

Client Alert

March 30, 2018

CFPB Issues RFI on Guidance and Implementation Support

By **Obrea O. Poindexter, Jeremy R. Mandell, and Amanda J. Mollo**

On March 29, 2018, the Consumer Financial Protection Bureau (CFPB or “Bureau”) issued a [Request for Information](#) (RFI) on the CFPB’s guidance and implementation support. The RFI is the tenth in a series that solicits public feedback on the Bureau’s operations and the regulations for which it is responsible. A [press release](#) accompanying the RFI states that the Bureau will be “assessing the overall effectiveness and accessibility of its guidance materials and activities” and “considering whether it would be appropriate to make changes to the formats, processes, and delivery methods for providing this guidance,” as well as the “disclaimers used on certain forms of guidance.” This RFI does not request feedback regarding the educational materials developed for consumers, substantive rules within the Bureau’s jurisdiction or the guidance provided in the Bureau’s Supervision and Examination Manuals or Supervisory Highlights.

REQUESTED FEEDBACK

The RFI states that the Bureau is seeking feedback on “the overall effectiveness and accessibility of the Bureau’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 Bureau 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 non-rule guidance.” The RFI includes an overview of the types of rules and guidance it may promulgate or publish under the Administrative Procedures Act and the benefits and drawbacks of each with respect to efficiency, flexibility and weight of authority.

The RFI includes an outline to illustrate potential topic areas that comments might address. These potential areas for comment include:

- The Bureau’s Regulatory Inquiries Function, through which the Bureau can respond to specific questions about its statutes and regulations without the weight of interpretations of the regulations or general statements of policy.
- Regulatory implementation and compliance aids, such as compliance guides, rule summaries, reference materials and webinars. The CFPB seeks feedback regarding the utility and ease of navigation of these materials.
- The efficiency and effectiveness of providing guidance through the Bureau’s Official Interpretations and standalone interpretive rules.
- Guidance materials issued by the CFPB’s Division of Supervision, Enforcement and Fair Lending, which can provide insight into enforcement and supervision priorities and expectations.

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- Suggestions for new forms of written guidance, such as advisory opinions, which the Bureau has not previously issued, and lists of Frequently Asked Questions with informal answers. The Bureau said it is open to new forms of guidance suggested by commenters.
- Disclaimers attached to guidance materials that may describe the purpose or limitations of the guidance provided, which may cause confusion with respect to the guidance.

The Bureau requests that commenters provide detailed responses, including the nature of any suggested changes, data or information supporting the commenter's position, and information on the impact and costs of the guidance and implementation support and any suggested changes. The Bureau also asks that commenters prioritize their suggestions and explain the prioritization. In addition, the Bureau asks commenters to focus on "revisions that the Bureau could implement without changes in the law" and "in light of tradeoffs under" the Administrative Procedures Act.

Among other things, the RFI is an opportunity for industry to provide feedback to help the CFPB develop a meaningful advisory opinion policy. The CFPB's existing no action letter policy has proven to be of limited value, in part because action letters are nonbinding on the CFPB and are not entitled to deference from courts. A stronger policy with more reliable outcomes could help to promote innovation and greater certainty in consumer financial services.

WHAT'S NEXT

Comments on the RFI regarding guidance and implementation support are due within 90 days of publication of the RFI in the *Federal Register*, which is expected to occur on April 2, 2018.

The Bureau indicated in its press release that it will issue an RFI addressing the Bureau's consumer education efforts the week of April 2, 2018, and another RFI addressing consumer inquiries "in the coming weeks."

The press release also contained a notice that it has extended the comment deadlines for the first three RFIs issued in this series. Comments regarding civil investigative demands are now due April 26, 2018. Comments regarding Bureau rules of practice for adjudication proceedings are now due May 7, 2018. Comments regarding the CFPB's enforcement processes are now due May 14, 2018.

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