

Client Alert

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CFPB Issues RFI on Inherited Regulations

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

On March 26, 2018, the Consumer Financial Protection Bureau (CFPB or “Bureau”) published a [Request for Information](#) (RFI) on the CFPB’s inherited regulations and inherited rulemaking authorities. The RFI is the ninth in a series that solicits public feedback on the Bureau’s operations, and the regulations for which it is responsible. This RFI does not request feedback regarding the rulemaking process, rules that the Bureau issued after notice and comment, or implementation guidance because these topics are the subject of separate RFIs. Comments on the RFI regarding inherited regulations are due by June 24, 2018.

The Bureau indicated in a [press release](#) that it will issue the next RFI in the series, addressing the Bureau’s guidance and implementation support, later this week.

INHERITED REGULATIONS UNDER REVIEW

The scope of the latest RFI is on the regulations the Bureau “inherited” under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Before the Dodd-Frank Act, responsibility for rulemaking and enforcement related to consumer financial protection laws was divided among several federal regulators, including the Board of Governors of the Federal Reserve System and the Federal Trade Commission. Under the Dodd-Frank Act, the authority to promulgate rules relating to the consumer financial protection laws was transferred to the CFPB, which republished and assumed responsibility for regulations that had been issued by other federal agencies. These previously-issued, or “inherited,” regulations (along with rulemaking authority inherited by the Bureau that was not exercised by the Bureau’s predecessors) are the focus of the latest RFI.

SCOPE OF REQUESTED COMMENTS

The RFI states that the Bureau is seeking feedback on the substance of its inherited regulations, noting its statutory mandate to ensure “that, with respect to consumer financial products and services . . . outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens.”¹ The RFI includes an overview of existing efforts at the Bureau to examine inherited regulations, including efforts in 2011 and 2012 to streamline the inherited regulations and a recently established initiative to periodically review individual inherited regulations; the RFI seeks public input on the additional steps the Bureau could take to better fulfill its statutory mandate.

Specifically, the RFI solicits input on:

- Whether the CFPB should issue additional regulations;
- Specific changes the Bureau should make to existing regulations; and
- Identification of current regulations that the Bureau should not change.

¹ 12 U.S.C. § 5511(b)(3).

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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 inherited regulations and any suggested changes.

In addition, the Bureau included an outline to illustrate potential topic areas that comments might address. These potential areas for public feedback include:

- Aspects of rules that: should be tailored; create unintended consequences; overlap or conflict with other laws or regulations; are incompatible or misaligned with new technologies; or could be modified to more effectively protect consumers.
- Identification of potential changes that could make existing regulations meet or advance the statutory purposes of the consumer financial laws more effectively.
- Suggestions regarding activities the Bureau could undertake to improve its analyses of costs and benefits of inherited regulations and potential changes thereto.
- Identification of potential actions the Bureau could take to make compliance with inherited regulations more effective and efficient.

The Bureau asks that commenters prioritize their suggestions and explain how or why the suggestions are prioritized as they are. In addition, the Bureau asks commenters to identify their top priorities.

TAKEAWAYS

This RFI should be viewed in conjunction with the March 21 [RFI on adopted regulations](#), the March 7 [RFI on the rulemaking process](#), and the forthcoming RFI on the Bureau's guidance and implementation support. Taken together, these requests represent a top-to-bottom review of the CFPB's rulemaking authority and rulewriting apparatus. The CFPB's review creates an opportunity for providers and consumers of these financial products and services to inform the Bureau on how to update regulations to meet the demands of a dynamic market for consumer financial products and services.

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