

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2018-0009]

Request for Information Regarding Bureau Rulemaking Processes

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 assessing the overall efficiency and effectiveness of its rulemaking processes and, consistent with law, considering whether any changes to its rulemaking processes would be appropriate.

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-2018-0009, 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-2018-0009 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: Kristine M. Andreassen and Owen Bonheimer, 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:

Background on Statutory Requirements Relevant to the Bureau’s Rulemaking Process

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)¹ states that the Bureau is authorized to exercise its authorities under Federal consumer financial

¹ Public Law 111-203, 124 Stat. 2081 (2010).

law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.² 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, including both enumerated consumer laws³ and provisions of title X of the Dodd-Frank Act,⁴ and to prevent evasions thereof.⁵ The Bureau has engaged in rulemakings mandated by Congress as well as discretionary rulemakings pursuant to these and other authorities. The Bureau's rulemaking processes are subject to a number of statutory requirements, including those discussed below.

Notice-and-comment requirements for rulemakings. The Administrative Procedure Act (APA) requires a Federal agency to publish a notice of proposed rulemaking (NPRM) in the *Federal Register* whenever it formulates, amends, or repeals rules, unless an exception applies.⁶ The Bureau's NPRMs typically include the following: (1) background sections, which provide information about the relevant market(s) and other applicable laws and regulations; (2) section-by-section analysis of proposed regulatory text and the official interpretations thereto (also referred to as commentary); (3) proposed impact analyses, as described below; and (4) the

² 12 U.S.C. 5512(a).

³ Enumerated consumer laws are the 18 statutes (or portions thereof) specifically listed in the Dodd-Frank Act, including, for example, the Fair Credit Billing Act, the Fair Debt Collection Practices Act, the Home Mortgage Disclosure Act of 1975, the Truth in Lending Act, and the Truth in Savings Act. 12 U.S.C. 5481(12). The Bureau has rulemaking authority for these and certain other Federal consumer financial laws as defined by 12 U.S.C. 5481(14). *See generally* 12 U.S.C. 5512.

⁴ This includes the Dodd-Frank Act's prohibition against unfair, deceptive, or abusive acts or practices. 12 U.S.C. 5531.

⁵ 12 U.S.C. 5512(b)(1).

⁶ 5 U.S.C. 553(b). The APA includes exceptions for interpretive rules, general statements of policy, rules of agency organization, procedure, or practice, or when the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. This RFI is focused on the Bureau's processes for substantive or "legislative" rulemakings, not those occurring under an exception in the APA.

proposed regulatory text and commentary. (Items 1-3 are referred to collectively as preamble.)

A final rule also includes in its preamble a summary of and response to comments received on the NPRM (including on its proposed impact analyses), and an explanation of changes from the NPRM.

Small business review process required for certain rulemakings. The Regulatory Flexibility Act (RFA)⁷ requires the Bureau to engage in a small business feedback process prior to proposing a rule for which (1) the APA requires notice and comment and (2) the Bureau does not certify that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.⁸ Prior to issuing an NPRM in these rulemakings, a review panel must seek input from a representative cross section of affected small entities to obtain advice and recommendations on proposals the Bureau is considering. The Bureau refers to this review panel as a SBREFA panel, as it is governed by the provisions added to the RFA by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).⁹ The panel must be comprised of representatives from the Bureau, the Office of Management and Budget's Office of Information and Regulatory Affairs (OMB OIRA), and the Small Business Administration's (SBA) Office of Advocacy. The panel is required to prepare a report on its findings and make this report part of the rulemaking record. The Bureau typically releases a SBREFA panel report,

⁷ Public Law 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. 601 *et seq.*).

⁸ 5 U.S.C. 609.

