

# Client Alert

---

March 8, 2018

## CFPB Requests Feedback on Rulemaking Process

By **Obrea O. Poindexter, Crystal N. Kaldjob, and Amanda J. Mollo**

On March 7, 2018, the Consumer Financial Protection Bureau (CFPB or “Bureau”) released a [Request for Information](#) (RFI) regarding the Bureau’s rulemaking process, the seventh RFI in its initiative to reexamine the Bureau’s existing policies and procedures under Acting Director Mick Mulvaney’s leadership.<sup>1</sup> Through this latest RFI, the Bureau seeks feedback “on all discretionary aspects of the Bureau’s [rulemaking] processes, including current practices, timelines, and potential improvements in each stage of these processes.” As a result, the CFPB is not seeking feedback about those elements of federal agency rulemaking that are required by law, or the content of any particular proposed or final rule. Thus, responses to this RFI should focus on the process elements of CFPB rulemaking.

Commenters are invited to provide feedback on the Bureau’s overall rulemaking process and to include a discussion of the positive and negative aspects of the CFPB’s processes, specific suggestions for improvements and identification of rulemaking procedures that should not be modified. The RFI divides the rulemaking process into three parts: (1) Initial Outreach and Information Gathering, (2) Notices of Proposed Rulemaking, and (3) Final Rules. To illustrate the types of comments the CFPB is seeking from the public and industry, the Bureau provides sample questions with respect to each element of the rulemaking process.

### INITIAL OUTREACH AND INFORMATION GATHERING

The RFI invites comment on the mechanisms the Bureau uses to gather data, such as RFIs and methods to better obtain data from stakeholders to support quantitative analysis and 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 stakeholders to share data to inform potential proposed rules, and whether the Bureau could better address concerns about treatment of proprietary business information. The RFI also requests feedback about its processes for convening a panel comprised of representatives from the Bureau, the Office of Management and Budget’s Office of Information and Regulatory Affairs, and the Small Business Administration’s Office of Advocacy under Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) to seek input from a representative cross section of affected small entities and to obtain advice and recommendations on proposals the Bureau is considering.

### NOTICES OF PROPOSED RULEMAKING AND FINAL RULES

The RFI also seeks public input on the content of the various sections normally contained in a Notice of Proposed Rulemaking and the level of detail and analysis provided therein, as well as the quality of examples provided in proposed commentary. In addition, the RFI requests feedback on the practice of releasing proposed rules prior to publication in the *Federal Register*, the duration of comment periods, mechanisms for encouraging additional public feedback, the use of online comment posting systems, and meetings with stakeholders during and after a comment period.

---

<sup>1</sup> Our client alert on this initiative is available [here](#).

## Client Alert

---

This RFI appears to be a further step in Acting Director Mulvaney's plan to limit, or cease altogether, the CFPB's practice under former Director Richard Cordray of engaging in rulemaking by enforcement actions by using a more formal rulemaking process. The CFPB will begin accepting comments when the RFI is published in the *Federal Register*, which is expected to occur on March 9, and the comment period will last 90 days. The CFPB plans to issue subsequent RFIs seeking public comment on potential modifications to regulations already adopted by the CFPB and those inherited from other agencies.

**Contact:**

**Obrea O. Poindexter**  
(202) 887-8741  
[opoindexter@mofo.com](mailto:opoindexter@mofo.com)

**Crystal N. Kaldjob**  
(202) 887-1687  
[ckaldjob@mofo.com](mailto:ckaldjob@mofo.com)

**Amanda J. Mollo**  
(202) 778-1609  
[amolloy@mofo.com](mailto:amolloy@mofo.com)

# Client Alert

---

## Financial Services Team

---

### California

Alexis A. Amezcua	(415) 268-6557
Elizabeth Balassone	(415) 268-7585
Roland E. Brandel	(415) 268-7093
Sarah N. Davis	(415) 268-7478
Henry M. Fields	(213) 892-5275
Joseph Gabai	(213) 892-5284
Angela E. Kleine	(415) 268-6214
Jim McCabe	(415) 268-7011
James R. McGuire	(415) 268-7013
Mark David McPherson	(212) 468-8263
Ben Patterson	(415) 268-6818
Sylvia Rivera	(213) 892-5734
William L. Stern	(415) 268-7637
Nancy R. Thomas	(213) 892-5561
Lauren Lynn Wroblewski	(415) 268-6458

### New York

Robert J. Baehr	(212) 336-4339
James M. Bergin	(212) 468-8033
Meghan E. Dwyer	(212) 336-4067
David J. Fioccola	(212) 336-4069
Marc-Alain Galeazzi	(212) 336-4153
Adam J. Hunt	(212) 336-4341
Jessica Kaufman	(212) 336-4257
Mark P. Ladner	(212) 468-8035
Jiang Liu	(212) 468-8008
David H. Medlar	(212) 336-4302
Barbara R. Mendelson	(212) 468-8118
Michael B. Miller	(212) 468-8009
Ryan J. Richardson	(212) 336-4249
Jeffrey K. Rosenberg	(212) 336-4130
Mark R. Sobin	(212) 336-4222
Joan P. Warrington	(212) 506-7307

---

### Washington, D.C.

---

Marcie Brimer	(202) 887-6932	Steven M. Kaufmann	(202) 887-8794
Rick Fischer	(202) 887-1566	Donald C. Lampe	(202) 887-1524
Adam J. Fleisher	(202) 887-8781	Jeremy R. Mandell	(202) 887-1505
Natalie A. Fleming Nolen	(202) 887-1551	Amanda J. Mollo	(202) 778-1609
Calvin D. Funk	(202) 887-6930	Obrea O. Poindexter	(202) 887-8741
Susan I. Gault-Brown	(202) 887-1597	Sean Ruff	(202) 887-1530
Julian E. Hammar	(202) 887-1679	Trevor R. Salter	(202) 887-1527
Oliver I. Ireland	(202) 778-1614	Nathan D. Taylor	(202) 778-1644
Crystal N. Kaldjob	(202) 887-1687	Jennifer S. Talbert	(202) 887-1563

---

# Client Alert

---

## **About Morrison & Foerster:**

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for 13 straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at [www.mofo.com](http://www.mofo.com).

*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.*