



OFFICE OF INSPECTOR GENERAL

Evaluation Report

2014-SR-C-013

# The CFPB Complies With Section 1100G of the Dodd-Frank Act, but Opportunities Exist for the CFPB to Enhance Its Process

September 29, 2014

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

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## Abbreviations

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CFPB	Consumer Financial Protection Bureau
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
FRFA	final regulatory flexibility analysis
IRFA	initial regulatory flexibility analysis
NPRM	notice of proposed rulemaking
OIG	Office of Inspector General
OMB	Office of Management and Budget
RFA	Regulatory Flexibility Act, as amended
RMR	Division of Research, Markets, and Regulations
SBA Advocacy Counsel	Small Business Administration's Chief Counsel for Advocacy
SISNOSE	significant economic impact on a substantial number of small entities

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# ***Executive Summary:***

## **The CFPB Complies With Section 1100G of the Dodd-Frank Act, but Opportunities Exist for the CFPB to Enhance Its Process**

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### **Purpose**

The Office of Inspector General conducted this evaluation to assess the Consumer Financial Protection Bureau's (CFPB) compliance with section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

### **Background**

The Regulatory Flexibility Act, as amended, requires federal agencies to analyze the impact of their regulatory actions on small entities. Section 1100G of the Dodd-Frank Act, which became effective July 21, 2011, amended some of the provisions of the Regulatory Flexibility Act, requiring the CFPB (1) to assess the impact of any proposed rule on the cost of credit for small business entities through regulatory flexibility analyses and (2) to convene panels to seek direct input from small business entities prior to issuing certain rules. The CFPB created two internal guidance documents that outline the agency's process to comply with these requirements.

### **Findings**

Overall, we found that the CFPB complied with the provisions of section 1100G of the Dodd-Frank Act as well as the two interim policies and procedures issued by the CFPB's Division of Research, Markets, and Regulations (RMR). We reviewed the 1100G rulemaking process for six proposed and final rules and determined that RMR conducted the required analyses on proposed and final rules.

Our evaluation found, however, that RMR's interim policies and procedures have been in use for approximately two years without being updated or finalized. We also found that RMR's interim policies and procedures afforded teams significant discretion in their 1100G rulemaking approach to regulatory analysis, which contributed to a variance in documentation and inconsistent knowledge transfer practices.

Finally, we found that RMR uses an inconsistent approach to storing supporting documentation related to 1100G rulemakings. The CFPB has an agency-wide records management policy that obligates the agency to maintain readily accessible records. Although RMR's interim guidance generally discussed document management, it did not prescribe a formal structure to catalog RMR's records; thus, retrieving documents in response to requests was time consuming.

After the close of our fieldwork and during our report drafting process, we were informed by CFPB officials that RMR had finalized and reissued the two policies and procedures documents.

### **Recommendations**

We recommend that the CFPB finalize RMR's interim policies and procedures, establish a standard approach to manage electronic documents that facilitates retrieval of 1100G rulemaking supporting documentation, and ensure that the standard approach complies with CFPB and other applicable provisions. In its response to our draft report, the CFPB concurred with our recommendations and outlined actions that have been or will be taken to address our recommendations, including participation in an agency-wide document management working group. As part of our future follow-up activities, we will assess whether these corrective actions address our findings and recommendations.

Access the full report: <http://oig.consumerfinance.gov/reports/cfpb-section-1100g-compliance-sep2014.htm>

For more information, contact the OIG at 202-973-5000 or visit <http://oig.consumerfinance.gov>.

## Summary of Recommendations, OIG Report No. 2014-SR-C-013

Rec. no.	Report page no.	Recommendation	Responsible office
1	10	<p>Finalize <i>Interim Guidance on Regulatory Analysis for Substantive Rulemakings under the Dodd-Frank Act</i> and <i>Interim Guidance on the Small Business Review Panel Process under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act and the Dodd-Frank Act</i> based on lessons learned since the implementation of these two guidance documents. Among other things, the final documents should address</p> <ol style="list-style-type: none"> <li>procedures for certifying that a rule would not have a significant economic impact on a substantial number of small entities.</li> <li>knowledge sharing and transfer within rulemaking teams.</li> <li>the importance of meeting statutory deadlines.</li> <li>the implementation of preventative internal controls that could minimize the risk of noncompliance with statutory deadlines.</li> <li>measures for monitoring statutory rulemaking compliance.</li> </ol>	Division of Research, Markets, and Regulations
2	12	Establish a standard approach to managing electronic documents that facilitates retrieval of rulemaking supporting documentation.	Division of Research, Markets, and Regulations
3	13	Work with the Chief Administrative Officer and Chief Information Officer to ensure that the standard approach complies with the CFPB's <i>Policy for Records Management</i> , in addition to other applicable provisions, such as the Federal Records Act, including National Archives and Records Administration regulations, specifically 36 C.F.R. part 1236, <i>Electronic Records Management</i> .	Division of Research, Markets, and Regulations



OFFICE OF INSPECTOR GENERAL  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
CONSUMER FINANCIAL PROTECTION BUREAU

September 29, 2014

**MEMORANDUM**

**TO:** David Silberman  
Associate Director, Division of Research, Markets, and Regulation  
Consumer Financial Protection Bureau

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

**SUBJECT:** OIG Report No. 2014-SR-C-013: *The CFPB Complies With Section 1100G of the Dodd-Frank Act, but Opportunities Exist for the CFPB to Enhance Its Process*

The Office of Inspector General has completed its report on the subject evaluation. Our objective for this evaluation was to assess the Consumer Financial Protection Bureau's (CFPB) compliance with section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This section of the act requires the CFPB to assess the impact of any proposed rule on the cost of credit for small business entities through regulatory flexibility analyses and to convene panels to seek direct input from small business entities prior to issuing certain rules.

