



OFFICE OF INSPECTOR GENERAL

Evaluation Report

2017-SR-C-015

The CFPB Generally Complies With
Requirements for Issuing
Civil Investigative Demands but
Can Improve Certain Guidance and
Centralize Recordkeeping

September 20, 2017

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
CONSUMER FINANCIAL PROTECTION BUREAU

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Abbreviations

CFPB	Consumer Financial Protection Bureau
CID	civil investigative demand
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
FTC	Federal Trade Commission
investigation rules	Rules Relating to Investigations
LD	Litigation Deputy
OIG	Office of Inspector General



Executive Summary:

The CFPB Generally Complies With Requirements for Issuing Civil Investigative Demands but Can Improve Certain Guidance and Centralize Recordkeeping

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Purpose

We conducted this evaluation to assess the Consumer Financial Protection Bureau's (CFPB) adherence to its policies and procedures for issuing civil investigative demands (CIDs) and its general compliance with the requirements in section 1052(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Specifically, our review determined whether the sampled CIDs contained the procedural elements required by the Dodd-Frank Act, including, but not limited to, the presence of certain information such as notifications of purpose, return dates, and custodians.

Background

The Dodd-Frank Act authorizes the CFPB to take appropriate enforcement actions to address violations of federal consumer financial laws; the CFPB's Office of Enforcement performs this enforcement function and conducts investigations to ensure that financial institutions comply with such laws. The Office of Enforcement uses CIDs to obtain information from entities subject to an investigation or from third parties that may have relevant information. A CID is an official demand for documentary material, tangible things, reports, answers to written questions, or oral testimony; if necessary, a CID can be enforced in federal court. Requirements contained in section 1052(c) of the Dodd-Frank Act and the agency's procedures govern how the agency should issue CIDs.

Findings

We found that the CFPB generally complied with the procedural elements of section 1052(c) of the Dodd-Frank Act and with the agency's procedures when issuing the sampled CIDs, but the agency can improve its guidance for crafting notifications of purpose associated with CIDs. During our review, we learned that in accordance with internal guidance, a CID's notification of purpose is identical to the statement of purpose in the associated investigation's opening memorandum, which may be revised later in the investigation. Internal guidance calls for broad statements of purpose, to allow for flexibility. The guidance does not expressly remind enforcement attorneys of the need for statements of purpose to be compliant with relevant case law on notifications of purpose, including any developments in such case law, or remind them to revisit the statement of purpose in a revised opening memorandum if the purposes of the investigation evolve. A potentially noncompliant notification of purpose may limit the recipient's ability to understand the basis for requests and thereby heighten the risk that the CID may face a legal challenge. In the event of such a challenge, the CFPB's ability to obtain the information needed to enforce consumer financial protection laws could be delayed, irrespective of the court's decision. Additionally, noncompliant notifications of purpose pose a reputational risk, potentially affecting interactions with CID recipients and other stakeholders. During the course of our review, the CFPB updated its internal policies to mitigate this potential risk.

We also found that the CFPB can improve its matter management system. Specifically, we found that the Office of the Executive Secretariat does not appear to maintain a complete record of all petitions and supporting documents. In addition, the Office of Enforcement does not use a centralized repository to maintain CIDs and related documentation; rather, the agency maintains CID documentation on the shared drives of multiple offices. Thus, CID documentation is not maintained in an easily retrievable manner.

Recommendations

Our report contains a recommendation to improve the Office of Enforcement's practices for crafting notifications of purpose for CIDs to reduce the risk that notifications of purpose may result in legal challenges from CID recipients. Our report also contains recommendations for the agency to implement a centralized matter management system to ensure that official federal records are easily retrievable. In its response to our draft report, the CFPB concurs with our recommendations. The agency describes completed and planned actions to address our recommendations.

Summary of Recommendations, OIG Report 2017-SR-C-015

Finding 1: The CFPB Generally Complies With the Procedural Requirements of the Dodd-Frank Act and Internal Requirements for Issuing CIDs but Can Improve the Guidance for Crafting Notifications of Purpose

Number	Recommendation	Responsible office
1	Revise the <i>Policies and Procedures Manual</i> to expressly remind litigation teams that statements of purpose must comply with relevant case law on notifications of purpose, including any developments in such case law, and remind the teams to revisit the statement of purpose in a revised opening memorandum if the purposes of the investigation evolve.	Office of Enforcement

Finding 2: The CFPB's Matter Management System Could Be Improved

Number	Recommendation	Responsible office
2	Coordinate with other CFPB divisions to identify and implement a centralized matter management system that facilitates the retrieval of civil investigative demand documentation while ensuring that access to high-sensitivity information is limited in accordance with the CFPB's policies and procedures.	Office of Enforcement
3	Ensure that the Office of the Executive Secretariat follows its established records file plan and develops a process for maintaining civil investigative demand documentation, including petitions to modify or set aside civil investigative demands, so that official federal records and related supporting documents are easily retrievable.	Office of the Executive Secretariat



OFFICE OF INSPECTOR GENERAL

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
CONSUMER FINANCIAL PROTECTION BUREAU

September 20, 2017

MEMORANDUM

TO: Anthony Alexis
Assistant Director, Office of Enforcement
Consumer Financial Protection Bureau

Gena Chieco
Executive Secretary and Counsel to the Director, Office of the Executive Secretariat
Consumer Financial Protection Bureau

FROM: Melissa Heist *Melisse Heist*
Associate Inspector General for Audits and Evaluations

SUBJECT: OIG Report 2017-SR-C-015: *The CFPB Generally Complies With Requirements for Issuing Civil Investigative Demands but Can Improve Certain Guidance and Centralize Recordkeeping*

We have completed our report on the subject evaluation. We conducted this evaluation to assess the Consumer Financial Protection Bureau (CFPB) Office of Enforcement's (1) adherence to its policies and procedures for issuing CIDs and (2) general compliance with the requirements in section 1052(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

We provided you with a draft of our report for review and comment. In your response, you concur with our recommendations and outline completed and planned actions to address our recommendations. We have included your response as appendix C to our report.

