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Practice Group:

Mortgage Banking &
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Products

And the Plot Thickens: the CFPB Issues a Quartet of Interim Final Rules Laying Out Its Investigatory and Enforcement Procedures

The powerful new Consumer Financial Protection Bureau (the “Bureau” or “CFPB”) is up and running, and is expected to soon begin investigating and prosecuting claims against covered persons under the Consumer Financial Protection Act (the “CFPA” or “Act”).ⁱ

To this end, on July 28, 2011, the Bureau issued four interim final rules setting out procedures governing: (i) Bureau investigations of possible violations of federal consumer financial lawⁱⁱ; (ii) the Bureau’s use of administrative adjudications to enforce compliance with the Act, rules issued under the Act, and any other federal law or regulation the Bureau is authorized to enforce; (iii) how the Bureau will handle confidential information obtained from persons over which it exercises its authority; and (iv) the process by which state officials must notify the CFPB of actions or proceedings they take under the Act.

The interim rules’ confidentiality provisions are particularly noteworthy. The Bureau’s power under these rules to disclose confidential information to state attorneys general may enable the attorneys general to do through the back door what they cannot do through the front door – namely, obtain access to information about federally chartered depository institutions that otherwise would be available only through the exercise of visitatorial powers.

Indeed, the CFPB and the National Association of Attorneys General have committed to work together to the fullest extent permitted by law.ⁱⁱⁱ They plan to share consumer complaint information with one another and “analyze and leverage” the information they receive from the public.^{iv} Further, the CFPB could potentially share the results of its supervisory examinations of federally chartered depository institutions with the state AGs, giving them information that they could not otherwise obtain. This potential to thwart the carefully calibrated interpretation of the visitatorial powers provision in *Cuomo v. Clearing House Association*^v perhaps should be the subject of comments.

As interim final rules, these procedures are effective immediately, but interested parties can provide comments before the rules are finalized. Comments are due on September 26, 2011. Institutions subject to the Bureau should become familiar with the procedures described in the interim rules so that they are prepared to respond to investigatory requests and administrative actions. A summary of the interim rules follows.

1. Procedures for Investigations

The Bureau’s investigative procedure rules describe the Bureau’s authority to conduct investigations in a nonadjudicative setting (*i.e.*, before instituting an adjudicative or judicial proceeding).^{vi} In developing the rules, the Bureau considered the investigatory procedures of other law enforcement agencies, including the Federal Trade Commission (“FTC”), the Securities and Exchange Commission

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(“SEC”) and the prudential regulators. Because of the Federal Trade Commission Act’s similarities to the CFPA, the Bureau drew most heavily from the FTC’s nonadjudicative procedures in developing its investigatory rules.

Civil investigative demands (“CID”) will form the foundation upon which the CFPB’s Assistant Director for the Division of Enforcement exercises his or her authority. The Assistant Director, or a designee, may issue a CID for virtually any type of material or information that he or she deems relevant to an investigation, including: (a) documentary material, (b) tangible things, (c) written reports or answers, and (d) oral testimony, which are governed by specific procedures for investigational hearings.^{vii} The Bureau must inform a person subject to a CID of the “nature of the conduct constituting the alleged violation that is under investigation and the provisions of law applicable to such violation.”^{viii}

The Bureau’s rules do not mandate a deadline for responding to a CID, but instead grant upon the Assistant Director the authority to “negotiate and approve the terms of satisfactory compliance with [CIDs] and, for good cause shown, extend the time period prescribed for compliance.”^{ix} This language provides latitude for parties to negotiate the scope and response time for CIDs, but it remains to be seen how flexible the Bureau will be in connection with these issues. Notably, the rules expressly state that requests for extensions of time are “disfavored,”^x meaning that institutions may need to muster the resources needed to respond to CIDs in short order, regardless of competing business demands.

If a person believes a CID is objectionable (whether on the basis of privilege or otherwise), the rules do not provide for independent review, but rather provide that the objecting party must file with the Bureau’s Director (or her authorized designee) a motion for modifying or setting aside the CID.^{xi} This procedure is not unique; other federal agencies also lack an avenue for an independent review of investigatory requests. But it does underscore the uphill battle that the target of a CID will face if he believes the CID is objectionable. If the Director denies a motion to modify or set aside a CID, a person’s only remaining option is to refuse to comply, thereby inviting the Bureau to invoke its authority to institute a judicial action to compel performance.^{xii}

The interim rules describe the process by which a party can withhold privileged materials from productions to the Bureau and provide procedures under which a person subject to a CID may claw back inadvertently produced privileged material or avoid inadvertent waivers of privilege.^{xiii}

The Bureau can conduct investigational hearings pursuant to a CID. In contrast to the FTC’s investigational hearings, in CFPB hearings, witnesses or their counsel may not object to a question on the grounds that the question is outside the scope of the investigation.^{xiv} Another notable difference is that the CFPB may bring outsiders into the investigational hearing room – representatives of other agencies with which the CFPB is conducting a joint investigation may be present if the person being examined consents.^{xv}