Our report contains three recommendations. We recommend that the CFPB finalize RMR's interim policies and procedures, establish a standard approach to managing electronic documents that facilitates retrieval of section 1100G rulemaking supporting documentation, and ensure that the standard approach complies with CFPB and other applicable provisions. In your response, you concurred with our recommendations and outlined actions that have been or will be taken to address our recommendations. We have included your response as appendix C in our report.

We appreciate the cooperation that we received from the Division of Research, Markets, and Regulation. Please contact me if you would like to discuss this report or any related issues.

cc: Kelly Cochran  
Dan Sokolov  
Stephen Agostini  
J. Anthony Ogden

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# Introduction

## Objective

Our objective was to evaluate the Consumer Financial Protection Bureau's (CFPB) actions to comply with section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). To accomplish our objective, we reviewed CFPB policies and procedures and other documents applicable to rulemakings under section 1100G of the Dodd-Frank Act.<sup>1</sup> We interviewed CFPB staff in the Division of Research, Markets, and Regulations (RMR), and we reviewed a sample of proposed and final rules for compliance with the provisions of section 1100G and other relevant regulatory analysis provisions. Additional details on our scope and methodology are in appendix A.

## Background

Title X of the Dodd-Frank Act established the CFPB to “regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.”<sup>2</sup> The Dodd-Frank Act authorized the CFPB to prescribe rules and issue orders and guidance concerning federal consumer financial laws. As part of the rulemaking process, federal agencies are required under the Regulatory Flexibility Act, as amended (RFA), to analyze the impact of their regulatory actions on small entities. Section 1100G of the Dodd-Frank Act, which became effective July 21, 2011, amended some of the provisions of the RFA, such as requiring the CFPB to assess the impact of any proposed rule on the cost of credit for small business entities through a regulatory flexibility analysis. This analysis includes assessing alternatives to the proposed rule that accomplish statutory objectives while minimizing the potential increase in the cost of credit for small entities. Section 1100G also requires the CFPB to convene panels to seek direct input from small business entities prior to issuing certain rules. Section 1100G did not include any deadlines or amend any deadlines contained in the RFA.

RMR is responsible for analyzing and drafting rules that may impact small business entities. RMR includes two groups that are primarily involved in the section 1100G rulemaking process: the Office of Research and the Office of Regulations. The Office of Research consists of economists and financial analysts who perform economic research and analysis concerning the impact of the rule, and the Office of Regulations is staffed with attorneys who draft the rulemaking text and work with the CFPB's Office of General Counsel to ensure that the rulemaking process complies with applicable requirements.

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1. This report will narrowly refer to *rulemaking* as only those rulemaking processes related to the provisions within section 1100G of the Dodd-Frank Act. The use of the term *rulemaking* is not a reference to all notice and comment rulemaking activities.
  2. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No 111-203, § 1011(a), 124 Stat. 1376, 1964 (2010) (codified at 5 U.S.C. § 5491(a) (2010)).

The rulemaking process may require the CFPB to conduct an initial regulatory flexibility analysis (IRFA), as well as a final regulatory flexibility analysis (FRFA). The RFA dictates when the CFPB must provide certain additional information in support of its IRFA on proposed rules and when it must prepare a FRFA on final rules.<sup>3</sup>

Section 603 of the RFA prescribes the content of an IRFA, which is required for proposed rules issued for public notice and comment in a notice of proposed rulemaking (NPRM) in the *Federal Register*.<sup>4</sup> For an IRFA, the CFPB performs independent analysis on proposed rules, which includes (1) considering any significant alternatives; (2) considering the cost-of-credit impact on small entities;<sup>5</sup> (3) under certain circumstances, meeting with a representative set of small businesses in the form of a small business review panel to obtain the panel's advice and recommendations; and (4) publicizing the proposed rule.

As part of the IRFA process, RMR provides small entities an opportunity to participate in the rulemaking process through small business review panels under the framework found in section 609 of the RFA. The CFPB organizes these panels in conjunction with staff at other agencies, including the Small Business Administration's Chief Counsel for Advocacy (SBA Advocacy Counsel) and the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs. Once convened, the small business review panel identifies representatives of affected small entities and ensures that those representatives have an opportunity to participate and provide advice and recommendations related to the rule. The interagency small business review panel must issue a public report within 60 days of convening based on the comments from the small entity representatives and publish that report when the proposed rule is issued as an NPRM.

