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April 13, 2018

To: Clients and Friends

From: David F. Dulock

Subject: CFPB Request for Comments on CFPB's Guidance Materials and Activities

In the April 2, 2018, issue of the *Federal Register* (83 FR 13959, [click here](#)), the CFPB published a request for information (RFI) seeking comments and information to assist it in assessing the overall effectiveness and accessibility of its guidance materials, activities and implementation support; whether it would be appropriate to make changes, consistent with law, to the formats, processes, and delivery methods for providing such guidance; and suggestions for future improvement.

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-2018-0013, 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-2018-0013 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 July 2, 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.

As stated above, the CFPB is using this RFI to seek public input regarding the overall effectiveness and accessibility of the CFPB's guidance as well as changes that it may make, consistent with applicable law, to the formats, processes, and delivery methods for providing such guidance. Additionally, the CFPB is seeking comment on potential new forms of guidance that could support regulatory implementation and compliance, as well as on the disclaimers used for its guidance. In this RFI, the CFPB is not seeking comments on the following topics, as these have been addressed or will be addressed in other CFPB RFIs: (1) educational materials on its regulations developed for consumers or in response to consumer inquiries; (2) the substance of any particular proposed or final rule (for both rules the CFPB adopted and those it inherited), including a proposed or final rule's Official Interpretations that are published with the regulations; or (3) the guidance provided in the CFPB's Supervision and Examination Manuals or Supervisory Highlights.

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

- Specific discussions of the positive and negative aspects of the CFPB's guidance materials and activities (including implementation support).

(5 pages)

- Specific suggestions regarding any potential updates or modifications to the CFPB's approach to providing guidance (including implementation support), and including, in as much detail as possible, supporting data or other information on impacts and costs, or information concerning alignment with the processes of other agencies.
- Specific identification of any aspects of the CFPB's approach to guidance (including implementation support) provided by the CFPB that should not be modified, and including, in as much detail as possible, supporting data or other information on impacts and costs, or information concerning alignment with the processes of other agencies.

The following sections contain a non-exhaustive list to assist those making comments, which is not intended to restrict what may be addressed as commenters may comment on matters that are related to the CFPB's guidance but that do not appear in the list. In their comments, the CFPB requests that commenters identify with specificity the CFPB guidance material or activity, format, process, or delivery platform at issue, providing specific examples where appropriate. Commenters also may comment on some or all of the questions below, but are requested to indicate on which area they are commenting.

Regulatory Inquiries Function

The CFPB's Regulatory Inquiries Function assists individual inquirers who have specific questions about the CFPB's statutes and regulations. The informal assistance provided through this function is limited and individualized and does not constitute an official interpretation by the CFPB. Generally, under the Regulatory Inquiries Function, individual inquiries are submitted to the CFPB through phone conversations with CFPB staff or by an email or a form accessed on the CFPB's website.

The CFPB is seeking feedback on all aspects of its Regulatory Inquiries Function, including the following areas of interest:

1. The preferred vehicle(s) for submitting inquiries (i.e., phone message, email, web form, or other specific vehicle).
2. Preferences regarding the responses to regulatory inquiries; the format and delivery method for the responses provided (i.e., oral response, email, or other format or delivery method); and the desired timing of the responses provided.
3. The relative value of responses to regulatory inquiries. In particular, the CFPB is interested in the tradeoffs between providing quick guidance orally to individuals through the Regulatory Inquiries Function and providing written guidance, which is generic and takes more time, but generally is more broadly accessible.
4. Whether the CFPB should, as a matter of practice, publish written responses to regulatory inquiries and, if so, consistent with law, the appropriate vehicle or platform for such publications, the desired frequency for publishing such responses, and the appropriate disclaimers to accompany such publications.
5. Additional ways that the CFPB can improve the Regulatory Inquiries Function, including improvements to the process for submitting inquiries, the process for receiving responses, the substance of responses, or the timing of responses.

Regulatory Implementation and Compliance Aids

The CFPB creates and releases on its website several categories of regulatory implementation and compliance aids, including: (1) compliance guides; (2) rule summaries and other quick reference

materials; and (3) webinars. Compliance guides are plain language summaries of a CFPB rule and are not intended to be interpretations of that rule or general statements of policy. Compliance guides include Small Entity Compliance Guides as well as instructional guides for disclosure forms. Quick reference materials are additional plain language summaries of a rule or portions of a rule, but are shorter than compliance guides. These include, but are not limited to, executive summaries, summaries of changes, factsheets, flow charts, decision trees, and summary tables. Webinars are recorded presentations in which the CFPB provides information to facilitate further understanding of a rule, either in a question-and-answer or topic-based explanation format.

The CFPB is seeking feedback on all aspects of its Regulatory Implementation and Compliance Aids, including the following areas of interest:

6. The utility of the CFPB's compliance guides and quick reference materials as well as potential areas for improvement, including:

a. The scope of topics addressed and the format in which they are presented;
b. The ease of navigation to materials on the CFPB's website and to sections within the compliance guides or quick reference materials;

c. The effectiveness of the CFPB's use of the plain language writing style in the Small Entity Compliance Guides and quick reference materials to help make the rules more easily understandable; and

d. The usefulness of the CFPB providing Small Entity Compliance Guides and quick reference materials when not legally required to do so (particularly for entities that do not meet the Small Business Administration's definition of "small business").

