

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2018-0002]

Request for Information Regarding Bureau Rules of Practice for Adjudication Proceedings

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is seeking comments and information from interested parties to assist the Bureau in considering whether and how to amend the Bureau's Rules of Practice for Adjudication Proceedings.

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

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2018-0002, by any of the following methods:

- *Electronic:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2018-0002 in the subject line of the message.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

INSTRUCTIONS: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the question on

which you are commenting at the top of each response (you do not need to answer all questions).

Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G St NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern standard time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries and submission process questions, please call Monica Jackson at (202) 435-7275.

SUPPLEMENTARY INFORMATION: The Consumer Financial Protection Act of 2010 (Act) required the Bureau to prescribe rules establishing such procedures as may be necessary to carry out hearings and adjudications conducted pursuant to 12 U.S.C. 5563. 12 U.S.C. 5563(e). On July 28, 2011, the Bureau published an interim final rule seeking comment and prescribing rules establishing such hearings and procedures, with the exception of rules relating to the issuance of a temporary cease-and-desist order (TCDO) pursuant to section 1053(c) of the Act. 76 FR 45338 (July 28, 2011). The Bureau responded to comments received and published a final rule on June 29, 2012. 77 FR 39058 (June 29, 2012). This rule was codified at 12 CFR part 1081, Subparts A – D. The Bureau published an interim final rule seeking comment and

prescribing rules on TCDOs on September 26, 2013. 78 FR 59163 (Sept. 26, 2013). The Bureau received a single comment on this rule. Following consideration of the comment, the Bureau adopted the interim final rule without change on June 18, 2014. 79 FR 34622 (June 18, 2014). This rule was codified at 12 CFR part 1081, Subpart E. Collectively, the rules codified at 12 CFR part 1081 are titled “Rules of Practice for Adjudication Proceedings” (Rules).

The Rules pertain to the general conduct of administrative adjudication proceedings, the initiation of such proceedings and prehearing rules, hearings, decisions and appeals, and temporary cease-and-desist proceedings. To date, there have been eight administrative adjudication proceedings under the Rules that were not immediately resolved by the issuance of a consent order pursuant to 12 CFR 1081.200(d). Six of these proceedings were settled during the course of the adjudication, one proceeding is pending, and one proceeding has resulted in a final decision.

The Bureau is, as described below, issuing this request for information seeking public comment on whether and how it might improve its administrative adjudication processes, including the Rules, while continuing to achieve the Bureau’s statutory purposes and objectives.

Overview of This Request for Information

The Bureau is using this request for information to seek public input regarding the Rules. The Bureau encourages comments from all interested members of the public. The Bureau anticipates that the responding public may include entities that have participated in Bureau administrative adjudication proceedings or similar proceedings at other agencies, members of the bar who represent these entities, agencies that utilize an administrative adjudication process, individual consumers, consumer advocates, regulators, and researchers or members of academia.

Section 1053 of the Act authorizes the Bureau to conduct administrative adjudications.

The Bureau in the past has brought cases in the administrative setting in accordance with applicable law. The Bureau understands, however, that the administrative adjudication process can result in undue burdens, impacts, or costs on the parties subject to these proceedings. Members of the public are likely to have useful information and perspectives on the benefits and impacts of the Bureau's use of administrative adjudications, as well as existing administrative adjudication processes and the Rules. The Bureau is especially interested in receiving suggestions for whether it should be availing itself of the administrative adjudication process, and if so how its processes and Rules could be updated, streamlined, or revised to better achieve the Bureau's statutory objectives; to minimize burdens, impacts, or costs on parties subject to these proceedings; to align the Bureau's administrative adjudication Rules more closely with those of other agencies; and to better provide fair and efficient process to individuals and entities involved in the adjudication process, including ensuring that they have a full and fair opportunity to present evidence and arguments relevant to the proceeding. Interested parties may also be well-positioned to identify those parts of the Bureau's administrative adjudication processes and Rules that they believe may be most in need of improvement, and, thus, assist the Bureau in prioritizing and properly tailoring its process for reviewing its processes and Rules. In short, engaging members of the public in an open, transparent process will help inform the Bureau's review of its processes related to administrative adjudications.