An exception to the IRFA process allows the agency head to certify that a proposed rule would not have a significant economic impact on a substantial number of small entities (SISNOSE).<sup>6</sup> When a SISNOSE certification occurs, the CFPB generally does not convene the small business

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3. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No 111-203, § 1100G, 124 Stat. 1376, 2112-13 (2010) (codified at 5 U.S.C. §§ 603(d), 604(a), 609(d)).
  4. The NPRM is the official document that announces and explains the agency's plan to address a problem or accomplish a goal. Proposed rules are published in the *Federal Register* to notify the members of the public and to give them an opportunity to submit comments. In certain situations, the NPRM must include a description of (1) any projected increase in the cost of credit for small entities, (2) any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any increase in the cost of credit for small entities, and (3) the advice and recommendations of representatives of small entities relating to issues associated with the project increases or alternatives.
  5. Small entities are defined by the Small Business Administration as small businesses, small governmental units, and small organizations. During the rulemaking period, an entity was considered small by the Small Business Administration if it had \$175 million or less in assets for banks and \$7 million or less in revenue for nonbank mortgage lenders, mortgage brokers, and mortgage servicers.
  6. Section 553(b) of the Administrative Procedure Act and section 608 of the RFA allow for instances in which the regulatory flexibility analysis and small business review panel provisions can be waived. For example, section 553(b) of the Administrative Procedure Act states that a rule does not go out for notice and comment, and therefore would bypass the IRFA and small business review panel, if the rule is interpretative; if the rule is a general statement of policy; if the rule is a rule of agency organization, procedure, or practice; or if the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Section 608 of the RFA allows the Director of the CFPB to provide in writing a justification for waiving or exempting the agency from the regulatory flexibility analysis required in section 603 of the RFA, or a justification for delaying the completion of the RFA requirements in section 604, in response to an emergency.



review panel, does not conduct the IRFA, and does not describe the cost-of-credit impact associated with the rule.<sup>7</sup> SISNOSE certification can occur at various points in the rulemaking process.

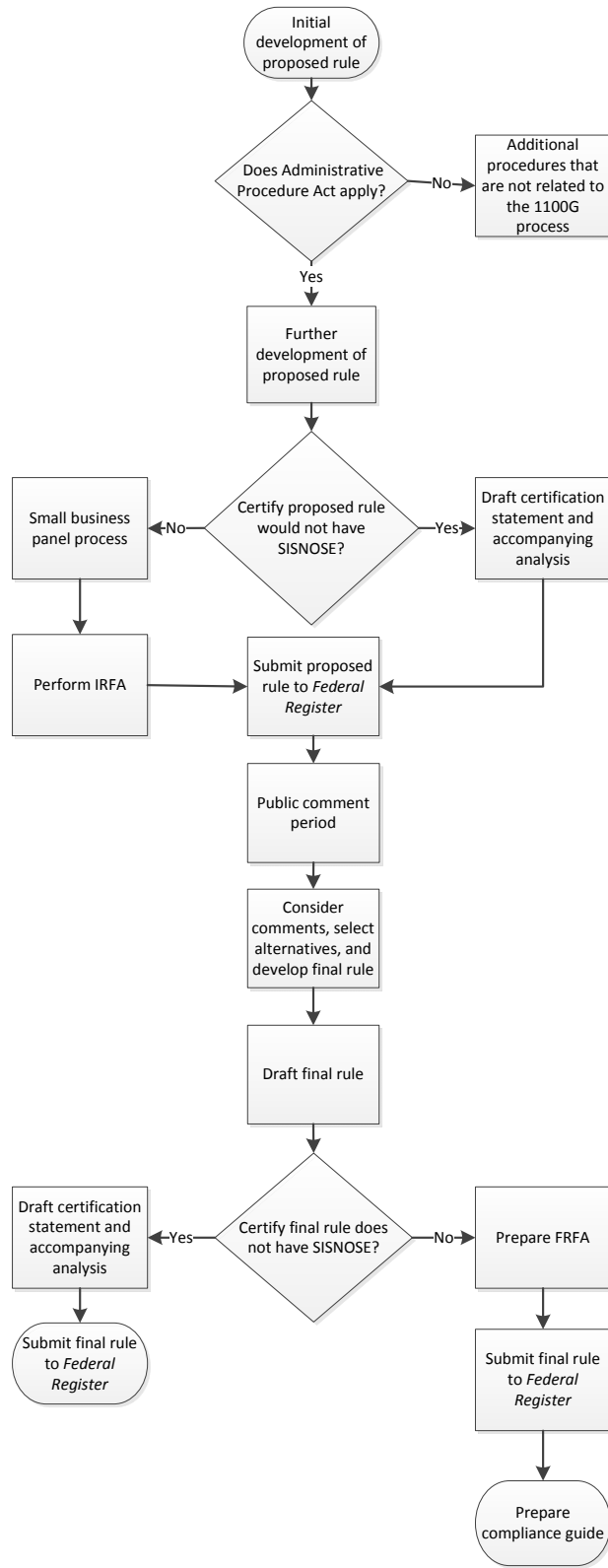
Section 604 of the RFA describes the process of promulgating a final rule. If SISNOSE certification does not occur pursuant to section 603, RMR prepares a FRFA and makes it available to the public by publishing it as part of the final rule. For a FRFA, the CFPB performs independent analysis on information obtained during its initial analysis and subsequent comment periods and publicizes the final rule with a description of the steps the agency has taken to minimize any additional cost of credit for small entities. In its FRFA, RMR addresses any significant issues raised during the comment period, discusses any changes to the proposed rule, estimates the number of small entities to which the rule will apply, and describes the steps the CFPB has taken to minimize the significant economic impact on small entities. Ultimately, the final rule is published in the *Federal Register*.<sup>8</sup> Figure 1 provides an overview of the CFPB's section 1100G rulemaking process.

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7. The CFPB may, in some instances, certify that a proposed rule would not have a SISNOSE but continue to evaluate the potential economic impact of the proposed rule on small entities as defined by the RFA.

8. Before the final rule becomes effective, the CFPB issues a small entity compliance guide that highlights issues that small businesses, and those who work with them, may want to consider when implementing the rule.

