

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2018-0011]

Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is seeking comments and information from interested parties to assist the Bureau in considering whether, consistent with its statutory authority to prescribe rules pursuant to the Federal consumer financial laws, the Bureau should amend those rules it has promulgated since its creation or issue certain new rules.

DATES: Comments must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2018-0011, by any of the following methods:

- *Electronic:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2018-0011 in the subject line of the message.
- *Mail:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics). Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Thomas L. Devlin and Kristin McPartland, Senior Counsels, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

Congress established the Bureau in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and therein set forth the Bureau's purpose, objectives, and functions.¹ Pursuant to that Act, on July 21, 2011, the "consumer financial protection functions"

¹ Public Law 111-203, 124 Stat. 2081 (2010) (codified at 15 U.S.C. 1693a *et seq.*). Section 1021 of the Dodd-Frank Act states that the Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law

previously vested in certain other Federal agencies transferred to the Bureau.² The term “consumer financial protection function” is defined to include “all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.”³ The Dodd-Frank Act in turn defines Federal consumer financial law broadly to include “the provisions of [title X of the Dodd-Frank Act], the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under [title X], an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H.”⁴

Accordingly, Congress generally transferred to the Bureau rulemaking authority for Federal consumer financial laws previously vested in certain other Federal agencies, and the Bureau thereafter assumed responsibility over the various regulations that these agencies had issued under this rulemaking authority (the “Inherited Regulations”).⁵ The Dodd-Frank Act also provided new rulemaking authorities to the Bureau under the Federal consumer financial laws.⁶ Since the Bureau’s creation, it has prescribed a number of rules under Federal consumer

consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. Section 1021 also authorized the Bureau to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services, five specific objectives are met. 12 U.S.C. 5511.

² 12 U.S.C. 5581.

³ 12 U.S.C. 5581(a)(1).

⁴ 12 U.S.C. 5481(14).

⁵ The Bureau generally restated these regulations first through a series of interim final rules published in the *Federal Register* and subsequently through a final rule. 81 FR 25323 (Apr. 28, 2016). Bureau rules are generally set forth in title 12, Chapter X of the Code of Federal Regulations.

⁶ For example, section 1089 of the Dodd-Frank Act amended the Fair Debt Collection Practices Act to authorize the Bureau to “prescribe rules with respect to the collection of debts by debt collectors,” as defined in the Act. *See* 15 U.S.C. 1692l (d); 78 FR 67847, 67852 (Nov. 12, 2013).

financial law in rulemakings mandated by Congress, as well as in discretionary rulemakings. These Bureau-issued rules and the new authorities created under the Dodd-Frank Act are referred to collectively in this RFI as the “Adopted Regulations.” The Adopted Regulations have often amended the Inherited Regulations.

The Bureau’s Rulemaking Authority. The Dodd-Frank Act states that the Bureau is authorized to “exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.”⁷ The Dodd-Frank Act further authorizes the Director of the Bureau to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, which include enumerated consumer laws as well as provisions of the Dodd-Frank Act, and to prevent evasions thereof.⁸

Existing Bureau Work to Examine Adopted Regulations. Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The Bureau must publish a report of the assessment not later than five years after the effective date of such rule or order. The assessment must address, among other relevant factors, the rule’s effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals stated by the Bureau. The assessment also must reflect available evidence and any data that the Bureau reasonably may collect. Before publishing a report of its assessment, the Bureau must invite public comment on recommendations for modifying, expanding, or eliminating the significant rule or order.⁹ More

⁷ 12 U.S.C. 5512(a).

⁸ 12 U.S.C. 5512(b)(1).

⁹ 12 U.S.C. 5512(d).

generally, the Dodd-Frank Act also states that the Bureau is authorized to exercise its authorities under Federal consumer financial law for, among other objectives, “ensuring 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.”¹⁰ As discussed further below, the Bureau has issued three Requests for Information to date announcing section 1022(d) assessments of specific Adopted Regulations and seeking comment on the assessments.