We appreciate the cooperation that we received from the Office of Enforcement and the Office of the Executive Secretariat. Please contact me if you would like to discuss this report or any related issues.

cc: Christopher D'Angelo, Associate Director, Division of Supervision, Enforcement, and Fair Lending
David Bleicken, Deputy Associate Director, Division of Supervision, Enforcement, and Fair Lending
John Coleman, Deputy General Counsel for Litigation and Oversight, Legal Division
Joanna Pearl, Chief of Staff, Office of Enforcement
Dana James, Acting Chief Financial Officer and Assistant Director, Office of the Chief Financial Officer

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Introduction

Objectives

We conducted an evaluation of the Consumer Financial Protection Bureau's (CFPB) processes for issuing civil investigative demands (CIDs). Our objectives were to assess the CFPB's (1) adherence to its policies and procedures for issuing CIDs and (2) general compliance with the requirements in section 1052(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

We judgmentally selected a sample of CIDs from 2013 to 2015 and reviewed the related documentation. We also interviewed officials from the Federal Trade Commission (FTC) and the U.S. Department of Justice, two federal agencies with similar CID authority, and compared their CID processes to the CFPB's processes. Details on our scope and methodology are in appendix A.

Background

The Dodd-Frank Act established the CFPB to regulate the offering and provision of consumer financial products and services under federal consumer financial laws. With respect to the enforcement of those laws, the Dodd-Frank Act grants the CFPB certain authorities to (1) conduct investigations and (2) obtain information to aid those investigations by issuing CIDs. A CID is a tool used by the CFPB's Office of Enforcement to obtain information from entities subject to an investigation or from third parties that may have relevant information. A CID is an official demand for documentary material, tangible things, reports, answers to written questions, or oral testimony; if necessary, the CFPB can seek to enforce a CID in federal court.

From October 1, 2016, through March 31, 2017, the agency announced enforcement actions requiring approximately \$200 million in total relief for consumers who fell victim to various violations of consumer financial protection laws. The CFPB generally does not publicize details about ongoing investigations, including CIDs, until the agency files a public enforcement action. However, the CFPB does publish petitions to modify or set aside CIDs and the orders resolving those petitions.¹

The CFPB's Office of Enforcement

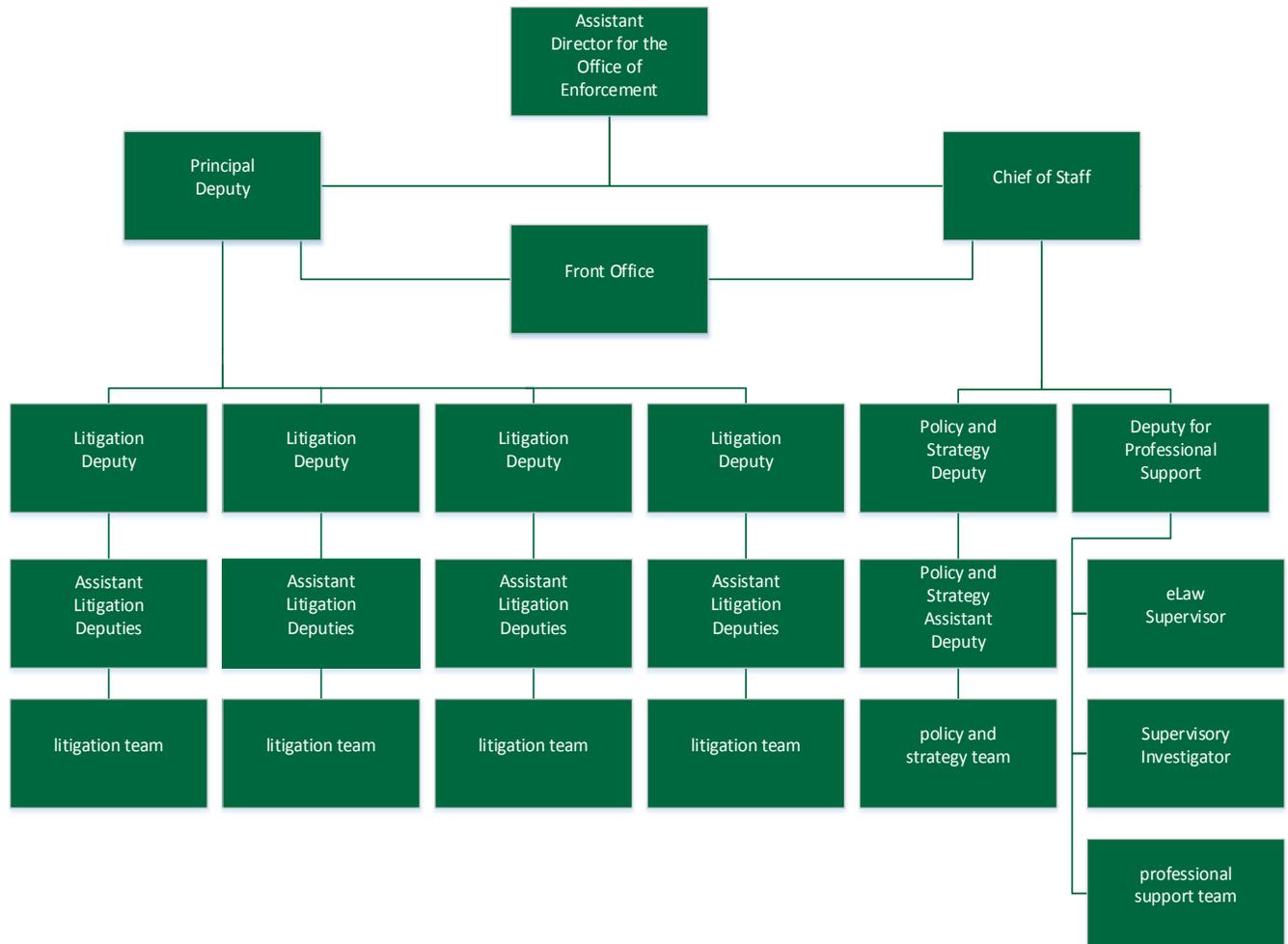
The Office of Enforcement is one of four offices in the Division of Supervision, Enforcement, and Fair Lending, and one of two CFPB offices responsible for investigating potential violations

1. See the CFPB's Rules Relating to Investigations, 12 C.F.R. 1080.6(g).

of federal consumer financial laws.² The office investigates potential violations of federal consumer financial laws by companies or individuals that offer or provide consumer financial products or services and issues enforcement actions when appropriate.

The Office of Enforcement includes four litigation teams, each led by a Litigation Deputy (LD) and two Assistant Litigation Deputies and staffed by 20–22 attorneys and 3–4 paralegals. The policy and strategy team and the Front Office staff provide strategic direction and support for the litigation teams. The office’s professional support staff includes investigators, forensic accountants, statisticians, and eDiscovery staff (figure 1).³

Figure 1: Organizational Structure of the Office of Enforcement



Source: Developed by the OIG based on a review of the CFPB’s organization charts.

