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January 29, 2018

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** CFPB Request for Comments on Civil Investigative Demand Processes

In the January 26, 2018, issue of the *Federal Register* (83 FT 3686, [click here](#)), the Consumer Financial Protection Bureau (CFPB) published a notice and request for information (RFI) seeking comments and information from interested parties to assist it in assessing potential changes that can be implemented to its Civil Investigative Demand (CID) processes.

The following is a redaction of the CFPB's notice and request for information published in the January 26, 2018, issue of 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-2018-0001, by any of the following methods:

- *Electronic:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB-2018-0001 in the subject line of the message.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Comments must be received by March 27, 2018, and must include the document title and docket number.

As part of its investigative activities, the CFPB is authorized by federal law to issue CIDs to entities and persons whom the CFPB has reason to believe may have information relevant to a violation of the laws the CFPB enforces. These CIDs require recipients to provide the CFPB with information in varying forms—*e.g.*, some combination of written answers to interrogatories, written reports, documents, tangible things, and testimony. Recipients are required to produce the requested information to the CFPB, which uses such information to further investigations of potential violations of Federal consumer financial laws.

To assess the efficiency and effectiveness of its existing CID processes, the CFPB is issuing this RFI seeking public comment on how best to achieve meaningful burden reduction or other improvement to the CID processes while continuing to achieve the CFPB's statutory and regulatory mission of enforcing Federal consumer financial law.

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

- Specific suggestions regarding any potential updates or modifications to the CFPB's practices regarding the formulation, issuance, or modification of CIDs consistent with the CFPB's regulatory and statutory objectives, including, in as much detail as possible,

(3 pages)

the potential update or modification, supporting data or other information such as cost information or information concerning alignment with the processes of other agencies with similar authorities; and

- Specific identification of any aspects of the CID processes that should not be modified, including supporting data or other information such as cost information or information concerning alignment with the processes of other agencies with similar authorities.

The following list represents the CFPB's preliminary attempt to identify elements of CFPB processes related to CIDs on which it should immediately focus. This non-exhaustive list is to assist in the formulation of comments and is not intended to restrict the issues that may be addressed, as the CFPB is seeking feedback on all aspects of its CID process. In their comments, the CFPB requests that commenters identify with specificity the CFPB regulations or practices at issue, providing legal citations where appropriate and available.

1. The processes for initiating investigations, including 12 CFR 1080.4's delegation of authority to initiate investigations to the Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement;

2. The processes for issuing CIDs, including the non-delegable authority of the Director, Assistant Director of the Office of Enforcement, and the Deputy Assistant Directors of the Office of Enforcement to issue CIDs;

3. Specific steps that the CFPB could take to improve CID recipients' understanding of investigations, whether through the notification of purpose included in each CID or through other avenues, including facilitating a better understanding of the specific types of information sought by the CID;

4. The nature and scope of requests included in CIDs, including whether topics, questions, or requests for written reports effectively achieve the CFPB's statutory and regulatory objectives, while minimizing burdens, consistent with applicable law, and the extent to which the meet and confer process helps achieve these objectives;

5. The timeframes associated with each step of the CID process, including return dates, and the specific timeframes for meeting and conferring, and petitioning to modify or set aside a CID;

6. The taking of testimony from an entity, including whether 12 CFR 1080.6(a)(4)(ii), and/or the CFPB's processes should be modified to make expressly clear that the standards applicable to Federal Rule of Civil Procedure 30(b)(6) also apply to the taking of testimony from an entity;

7. The processes for handling the inadvertent production of privileged information, including whether 12 CFR 1080.8(c) and/or the CFPB's processes should be modified in order to make expressly clear that the standards applicable to Federal Rule of Evidence 502 also apply to documents inadvertently produced in response to a CID;

8. The rights afforded to witnesses by 12 CFR 1080.9, including limitations on the role of counsel described in 12 CFR 1080.9(b) in light of the statutory delineation of objections set forth in 12 U.S.C. 5562(c)(13)(D)(iii);

9. The processes concerning meeting and conferring with recipients of CIDs, including, for example, negotiations regarding modifications and the delegation of authority to the Assistant Director of the Office of Enforcement and Deputy Assistant Directors of the Office of Enforcement to negotiate and approve the terms of satisfactory compliance with CIDs and extending the time for compliance;

10. The requirements for responding to CIDs, including certification requirements, and the CID document submission standards; and

11. The processes concerning CID recipients' petitions to modify or set aside CFPB CIDs, including:

a. Whether it is appropriate for CFPB investigators to provide the Director with a statement setting out a response to the petition without serving that response on the petitioner;

b. Whether petitions and the Director's orders should be made public, consistent with applicable laws; and

c. The costs and benefits of the petition to modify or set aside process, by direct adjudication in Federal court, in light of the statutory requirement for the petition process and the fact that CIDs are not self-enforcing.

The CFPB's Rules for Investigations, which includes CIDs, are in the Code of Federal Regulations, 12 CFR §§1080.1 – 1080.14. To assist you in submitting information and/or comments for this RFI on CIDs [click here](#) for these Rules.

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