Overview of This Request for Information

The Bureau is using this request for information (RFI) to seek public input regarding the substance of the Adopted Regulations, including whether the Bureau should issue additional rules. The Bureau encourages comments from all interested members of the public. The Bureau anticipates that the responding public may include (among others) entities and their service providers subject to Bureau rules, trade associations that represent these entities, individual consumers, consumer advocates, regulators, and researchers or members of academia.

The Bureau previously issued an RFI regarding its rulemaking processes, and plans to issue an RFI about the Bureau’s regulatory implementation and guidance functions. The Bureau also plans to issue an RFI regarding the Inherited Regulations. Accordingly, the purpose of this RFI is to seek feedback on the content of the Adopted Regulations, not the Bureau’s rulemaking processes, implementation initiatives that occur after the issuance of a final rule, or the Inherited Regulations. Also please note that the Bureau is not requesting comment on any pending

¹⁰ 12 U.S.C. 5511(b)(3).

rulemaking for which the Bureau has issued a Notice of Proposed Rulemaking or otherwise solicited public comment.

The Adopted Regulations. The Adopted Regulations include rulemakings adopted under Federal consumer financial law and issued by the Bureau since the designated transfer date in 2011, including rules that were adopted pursuant to specific instructions from Congress.¹¹ The term also includes new rulemaking authorities given to the Bureau by the Dodd-Frank Act under the Federal consumer financial laws. The Adopted Regulations generally include all final rulemakings that the Bureau issued after providing notice and seeking public comment, including any accompanying Official Interpretations (commentary) issued by the Bureau. However, the Bureau is not requesting feedback at this time on its 2015 rule under the Home Mortgage Disclosure Act (nor that rule’s subsequent amendments)¹² or its 2017 rule entitled “Payday, Vehicle Title, and Certain High-Cost Installment Loans,”¹³ because the Bureau has previously announced that it intends to engage in rulemaking processes to reconsider those rules.

The Bureau also previously has announced that it is conducting assessments, pursuant to section 1022(d) of the Dodd-Frank Act, of certain final Bureau rules concerning remittance transfers, mortgage servicing under the Real Estate Settlement Procedures Act, and ability-to-repay and qualified mortgage standards.¹⁴ As part of those assessments, the Bureau previously

¹¹ Examples of larger rules issued by the Bureau that would fall under the definition of “Adopted Regulations” include the rules the Bureau promulgated pursuant to the Dodd-Frank Act to govern mortgage servicing, mortgage origination, integrated mortgage disclosures, and remittance transfers, and also include discretionary rules the Bureau has adopted such as the rule governing prepaid accounts. This list is non-exclusive; a full list of final rules issued by the Bureau is available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/>.

¹² 80 FR 66127 (Oct. 28, 2015), as subsequently amended.

¹³ 82 FR 54472 (Nov. 17, 2017).

¹⁴ 77 FR 6194 (Feb. 7, 2012), 78 FR 10695 (Feb. 14, 2013), and 78 FR 6408 (Jan. 30, 2013), each as subsequently amended.

solicited recommendations for modifying, expanding, or eliminating these rules in accordance with section 1022(d)(3). The Bureau will consider for purposes of this RFI, and to the extent relevant, all comments previously received in connection with the assessments. Although respondents to this RFI are free to comment on those rules currently under assessment, respondents should not feel any obligation to include in their responses to this RFI suggestions or observations previously made in the context of those assessments.