Note: This organization chart is not comprehensive and includes only details relevant to this evaluation.

2. The CFPB’s Office of Fair Lending and Equal Opportunity also conducts investigations of potential violations of federal consumer financial laws, specifically related to fair lending.
3. *E-discovery* is the process of identifying, preserving, collecting, reviewing, analyzing, and producing electronically stored information in response to a government investigation or during administrative, civil, or criminal legal actions.

The CFPB's Statutory CID Authority and Agency Policies and Procedures

Section 1052(c) of the Dodd-Frank Act provides the CFPB with the authority to issue and enforce CIDs.⁴ The act also outlines a series of procedural requirements for CIDs. It states that the CFPB may issue a CID to any person who may have information relevant to a violation of federal consumer financial law. The statute states that each CID must “state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.” See appendix B for the specific statutory requirements for issuing and enforcing CIDs described in section 1052(c) of the Dodd-Frank Act.

In June 2012, the CFPB adopted its final Rules Relating to Investigations (investigation rules), which describes its procedures for conducting investigations under section 1052 of the Dodd-Frank Act.⁵ The investigation rules set forth the CFPB’s authority to conduct investigations and the rights of persons from whom the agency seeks to compel information in investigations. As they relate to CIDs, the investigation rules restate many of the requirements included in the Dodd-Frank Act and provide additional details on issuing, modifying, and enforcing a CID. Additionally, the investigation rules specify the procedures that recipients must follow when petitioning the CFPB Director to modify or set aside a CID. The CFPB modeled the investigation rules on the investigative procedures of other federal agencies with enforcement authority, such as the FTC and the U.S. Securities and Exchange Commission.

The Office of Enforcement’s *Policies and Procedures Manual* provides further internal guidance to staff for issuing, modifying, serving, and enforcing a CID. Among other topics, the manual outlines the agency’s expectations for drafting notifications of purpose. It states that the notification of purpose for a CID should match the statement of purpose for an investigation, which is contained in the investigation’s opening memorandum, and the manual includes examples of language for an investigation’s statement of purpose. The manual suggests that statements of purpose “describe the nature of the conduct and the potentially applicable law in very broad terms.”

The manual also provides Office of Enforcement staff with guidance for reducing the potential burden of complying with a CID. It states that staff should consider the burden the CID will impose on the recipient and carefully consider what requests for information to include in a CID. The manual further states that staff should (1) narrowly tailor a CID to solicit the information necessary for the investigation and (2) be amenable to working with the recipient to narrow an issued CID so that it is consistent with the needs of the investigation.

In addition to detailed guidance on the CID process, the *Policies and Procedures Manual* also contains guidance on maintaining matter files, including establishing a folder for CIDs and updating the Office of Enforcement’s matter management system with information on each CID. The manual also includes hyperlinks to a CID-related form and templates.

4. The FTC and the U.S. Department of Justice are two other federal agencies with CID authority.

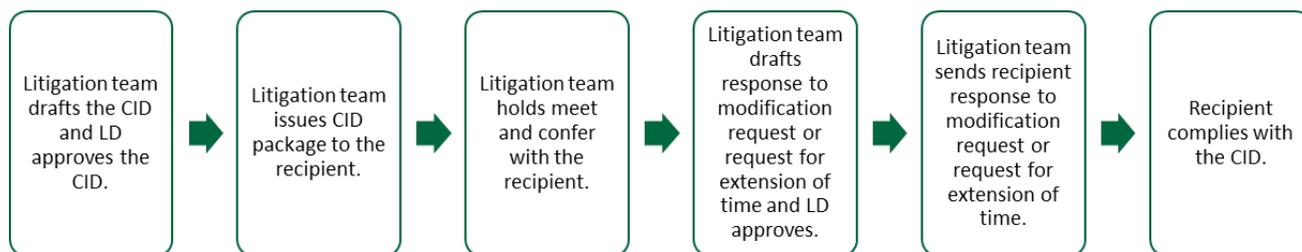
5. The CFPB’s Rules Relating to Investigations can be found at 12 C.F.R. § 1080.6 (2017).

The Office of Enforcement’s Process for Issuing and Modifying CIDs

Office of Enforcement litigation teams may issue one or more CIDs to companies and individuals after opening an investigation to obtain information relevant to the alleged violation of law that is under investigation. The litigation team working on a particular investigation may demand that the subject of the investigation or a third party produce documents, tangible things, written reports, answers to questions, and oral testimony. Using templates to assist in drafting a CID, the litigation team considers what information to request and the burden those requests might impose on the recipient. The litigation team sends the draft CID to the Assistant Litigation Deputy and the LD for review and feedback. The LD signs the CID to indicate final approval, and the litigation team issues the CID package to the recipient.⁶

The investigation rules require the CID recipient to meet and confer with the CFPB’s litigation team within 10 days of the agency serving the CID unless the LD waives the meet and confer requirement. During the meet and confer, the litigation team addresses the recipient’s requests for modifications or extensions; discusses any potential production of personally identifiable information; and inquires about the recipient’s information management systems, organizational structure, and document retention policies. Following the meet and confer, the recipient may submit in writing a request for modification of the CID terms or a request for an extension of time to respond. The litigation team memorializes any proposed agreement in a letter for final approval and signature by the LD. Upon submitting the requested materials, the recipient certifies compliance with the CID under a sworn certificate, attesting that all the requested information in the recipient’s possession, custody, or control has been produced.⁷ This process is depicted in figure 2.

Figure 2: The CID Process With Request to Modify and Extend



Source: Developed by the OIG based on a review of the Office of Enforcement’s CID process.

Note: This figure depicts the CID process in the absence of a petition to the CFPB Director to modify or set aside the CID. A CID recipient may request a modification or an extension of time from the litigation team, which is distinct from a petition to the CFPB Director to modify or set aside the CID.

6. A CID package may include the following, as appropriate: the signed CID form, CID definitions and instructions, certificates of compliance, the business records certificate, document submission standards, the investigation rules, the certificate of compliance with the Right to Financial Privacy Act, and the notice to persons supplying information.
7. If a CID recipient fails to comply with a CID, the litigation team may seek enforcement in federal district court.

The CID Petition Process

The recipient may file a petition to modify or set aside a CID within 20 days of service or by the return date if that date is less than 20 days from the date of service. The CFPB Director rules on petitions to modify or set aside CIDs. The CFPB typically publishes petitions to modify or set aside CIDs and the Director's orders resolving those petitions. A petitioner may request confidential treatment of all or part of a petition.