⁹ Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996). These RFA requirements also apply to two other Federal agencies (the Environmental Protection Agency and the Occupational Safety and Health Administration). 5 U.S.C. 609(d). To date, the Bureau has conducted SBREFA panels for rulemakings regarding the integration of Truth in Lending Act and Real Estate Settlement Procedures Act mortgage disclosure requirements; mortgage servicing; residential mortgage loan origination standards; the Home Mortgage Disclosure Act; payday, vehicle, title, and similar loans; arbitration agreements; and debt collection. For issued SBREFA panel reports, see Bureau of Consumer Fin. Prot., "Small Business Review Panels," <https://www.consumerfinance.gov/policy-compliance/rulemaking/small-business-review-panels/> (last visited Feb. 26, 2018).

and any written comments from the small entity representatives, to the public at the same time that it releases an NPRM. As required by SBREFA, the Bureau's NPRMs reflect how the Bureau has acted on or otherwise responded to the report's recommendations. Additionally, in these rulemakings, as discussed further below, the RFA also requires additional impacts analysis concerning small entities, including consideration of potential alternatives.¹⁰

Analysis of impacts of proposed and final rules. The Dodd-Frank Act requires the Bureau to consider, in prescribing a rule under the Federal consumer financial laws, the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from the rule.¹¹ The Bureau also must consider the impact of proposed rules on depository institutions and credit unions with \$10 billion or less in assets and on consumers in rural areas.¹² The RFA requires the Bureau either to certify that the rule will not have a significant economic impact on a substantial number of small entities or to analyze the rule's impacts on small entities and potential alternatives, as described above. The Paperwork Reduction Act¹³ also requires the Bureau to identify the impact of information collection requirements in the rule and to meet certain other procedural requirements in connection with information collections. These impacts analyses are included in an NPRM and reviewed for final rules in light of comments received and further analysis.

Relatedly, pursuant to the Congressional Review Act (CRA), the Bureau must prepare a report on each final rule for each House of Congress and the Comptroller General of the

¹⁰ 5 U.S.C. 605(b).

¹¹ 12 U.S.C. 5512(b)(2)(A)(i).

¹² 12 U.S.C. 5512(b)(2)(A)(ii).

¹³ 44 U.S.C. 3501 *et seq.*

Government Accountability Office.¹⁴ This report must include, among other things, the decision by the administrator of OMB OIRA as to whether the rule is a “major rule” as defined by the CRA.¹⁵

Consultation with other Federal agencies. The Dodd-Frank Act requires that the Bureau consult with appropriate prudential regulators or other Federal agencies prior to proposing a rule and before issuing a final rule regarding consistency with prudential, market, or systemic objectives administered by such agencies.¹⁶ In addition, as required by the Dodd-Frank Act, the Bureau and the Federal Trade Commission (FTC) have entered into a Memorandum of Understanding that provides for the Bureau and the FTC to consult with one another before proposing or finalizing a rule concerning unfair, deceptive, or abusive acts or practices, to avoid duplication or conflict between the agencies’ respective rulemaking activities in this area.¹⁷

Overview of This Request for Information

While many elements of Federal agency rulemaking are required by law, a number of the Bureau’s rulemaking processes, and certain aspects of how the Bureau implements required processes, are discretionary, and the Bureau is using this request for information (RFI) to seek public input regarding these discretionary aspects of its rulemaking processes (the Bureau’s processes). The Bureau encourages comments from all interested members of the public. The Bureau anticipates that the responding public may include entities and individuals subject to Bureau rules, trade associations that represent these businesses, individual consumers, consumer

¹⁴ 5 U.S.C. 801(a)(1)(A).

¹⁵ 5 U.S.C. 801(a)(1)(ii); 5 U.S.C. 804(2).

¹⁶ 12 U.S.C. 5512(b)(2)(B).

¹⁷ 12 U.S.C. 5581(b)(5)(D) (requiring this Memorandum of Understanding). The Bureau also must consult with the FTC before issuing a rule to define covered persons subject to its supervision authority. 12 U.S.C. 5514(a)(2).

advocates, regulators, researchers or members of academia, and other entities or individuals that have submitted comments regarding Bureau rulemakings or provided feedback through other mechanisms.