Figure 1: The Office of Inspector General's Depiction of the CFPB's Section 1100G Rulemaking Process



Source: OIG compilation based on documents provided by the CFPB and interviews with RMR officials.

## **CFPB Internal Guidance**

### **Interim Guidance on Regulatory Analysis for Substantive Rulemakings**

In January 2012, RMR issued its *Interim Guidance on Regulatory Analysis for Substantive Rulemakings under the Dodd-Frank Act*. The CFPB issued the interim guidance, in part, to facilitate the agency's compliance with the regulatory flexibility analysis requirements in the Dodd-Frank Act and the RFA. The interim guidance highlights the need for regulatory analysis in the rulemaking process that considers the costs, benefits, and impact of the regulation and that promotes an efficient and consistent approach to regulatory analysis. The guidance permits staff to "vary materially from the terms of this guidance after appropriate consultation with the Office of General Counsel and notice to the Associate or Deputy Associate Director of RMR."

The guidance establishes RMR as the lead for rulemakings subject to section 1100G and specifies that at least one economist from RMR's Office of Research will participate on a rulemaking team. The regulatory flexibility analyses may be drafted by RMR or any other appropriate office at the CFPB; however, RMR's Office of Research may review and concur, and it is ultimately accountable for the overall analysis.

The interim guidance notes that RMR should determine whether the number of small entities expected to experience a significant economic impact from the anticipated regulation is substantial. If the rule will not have a SISNOSE, a memorandum should be drafted to the Associate Director for RMR that contains the factual basis for the recommendation to certify. The interim guidance then states that the Associate Director for RMR, or other appropriate executive, should present a recommendation to the CFPB Director concerning the agency's assessment to certify.

### **Interim Guidance on the Small Business Review Panel Process**

In February 2012, RMR issued the *Interim Guidance on the Small Business Review Panel Process under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act and the Dodd-Frank Act*. The guidance outlines the requirements of the RFA and includes actions that may be taken, such as informal discussions with the SBA Advocacy Counsel and the OMB's Office of Information and Regulatory Affairs, regarding the small business review panel process. Informal discussions include consultations regarding a schedule to convene the panel and hold meetings with small entity representatives.

Among other requirements, the CFPB develops the materials to be distributed to small entity representatives and works with the SBA Advocacy Counsel and OMB's Office of Information and Regulatory Affairs on the following:

- collecting advice and recommendations from the small entity representatives on issues related to the proposed rule and significant alternatives
- issuing a report within 60 days of convening the small business review panel that discusses the comments of the small entity representatives and the panel's findings related to the proposed rule

- waiving the requirements of convening a small business review panel if such requirements would not advance the effective participation of small entities in the rulemaking process

### ***The CFPB's Approach to Addressing Cost of Credit***

Sections 603 and 604 of the RFA, as amended by section 1100G of the Dodd-Frank Act, respectively state that the IRFA must consider the cost of credit for small entities and the FRFA must include a description of the steps taken to minimize any additional cost of credit for small entities, unless the CFPB certifies that the rule, if issued, would not have a SISNOSE. These provisions within the RFA only relate to small entities. During the small business review panel process, RMR collects advice and recommendations regarding the potential increase in the cost of credit for small entities and evaluates any potential alternatives. In addition, on a discretionary basis, RMR conducts independent analysis of the projected increase in the cost of credit for small entities. As part of this analysis, the CFPB considers the impact that the rule may have on end-user consumers by estimating which costs will likely be borne by consumers and testing such forecasts with data.

# Commendable Action: RMR Has Taken Actions to Comply With Section 1100G of the Dodd-Frank Act

Our evaluation found that the CFPB complied with section 1100G provisions related to the cost-of-credit analysis for small entities and small business review panels as well as the agency's interim internal policies and procedures. For all rules that required a cost-of-credit consideration analysis, we found that RMR collected advice and recommendations regarding the potential increase in the cost of credit for small entities and considered the impact that the rule may have on end-user consumers by conducting independent analysis. In addition, we found that RMR considered alternatives to the proposed rule that would minimize any increase in the cost of credit for small entities. We sampled six proposed and final rules that were published in the *Federal Register* during the July 21, 2010, to April 18, 2013, time period, which are detailed in appendix B. The sample included four rules with a cost-of-credit component. These four rules constitute all of the proposed or final rules that included a cost-of-credit analysis during our scope period.

We reviewed RMR's interim guidance and concluded that it is consistent with the provisions of section 1100G of the Dodd-Frank Act and the RFA. In reviewing the internal guidance, we noted that it emphasized a rigorous and multidisciplinary approach to rulemaking using evidence that the CFPB can reasonably obtain. Analysis is expected early in the rulemaking process to determine whether a proposed rule will be subject to the RFA. The guidance documents provide the rulemaking framework for RMR to assess whether a proposed or final rule would have a SISNOSE. When small business review panels are warranted, the guidance outlines the key activities, the purpose of interaction with other agencies, and the anticipated timing of such actions.

# Finding 1: RMR Could Benefit From Updated and Finalized Rulemaking Guidance

RMR has not updated or finalized its interim policies and procedures that guide each rulemaking team's analysis and ensure compliance with the requirements of section 1100G of the Dodd-Frank Act. Further, the interim guidance on conducting regulatory analysis affords considerable discretion to each rulemaking team, which has led to inconsistency among teams' approaches to rulemaking. While this discretion in the interim guidance does not appear to have been a contributing factor, we noted one instance of technical noncompliance with a statutory deadline. The *Standards for Internal Control in the Federal Government*, issued by the Comptroller General of the United States, provides the framework for internal control concerning an agency's policies and procedures. The *Standards for Internal Control in the Federal Government* states that management must continually assess and evaluate its internal controls to ensure that the control activities being used are effective and updated when necessary. According to RMR, because of the pace of change during the CFPB's first two years of operation, it has not updated or finalized the guidance documents. Updated and finalized guidance that reflects lessons learned from issuing proposed and final rules would (1) reduce variability and reinforce consistent and timely rulemaking activities and (2) support the agency's goal of achieving consistency and efficiency in its regulatory flexibility analysis approach.

