



BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2018-0001]

Request for Information Regarding Bureau Civil Investigative Demands and Associated 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 potential changes that can be implemented to the Bureau's Civil Investigative Demand (CID) processes, consistent with law, to consider whether any changes to the processes would be appropriate.

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2018-0001, 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-2018-0001 in the subject line of the message.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson Office of the Executive Secretary, 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. 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 St NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern standard 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. 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: For general inquiries and submission process questions, please call Monica Jackson at (202) 435-7275.

SUPPLEMENTARY INFORMATION: In the course of its investigatory activities, and as authorized by 12 U.S.C. 5562 and 12 CFR 1080.6, the Bureau issues CIDs to entities and persons whom the Bureau has reason to believe may have information relevant to a violation of the laws the Bureau enforces. These demands require recipients to provide the Bureau with information in varying forms: most frequently some combination of written answers to interrogatories, written reports, documents, tangible things, and testimony. Recipients are required to produce the requested information to the Bureau, which uses such information to further investigations of potential violations of Federal consumer financial laws.

To assess the efficiency and effectiveness of its existing CID processes, the Bureau is, as described below, issuing this request for information seeking public comment on how best to achieve meaningful burden reduction or other improvement to the CID processes while continuing to achieve the Bureau's statutory and regulatory objectives.

Overview of This Request for Information

The Bureau is using this request for information to seek public input regarding the exercise of its authority to issue CIDs, including from entities who have received one or more CIDs from the Bureau, or members of the bar who represent these entities.

The issuance of CIDs is an essential tool for fulfilling the Bureau's statutory mission of enforcing Federal consumer financial law. The Bureau issues CIDs in accordance with the law and in furtherance of its investigatory objectives. The Bureau understands, however, that responding to a CID can impose burdens on the recipients. Entities who have received one or more CIDs, members of the bar who represent these entities, and members of the public are likely to have useful information and perspectives on the benefits and burdens of the Bureau's existing processes related to CIDs. The Bureau is especially interested in better understanding how its processes related to CIDs may be updated, streamlined, or revised to better achieve the Bureau's statutory and regulatory objectives, while minimizing burdens, consistent with applicable law, and how to align the Bureau's CID processes with those of other agencies with similar authorities. Interested parties may also be well-positioned to identify those parts of the Bureau's processes related to CIDs that are most in need of improvement, and, thus, assist the Bureau in prioritizing and properly tailoring its review process. In short, engaging CID recipients, potential CID recipients, and the public in an open, transparent process will help inform the Bureau's review of its processes related to CIDs.

Questions 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 Bureau's practices regarding the formulation, issuance, or modification of CIDs consistent with the Bureau's regulatory and statutory objectives, including, in as much detail as possible, the potential update or modification, supporting data or other information such as cost information or information concerning alignment with the processes of other agencies with similar authorities; and
- Specific identification of any aspects of the Bureau's CID processes that should not be modified, including supporting data or other information such as cost information or information concerning alignment with the processes of other agencies with similar authorities.

The following list of questions represents a preliminary attempt by the Bureau to identify elements of Bureau processes related to CIDs on which it should immediately focus. 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. In addressing these questions or others, the Bureau requests that commenters identify with specificity the Bureau regulations or practices at issue, providing legal citations where appropriate and available.

The Bureau is seeking feedback on all aspects of its civil investigative demand process, including but not limited to:

1. The Bureau's processes for initiating investigations, including 12 CFR 1080.4's delegation of authority to initiate investigations to the Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement;
2. The Bureau's processes for the issuance of CIDs, including the non-delegable authority of the Director, Assistant Director of the Office of Enforcement, and the Deputy Assistant Directors of the Office of Enforcement to issue CIDs;
3. Specific steps that the Bureau could take to improve CID recipients' understanding of investigations, whether through the notification of purpose included in each CID or through other avenues, including facilitating a better understanding of the specific types of information sought by the CID;
4. The nature and scope of requests included in Bureau CIDs, including whether topics, questions, or requests for written reports effectively achieve the Bureau's statutory and regulatory objectives, while minimizing burdens, consistent with applicable law, and the extent to which the meet and confer process helps achieve these objectives;
5. The timeframes associated with each step of the Bureau's CID process, including return dates, and the specific timeframes for meeting and conferring, and petitioning to modify or set aside a CID;
6. The Bureau's taking of testimony from an entity, including whether 12 CFR 1080.6(a)(4)(ii), and/or the Bureau's processes should be modified to make expressly clear that the standards applicable to Federal Rule of Civil Procedure 30(b)(6) also apply to the Bureau's taking of testimony from an entity;
7. The Bureau's processes for handling the inadvertent production of privileged information, including whether 12 CFR 1080.8(c) and/or the Bureau's processes should

- be modified in order to make expressly clear that the standards applicable to Federal Rule of Evidence 502 also apply to documents inadvertently produced in response to a CID;
8. The rights afforded to witnesses by 12 CFR 1080.9, including limitations on the role of counsel described in 12 CFR 1080.9(b) in light of the statutory delineation of objections set forth in 12 U.S.C. 5562(c)(13)(D)(iii);
 9. The Bureau's processes concerning meeting and conferring with recipients of CIDs, including, for example, negotiations regarding modifications and the delegation of authority to the Assistant Director of the Office of Enforcement and Deputy Assistant Directors of the Office of Enforcement to negotiate and approve the terms of satisfactory compliance with civil investigative demands and extending the time for compliance;
 10. The Bureau's requirements for responding to CIDs, including certification requirements, and the Bureau's CID document submission standards; and
 11. The Bureau's processes concerning CID recipients' petitions to modify or set aside Bureau CIDs, including:
 - a. Whether it is appropriate for Bureau investigators to provide the Director with a statement setting out a response to the petition without serving that response on the petitioner;
 - b. Whether petitions and the Director's orders should be made public, consistent with applicable laws; and
 - c. The costs and benefits of the petition to modify or set aside process, vis-à-vis direct adjudication in Federal court, in light of the statutory requirement for the petition process and the fact that CIDs are not self-enforcing.

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

Dated: January 18, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

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