Last, the Bureau’s rules describe how the CFPB must dispose of investigations. If the Bureau believes further investigation of a matter is warranted, it may take one of three actions: (1) file a judicial action in federal or state court, (2) commence an administrative hearing pursuant to the Bureau’s adjudication practices (see below), or (3) refer the matter to an appropriate federal, state, or foreign governmental agency.^{xvi} Alternatively, if the Bureau believes that additional enforcement action is not necessary, the Bureau will close the investigatory file.^{xvii}

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2. Adjudication Procedures

If the Bureau commences an administrative hearing, the Bureau’s rules of practice for adjudication proceedings will govern. As with the investigative rules, the CFPB drew heavily from other federal agencies’ rules for adjudicative proceedings, including those of the prudential regulators, the SEC and FTC.

The Bureau’s adjudication proceedings will begin with a public notice of charges filed by the Bureau with a hearing officer.^{xxviii} After that, a typical chain of prehearing events is triggered – answer, scheduling conference, motions, subpoenas, witness statements, etc.^{xxix} At the conclusion of this prehearing process, the parties appear before the hearing officer in a presumptively public hearing.^{xx} The burden of proof at the hearing lies with the Bureau, and the rules of evidence that apply under the Administrative Procedure Act and/or the Federal Rules of Evidence generally apply.^{xxi} In this regard, however, there are a few noteworthy deviations from judicial trials, including more lenient standards on the admissibility of hearsay.^{xxii}

The hearing officer is supposed to issue a recommendation within 300 days of the filing of the notice of charges,^{xxiii} although no substantive rights arise to the respondent if the Bureau fails to meet the specified deadline.^{xxiv} If the hearing officer is unable to issue a recommended decision within 300 days of the notice, he or she must submit a written request to the Director for an extension.^{xxv} All parties to the proceeding may file briefs in support of or in opposition to that request, but ultimately, the Director may issue an order extending the time period for filing the recommended decision.^{xxvi}

As with other administrative proceedings, the hearing officer’s “decision” is not akin to that of a judge in a civil action. Instead, it is a “recommended decision” and the Director of the CFPB (or an authorized designee) ultimately issues the final decision, which may include reviewing exceptions to the hearing officer’s recommended decision that any party may file.^{xxvii} The Director will render a decision, which may involve affirming, reversing, modifying, setting aside, or remanding the hearing officer’s recommendation. If a party has perfected his appeal to the Director of the hearing officer’s recommended decision, such party may seek judicial review of a final decision of the Director.^{xxviii}

3. Disclosure of Records and Information

The Bureau’s interim final disclosure rule establishes procedures for implementing the federal Freedom of Information Act (“FOIA”)^{xxix} and Privacy Act^{xxx} at the CFPB.^{xxxi} It also sets forth a process for parties seeking testimony or records from the Bureau for use in litigation and other proceedings. Finally, the rule governs the treatment of confidential information that the Bureau receives and generates during the course of its work. These provisions are important because they govern, among other matters, the circumstances under which information and material that a person produces to the Bureau can be obtained by third parties, such as class action plaintiffs.

Regulations Implementing FOIA

The FOIA provides a mechanism under which the public can obtain copies of federal agency records unless an exception applies. Agencies subject to FOIA must issue regulations to implement its provisions. The CFPB’s FOIA provisions in large part track the FOIA statute and are modeled after regulations that have been promulgated by other federal agencies such as the Treasury Department.^{xxxii} They are, for example, similar in both form and content to the Federal Reserve Board’s FOIA regulations.^{xxxiii}

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Agency information subject to the FOIA is divided into three main categories: (1) information required to be published in the Federal Register; (2) information that must be made available for public inspection and copying, or published and offered for sale; and (3) information required to be made available to any member of the public upon specific request. It is this third category that generates the most interest because it covers requests for agency records, including requests for business information produced to the agency during the course of regulatory investigations.

Businesses that submit commercial or financial information to the CFPB that may be protected from disclosure under Exemption 4 of the FOIA (“business information”) should use good-faith efforts to designate the portions of their submissions that they consider to be protected from disclosure.^{xxxiv} FOIA Exemption 4 protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.”^{xxxv} Submitters can make these designations by making appropriate markings either at the time of submission or at a reasonable time afterwards. The CFPB will generally afford a submitter ten business days from the date that it notifies the submitter of a request for the submitter’s business information to provide the CFPB a detailed statement of any objection to disclosure. But if the designation appears to be obviously frivolous, the CFPB need only give the submitter written notice of a final decision to disclose the information within a “reasonable time” prior to a specified disclosure date.

