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March 9, 2018

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** CFPB Request for Comments on the CFPB's Rulemaking Processes to Implement Federal Consumer Financial Laws

In the March 9, 2018, issue of the *Federal Register* (83 FR 10437, [click here](#)), the CFPB published a request for information (RFI) seeking comments and information to assist it in assessing the overall efficiency and effectiveness of its rulemaking processes and considering whether any changes to its rulemaking processes would be appropriate.

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-2018-0009, 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-2018-0009 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 7, 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. Commenters do not need to comment on all topics.

While many elements of CFPB rulemaking are required by law, a number of the CFPB's rulemaking processes, and certain aspects of how it implements required processes, are discretionary. This RFI seeks public input regarding these discretionary aspects of the CFPB rulemaking processes as outlined below. This RFI is not seeking comment on the content of any particular proposed or final rule.

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

- Specific discussion of the positive and negative aspects of the CFPB's rulemaking processes;
- Specific suggestions regarding any potential updates or modifications to the CFPB's rulemaking processes, consistent with the laws governing rulemaking processes, including, in as much detail as possible, the potential updates or modifications, supporting data or other information on impacts and costs of participation in rulemakings and on suggested changes thereto, information related to consumer and public benefit that might result from such changes, or information concerning alignment with the processes of other agencies with similar authorities; and

- Specific identification of any aspects of the CFPB's rulemaking processes that should not be modified, consistent with the laws governing rulemaking processes, and including, in as much detail as possible, supporting data or other information on impacts and costs, information related to consumer and public benefit resulting from these processes, or information concerning alignment with the processes of other agencies with similar authorities.

The following 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 practices at issue, providing citations to specific rulemakings or laws governing rulemakings where appropriate and available. While comments are welcome on any or all of the topics below, commenters are requested to indicate on which topic or topic number they are commenting.

The CFPB is seeking feedback on all aspects of its discretionary rulemaking processes, including, but not limited to:

#### *Initial Outreach and Information Gathering*

1. Mechanisms used by the CFPB for gathering information, data, and feedback from stakeholders (*i.e.*, industry, consumer advocates, and others) in advance of the steps outlined separately below, including:

a. RFIs concerning market conditions or issues, particular regulatory options, or the process or content of CFPB research, or advance notices of proposed rulemaking inviting public comment to shape a potential proposed rule.

b. Efforts to gather data from industry, academia, think tanks, consumer groups, and others to support quantitative analysis. Comment is specifically sought on methods by which the CFPB might better obtain meaningful, nationally representative data from stakeholders for use in assessing benefits and costs of proposed rules. The CFPB is particularly interested in suggestions on how the CFPB might best encourage industry and other stakeholders to share data to inform a potential proposed rule and whether concerns about treatment of proprietary business data could be better addressed consistent with existing law.

2. Convening a SBREFA panel<sup>1</sup>, when required, including:

a. The outline of the proposal under consideration and the analysis of potential impacts on small entities and regulatory alternatives that are released at the start of the SBREFA panel process.

b. Selection of and interaction with small entity representatives during the SBREFA panel process.

c. The SBREFA panel report.

d. Outreach to other stakeholders on the basis of public release of the outline of the proposal under consideration.

3. Consultations with tribal governments in certain circumstances, which pursuant to CFPB policy may occur through meetings, telephone conferences, and other forms of communication and outreach prior to issuing an NPRM<sup>2</sup>, as well as through a formal request for comment from tribal governments and tribal members in an NPRM.

#### *Notices of Proposed Rulemaking*

4. The content of the NPRM itself, including:

a. The background section, which provides information about the relevant market and other applicable laws and regulations.

b. Section-by-section analysis of the proposed regulatory text and commentary, including the level of detail regarding the CFPB's rationale for its proposed rule, responsiveness to SBREFA panel report recommendations (where applicable), the level of detail in the section-by-section analysis about the NPRM's draft regulatory text and commentary, and the questions and topics about which comment is requested.

c. Impact analyses for the proposed rule, including the qualitative and quantitative analysis therein, and the data on which they rely.

d. The proposed regulatory text and commentary, including the CFPB's use of commentary, appendices, and model or sample forms to provide interpretations and illustrations of regulatory text and, relatedly, the level of detail and the quantity of examples contained in proposed commentary.

5. The CFPB's issuance of the NPRM, including the CFPB's general practice of releasing the NPRM on its website in advance of publication in the Federal Register, and supporting materials the CFPB may release simultaneously with an NPRM, such as a press release or consumer-facing blog post, as well as other high-level or summary material regarding the content of the NPRM.

6. Comment periods for NPRMs, including the length of the comment period and extensions of comment periods in certain circumstances, whether and in what circumstances the CFPB should provide "reply periods" for commenters to review and formally respond to other commenters' comment letters, and whether and to what extent the CFPB should consider comments received after the close of the comment period.

7. Mechanisms for encouraging additional feedback on all or part of a NPRM, including the use of online tools to solicit public feedback such as, for example, the CFPB's engagement from 2012 to 2014 with Cornell University's eRulemaking Initiative to garner public feedback via Cornell's website.

8. The CFPB's processing and posting of comments received to its electronic docket on <http://www.regulations.gov>, including the ways of accepting comments, the timeframe to post comments, treatment of duplicative or largely duplicative comments, posting similar or related comments in batches rather than as separate entries, treatment of anonymous comments, treatment of comments where there may be questions about the commenter's identity, and ways to tabulate comments received.

9. Outreach and engagement by the CFPB during and after the comment period, including meetings with stakeholders, and disclosure of such communications under the CFPB's ex parte policy.<sup>3</sup>

10. Consideration of new data, studies, and reports issued by other agencies or third parties after the NPRM is released.

### *Final Rules*

11. The content of the notice issuing the final rule, including each of the elements listed above in topic 4 (for NPRMs) as well as the CFPB's explanation of its rationale for the final rule, the discussion in the section-by-section analysis about the final rule's regulatory text and commentary, the summary of and response to comments received on the NPRM (including those specifically regarding the impact analyses), and the explanation of changes from the NPRM.

12. The CFPB's release of the final rule on its website in advance of publication in the

Federal Register and supporting materials the CFPB may release simultaneously with a final rule, which may include a press release, consumer-facing blog post, remarks by the CFPB's Director presented at a public event or press call, other high-level or summary material regarding the content of the final rule, and select regulatory implementation materials.

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<sup>1</sup>A panel required by the Small Business Regulatory Enforcement Fairness Act of 1996 that, prior to a NPRM, seeks input from a representative cross section of affected small entities to obtain advice and recommendations on proposals the CFPB is considering when the CFPB does not certify that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

<sup>2</sup> Notice of proposed rulemaking (NPRM), which is required by the Administrative Procedure Act to be published in the *Federal Register* whenever the CFPB formulates, amends, or repeals rules, unless an exception applies. See above in topic 4.

<sup>3</sup> See Policy on Ex Parte Presentations in Rulemakings, 76 FR 18687 (Apr. 21, 2017). Written ex parte communications and summaries of oral ex parte communications are posted to the rulemaking docket on <http://www.regulations.gov> together with public comments received through the avenues specified in the NPRM.

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