The Bureau will issue subsequent RFIs seeking public input regarding potential modifications to both regulations adopted by the Bureau and those inherited from other agencies, as well as about overall effectiveness and accessibility of the Bureau's guidance and implementation support. The purpose of this RFI is to seek feedback on the Bureau's processes outlined below; the Bureau is not seeking comment in this RFI on the content of any particular proposed or final rule. To provide comments on the Bureau's use of public and non-public external engagements, such as field hearings, town halls, and roundtables, please respond to the specific RFI on that topic, Docket No. CFPB-2018-0005, 83 FR 8247 (Feb. 26, 2018).

Suggested Topics for Commenters

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

- Specific discussion of the positive and negative aspects of the Bureau's processes;
- Specific suggestions regarding any potential updates or modifications to the Bureau's processes, consistent with the laws governing rulemaking processes, including, in as much detail as possible, the potential updates or modifications, supporting data or other information on impacts and costs of participation in rulemakings and on suggested changes thereto, information related to consumer and public benefit that might result from such changes, or information concerning alignment with the processes of other agencies with similar authorities; and

- Specific identification of any aspects of the Bureau’s processes that should not be modified, consistent with the laws governing rulemaking processes, and including, in as much detail as possible, supporting data or other information on impacts and costs, information related to consumer and public benefit resulting from these processes, or information concerning alignment with the processes of other agencies with similar authorities.

The Bureau is seeking feedback on all discretionary aspects of the Bureau’s processes, including current practices, timelines, and potential improvements in each stage of these processes. The following non-exhaustive list outlines the various stages of the Bureau’s processes and includes particular queries regarding certain components of each stage. This list and related queries represent a preliminary attempt by the Bureau to identify elements of the Bureau’s processes that may be of particular interest to the public. This list is meant to assist in the formulation of comments and is not intended to restrict the issues that may be addressed. In addressing these topics or others, the Bureau requests that commenters identify with specificity the Bureau practices at issue, providing citations to specific rulemakings or laws governing rulemakings where appropriate and available. Comments are welcome on any or all of the topics below, but please be sure to indicate on which topic or topic number you are commenting.

The Bureau is seeking feedback on all aspects of the Bureau’s processes including, but not limited to:

Initial Outreach and Information Gathering

1. Mechanisms used by the Bureau for gathering information, data, and feedback from stakeholders (*i.e.*, industry, consumer advocates, and others) in advance of the steps outlined separately below, including:

- a. RFIs concerning market conditions or issues, particular regulatory options, or the process or content of Bureau research, or advance notices of proposed rulemaking inviting public comment to shape a potential proposed rule.
 - b. Efforts to gather data from industry, academia, think tanks, consumer groups, and others to support quantitative analysis. Comment is specifically sought on methods by which the Bureau might better obtain meaningful, nationally representative data from stakeholders for use in assessing benefits and costs of proposed rules. The Bureau is particularly interested in suggestions on how the Bureau might best encourage industry and other stakeholders to share data to inform a potential proposed rule and whether concerns about treatment of proprietary business data could be better addressed consistent with existing law.
2. Convening a SBREFA panel, when required as described above, including:
 - a. The outline of the proposal under consideration and the analysis of potential impacts on small entities and regulatory alternatives that are released at the start of the SBREFA panel process.
 - b. Selection of and interaction with small entity representatives during the SBREFA panel process.
 - c. The SBREFA panel report.
 - d. Outreach to other stakeholders on the basis of public release of the outline of the proposal under consideration.
3. Consultations with tribal governments in certain circumstances, which pursuant to Bureau policy may occur through meetings, telephone conferences, and other forms of

communication and outreach prior to issuing an NPRM, as well as through a formal request for comment from tribal governments and tribal members in an NPRM.¹⁸