The CFPB's internal process for responding to petitions to modify or set aside CIDs, which was updated in January 2017, aims to complete the CFPB's response to a petition within approximately 30–40 calendar days from the filing of a petition.⁸ In January 2017, the CFPB made the following key changes to its process:

- The Legal Division, rather than the Office of Enforcement, now drafts a memorandum to the Director about the disposition of the petition, because the issues raised by petitions are largely legal in nature. In addition, this change allows Office of Enforcement staff to focus on their other investigatory or enforcement work, so as not to delay resolution of the petition.
- The Director now decides on requests for confidential treatment of a petition. When the CFPB transferred this responsibility to the Director from the Associate Director for the Division of Supervision, Enforcement, and Fair Lending, the CFPB also eliminated the option for petitioners to withdraw a petition due to denial of confidential treatment. Instead, after serving the CFPB Director's order to a petitioner, the CFPB will delay publishing the petition and the Director's order for at least 5 business days to allow the petitioner an opportunity to seek a court order preventing any proposed disclosure of an alleged trade secret or other information that the CFPB cannot lawfully disclose.⁹
- Under the current approach, the Director's final order on the petition includes any decisions pertaining to confidentiality. Under prior procedures, decisions on confidentiality requests and the merits of the related petition occurred sequentially, sometimes delaying the resolutions of petitions that included a request for confidential treatment.
- The Office of Enforcement litigation team reviews the petition for information that the CFPB may have good cause to redact and recommends any redactions regardless of whether the petitioner has made a request for confidential treatment.

As stated in the investigation rules, a petitioner must file any petition to modify or set aside a CID with the CFPB's Executive Secretary. The Office of the Executive Secretariat is responsible for docketing petitions and coordinating the agency's responses to petitions. This

8. The CFPB benchmarked against the FTC's process for responding to petitions and noted that the FTC must comply with a regulatory requirement to resolve all petitions within 40 days of the filing date. Although the CFPB does not have a similar regulatory requirement, the agency based its target time frame on this benchmark.

9. As discussed above, the FTC's CID authority is similar to the CFPB's. Comparatively, the FTC does not have a process whereby petitioners can request confidentiality for an entire petition; rather, a petitioner can request confidential treatment of certain data and information, but the redacted petition is public record. The CFPB has not granted in full any requests for confidential treatment. Three requests were granted in part.

office is also responsible for notifying the petitioner if the agency will not address the petition for cases in which the petition seeks unavailable relief or review.¹⁰

The Office of the Executive Secretariat prepares the CFPB Director's daily briefing book, which includes memorandums and proposed orders prepared by the Legal Division that support the Director in deciding on which petitions to modify or set aside CIDs. Once the Director rules on a petition and any accompanying confidentiality request, the Office of the Executive Secretariat serves the order on the petitioner. The order includes a notice that the public version of the petition will be published on the CFPB's public website no fewer than 5 business days after the order is served on the petitioner, unless the CFPB determines that there is good cause to avoid publication. An FTC official noted that the FTC engages in a similar practice by providing notice before publishing a petition so the petitioner can seek a court order.

10. A petition submitted pursuant to 12 C.F.R. § 1080.6(e) must seek relief or request review on grounds available under 12 U.S.C. § 5562(f) or 12 C.F.R. § 1080.6(e).

Finding 1: The CFPB Generally Complies With the Procedural Requirements of the Dodd-Frank Act and Internal Requirements for Issuing CIDs but Can Improve the Guidance for Crafting Notifications of Purpose

We found that the CFPB generally complied with the procedural elements of section 1052(c) of the Dodd-Frank Act and the agency's procedures when issuing the sampled CIDs, but the agency can improve its guidance for crafting notifications of purpose associated with CIDs.¹¹ Section 1052(c) of the Dodd-Frank Act sets forth the CFPB's statutory requirements for issuing a CID, including that the notification of purpose shall state the nature of the conduct constituting the alleged violation under investigation and the provision of law applicable to such violation. The investigation rules describe the CFPB's procedures to carry out the requirements in section 1052(c) of the Dodd-Frank Act and specify additional policies and procedures related to revising CID terms and petitions to modify or set aside CIDs. The Office of Enforcement's *Policies and Procedures Manual* aligns with the policies and procedures outlined in the investigation rules and provides further guidance to Office of Enforcement employees regarding the CID process. According to the *Policies and Procedures Manual*, a CID's notification of purpose is identical to the statement of purpose in the associated investigation's opening memorandum, which may be revised later in the investigation.

The *Policies and Procedures Manual* calls for a broad statement of purpose. The guidance does not expressly remind enforcement attorneys of the need for statements of purpose to be compliant with relevant case law on notifications of purpose, including any developments in such case law, or remind them to revisit the statement of purpose in a revised opening memorandum if the purposes of the investigation evolve. A potentially noncompliant notification of purpose may limit the recipient's ability to understand the basis for requests and thereby heighten the risk that the CID may face a legal challenge. In the event of such a challenge, the CFPB's ability to obtain the information needed to enforce consumer financial protection laws could be delayed, irrespective of the court's decision. Additionally, noncompliant notifications of purpose pose a reputational risk, potentially affecting interactions with CID recipients and other stakeholders. During the course of our review, the Office of Enforcement updated its internal policies to mitigate this potential risk.

The CFPB Generally Complies With the Dodd-Frank Act Requirements for Issuing CIDs

Our review indicates that the CFPB generally met the procedural requirements of section 1052(c) of the Dodd-Frank Act in issuing each of the sampled CIDs. The requirements in section 1052(c) are restated in the investigation rules and the Office of Enforcement's *Policies and Procedures Manual* so that, in effect, compliance with the Dodd-Frank Act also indicates compliance with certain policies and procedures.

11. We determined whether the sampled CIDs contained the procedural elements required by the Dodd-Frank Act, such as the presence of notifications of purpose, return dates, and custodians. Further, we evaluated the Office of Enforcement's process for issuing CIDs to find opportunities for improvement. We did not assess whether the sampled CIDs satisfy specific statutory provisions for providing adequate notification of purpose and other elements that may be interpreted by a court of law.

For the sampled CIDs, we reviewed the entire CID package, including the requests, definitions and instructions, and document submission standards, to determine whether each sampled CID would allow a recipient to identify and submit responsive material, reports, or answers. We determined that the sampled CIDs defined key terms and provided illustrative examples, applicable time periods, and instructions to allow a recipient to identify and provide responsive material, reports, or answers.

