



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.