## Guidance Is Not Final and Has Resulted in Varying Approaches to Rulemaking

We believe that updated and finalized versions are warranted for RMR's two interim documents that govern the rulemaking process:

- *Interim Guidance on Regulatory Analysis for Substantive Rulemakings under the Dodd-Frank Act*
- *Interim Guidance on the Small Business Review Panel Process under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act and the Dodd-Frank Act*

The division has used these interim documents for approximately two years. According to *Standards for Internal Control in the Federal Government*, agency management must ensure that control activities, such as policies, are effective and updated when necessary. RMR attributes the interim state of its guidance documents to the pace of change during the CFPB's first two years of operation. We believe that the agency currently has an opportunity to assess the lessons learned from issuing proposed and final rules over the last two years and issue updated, final guidance.

Further, the CFPB's interim guidance on regulatory analysis states that each rulemaking team has "substantial discretion" to develop its rulemaking process. As a result, staff may deviate from the provisions of the guidance after appropriate consultation with the Office of General Counsel and notice to RMR's Associate Director or Deputy Associate Director.

We evaluated six rules, and our testing revealed the following two examples of inconsistent approaches to RMR's rulemaking:<sup>9</sup>

1. **Variance in Documentation.** The internal guidance states that in situations in which the agency would certify that the rule would not have a SISNOSE, the CFPB Director should be provided a memorandum that includes the factual basis for the recommendation to certify and a recommendation on whether a small business review panel should be convened. We found that for one rule regarding appraisals for higher-priced mortgage loans, the RMR rulemaking team recommended that the rule be certified as not having a SISNOSE at the proposed and final rulemaking stage. For the proposed rule certification, RMR provided the recommendation to the Director in a memorandum, consistent with the approach outlined in the interim guidance on regulatory analysis. For the final rule certification, however, the rulemaking team did not draft a formal memorandum to communicate the factual basis for certification to the Director. However, the Director performed a review of the final rule text, which included the factual basis and certification statement, prior to issuance into the *Federal Register*. The rulemaking team indicated that the factual basis for certification did not materially change between the proposed and final rule stages and, therefore, did not warrant a second formal certification memorandum. Nevertheless, the rulemaking team did not document its rationale for not issuing a formal certification memorandum to the Director during the final rulemaking stage.
2. **Variance in Knowledge Transfer.** During the scope of our evaluation, RMR reassigned staff to various teams, and rulemaking teams experienced turnover during our reporting period. In our discussions with RMR, we noted that rulemaking staff members who were reassigned used their discretion in transferring knowledge to remaining staff members; the transfer was informal and inconsistent because the guidance does not address how to transfer institutional knowledge when turnover occurs.

## Guidance Should Reinforce the Importance of Compliance With Statutory Deadlines

Separate from the discretion afforded by the interim guidance on regulatory analysis, we found an isolated instance of technical noncompliance with a statutory reporting requirement previously contained in the RFA prior to the enactment of the Dodd-Frank Act. Our evaluation of the CFPB's rulemaking found that on May 9, 2012, the CFPB, the SBA Advocacy Counsel, and OMB's Office of Information and Regulatory Affairs convened a small business review panel for the Loan Originator Compensation Requirements Under the Truth In Lending Act rulemaking.<sup>10</sup> Under the RFA, and reinforced by the CFPB's internal interim guidance, the interagency small business review panel should have issued a panel report within 60 days. Sixty days from May 9, 2012, was July 8, 2012, a Sunday. Using the computation requirements in Federal Rule of Civil Procedure 6(a), the 60-day period was extended to the end of the following day, Monday,

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9. See appendix B for details of the sample selected.

10. Each agency participating in a small business review panel must sign the panel's report before it can be issued.

July 9, 2012.<sup>11</sup> The interagency small business review panel issued the Small Business Review Panel report on Wednesday, July 11, 2012, two days after the statutory deadline. We understand that the panel missed the deadline because it conducted two additional conference calls with small entity representatives to solicit their feedback as part of the outreach process. These calls provided additional opportunities for the small entity representatives to understand certain aspects of the proposals under consideration, provide responses to representatives' questions, and provide additional comments.

Our evaluation testing covered every rule that the CFPB concluded would require a small business review panel. This missed deadline was an isolated instance. The small business review panel is an interagency effort, and we did not identify any consequences resulting from the missed deadline. While we understand and acknowledge the circumstances surrounding the missed deadline, including the benefits to be derived from additional feedback, we believe the CFPB exposes itself to potential criticism as a result of missing congressionally mandated deadlines. Therefore, as part of the effort to finalize the interim guidance on small business review panels, RMR should consider implementing preventive internal controls, such as a milestone tracking tool, that could minimize the risk of noncompliance with any statutory rulemaking requirement. Although the lack of such controls may not have contributed to the missed deadline, we believe it may be prudent to implement an internal control system that can track the progress toward meeting reporting deadlines. The agency should also consider implementing additional monitoring measures, such as regular reports on rulemaking milestones with distribution to the appropriate members of management and staff accountable for statutory rulemaking compliance.