Questions for Commenters

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

- Specific discussion of the positive and negative aspects of the Bureau’s administrative adjudication processes, including whether a policy of proceeding in Federal court in all instances would be preferable;
- Specific suggestions regarding any potential updates or modifications to the Bureau’s administrative adjudication processes, including the Bureau’s Rules, consistent with the Bureau’s statutory purposes and objectives, and including, in as much detail as possible, the potential update or modification, supporting data or other information on impacts and costs, or information concerning alignment with the processes of other agencies; and
- Specific identification of any aspects of the Bureau’s administrative adjudication processes, including the Bureau’s Rules, that should not be modified, consistent with the Bureau’s statutory purposes and objectives, and including, in as much detail as possible, supporting data or other information on impacts and costs, information related to consumer and public benefit resulting from these processes, or information concerning alignment with the processes of other agencies.

The following list of general areas represents a preliminary attempt by the Bureau to identify elements of Bureau processes related to administrative adjudications that may be deserving of more immediate focus. This non-exhaustive list is meant to assist in the formulation of comments and is not intended to restrict the issues that may be addressed. In addressing these questions or others, the Bureau requests that commenters identify with specificity the Bureau regulations or practices at issue, providing legal citations where appropriate and available. Please feel free to comment on some or all of the questions below, but please be sure to indicate on which area you are commenting.

The Bureau is seeking feedback on all aspects of its administrative adjudication process, including but not limited to:

1. Whether, as a matter of policy, the Bureau should pursue contested matters only in Federal court rather than through the administrative adjudication process;
2. The Rules' protection of the rights and interests of third parties;
3. 12 CFR 1081.200(b)'s requirements for the contents of the Bureau's notice of charges;
4. The policy, expressed in 12 CFR 1081.101 for administrative adjudication proceedings to be conducted expeditiously, including:
 - a. 12 CFR 1081.201(a)'s requirement that respondents file an answer to a notice of charges within 14 days;
 - b. 12 CFR 1081.115(b)'s requirement that the hearing officer in administrative adjudications strongly disfavor motions for extensions of time except upon a showing of substantial prejudice;
 - c. 12 CFR 1081.212(h)'s requirement that the hearing officer decide any motion for summary disposition within 30 days; and
 - d. the Bureau's implementation of the requirement in 12 USC 5563(b)(1)(B) that hearings take place within 30 to 60 days of the notice of charges, unless the respondent seeks an extension of that time period;
5. 12 CFR 1081.206's requirements that the Bureau make documents available for copying or inspection, including whether the Bureau should produce those documents in electronic form to respondents in the first instance, at the Bureau's expense;

6. 12 CFR 1081.208's requirements for issuing subpoenas, and whether counsel for a party should be entitled to issue subpoenas without leave of the hearing officer;
7. 12 CFR 1081.209(g)(3)'s provision that failure to object to a question or document at a deposition is, with some exception, not deemed a waiver of the objection;
8. 12 CFR 1081.210(b)'s limitation on the number of expert witnesses any party may call at a hearing, absent "extraordinary circumstances";
9. 12 CFR 1081.210(c)'s requirements for expert reports, including whether that paragraph should expressly incorporate the requirements of the Federal Rules of Civil Procedure relating to the required disclosures of expert witnesses;
10. 12 CFR 1081.212(e)'s instruction that extensions of the length limitation for motions for summary disposition are disfavored;
11. 12 CFR 1081.303(b)'s rules pertaining to admissible evidence in administrative adjudications, including:
 - a. Whether, in general, the Bureau should expressly adopt the Federal Rules of Evidence; and
 - b. whether, if the Bureau does not expressly adopt the Federal Rules of Evidence, the acceptance of prior testimony hearsay evidence pursuant to 12 CFR 1081.303(b)(3) should comply with the requirements of Federal Rule of Evidence 804(b)(1);
12. The Rules' lack of authorization for parties to conduct certain discovery, including deposing fact witnesses or serving interrogatories; and

13. Whether respondents should be afforded the opportunity to stay a decision of the Director pending appeal by filing a supersedeas bond, consistent with Federal Rule of Civil Procedure 62(d).

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

[THIS SIGNATURE PAGE PERTAINS TO THE REQUEST FOR INFORMATION
TITLED “REQUEST FOR INFORMATION REGARDING BUREAU RULES OF
PRACTICE FOR ADJUDICATION PROCEEDINGS”]

Dated: January 30, 2018.



Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.