Notices of Proposed Rulemaking

4. The content of the NPRM itself, including:
 - a. The background section, which provides information about the relevant market and other applicable laws and regulations.
 - b. Section-by-section analysis of the proposed regulatory text and commentary, including the level of detail regarding the Bureau's rationale for its proposed rule, responsiveness to SBREFA panel report recommendations (where applicable), the level of detail in the section-by-section analysis about the NPRM's draft regulatory text and commentary, and the questions and topics about which comment is requested.
 - c. Impact analyses for the proposed rule, including the qualitative and quantitative analysis therein, and the data on which they rely.
 - d. The proposed regulatory text and commentary, including the Bureau's use of commentary, appendices, and model or sample forms to provide interpretations and illustrations of regulatory text and, relatedly, the level of detail and the quantity of examples contained in proposed commentary.
5. The Bureau's issuance of the NPRM, including the Bureau's general practice of releasing the NPRM on its website in advance of publication in the *Federal Register*, and supporting materials the Bureau may release simultaneously with an NPRM, such as a

¹⁸ See Bureau of Consumer Fin. Prot., "Policy for Consultation with Tribal Governments," available at http://files.consumerfinance.gov/f/201304_cfpb_consultations.pdf.

press release or consumer-facing blog post, as well as other high-level or summary material regarding the content of the NPRM.

6. Comment periods for NPRMs, including the length of the comment period and extensions of comment periods in certain circumstances, whether and in what circumstances the Bureau should provide “reply periods” for commenters to review and formally respond to other commenters’ comment letters, and whether and to what extent the Bureau should consider comments received after the close of the comment period.
7. Mechanisms for encouraging additional feedback on all or part of a NPRM, including the use of online tools to solicit public feedback such as, for example, the Bureau’s engagement from 2012 to 2014 with Cornell University’s eRulemaking Initiative to garner public feedback via Cornell’s website.¹⁹
8. The Bureau’s processing and posting of comments received to its electronic docket on <http://www.regulations.gov>, including the ways of accepting comments, the timeframe to post comments, treatment of duplicative or largely duplicative comments, posting similar or related comments in batches rather than as separate entries, treatment of anonymous comments, treatment of comments where there may be questions about the commenter’s identity, and ways to tabulate comments received.
9. Outreach and engagement by the Bureau during and after the comment period, including meetings with stakeholders, and disclosure of such communications under the Bureau’s ex parte policy.²⁰

¹⁹ Reports based on comments received using this process were included in the relevant rulemaking dockets. See Cornell U., “Cornell eRulemaking Initiative,” <http://regulationroom.org> (last visited Feb. 26, 2018).

²⁰ See Policy on Ex Parte Presentations in Rulemakings, 76 FR 18687 (Apr. 21, 2017) (revising policy in place since August 16, 2011). Written ex parte communications and summaries of oral ex parte communications are posted to

10. Consideration of new data, studies, and reports issued by other agencies or third parties after the NPRM is released.

Final Rules

11. The content of the notice issuing the final rule, including each of the elements listed above in topic 4 (for NPRMs) as well as the Bureau's explanation of its rationale for the final rule, the discussion in the section-by-section analysis about the final rule's regulatory text and commentary, the summary of and response to comments received on the NPRM (including those specifically regarding the impact analyses), and the explanation of changes from the NPRM.
12. The Bureau's release of the final rule on its website in advance of publication in the *Federal Register* and supporting materials the Bureau may release simultaneously with a final rule, which may include a press release, consumer-facing blog post, remarks by the Bureau's Director presented at a public event or press call, other high-level or summary material regarding the content of the final rule, and select regulatory implementation materials.

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

the rulemaking docket on <http://www.regulations.gov> together with public comments received through the avenues specified in the NPRM.

**[THIS SIGNATURE PAGE PERTAINS TO THE REQUEST FOR INFORMATION
TITLED "REQUEST FOR INFORMATION REGARDING BUREAU RULEMAKING
PROCESSES"]**

Dated: March 6, 2018.

A handwritten signature in blue ink, appearing to read "M. Mulvaney", is written over a horizontal line.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.