## Management Actions Taken

Following the completion of our fieldwork and during our report drafting phase, we were informed by CFPB officials that RMR had reevaluated its policies and procedures on regulatory analysis and the small business review panel process. RMR finalized and reissued *Guidance on Regulatory Analysis for Substantive Rulemakings* and *Guidance on the Small Business Review Panel Process under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act and the Dodd-Frank Act*. Although we did not perform additional testing, we noted that the finalized guidance on regulatory analysis provides additional direction on the final rule certification memorandum process. We will review the updated materials as part of the follow-up process for our recommendations.

## Recommendation

We recommend that the Associate Director of RMR

1. Finalize *Interim Guidance on Regulatory Analysis for Substantive Rulemakings under the Dodd-Frank Act* and *Interim Guidance on the Small Business Review Panel Process*

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11. Federal Rule of Civil Procedure 6(a) requires that for any statute that does not specify a method of computing time, the period of time is calculated by beginning on the day after the event that triggers the period and counting every day including intermediate Saturdays, Sundays, legal holidays, and the last day of the period. However, if the last day is a Saturday, Sunday, or legal holiday, Rule 6(a) provides that the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.



*under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act and the Dodd-Frank Act* based on lessons learned since the implementation of these two guidance documents. Among other things, the final documents should address

- a. procedures for certifying that a rule would not have a SISNOSE.
- b. knowledge sharing and transfer within rulemaking teams.
- c. the importance of meeting statutory deadlines.
- d. the implementation of preventative internal controls that could minimize the risk of noncompliance with statutory deadlines.
- e. measures for monitoring statutory rulemaking compliance.

## **Management's Response**

The Associate Director of RMR concurred with this recommendation. In his response, the Associate Director noted that the CFPB currently has an opportunity to assess the lessons learned from issuing proposed and final rules over the last two years.

The Associate Director stated that since the conclusion of our fieldwork, RMR has reevaluated and reissued finalized versions of its internal policies and procedures on regulatory analysis and the small business review panel process. Among other things, the updated policies clarify the final rule certification memorandum process. The CFPB will continue to update and refine its internal guidance as necessary to clarify and address the specific items suggested in this report.

## **OIG Comment**

We believe that the actions described by the Associate Director of RMR are responsive to our recommendation. We intend to follow up on RMR's actions to ensure that this recommendation is fully addressed.

# Finding 2: RMR's Document Management System Could Be Improved

Although RMR uses a centralized repository for rulemaking supporting documentation, we found that the division's approach for storing this documentation is inconsistent and informal. The CFPB has an agency-wide records management policy that obligates the agency to maintain records for easy retrieval, and RMR's interim guidance generally discusses document management. However, the interim guidance does not prescribe a formal structure to catalog RMR's records. A standard approach to managing documents could simplify the process for responding to requests.

## Proprietary Shared Drive Is Used Informally to Store Supporting Documents

We found that RMR maintains the documentation associated with its rulemakings in a centralized repository on a proprietary shared drive. However, we were informed through interviews that each rulemaking team created an electronic folder for the rulemakings in process and used a file classification system of its choice.

The CFPB's *Policy for Records Management* interprets sections of the Federal Records Act, including National Archives and Records Administration regulations that affect the records management programs of federal agencies. The policy states that the agency's employees are obligated to maintain records so that the information is easily retrievable. Further, RMR's *Interim Guidance on Regulatory Analysis for Substantive Rulemakings under the Dodd-Frank Act* notes that rulemaking staff will preserve key data, spreadsheets, and computer programs relied on to perform calculations in a centralized repository.

The lack of a standard approach to storing rulemaking documentation may have contributed to difficulties retrieving supporting documentation for our evaluation. We understand that gathering rulemaking supporting documentation in general can require considerable effort, and for the Loan Originator Compensation Requirements Under the Truth In Lending Act rulemaking in particular, gathering documentation would require a substantial amount of effort because of the rulemaking's complexity. We believe that these challenges indicate that RMR could benefit from a standard approach to managing electronic documents; such a structure would foster consistency and facilitate the retrieval of documentation.

## Recommendations

We recommend that the Associate Director of RMR

2. Establish a standard approach to managing electronic documents that facilitates retrieval of rulemaking supporting documentation.

3. Work with the Chief Administrative Officer and Chief Information Officer to ensure that the standard approach complies with the CFPB's *Policy for Records Management*, in addition to other applicable provisions, such as the Federal Records Act, including National Archives and Records Administration regulations, specifically 36 C.F.R. part 1236, *Electronic Records Management*.

## Management's Response

The Associate Director of RMR concurred with this recommendation. In his response, the Associate Director agreed that the adoption of a formal file structure by RMR would be an effective tool to facilitate the retrieval of information and would help document and standardize current practices.

The Associate Director stated that the establishment of a recommended approach to file and document management will be incorporated into RMR's design and operations plan for fiscal year 2015. RMR will consult with the appropriate CFPB officers and offices to ensure that the approach complies with applicable CFPB policies, federal records laws, and regulations. In addition, the Associate Director stated that the CFPB is planning to implement an enterprise-wide electronic document management system, and RMR will be participating in the workgroup assessing potential options. Participation in the workgroup will be part of RMR's efforts to promote a consistent approach to managing electronic documents and to facilitate the retrieval of information.

