

CFPB Bulletin 11-3

Re: Policy on Ex Parte Presentations in Rulemaking Proceedings

Date: August 16, 2011

The Consumer Financial Protection Bureau (CFPB) has adopted the following policy on ex parte presentations in rulemaking proceedings:

CFPB POLICY ON EX PARTE PRESENTATIONS IN RULEMAKING PROCEEDINGS

(a) **SCOPE.**—This policy applies to communications with persons outside the Consumer Financial Protection Bureau (“CFPB”) during informal rulemaking proceedings conducted in accordance with section 553 of the Administrative Procedure Act, including rulemaking proceedings in which public comment is sought as a matter of discretion.

(b) **DEFINITIONS.**—For purposes of this policy, the following definitions apply:

(1) **EX PARTE PRESENTATION.**—

(A) Except as provided in subparagraph (b)(1)(B), the term “ex parte presentation” means any written or oral communication by any person outside the CFPB that imparts information or argument directed to the merits or outcome of a rulemaking proceeding.

(B) Ex parte presentations do not include the following:

(i) Statements by any person made in a public meeting, hearing, conference, or similar event, or public medium such as a newspaper, magazine, or blog;

(ii) Communications that are inadvertently or casually made;

(iii) Inquiries limited to the status of a rulemaking or concerning compliance with procedural requirements; or

(iv) Communications that occur as part of the CFPB’s regular supervisory, monitoring, research, and/or other statutory responsibilities, which communications are only incidentally relevant to, and not intended to influence the outcome of, a rulemaking proceeding.

(2) **DECISION-MAKING PERSONNEL.**—The term “decision-making personnel” means any employee of the CFPB who is or may reasonably be expected to be involved in formulating a CFPB rule.

(c) POLICY.—It is the CFPB’s policy to provide for open development of rules and to encourage full public participation in rulemaking actions. The CFPB encourages decision-making personnel to contact the public directly when factual information is needed to resolve questions of substance and to be receptive, consistent with the limitations on CFPB staff time, to communications from persons affected by or interested in a CFPB rulemaking. However, to promote fairness and reasoned decision-making, the CFPB’s policy is to require public disclosure of ex parte presentations according to CFPB guidelines. The CFPB expects that the primary means of communicating a person’s views in the course of a rulemaking will be through the submission of written comments to the rulemaking docket. Ex parte communications should supplement and not substitute for those submissions.

(d) DISCLOSURE.—Except as provided in paragraph (e), the following disclosure requirements apply from the date of publication in the *Federal Register* (or on the CFPB’s website, whichever is earlier) of a notice of proposed rulemaking or interim final rule for public comment until the date of publication in the *Federal Register* of the final rule or final disposition of the notice of proposed rulemaking or interim final rule:

(1) ORAL EX PARTE PRESENTATIONS.—A person who makes an oral ex parte presentation to decision-making personnel shall, not later than three business days after the presentation, file to the rulemaking docket for the proceeding and submit to the CFPB’s Executive Secretary and all CFPB employees to whom the presentation was made, a memorandum summarizing the presentation. Memoranda must contain a list of all persons attending or otherwise participating in the presentation, the date of the presentation, and a summary of data presented and arguments made during the presentation. If the oral ex parte presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s prior written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. If a summary of an oral ex parte presentation is incomplete or inaccurate, CFPB staff may require the filer to correct any inaccuracies or missing information.

(2) WRITTEN EX PARTE PRESENTATIONS.—A person who makes a written ex parte presentation to decision-making personnel (including documents shown or given to decision-making personnel during oral ex parte presentations) shall, not later than three business days after the presentation, file to the rulemaking docket for the proceeding and submit to the CFPB’s Executive Secretary and all CFPB employees to whom the presentation was made a copy of

the presentation.

(3) SUBMISSION REQUIREMENTS.—

(i) A written ex parte presentation and a memorandum summarizing an oral ex parte presentation (and cover letter, if any) shall identify the proceeding to which it relates, including the docket number, if any, and must be labeled as an ex parte presentation.

(ii) All filings and submissions under paragraphs (d)(1) and (2) shall be performed electronically, by filing the required materials using www.regulations.gov and emailing the required materials to the Executive Secretary (at expartedisclosures@cfpb.gov) and all CFPB employees to whom the ex parte presentation was made. If electronic filing would present an undue hardship, the person filing must request an exemption from the electronic filing requirement, stating the nature of the hardship, and submit by mail or email to the Executive Secretary an original and one copy of the written ex parte presentation or memorandum summarizing an oral ex parte presentation, with a copy by mail or email to all CFPB employees to whom the ex parte presentation was made. (Mail may be sent to the Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, N.W., Washington, DC 20036.)

(iii) In cases where a filer believes that one or more of the documents or portions thereof to be filed should be withheld from public inspection, the filer should file electronically a request that the information not be made available for public inspection. Simultaneously with any such request, the filer shall file with the Executive Secretary a paper copy of the document(s) containing the confidential information and marked prominently as “Confidential,” and also shall file electronically a copy of the same document(s) with the confidential information redacted and marked “Public Copy.”

(iv) CFPB staff may in their discretion elect to prepare written summaries of oral ex parte presentations and place them in the record and also place any written ex parte presentations in the record in lieu of requiring the person who made the ex parte presentation to prepare such summaries.

(e) EXEMPTIONS.—

(1) The disclosure requirements in section (d) do not apply to ex parte presentations (i) to the General Counsel and his or her staff that concern judicial review of a matter that has been decided by the CFPB; (ii) by other Federal government agencies, offices, or their staff; or (iii) by members of Congress or their staff unless such presentations are of major significance, contain information or argument not already reflected in the rulemaking docket, and plainly intended to affect the ultimate outcome of the rulemaking. Federal government agencies and members of Congress are welcome to post written comments to the rulemaking docket.

(2) The CFPB may properly withhold from the rulemaking docket information exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552.

(f) DISCRETION TO MODIFY.—Where the public interest so requires in particular rulemaking proceedings, the CFPB and its staff retain the discretion to modify the applicable ex parte rules or practices.

(g) VIOLATIONS.—Persons who fail to adhere to this policy are subject to such sanctions as may be appropriate. Any person who becomes aware of a possible violation of any of the requirements of this policy may advise the Office of General Counsel of all the facts and circumstances that are known to him or her.