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April 4, 2018

To: Clients and Friends

From: David F. Dulock

Subject: CFPB Request for Comments on the Substance of CFPB’s Inherited Regulations Implementing Federal Consumer Financial Laws

In the March 26, 2018, issue of the *Federal Register* (83 FR 12881, [click here](#)), the CFPB published a request for information (RFI) seeking comments and information to assist it in considering whether, consistent with its statutory authority to prescribe rules pursuant to the Federal consumer financial laws, it should amend the inherited regulations or exercise the rulemaking authorities that it inherited from certain other Federal agencies.

The following is a redaction of the above RFI published by the CFPB in the *Federal Register*. The redacted text contains the essential information needed to submit the requested information and comments.

You may submit information and other comments, identified by Docket No. CFPB–2018–0012, by any of the following methods:

- *Electronic:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. CFPB–2018–0012 in the subject line of the message.
- *Mail:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Comments must be received by June 25, 2018, and must include the document title and docket number. Commenters are requested to note the number of the topic(s) commented on at the top of each response but do not need to comment on all topics.

The Dodd-Frank Act (15 U.S.C. 1693a *et seq.*) generally transferred to the CFPB rulemaking authority for Federal consumer financial laws previously vested in certain other Federal agencies, and the CFPB thereafter assumed responsibility over the various regulations that these agencies had issued under this rulemaking authority (the “Inherited Regulations”¹).

The CFPB is using the above RFI to seek public input regarding the substance of the Inherited Regulations, including whether the CFPB should issue additional rules. Accordingly, the purpose of this RFI is to seek feedback on the content of the Inherited Regulations, not the CFPB’s rulemaking processes, implementation initiatives that occur after the issuance of a final rule, or the CFPB’s Adopted Regulations (*see* this firm’s March 21, 2018, memo discussing the CFPB’s RFI on its Adopted Regulations). Also the CFPB is not requesting comment on any pending rulemaking for which the CFPB has issued a Notice of Proposed Rulemaking or otherwise solicited public comment.

(3 pages)

To more effectively evaluate suggestions, the CFPB requests that, where possible, comments include:

- Specific suggestions regarding any potential updates or modifications to the Inherited Regulations, consistent with the laws providing the CFPB with rulemaking authority and the CFPB's regulatory and statutory purposes and objectives, and including, in as much detail as possible, the nature of the requested change, and supporting data or other information on impacts and costs of the Inherited Regulations and on the suggested changes; and
- Specific identification of any aspects of the Inherited Regulations that should not be modified, consistent with the laws providing the CFPB with rulemaking authority and the CFPB's regulatory and statutory purposes and objectives, and including, in as much detail as possible, supporting data or other information on impacts and costs, or information related to consumer and public benefit resulting from these rules.

The following list is an attempt by the CFPB to identify considerations relevant in determining where modifications of the Inherited Regulations or further exercise of the CFPB's rulemaking authorities may be appropriate. This non-exhaustive list is to assist those making comments and is not intended to restrict the issues that may be addressed. In their comments, the CFPB requests that commenters identify with specificity the CFPB rules at issue, providing legal citations to specific regulations or statutes where appropriate and available. Commenters may identify the products or services that would be affected by any recommendations made by those commenters. Commenters also may comment on some or all of the questions below and on some or all of the Inherited Regulations, but are requested to indicate on which area they are commenting.

The CFPB is seeking feedback on all aspects of the Inherited Regulations, including, but not limited to:

1. Aspects of the Inherited Regulations that:
 - a. Should be tailored to particular types of institutions or to institutions of a particular size;
 - b. Create unintended consequences;
 - c. Overlap or conflict with other laws or regulations in a way that makes it difficult or particularly burdensome for institutions to comply;
 - d. Are incompatible or misaligned with new technologies, including by limiting providers' ability to deliver, electronically, mandatory disclosures or other information that may be relevant to consumers; or
 - e. Could be modified to provide consumers greater protection from the incidence and effects of identity theft.
 2. Changes the CFPB could make to the Inherited Regulations, consistent with its statutory authority, to more effectively meet the statutory purposes and objectives set forth in the Federal consumer financial laws, as well as the CFPB's predecessor agencies' specific goals for the particular Inherited Regulation in the first instance.
 3. Changes the CFPB could make to the Inherited Regulations, consistent with its statutory authority, that would advance the following statutory purposes and objectives as set forth in section 1021 of the Dodd-Frank Act:
 - a. The statutory purposes set forth in section 1021(a) are:
 - i. All consumers have access to markets for consumer financial products and services;
- and

ii. Markets for consumer financial products and services are fair, transparent, and competitive.

b. The statutory objectives set forth in section 1021(b) are:

i. Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

ii. Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

iii. Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

iv. Federal consumer financial law is enforced consistently in order to promote fair competition; and

v. Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

4. Pilots, field tests, demonstrations, or other activities that the CFPB could launch to better quantify benefits and costs of potential revisions to the Inherited Regulations, or to make compliance with the Inherited Regulations more efficient and effective.

5. Areas where the CFPB has inherited rulemaking authority, but has not exercised it, where rulemaking would be beneficial and align with the purposes and objectives of the applicable Federal consumer financial laws.

¹ The CFPB generally restated these Inherited Regulations first through a series of interim final rules published in the Federal Register and subsequently through a final rule published in the April 28, 2016, Federal Register (81 FR 25323), which includes but not limited to: 12 CFR Parts 1002 (Reg. B-ECOA), 1003 (Reg. C-HMDA), 1005 (Reg. E-EFTA), 1006 (Reg. F-FDCPA), 1007 (Reg. G-SAFE Mortgage Licensing-Federal), 1008 (Reg. H-SAFE Mortgage Licensing – State), 1014 (Reg. N-Advertising), 1016 (Reg. P-Consumer Privacy), 1022 (Reg. V-FCRA), 1024 (Reg. X-RESPA), and 1026 (Reg. Z-TILA).

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