## OIG Comment

We believe that the actions described by the Associate Director of RMR are responsive to our recommendation. We intend to follow up on RMR's actions to ensure that this recommendation is fully addressed.

# Appendix A

## Scope and Methodology

Our objective was to evaluate the CFPB's actions to comply with section 1100G of the Dodd-Frank Act. To accomplish our objective, we completed the following steps:

- We reviewed relevant CFPB internal documents, including RMR's *Interim Guidance on Regulatory Analysis for Substantive Rulemakings under the Dodd-Frank Act*; *Interim Guidance on the Small Business Review Panel Process under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act and the Dodd Frank Act*; and the CFPB's *Policy for Records Management*.
- We considered provisions of the RFA found in 5 U.S.C. sections 603–605 and 608–609, as well as provisions for finishing the rulemaking process with the issuance of a small entity compliance guide.
- We considered internal control guidance in *Standards for Internal Control in the Federal Government*, issued by the Comptroller General of the United States.
- We conducted interviews with CFPB employees, including personnel in RMR and in the Office of General Counsel who were responsible for section 1100G rulemaking and implementing RMR's interim guidance.

Initially, we found 181 proposed and final rules that were published in the *Federal Register* during the July 21, 2010, to April 18, 2013, time period. From a population of 25 that were subject to public notice and comment required under section 1100G rulemaking, we selected 4 rules that were required to comply with the RFA small business review panels requirements and the section 1100G cost-of-credit provisions. Additionally, we judgmentally selected 2 rules that were certified that they would not have a SISNOSE. Each proposed and final rule in our sample is summarized in appendix B.

We conducted our fieldwork from February 2013 to December 2013. We performed our review in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

# Appendix B

## Final Sample of Rules Reviewed

1. **Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z).** The CFPB is proposing to amend Regulation X (Real Estate Settlement Procedures Act) and Regulation Z (Truth in Lending) to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer credit transactions secured by real property. In addition to combining the existing disclosure requirements and implementing new requirements in the Dodd-Frank Act, the proposed rule provides extensive guidance regarding compliance with those requirements.
2. **Regulation E—Electronic Fund Transfers.** The proposal addresses three narrow issues. First, the proposal would provide additional flexibility regarding the disclosure of foreign taxes, as well as fees imposed by a designated recipient’s institution for receiving a remittance transfer in an account. Second, the proposal would limit a remittance transfer provider’s obligation to disclose foreign taxes to those imposed by a country’s central government. Third, the proposal would revise the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because the sender provided incorrect or insufficient information and, in particular, when a sender provides an incorrect account number and that incorrect account number results in the funds being deposited in the wrong account. The CFPB is also proposing to temporarily delay and extend the effective date of the rule.
3. **Appraisals for Higher-Risk Mortgage Loans (Regulation Z).** For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the proposed and final rule would require creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used.
4. **Loan Originator Compensation Requirements Under the Truth In Lending Act (Regulation Z).** The rule implements requirements and restrictions imposed by the Dodd-Frank Act concerning loan originator compensation; qualifications of, and registration or licensing of, loan originators; compliance procedures for depository institutions; mandatory arbitration; and the financing of single premium credit insurance. The final rule revises or provides additional commentary on Regulation Z’s restrictions on loan originator compensation, including application of these restrictions to prohibitions on dual compensation and compensation based on a term of a transaction or a proxy for a term of a transaction, and to recordkeeping requirements. The final rule also establishes tests for when loan originators can be compensated through certain profits-based compensation arrangements.
5. **Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X).** This rule implements Dodd-Frank Act sections addressing servicers’ obligations to correct errors asserted by mortgage loan borrowers, to provide certain information requested by such borrowers, and to provide protections to such borrowers in connection with force-placed insurance. Additionally, this final rule addresses servicers’ obligations to establish reasonable policies and procedures to achieve certain delineated objectives, to provide information about mortgage loss mitigation options to delinquent

borrowers, to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions, and to evaluate borrowers' applications for available loss mitigation options. Further, this final rule modifies and streamlines certain existing servicing-related provisions of Regulation X.

6. **Mortgage Servicing Rules Under the Truth In Lending Act (Regulation Z).** This final rule implements Dodd-Frank Act sections addressing initial rate adjustment notices for adjustable-rate mortgages, periodic statements for residential mortgage loans, prompt crediting of mortgage payments, and responses to requests for payoff amounts. This final rule also amends current rules governing the scope, timing, content, and format of disclosures to consumers regarding the interest rate adjustments of their variable-rate transactions.

**Table B-1: Details on Rules Sampled**

No.	NPRM <i>Federal Register</i> citation	Certification or panel <sup>a</sup>	Cost-of credit analysis
1	Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)	Panel	Yes
2	Regulation E— Electronic Fund Transfers	Certification	N/A
3	Appraisals for Higher-Risk Mortgage Loans (Regulation Z)	Certification	N/A
4	Loan Originator Compensation Requirements Under the Truth In Lending Act (Regulation Z)	Panel	Yes
5	Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)	Panel	Yes
6	Mortgage Servicing Rules Under the Truth In Lending Act (Regulation Z)	Panel	Yes

Source: OIG compilation based on applicable *Federal Register* notices.

<sup>a</sup>*Certification* means that the CFPB Director certified that the proposed rule would not have a SISNOSE; *panel* means that the CFPB convened a small business review panel.

