

Client Alert

January 18, 2018

CFPB Announces Review of Agency's Functions

By **Obrea O. Poindexter** and **Donald C. Lampe**

On January 17, 2018, the Consumer Financial Protection Bureau (CFPB or "Bureau") announced that it soon will begin issuing a series of Requests for Information (RFIs) to "ensure the Bureau is fulfilling its proper and appropriate functions to best protect consumers." The CFPB said the RFIs will seek public comment on enforcement, supervision, rulemaking, market monitoring, and education activities, with the goal of providing "an opportunity for the public to submit feedback and suggest ways to improve outcomes for both consumers and covered entities."

In the CFPB [press release](#), acting Director Mick Mulvaney said that "under new leadership, it is natural for the Bureau to critically examine its policies and practices to ensure they align with the Bureau's statutory mandate." He added that "[m]uch can be done to facilitate greater consumer choice and efficient markets, while vigorously enforcing consumer financial law in a way that guarantees due process." Acting Director Mulvaney also said that "[m]oving forward, the Bureau will consistently seek out constructive feedback and welcome ideas for improvement."

The CFPB indicated that its first RFI will cover civil investigative demands (CIDs), which are legal demands for information and documents that the agency's Office of Enforcement can issue to initiate or supplement enforcement investigations. According to the CFPB, comments received in response to this RFI will "help the Bureau evaluate existing CID processes and procedures, and to determine whether any changes are warranted."

WHAT DO FINANCIAL INSTITUTIONS AND OTHER FINANCIAL SERVICES PROVIDERS NEED TO KNOW NOW ABOUT THE BUREAU'S INITIATIVE?

- The acting Director appears to be exercising the same authority to issue public RFIs that the former Director exercised from time to time. However, the acting Director is placing special emphasis on consumer choice and efficient markets, which was one of the statutory objectives for the agency in the Dodd-Frank Act.¹ This is emerging as a theme at the Bureau under the acting Director's brief tenure; that is, striking a balance between the purpose and objectives of the CFPB as intended by Congress.
- It is notable that the first RFI covers one of the more controversial aspects of the Bureau's authority; that is, the issuance and handling of CIDs. Over the years, the Bureau has received criticism for the short time periods for responding to CIDs, the jurisdiction-expanding coverage of CIDs,² and the former Director's almost perfect record of never granting a respondent's motion to limit the scope of a CFPB CID.

¹ 12 U.S.C. § 5521(b)(5): "The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services – markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation."

² See, e.g., *Consumer Financial Protection Bureau v. Accrediting Council for Independent Colleges and Schools*, No. 16-5174 (D.C. Cir. April 21, 2017).

Client Alert

- The RFIs will be open for comment from any and all commenters. It can be expected that consumer advocates, certain members of Congress, and others, such as plaintiffs' attorneys, will vociferously defend the Bureau and its track record before the former Director resigned last November. By the same token, industry participants, including trade groups and individual financial services companies, will have an opportunity to weigh in on the Bureau's impact on consumer choice, market efficiency, and competition in the marketplace.

Contact:

Obrea O. Poindexter
(202) 887-8741
opoindexter@mofo.com

Donald C. Lampe
(202) 887-1524
dlampe@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 |
| Judy Man Ni Mok | (212) 336-4073 |
| 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 |
| Rick Fischer | (202) 887-1566 |
| Adam J. Fleisher | (202) 887-8781 |
| Natalie A. Fleming Nolen | (202) 887-1551 |
| Calvin D. Funk | (202) 887-6930 |
| Julian E. Hammar | (202) 887-1679 |
| Oliver I. Ireland | (202) 778-1614 |
| Crystal N. Kaldjob | (202) 887-1687 |
| Steven M. Kaufmann | (202) 887-8794 |

Washington, D.C. (continued)

| | |
|---------------------|----------------|
| Donald C. Lampe | (202) 887-1524 |
| Jeremy R. Mandell | (202) 887-1505 |
| Amanda J. Mollo | (202) 778-1609 |
| Obrea O. Poindexter | (202) 887-8741 |
| Ryan J. Richardson | (202) 887-8761 |
| Sean Ruff | (202) 887-1530 |
| Trevor R. Salter | (202) 887-1527 |
| Nathan D. Taylor | (202) 778-1644 |
| 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.

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.