. Regulations can have pronounced ripple effects throughout the economy that impact consumers and businesses. This is why for decades, presidential administrations, regulators, and policymakers have considered how to best assess regulatory costs and benefits, and mitigate unintended consequences.

The following excerpt was published in the Federal Register in 1993, but could have been written to lay the foundation for our panel discussion today.

> The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and ***improves the performance of the economy***

> ***without imposing unacceptable or unreasonable costs on society***; ***regulatory policies that recognize that the private sector and private markets are the best engine for economic growth***; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are ***effective, consistent, sensible, and understandable***. We do not have such a regulatory system today.[2]

Almost 30 years ago, these words were released in an Executive Order (EO) signed by President Bill Clinton. We agree with these sentiments and hope regulators use these words as a guide when crafting rulemakings.

Subsequent to the Clinton EO, President George W. Bush's Administration released guidance on how to implement it throughout the agencies,[3]which is still used as a framework for agencies today. Then in 2011, President Barack Obama re-affirmed President Clinton's EO[4] stating:

> Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the ***best available science***. It must allow for ***public participation and an open exchange of ideas***. It must ***promote predictability and reduce uncertainty***. It must identify and use the ***best, most innovative, and least burdensome tools for achieving regulatory ends***. It must take into account ***benefits and costs, both quantitative and qualitative***. It must ensure that regulations are ***accessible, consistent, written in plain language, and easy to understand.*** It must measure, and seek to improve, the actual results of regulatory requirements.[5]

Again, these are comprehensive, valuable regulatory principles that executive and independent agencies should use to guide policymaking. While the EOs and guidance did not apply to independent agencies, President Obama asserted that independent agencies, no less than

[2] Executive Order 12866 of September 30, 1993 (emphasis added).
[3] Circular A-4 (September 17, 2003).
[4] Executive Order 13563 -- Improving Regulation and Regulatory Review Issued by President Obama on January 18, 2011.
[5] Id (emphasis added).

executive agencies, should promote its goals.[6] Now, we sit here during the Trump Administration continuing to debate how to best assess costs and benefits of rulemakings.

As the regulatory framework and financial services market evolves, so should the regulatory process and cost benefit analyses. When the Clinton EO was written, the CFPB had not even been created on paper, much less opened its doors. Nor had the Financial Stability Oversight Council (FSOC) or Office of Financial Research (OFR) been written into law or begun operating. These three agencies have cost benefit tools and data sources that could not be contemplated by the Clinton Administration, but should now be used when appropriate. Our recommendations below discuss how to use these and other resources to foster a cost benefit analysis process that creates regulations that are "effective, consistent, sensible, and understandable."[7]

III. The Best Outcomes Result from Cost Benefit Analyses that include Appropriate Resources and Stakeholder Input, with Regular Assessments and Necessary Corrections.

To promote the best outcomes for consumers, we provide recommendations below to improve the CFPB's cost benefit analyses and processes.

a. Appropriate Resources and Stakeholder Input

During the policymaking process, we believe the CFPB should use all of the internal and external resources at its disposal to achieve the most accurate and holistic view of the costs and benefits. In a November 2011 report titled "Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination," the Government Accountability Office (GAO) recommended "that FSOC direct the OFR to work with its members to identify and collect the data necessary to assess the impact of the Dodd-Frank Act regulations on, among

[6] Executive Order 13579--Regulation and Independent Regulatory Agencies Issued by President Obama on July 11, 2011.
[7] Executive Order 12866 of September 30, 1993.

other things, the stability, efficiency, and competitiveness of the U.S. financial markets."[8] We suggest the CFPB heed the recommendations from GAO and receive external, independent data and analysis support from these sister agencies.

Additionally, we ask the CFPB to work with external stakeholders, including supervised entities and third party vendors, who will be implementing the regulation. An understanding of the end-to-end impacts of implementing the regulation should be considered when weighing policy alternatives, as some alternatives can be implemented much more quickly, with fewer costs and unintended consequences than others. For example, many past rule changes have required supervised entities to seek assistance from third-party vendors to implement the changes; as these vendors are a finite resource and the assistance is needed quickly and by many entities, it is difficult to estimate the cost and availability of their assistance. Therefore, vendor input early in the process is critical. It is particularly important to start the cost benefit analysis early in the rulemaking process, when alternatives are being considered, to allow the analysis to help shape the final outcome.

One suggestion to obtain the best information from these sources would be to "crowd source" their expertise. "Crowd sourcing" the work could entail asking commenters to submit cost benefit analyses through the formal comment letter process or in an informal method, like the CFPB's new Tech Sprint process. By using these methods to source cost benefit analysis from supervised entities and other stakeholders, the Bureau could obtain many points of view and data that it otherwise would not have access to in order to support its decision making.

b. Regular Assessments and Necessary Corrections

When discussing updating laws, Thomas Jefferson famously said, "we might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors." Obviously, "barbarous ancestors" is a bit extreme for the present topic, however, the principle of updating laws still rings true. This is

[8] Government Accountability Office: "Dodd Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination" (November 2011).

why we urge the CFPB to engage in regular assessments of enacted rules and make necessary corrections.

The statutory requirement for the CFPB to conduct an assessment of major rules five years after enactment is a helpful tool, but we think the CFPB could go further to improve its rulemakings. Even rules that are not deemed "major" can have cumulative impacts on consumers and the market, which is why we believe these rules should also be assessed five years after enactment. Additionally, we urge the CFPB to join its sister agencies in conducting assessments of its rulemakings every 10 years under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA). Conducting an EGRPRA assessment every 10 years could identify, then fix unintended consequences not foreseen before the rule's implementation and could improve coordination between the agencies. Additionally, since the CFPB is a member of the Federal Financial Institutions Examination Council, which is subject to EGRPRA, it seems natural the CFPB would also be subject to the review.

After conducting these assessments with input from the appropriate stakeholders, the CFPB should seek to identify and explain significant discrepancies between predicted and actual effects of rulemakings. Then, most importantly, the CFPB should fix any issues caused by the discrepancies or that were unanticipated by amending the rulemaking.

IV. Conclusion

I would like to thank the Bureau for hosting this discussion and proving a forum to share our views on cost benefit analyses. We welcome the opportunity to assist the Bureau as it improves its processes to create more informed rules that seek to "protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation."[9]

[9] Executive Order 13563 -- Improving Regulation and Regulatory Review Issued by President Obama on January 18, 2011.