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**To:** Clients and Friends  
**From:** David F. Dulock  
**Subject:** CFPB Publishes Policy Statement on Compliance Aids

In the January 27, 2020 issue of the *Federal Register* (85 FR 4579, [click here](#)), the CFPB published its “Policy Statement on Compliance Aids,” the text of which is reprinted below. The Policy Statement announces a new designation for certain CFPB guidance, known as “Compliance Aids,” and explains the legal status and role of guidance with that designation. The Policy Statement becomes applicable on February 1, 2020.

### **Policy Statement on Compliance Aids**

Going forward, the Bureau intends to establish a new category of materials that are similar to previous compliance resources but will now be designated as “Compliance Aids.” This designation will provide the public with greater clarity regarding the legal status and role of these materials, as discussed below.<sup>3</sup>

The Bureau does not intend to use Compliance Aids to make decisions that bind regulated entities. Unlike the Bureau’s regulations and official interpretations, Compliance Aids are not “rules” under the Administrative Procedure Act.<sup>4</sup> Rather, Compliance Aids present the requirements of existing rules and statutes in a manner that is useful for compliance professionals, other industry stakeholders, and the public.<sup>5</sup> Compliance Aids may also include practical suggestions for how entities might choose to go about complying with those rules and statutes.<sup>6</sup> But they may not address all situations. Where there are multiple methods of compliance that are permitted by the applicable rules and statutes, an entity can make its own business decision regarding which method to use, and this may include a method that is not specifically addressed in a Compliance Aid. In sum, regulated entities are not required to comply with the Compliance Aids themselves. Regulated entities are only required to comply with the underlying rules and statutes.

Compliance Aids are designed to accurately summarize and illustrate the underlying rules and statutes. Accordingly, when exercising its enforcement and supervisory discretion, the Bureau does not intend to sanction, or ask a court to sanction, entities that reasonably rely on Compliance Aids.

<sup>3</sup> This policy statement does not apply to materials that do not bear the label “Compliance Aid,” or to the use of outdated materials that have been withdrawn or superseded. It also does not alter the status of materials that were issued before this policy statement, although the Bureau may reissue certain existing materials as Compliance Aids if it is in the public interest and as Bureau resources permit. Moreover, this policy statement does not determine the policies of regulators other than the Bureau.

<sup>4</sup> Under the Administrative Procedure Act, generally a “rule” is an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy. 5 U.S.C. 551(4). The three main categories of rules are substantive rules, interpretive rules, and general statements of policy. Some examples of rules are regulations like Regulation Z, 12 CFR part 1026, and official interpretations like the Official Interpretations to Regulation Z, 12 CFR part 1026, supp. I.

<sup>5</sup> See, e.g., *Golden & Zimmerman, LLC v. Domenech*, 599 F.3d 426, 432 (4th Cir. 2010) (agency documents like FAQs that “restate or report what already exists in the relevant body of statutes, regulations, and rulings” are not themselves rules under the Administrative Procedure Act).

<sup>6</sup> See, e.g., *Indus. Safety Equip. Ass’n, Inc. v. EPA*, 837 F.2d 1115, 1120–21 (D.C. Cir. 1988) (an agency’s “hortatory advice” regarding potential methods for complying with a rule is not itself a rule under the Administrative Procedure Act).