7. The utility of the CFPB's webinars as well as potential areas for improvement, including issues related to the website utilized for viewing; the format of the webinar guidance (*i.e.*, question and answer format, explanatory format, or other formats); the supplemental materials (*e.g.*, hyperlinked navigation tools, presentation slides, or other materials); and the ease with which topics of interest may be located within webinar materials.

8. For the identified types of regulatory implementation and compliance aids in questions six and seven, feedback on the delivery methods (*e.g.*, provision on the CFPB's website and email notifications to the appropriate email listserv), and the delivery method and timing for notifying stakeholders of the availability of new or amended materials.

Official Interpretations and Standalone Interpretive Rules

Many regulations issued under the CFPB's rulemaking authority contain Official Interpretations within the supplement or appendix to the regulatory text in the CFR. The CFPB also has issued standalone interpretive rules without notice and comment when rapid issuance of interpretive clarification will assist industry with regulatory implementation or compliance.

The CFPB is seeking feedback on all aspects of the process by which it issues interpretive rules and Official Interpretations, including the following areas of interest:

9. The efficiency and effectiveness of providing guidance through the CFPB's Official Interpretations.

10. Which types of standalone interpretive rules are most efficient and effective and, if any, with what frequency and through what processes the CFPB should amend the Official Interpretations to incorporate standalone interpretive guidance into the CFR.

11. Whether there are circumstances in which the CFPB should use the notice-and-comment process (even though not legally required) for standalone interpretive rules.

SEFL Guidance Materials

The CFPB's Division of Supervision, Enforcement, and Fair Lending (SEFL) issues a number of documents meant to provide industry and the public with insight into the CFPB's enforcement and supervision priorities, perspectives regarding compliance with Federal consumer financial law, and supervisory expectations. These materials include, for example, compliance bulletins, policy statements, and statements on supervisory practices.

The CFPB is seeking feedback on all aspects of these SEFL guidance materials, including but not limited to:

- 12. The timing, frequency, scope, and delivery method of SEFL guidance materials.
- 13. The benefits or drawbacks associated with the CFPB's use of each particular type of SEFL guidance vehicle.
- 14. Other feedback or suggestions related to SEFL guidance materials.

Recommendations for New Forms of Written Guidance

The CFPB has begun to explore other methods for delivering direct, easy-to-understand written guidance that can be delivered on a public platform on a shorter timeline than might be required for interpretive rules (*e.g.*, Frequently Asked Questions (FAQs) and advisory opinions). Historically, FAQs have been non-rule guidance that are written responses to questions received from regulated entities and others that do not constitute an interpretive rule, consistent with the kinds of information that the CFPB has provided orally or by email through the Regulatory Inquiries Function. Advisory opinions typically are a written response to a specific inquiry regarding the conformance of a specific transaction or activity with a particular statute or regulation subject to the CPB's jurisdiction. In the most formal cases, advisory opinions are interpretive rules—written opinions providing interpretations of a statute or regulation, often applying that interpretation to a particular situation. In other cases, advisory opinions are policy or non-rule guidance.

The Bureau is seeking feedback on potential new methods or channels for providing guidance, including but not limited to:

- 15. The utility of FAQs. Specifically, comment is sought on the types of questions that are appropriately dealt with through FAQs rather than another instrument, and the mechanisms that the CFPB should use to identify and prioritize issues and topics that should be addressed using FAQs.
- 16. The potential utility of establishing an advisory opinion program that would provide interpretations, in addition to or instead of an FAQ program, including the particular scope and benefits of advisory opinions that would be distinct from generalized FAQs and the types of questions or issues that could or could not be appropriately dealt with by advisory opinions.
- 17. The potential benefits and costs of memorializing over time any interpretations reflected in advisory opinions or other standalone guidance documents in the Official Interpretations to the underlying regulations, after notice and comment.

18. The tradeoffs between issuing FAQs or advisory opinions quickly and issuing written guidance after notice and comment. With respect to FAQs or advisory opinions, commenters should include, where possible, suggestions on how best to mitigate risks to stakeholders (*e.g.*, industry confusion, increased compliance costs, potential legal concerns) where there is a heightened risk that the CFPB may change its approach at a later date.

19. Other approaches, methods, or practices not currently employed by the CFPB that would enhance external stakeholders' ability to comprehend, implement, or comply with statutes and regulations subject to the CFPB's purview.

Disclaimers

The CFPB uses disclaimers on non-rule guidance materials to describe the purpose of the material, note the legal limitations of the guidance, and emphasize that the rule and its Official Interpretations are the definitive sources regarding a rule's requirements in the event of a perceived conflict. These disclaimers are often used to clarify when guidance materials are non-rule materials that are intended only to aid understanding and implementation. CFPB disclaimers are printed on rule summaries, compliance guides, quick reference materials, and other compliance aids. These disclaimers are given orally when CFPB staff conduct webinars, present at industry conferences or respond to questions through the Regulatory Inquiries Function. The particular language used in disclaimers is tailored to the type of guidance being provided.

The CFPB is seeking feedback on all aspects of its disclaimers, including the following areas of interest:

20. Taking into consideration the CFPB's purposes for providing guidance as well as APA [Administrative Procedure Act] requirements, whether disclaimers are transparent, understandable, and appropriate to the type of guidance being provided.

21. Desired changes to the CFPB's disclaimer language or approach to disclaimers generally, and whether other Federal agencies have adopted disclaimer language or approaches to disclaimers that would be useful to the CFPB.

22. The variety of CFPB disclaimers currently provided, and whether the CFPB should adopt a single, more generic disclaimer to be used in most instances.

23. Other feedback or suggestions related to the CFPB's disclaimers.

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