# Appendix C

## Management's Response



1700 G Street, N.W., Washington, DC 20552

September 23, 2014

Mr. Mark Bialek  
Inspector General  
Board of Governors of the Federal Reserve System  
and Consumer Financial Protection Bureau  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Dear Mr. Bialek,

Thank you for the opportunity to respond to the Office of Inspector General's draft report: *The CFPB Complies With Section 1100G of the Dodd-Frank Act, but Opportunities Exist for the CFPB to Enhance Its Process*. We are pleased with your finding of commendable action for the steps the CFPB has taken to comply with section 1100G of the Dodd-Frank Act,<sup>1</sup> which requires the CFPB to conduct a regulatory flexibility analysis to assess significant economic impacts of a rule on small business entities, including any significant increase in the cost of credit to small businesses, and to convene small business review panels prior to issuing certain rules.

We appreciate that your evaluation has verified that, throughout the course of its rulemaking activities, the CFPB complied with section 1100G provisions regarding the regulatory impact and cost-of-credit analysis for small entities and small business review panels. We also appreciate your recognition that the interim policies and procedures the Bureau developed for conducting the required regulatory impact analyses and small business review panels are consistent with the provisions of section 1100G, and that the Bureau has complied with these policies and procedures.

As the CFPB has worked to develop and issue regulations to implement the Dodd-Frank Act, it has actively sought to understand the impacts of its actions on small businesses, consider alternatives that would minimize any impacts on small entities, and integrate direct advice and input from small businesses into the rulemaking process. As noted in the report, the CFPB emphasizes a rigorous and multidisciplinary evidence-based approach to rulemaking. The small business review

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, Title X, § 1100G, 124 Stat. 2112, 2113 (2010) (codified at 5 U.S.C. §§ 603-604, 609 (2010)).

panels and regulatory analysis the CFPB has undertaken pursuant to Section 1100G is a critical component of this effort.

The report contains specific suggestions regarding additional enhancements to the CFPB's 1100G process. We concur with the recommendations made in the report and welcome the opportunity to build on the successes achieved to date as we continue to develop our 1100G processes. Our Management's Response provides the CFPB's perspective on the recommendations made in the report, highlights enhancements made since your review, and outlines our proposed approach for implementing your suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Silberman".

David Silberman  
Associate Director  
Division of Research, Markets, and Regulations



**Recommendation #1:** *Finalize Interim Guidance on Regulatory Analysis for Substantive Rulemakings Under the Dodd-Frank Act and Interim Guidance on the Small Business Review Panel Process under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act and the Dodd-Frank Act based on lessons learned since the implementation of these two guidance documents. Among other things, the final documents should address*

- a. *procedures for certifying that a rule would not have a SISNOSE.*
- b. *knowledge sharing and transfer within rulemaking teams.*
- c. *the importance of meeting statutory deadlines.*
- d. *the implementation of preventative internal controls that could minimize the risk of noncompliance with statutory deadlines.*
- e. *measures for monitoring statutory rulemaking compliance.*

**Management's Response to Recommendation #1**

We appreciate the report's acknowledgement of the extensive efforts the CFPB has undertaken to comply with the requirements of section 1100G of the Dodd-Frank Act and its compliance with interim internal policies and procedures. As noted in the report, the CFPB currently has an opportunity to assess the lessons learned from issuing proposed and final rules over the last two years and issue updated, final guidance. The report recognizes that since the conclusion of the OIG's fieldwork, the Division of Research, Markets, and Regulations (RMR) has reevaluated and reissued finalized versions of its internal policies and procedures on regulatory analysis and the small business review panel process. Among other things, the updated policies provide clarification on the final rule certification memorandum process. The CFPB welcomes the opportunity to further assess and enhance its internal policies and procedures on section 1100G requirements. The CFPB will continue to, as recommended, update and refine its internal guidance as necessary to clarify and address the specific items suggested in the report.

**Recommendations #2 and #3**

*We recommend that the Associate Director of RMR*

2. *Establish a standard approach to managing electronic documents that facilitates retrieval of rulemaking supporting documentation.*
3. *Work with the Chief Administrative Officer and Chief Information Officer to ensure that the standard approach complies with the CFPB's Policy for Records Management, in addition to other applicable provisions, such as the Federal Records Act and National Archives and Records Administration regulations, specifically 36 C.F.R. part 1236, Electronic Records Management.*

**Management's Response to Recommendations #2 and #3:**

As noted in the report, the CFPB has maintained documentation associated with its rulemakings in a centralized repository on a proprietary shared drive. The report observes that rulemaking teams create electronic folders to store information related to the rulemakings in process and recommends that the CFPB develop and implement a standard file structure and classification system to facilitate retrieval of the information. We agree that the adoption of a formal file structure by RMR would be an effective tool to facilitate the retrieval of information, and would help memorialize and standardize current practices. As it designs and implements its operations plan for fiscal year 2015, RMR will establish the recommended approach to file and document management and incorporate it into its processes. As recommended, RMR will consult with the Chief Administrative Officer and Chief Information Officer, as well as the Records Management Office, to ensure that the approach developed complies with applicable CFPB policies and the requirements of federal records laws and regulations.

In addition, the CFPB has begun to plan for the implementation of an enterprise-wide system for the management of electronic documents. The CFPB has formed a Bureau-wide document management working group, led by the Technology and Innovation Team (T&I) and comprised of representatives from RMR, the Operations Division (which includes the Administrative Operations and Records offices), and other divisions and offices, to assess and evaluate potential tools for document management. RMR representatives will participate in this working group as part of RMR's efforts to promote a consistent approach to managing electronic documents and to facilitate the retrieval of information.



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

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