The Office of Enforcement has created a CID form that serves as the demand document in a CID package. We reviewed the completed CID form for each of the sampled CIDs to assess compliance with Dodd-Frank Act requirements. We found that each of the sampled CIDs had a complete and accurate Action Required section, in which the litigation team indicated the appropriate types of information requested for each CID.

We found that each sampled CID established a return date for the requested information, or in the case of oral testimony, a date, time, and place where the oral testimony would occur. We also found that each of the sampled CIDs listed the LD as the custodian and the paralegal as the deputy custodian; further, in the case of oral testimony, the CID form identified the CFPB investigator conducting the testimony.

The CFPB Can Improve Its Guidance for Crafting Notifications of Purpose

We found that the notification of purpose for each sampled CID contained information on the nature of the conduct constituting the alleged violation under investigation and the applicable provisions of law. However, we found that the Office of Enforcement can improve the guidance pertaining to crafting notifications of purpose. The Office of Enforcement's *Policies and Procedures Manual* states that the CID's notification of purpose "should match the 'Statement of Purpose' included in the Opening Investigation Memorandum." During our interviews, we learned that litigation teams follow the guidance set forth in the manual.¹² The manual also suggests that an investigation's statement of purpose "describe the nature of the conduct and the potentially applicable law in very broad terms." We were also advised that a statement of purpose may be "necessarily broad" to allow for an investigation to develop over time.

We believe that the guidance suggesting attorneys craft a statement of purpose "in very broad terms," without also reminding attorneys of the need for statements of purpose to be compliant with relevant case law on notifications of purpose, might increase the risk that the language in the CID's identical notification of purpose does not comply with that case law.¹³ As a result, a potentially noncompliant notification of purpose may limit the recipient's ability to understand the basis for requests and thereby heighten the risk that the CID may face a legal challenge from the recipient. In the event of such a legal challenge, the CFPB's ability to obtain the information it needs to enforce consumer financial protection laws could be delayed, irrespective of the

12. The *Policies and Procedures Manual* states that staff should consult the LD or the Assistant Litigation Deputy with regard to making changes to the notification of purpose if the scope or circumstances of the investigation change after opening.

13. We did not seek to assess the adequacy of the notifications of purpose for the sampled CIDs.

court's decision.¹⁴ Additionally, noncompliant notifications of purpose pose a reputational risk, potentially affecting interactions with CID recipients and other stakeholders. To improve the guidance to its attorneys and to mitigate the risk of future legal challenges to CIDs, the Office of Enforcement should revise the *Policies and Procedures Manual* to expressly remind litigation teams of the need for statements of purpose to comply with relevant case law on notifications of purpose, including any developments in such case law, and remind litigation teams to revisit the statement of purpose in a revised opening memorandum if the purposes of the investigation evolve.

The CFPB Generally Complies With Policies and Procedures for Issuing CIDs

In addition to the requirements in section 1052(c) of the Dodd-Frank Act, the investigation rules and the Office of Enforcement's *Policies and Procedures Manual* describe procedures and internal guidance related to the CFPB's CID process. We determined that the CFPB generally complied with its policies and procedures in issuing the sampled CIDs.

Specifically, we found the following:

- The sampled CIDs for oral testimony complied with the investigation rules and the *Policies and Procedures Manual* by either (1) identifying a specific individual or (2) providing particular matters for examination.
- An LD signed each of the sampled CIDs as required by the *Policies and Procedures Manual*.
- The meet and confer for the sampled CIDs either occurred within 10 calendar days, as required by the investigation rules, or beyond 10 calendar days when requested by the recipient's counsel. In one instance, the meet and confer did not occur because the recipient immediately complied with the request.
- An LD signed each letter memorializing agreements to modify or to extend time as required by the *Policies and Procedures Manual*.
- The recipients that petitioned CIDs either filed the petitions with the Office of the Executive Secretariat within 20 calendar days after service of the CID, as required by the investigation rules, or beyond 20 calendar days after service of the CID due to approved extensions of time to file petitions.
- In accordance with the *Policies and Procedures Manual*, the matter management system contained the notification of purpose for each of the sampled CIDs. However, it did not contain hyperlinks to the appropriate internal drive for each of the sampled

14. In April 2017, the D.C. Circuit Court of Appeals affirmed the district court's denial of the CFPB's petition to enforce a CID issued to the Accrediting Council for Independent Colleges and Schools and held that the CID failed to advise the recipient of the "nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." *Consumer Financial Protection Bureau v. Accrediting Council for Independent Colleges and Schools*, 854 F.3d 683 (D.C. Cir., 2017). In June 2017, the District Court for the Northern District of Texas granted the CFPB's petition to enforce a CID and held that the notification of purpose met statutory requirements. *Consumer Financial Protection Bureau v. The Source for Public Data, LP*, 3:17-mc-16-G-BN, No. 26 (N.D. Tex. June 6, 2017).

CIDs. The Office of Enforcement explained that some of the hyperlinks navigated to legacy systems that are no longer operational, requiring staff to manually search for a CID on the shared drive.

- The *Policies and Procedures Manual* states that the litigation team should forward the signed CID package to the Assistant Director of the Office of Enforcement via the Litigation Review Inbox. We found some variations in how the office stores CID packages in this inbox; this issue is discussed further in finding 2.

The CFPB's Approach to Assessing the Burden Associated With Responding to CIDs

Preparing and modifying a CID involves significant professional judgment to carefully balance the burden the CID places on the recipient against the CFPB's need to obtain information necessary to conduct an investigation. The Office of Enforcement's processes for CID approval and modification seek to strike that balance by allowing for substantial input from the CID recipient.

The Investigation Rules Require Senior Official Approval to Issue CIDs, and Guidance Requires Staff to Consider Burden

The LDs we interviewed stated that they make an effort to limit the scope of an information request before CID issuance, and one LD indicated that the agency has issued more targeted CIDs as the office has gained experience with the process. For example, one LD reviews a CID for terms or phrases that on their face suggest that an opportunity to narrow the scope of the request exists. The CFPB's investigation rules limit the authority to issue CIDs to the CFPB Director, the Assistant Director of the Office of Enforcement, and the LDs in the Office of Enforcement. The purpose of this requirement is to balance the efficiency of the CFPB's investigative process with appropriate supervision and oversight of the litigation teams preparing each CID. In practice, however, the LDs are responsible for reviewing, approving, and issuing CIDs.