Suggested Topics for Commenters

To allow the Bureau to more effectively evaluate suggestions, the Bureau requests that, where possible, comments include:

- Specific suggestions regarding any potential updates or modifications to the Adopted Regulations, consistent with the laws providing the Bureau with rulemaking authority and the Bureau's regulatory and statutory purposes and objectives, and including, in as much detail as possible, the nature of the requested change, and supporting data or other information on impacts and costs of the Adopted Regulations and on the suggested changes thereto; and
- Specific identification of any aspects of the Adopted Regulations that should not be modified, consistent with the laws providing the Bureau with rulemaking authority and the Bureau's regulatory and statutory purposes and objectives, and including, in as much detail as possible, supporting data or other information on impacts and costs, or information related to consumer and public benefit resulting from these rules.

The following list represents a preliminary attempt by the Bureau to identify considerations relevant in determining where modifications of the Adopted Regulations or further exercise of the Bureau's rulemaking authorities may be appropriate. This non-exhaustive

list is meant to assist in the formulation of comments and is not intended to restrict the issues that may be addressed. The Bureau requests that, in addressing these questions or others, commenters identify with specificity the Bureau rules at issue, providing legal citations to specific regulations or statutes where appropriate and available. The Bureau invites commenters to identify the products or services that would be affected by any recommendations made by those commenters. Please feel free to comment on some or all of the questions below and on some or all of the Adopted Regulations, but be sure to indicate on which area you are commenting. The Bureau encourages commenters to make their best efforts to limit their comments to the Adopted Regulations; however, the Bureau will consider all comments received under the Inherited Regulations and Adopted Regulations RFIs together.

From all of the suggestions, commenters are requested to offer their highest priorities, along with their explanation of how or why they have prioritized suggestions. Commenters are asked to single out their top priority. Suggestions should focus on revisions that the Bureau could implement consistent with its authorities and without Congressional action.

The Bureau is seeking feedback on all aspects of the Adopted Regulations, including but not limited to:

1. Aspects of the Adopted Regulations that:
 - a. Should be tailored to particular types of institutions or to institutions of a particular size;
 - b. Create unintended consequences;
 - c. Overlap or conflict with other laws or regulations in a way that makes it difficult or particularly burdensome for institutions to comply;

- d. Are incompatible or misaligned with new technologies, including by limiting providers' ability to deliver, electronically, mandatory disclosures or other information that may be relevant to consumers; or
 - e. Could be modified to provide consumers greater protection from the incidence and effects of identity theft.
- 2. Changes the Bureau could make to the Adopted Regulations, consistent with its statutory authority, to more effectively meet the statutory purposes and objectives set forth in the Federal consumer financial laws, as well as the Bureau's specific goals for the particular Adopted Regulation.
- 3. Changes the Bureau could make to the Adopted Regulations, consistent with its statutory authority, that would advance the following statutory purposes and objectives as set forth in section 1021 of the Dodd-Frank Act:
 - a. The statutory purposes set forth in section 1021(a) are:
 - i. All consumers have access to markets for consumer financial products and services; and
 - ii. Markets for consumer financial products and services are fair, transparent, and competitive.
 - b. The statutory objectives set forth in section 1021(b) are:
 - i. Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
 - ii. Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

- iii. Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;
 - iv. Federal consumer financial law is enforced consistently in order to promote fair competition; and
 - v. Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.
4. Pilots, field tests, demonstrations, or other activities that the Bureau could launch to better quantify benefits and costs of potential revisions to the Adopted Regulations, or to make compliance with the Adopted Regulations more efficient and effective.
5. Areas where the Bureau has not exercised the full extent of its rulemaking authority in connection with a specific Adopted Regulation or with regard to rulemaking authorities created by the Dodd-Frank Act under the Federal consumer financial laws, and where rulemaking would be beneficial and align with the purposes and objectives of the applicable Federal consumer financial laws.

AUTHORITY: 12 U.S.C. 5511(c).

**[THIS SIGNATURE PAGE PERTAINS TO THE REQUEST FOR INFORMATION
TITLED “REQUEST FOR INFORMATION REGARDING THE BUREAU’S ADOPTED
REGULATIONS AND NEW RULEMAKING AUTHORITIES”]**

Dated: March , 2018.



Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.