The Office of Enforcement's *Policies and Procedures Manual* requires staff to carefully consider what information to request in a CID and to consider the burden the CID will impose on the recipient. The manual also states that staff should (1) narrowly tailor a CID to solicit the information necessary for the investigation and (2) be amenable to working with the CID recipient to narrow an issued CID so that it is consistent with the needs of the investigation. If a narrowly tailored CID does not result in the expected information, staff may choose to issue another CID.

The CFPB Uses Modifications and Extensions of Time to Help Alleviate Potential Burden

Based on our review of documentation related to the sampled CIDs, we found that the CFPB often uses modifications and extensions of time to alleviate some of the potential burden associated with CID requests. For example, we found that Office of Enforcement attorneys

engage CID recipients in continuous dialogue during the CID issuance process, using meet and confers, modification letters, extension letters, and extension emails to address the potential burden and allow the recipient to successfully comply with the CID.

As discussed above, the FTC's CID authority is similar to the CFPB's. After opening an investigation, particularly an investigation related to unfair or deceptive acts or practices, the FTC can issue CIDs to individuals or companies engaged in or whose business affects commerce. The FTC implements similar safeguards to help alleviate potential burden in its CIDs. The FTC requires a meet and confer, and one FTC official we interviewed noted that the recipient often tries to narrow the scope of a CID during this meeting. The FTC official stated that the informal meet and confer discussions could also lead to extensions of time for production of the requested CID information.

The investigation rules allow the CFPB discretion to modify CIDs or extend the time for compliance with good cause; an LD or the Assistant Director of the Office of Enforcement must approve such modifications. LDs noted that concerns about the burden or breadth of a CID can generally be resolved through modifications to the CID (for example, granting an extension of time or narrowing the request after understanding more about the CID recipient's systems). We learned that one team has involved CFPB subject-matter experts to help assess the potential burden associated with responding to a CID. The CID recipient argued that obtaining certain emails would be too burdensome because of the recipient's "archaic email system"; the litigation team obtained assistance from the office's eDiscovery team and determined that a significant extension of time would be reasonable. Office of Enforcement guidance encourages litigation teams to engage the eDiscovery team when determining the scope of requests, reviewing CID language, and conducting meet and confers.

Through discussions with Office of Enforcement attorneys, we found that some attorneys initially create a broader CID request, anticipating that the parties will use the meet and confer to narrow the request. Other attorneys we interviewed prepare the initial CID request to be as narrow as possible to ensure they only receive necessary information and anticipate that they may need to issue new CIDs for any required information not obtained through the initial CID.

The CFPB's Approach to Posting Petitions Publicly

Section 1080.6(g) of the investigation rules states that the CFPB will make publicly available both the petition and the CFPB Director's order in response. We learned that the FTC also publishes petitions, and the CFPB has modeled its petitions process after the FTC's process. Both the FTC and the CFPB cite government transparency as a reason for publishing petitions and orders in response to petitions. In 1977, the FTC considered the option of redacting identifying information from petitions prior to public disclosure but determined that this practice would "impair the public's ability to assess and understand these important rulings." The FTC amended its rules regarding CIDs in 2012 and received public comments suggesting that the FTC reevaluate its practice of making petitions public. The FTC declined to change its rules due to its position that publication of past proceedings would guide future petitioners and provide predictability to the determination process.

We also learned that both the CFPB and the FTC recognize that the public nature of the petitions process may discourage the filing of petitions. The Office of Enforcement's *Policies and Procedures Manual* also encourages staff to take steps to reduce the likelihood of a petition

to modify or set aside a CID by ensuring that a CID is initially tailored to the needs of the investigation and is not overly broad. However, petitioners can request confidentiality with the CFPB and ultimately may seek relief in court to protect confidentiality. Based on our review of the publicly posted petitions and orders, the CFPB has not granted any petitions from CID recipients. The agency has denied three requests for confidential treatment of petitions challenging a CID. Three requests were granted in part. Regardless of whether a petitioner has requested confidential treatment, the Office of Enforcement has established a process for litigation teams to review petitions for information that the CFPB may have good cause to redact. In our review of the CFPB's public petitions, we found that several contain redactions of certain information.

Management Actions Taken

In August 2017, the Office of Enforcement finalized a revised policy that reminds litigation teams that statements of purpose must comply with relevant case law on notifications of purpose, including any developments in such case law. The revised policy also reminds the litigation teams to revisit the statement of purpose should the purposes of the investigation evolve. The revised policy seeks to mitigate the risk associated with potentially noncompliant notifications of purpose.

Recommendation

We recommend that the Assistant Director for the Office of Enforcement

1. Revise the *Policies and Procedures Manual* to expressly remind litigation teams that statements of purpose must comply with relevant case law on notifications of purpose, including any developments in such case law, and remind the teams to revisit the statement of purpose in a revised opening memorandum if the purposes of the investigation evolve.

Management's Response

In its response to our draft report, the CFPB states that in August 2017 the Office of Enforcement finalized a revised policy that reminds staff that statements of purpose must comply with relevant case law on notifications of purpose, including any development in such case law. The revised policy also reminds staff to revisit the statement of purpose should the purposes of the investigation evolve.

OIG Comment

We believe that the actions described by the CFPB are responsive to our recommendation. We have reviewed the revised policy, and we believe the agency has taken sufficient action to close this recommendation.

Finding 2: The CFPB's Matter Management System Could Be Improved

We found that the Office of the Secretariat's shared drive does not appear to contain a complete record of all petitions and supporting documents. Further, the Office of Enforcement does not use a centralized repository to maintain CID and related documentation and does not assign a unique identifier to each CID. The CFPB maintains CID documentation on the shared drives of various offices, including the Office of Enforcement, the Legal Division's Office of Litigation and Oversight, and the Office of the Executive Secretariat. The CFPB's agencywide records management policy states that the agency should maintain records for timely retrieval. Additionally, the Office of Enforcement's policies and procedures require its employees to maintain uniform, complete, and accurate matter folders that document relevant developments throughout the course of enforcement matters. Specifically, enforcement employees must input information on each CID into the matter management system and link to the saved CID package.

However, employees do not consistently update these links to the current file location of the saved CID package in the matter management system, and there is no requirement for staff to include in the matter management system information related to petitions or CID modifications. Thus, CID documentation is not easily and readily available on request. The Office of Enforcement receives requests for information from various entities; the office must be able to timely and completely respond to such requests, to ensure compliance not only with its internal procedures but also with the Freedom of Information Act, discovery obligations, and other agency requests.

The CFPB Can Improve Its Recordkeeping of Petitions to Modify or Set Aside a CID

Although the Executive Secretary told us that the Office of the Executive Secretariat stores petitions to modify or set aside a CID on its shared drive, the office's shared drive does not appear to contain a complete record of all petitions and supporting documents. As discussed previously, a CID recipient may file a petition to modify or set aside a CID with the CFPB's Executive Secretary within 20 calendar days after service of the CID. The *File Plan for the Office of the Director and Executive Secretary November 2012* stipulates that correspondence and related supporting documents that are created, received, commented on, or signed by the CFPB Director—such as CID petitions and related documentation—are considered permanent federal records and must be transferred to the U.S. National Archives and Records Administration after 15 years. The lack of a centralized record of all petitions and supporting documents may have contributed to the Office of the Executive Secretariat's delay in responding to our request for the number of petitions filed to date.

Storage Across Multiple Divisions and Various Shared Drives Results in Difficulties Retrieving CID Documentation

The CFPB maintains CID documentation and information across multiple divisions and on various shared drives and in one matter management system. We found that Office of Enforcement staff generally maintain a CID folder within each matter file on the office's shared drive. To locate a particular CID or related documentation, Office of Enforcement staff first search the matter management system for the particular investigation or CID recipient. The relevant hyperlink should open the CID document from its location on the shared drive. However, we found that not all CIDs were appropriately hyperlinked, and some of the hyperlinks did not work because they navigated to legacy systems, requiring Office of Enforcement staff to manually search for a CID in a shared drive. Further, when we asked the Office of Enforcement for the total number of CIDs issued, it was not able to provide the information, in part because the office does not assign a unique identifier to each CID.

Enforcement staff are also required to email signed CID packages to the Litigation Review Inbox maintained by the Office of Enforcement's Front Office. However, we found that this inbox only contained four of the seven CID packages in our sample of CIDs.

The CFPB Has Established Requirements and Other Agency Practices for Preserving CID Records

The CFPB's *Policy for Records and Email Management* interprets sections of the Federal Records Act that affect the records management programs of federal agencies. The policy states that the agency's employees must maintain records so that the information is easily retrievable. In addition, the Office of Enforcement's policies and procedures require enforcement employees to maintain uniform, complete, and accurate matter files that document relevant developments throughout the course of enforcement matters. The office's policies and procedures state that maintaining these records is critical for information sharing, continuity (following personnel turnover), effective litigation management (including the maintenance of litigation holds), CFPB compliance with the Freedom of Information Act and discovery obligations, and file sharing with other law enforcement agencies. Further, the Office of Enforcement's file plan for records requires CIDs and correspondence related to CIDs to be maintained for a minimum of 5 years. Despite the issues described above, the Office of Enforcement has established a process for maintaining the official federal record for closed investigations, including the related CIDs, on its shared drive. When an investigation closes, the Office of Enforcement's process is to move the CID folder to a closed matters folder on the shared drive, which is used to maintain the official federal record.

The CFPB Would Benefit From a Centralized Approach to Managing CID Records

The lack of a central repository for storing CID documentation may have contributed to difficulties in retrieving supporting documentation for our evaluation. To effectively and efficiently respond to information requests and to comply with CFPB policy and federal recordkeeping requirements, we believe that the agency would benefit from a standard and centralized approach to managing electronic documents. During our benchmarking discussions,

we learned that the FTC uses an agencywide document management system that stores all CIDs, petitions, and resolutions. The FTC's Office of the Secretary informed us that the FTC maintains all such documents in one system, which allows for easy location of those documents and better ensures compliance with requirements for maintaining official federal records.

Management Actions Taken

In July 2017, the Office of the Executive Secretariat developed a centralized repository to store and track all petitions materials. The central repository includes separate folders for each matter. The office has also developed a master tracker for all petition-related information.

Through interviews, we learned that the Office of Enforcement is currently working with the CFPB's Office of Technology and Innovation to implement a new matter management system for the CFPB's enforcement function. Office of Enforcement staff noted that the new system will improve data quality because it will require teams to complete certain fields, including CID information, before moving forward in an investigation. In addition, the new system should enable Office of Enforcement staff to send a CID through the system electronically to obtain LD approval, and it will contain a calendar that shows due dates for CIDs. The Office of Enforcement plans to implement the new matter management system in fall 2017.

Recommendations

We recommend that the Assistant Director for the Office of Enforcement

2. Coordinate with other CFPB divisions to identify and implement a centralized matter management system that facilitates the retrieval of CID documentation while ensuring that access to high-sensitivity information is limited in accordance with the CFPB's policies and procedures.

We recommend that the Executive Secretary

3. Ensure that the Office of the Executive Secretariat follows its established records file plan and develops a process for maintaining CID documentation, including petitions to modify or set aside CIDs, so that official federal records and related supporting documents are easily retrievable.

Management's Response

In response to our draft report, the CFPB stated with respect to recommendation 2 that the Office of Enforcement is currently working with the agency's Office of Technology and Innovation to launch a new matter management system in fall 2017. This new system seeks to facilitate the retrieval of CID documentation while ensuring that access to sensitive information is limited in accordance with existing CFPB policies and procedures.

With respect to recommendation 3, the CFPB stated that in July 2017, the Office of the Executive Secretariat developed a centralized repository to store and track all materials related to petitions to modify or set aside CIDs. This update seeks to ensure that the Office of the

Executive Secretariat follows its established records file plan and that official federal records and related supporting documents are easily retrievable.

OIG Comment

With respect to recommendation 2, we believe that the actions described by the CFPB are responsive to our recommendation. We plan to follow up on the actions described to ensure that recommendation 2 is fully addressed.

With respect to recommendation 3, we have reviewed documentation associated with the actions taken by the CFPB, and we believe that the agency has taken sufficient action to close this recommendation.

Appendix A

Scope and Methodology

Section 1052(c) of the Dodd-Frank Act sets forth the CFPB’s statutory requirements for issuing a CID, and the investigation rules describe the CFPB’s procedures to carry out those requirements and specify additional policies and procedures related to the modification of CID terms and petitions to modify or set aside CIDs. The investigation rules restate the requirements in section 1052(c) so that, in effect, compliance with the Dodd-Frank Act also indicates compliance with certain policies and procedures.

We reviewed and analyzed section 1052(c) of the Dodd-Frank Act, the CFPB’s investigation rules, and the Office of Enforcement’s policies and procedures related to the CID process. We also reviewed the CFPB’s records management policy and the file plans for Office of Enforcement and Office of the Director records. We also reviewed and analyzed the petitions filed from June 2012 to June 2017 that are publicly available on the CFPB’s website.

We judgmentally selected a sample of seven CIDs issued from 2013 to 2015 and reviewed the related documentation, such as CIDs, petitions, recommendation memorandums, and communications between the Office of Enforcement and the CID recipient. In reviewing the documentation, we assessed the Office of Enforcement’s compliance with the Dodd-Frank Act CID requirements and internal policies and procedures for issuing CIDs. We did not assess or render determinations concerning substantive legal interpretations.¹⁵ Instead, we assessed procedural compliance through the presence of key elements pertaining to the requirements. We also observed the CID information stored in the Office of Enforcement’s matter management system for each sampled CID.

We interviewed several individuals involved in the CFPB’s CID process, including all four Office of Enforcement LDs and six enforcement attorneys, the Deputy General Counsel for Litigation and Oversight in the Legal Division, and the Executive Secretary. We also interviewed officials from the FTC and the U.S. Department of Justice, two agencies we determined to have similar CID authority, and compared their CID processes to the CFPB’s processes.

We conducted our fieldwork from July 2016 through April 2017. We performed our evaluation in accordance with the *Quality Standards for Inspection and Evaluation* issued in January 2012 by the Council of the Inspectors General on Integrity and Efficiency.

15. For example, we did not assess (1) the “definiteness and certainty” of a CID that would allow a recipient to identify the documentary material, tangible things, reports, or answers to questions to be produced; (2) the reasonableness of the time the CFPB allowed a recipient to submit its responsive information; or (3) whether each CID adequately stated the nature of the conduct constituting the alleged violation under investigation and the provision of law applicable to such violation, among other substantive legal interpretations.

Appendix B

Applicable Requirements of Section 1052(c) of the Dodd-Frank Act

SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY

(c) DEMANDS. –

(1) **IN GENERAL.** – Whenever the CFPB has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the CFPB may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the CFPB;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) **REQUIREMENTS.** – Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) **PRODUCTION OF DOCUMENTS.** – Each civil investigative demand for the production of documentary material shall –

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) **PRODUCTION OF THINGS.** – Each civil investigative demand for the production of tangible things shall –

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) DEMAND FOR WRITTEN REPORTS OR ANSWERS. – Each civil investigative demand for written reports or answers to questions shall –

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) ORAL TESTIMONY. – Each civil investigative demand for the giving of oral testimony shall –

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a CFPB investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

Source: OIG compilation based on section 1052(c) of the Dodd-Frank Act. This appendix only includes the statutory requirements that apply to the scope of this evaluation.

Appendix C

Management's Response



1700 G Street NW, Washington, DC 20552

September 8, 2017

Ms. Melissa Heist
Associate Inspector General for Audit and Evaluations
Board of Governors of the Federal Reserve System
Consumer Financial Protection Bureau
20th and Constitution Avenue
Washington, DC 20551

Dear Ms. Heist,

Thank you for the opportunity to review and comment on the Office of Inspector General's draft report *The CFPB Generally Complies With Requirements for Issuing Civil Investigative Demands but Can Improve Certain Guidance and Centralize Recordkeeping*. The Bureau values the effort that the Office of the Inspector General (OIG) has put into this evaluation and the recommendations it has provided for improving our processes for issuing Civil Investigative Demands (CIDs).

We are pleased that you agree that the Consumer Financial Protection Bureau's Office of Enforcement is compliant with applicable laws, policies, and procedures for issuing CIDs pursuant to requirements in section 1052(c) of the Dodd-Frank Act, the Bureau's Rules Relating to Investigations, and the Office of Enforcement's Policies and Procedures Manual. Specifically, we appreciate your finding that the Office of Enforcement met the procedural elements of section 1052(c) and the agency's procedures when issuing each of the CIDs that your team reviewed. Further, we are pleased that you found that the Office of Enforcement appropriately considers the burden associated with responding to CIDs and that our rules, policies, and procedures – as well as our practice – appropriately account for and accommodate the burdens imposed on CIDs recipients. We note your observation that the Bureau's approach compares favorably to our peer agencies like the Federal Trade Commission in our efforts to promote transparency and lessen burden.

We appreciate your recommendations and have already implemented responses to some of them. We are in the process of implementing the remainder. In particular, in August 2017, the Office of Enforcement revised its internal guidance on issuing CIDs to remind staff of their obligations to comply with relevant laws regarding notifications of purpose in CIDs. And in July 2017, the Office of the Executive Secretariat developed a centralized repository to store and track all materials related to petitions to modify or set aside CIDs. Finally, the Office of Enforcement is in the process of developing a new matter management system that will facilitate more robust tracking of CIDs, in line with the OIG's recommendations. We have outlined the specific steps we've taken in response to your recommendations below.

Thank you again for your review and the opportunity to provide comments on this report.

Sincerely,
Chris D'Angelo Digitally signed by Chris D'Angelo
Date: 2017.09.07 15:22:48 -04'00'
Christopher D'Angelo
Associate Director,
Division of Supervision,



1700 G Street NW, Washington, DC 20552

Enforcement, and Fair Lending

Anthony Alexis
Assistant Director for Enforcement
Division of Supervision,
Enforcement, and Fair Lending

Gena Chieco
Executive Secretary and Counsel to the Director
Office of the Director

Responses to Specific Recommendations:

1. As the OIG noted, in August 2017, the Office of Enforcement finalized a revised policy that reminds Enforcement staff that notifications of purpose contained in CIDs must comply with relevant law, including any developments in case law. The revised policy also reminds staff to revisit the statement of purpose should the purposes of the investigation evolve.
2. The Office of Enforcement is currently working with the CFPB's Office of Technology and Innovation to implement a new matter management system for the CFPB's enforcement function. The Bureau plans to launch the new matter management system in fall 2017. This new system will facilitate the retrieval of CID documentation while ensuring that access to sensitive information is limited in accordance with existing Bureau policies and procedures.
3. In July 2017, the Office of the Executive Secretariat developed a centralized repository to store and track all materials related to petitions to modify or set aside CIDs. The central repository includes separate folders for each matter. The office has also developed a master tracker for all petition-related information. This update will help ensure that the Office of the Executive Secretariat continues to follow its established records file plan and that official federal records and related supporting documents continue to be easily retrievable.



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