One notable difference between the CFPB and Board’s FOIA provisions is that, unlike the Board’s regulations, the CFPB’s rule contains a provision about disclosing records that are frequently requested. Subject to the application of FOIA exemptions and exclusions, when the CFPB receives three or more requests for substantially the same records, the CFPB is supposed to make the released records publicly available.^{xxxvi} (The Treasury Department’s rules contain a similar provision requiring the Department to make records publicly available after it has received *five* requests for substantially the same records.)^{xxxvii}

Ordinarily, the CFPB will have twenty business days to decide whether to grant or deny a request for records, but it may make *one* reasonable demand to the requester for clarifying information and toll that twenty-business-day time period. It also could extend the applicable time period due to unusual circumstances.

In the event of an appeal, the Bureau’s General Counsel ultimately has the authority to decide whether to affirm or reverse the initial determination of the Chief FOIA Officer.^{xxxviii} The Chief FOIA Officer is directed to include concise descriptions of the exemptions in both the agency’s handbook and its annual report on the FOIA.

Confidential Information: Consumer Complaints, Investigative Information, and Supervisory Information

CFPB’s interim confidential information final rules govern “the protection and disclosure of confidential information that the CFPB generates and receives during the course of its work.”^{xxxix} The rules restrict the disclosure of confidential information by the CFPB to third parties, address how confidential supervisory information can be disclosed, and describe information sharing with law enforcement agencies and other government agencies.

In general, CFPB employees or other persons in possession of confidential information may not disclose that information to anyone who is not a CFPB employee (or to a CFPB employee when the disclosure is not relevant to the performance of that employee’s duties).^{xl} Disclosure to contractors and consultants is allowed if they agree in writing to keep the information confidential. Under the rule, confidential information is considered to be the property of the CFPB, but the disclosure by the

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CFPB of any confidential information pursuant to the rule does not constitute a waiver of privilege that any agency or person may claim with respect to such information under federal law.^{xli}

Under the rules, “confidential information” means confidential consumer complaint information, confidential investigative information, and confidential supervisory information, as well as any other CFPB information that may be exempt from disclosure under FOIA.^{xlii} “Confidential consumer complaint information” includes information received or generated by the CFPB that comprises or documents consumer complaints, inquiries, or responses thereto concerning financial institutions or consumer financial products and services, to the extent that such information is exempt from disclosure under FOIA. “Confidential investigative information” includes CID material as well as “any documentary material prepared by, on behalf of, received by, or for the use by the CFPB or any other federal or state agency in the conduct of an investigation of or enforcement action against a person, and any information derived from such documents.”^{xliii} Finally, “confidential supervisory information” means:

- (i) Reports of examination, inspection and visitation, non-public operating, condition, and compliance reports, and any information contained in, derived from, or related to such reports;
- (ii) Any documents, including reports of examination, prepared by, or on behalf of, or for the use of the CFPB or any other federal, state, or foreign government agency in the exercise of supervisory authority over a financial institution, and any information derived from such documents;
- (iii) Any communications between the CFPB and a supervised financial institution or a federal, state, or foreign government agency related to the CFPB’s supervision of the institution;
- (iv) Any information provided to the CFPB by a financial institution to enable the CFPB to monitor for risks to consumers in the offering or provision of consumer financial products or services, or to assess whether an institution should be considered a covered person, as that term is defined by 12 U.S.C. 5481; and/or
- (v) Information that is exempt from disclosure pursuant to 5 U.S.C. 552(b)(8).^{xliiv}

Like the FOIA rules, the Bureau’s interim final rules addressing confidential information are based on those rules of other federal financial regulatory agencies that provide for the confidentiality and disclosure of information generated or received in the course of supervising, investigating, or pursuing enforcement actions against financial institutions.^{xlv}

For example, the provisions regarding confidential supervisory information are similar to those of the Federal Reserve Board. One interesting difference, however, is that, while both agencies allow disclosures of confidential supervisory information to accountants, legal counsel, and consultants under certain circumstances, the CFPB rules go a step further. They require that the supervised financial institution maintain a *written account of all disclosures* of confidential supervisory

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information that the institution makes to such persons, and provide the CFPB a copy of that written account upon request.^{xlvi} This could quickly become a cumbersome process when supervised institutions get outside parties involved in assisting them with examinations or other supervisory issues.

Notwithstanding the fact that the CFPB's rule seeks to provide "the maximum protection for confidential information," the Bureau has broad discretion to disclose this information.^{xlvii} Under the rule, the Bureau can disclose confidential information under certain conditions to law enforcement agencies, other government agencies, CFPB employees, Congress, in court and in hearings. Further, to the extent permitted by law and as authorized by the Director in writing, the CFPB may disclose confidential information "other than as set forth in this subpart."^{xlviii}

This provision makes an interesting contrast to the stated policy of the Federal Reserve Board in its rules. The Board also can make disclosures of confidential supervisory information to other members of the public (in addition to law enforcement agencies and supervisory agencies), but it is the Board's policy in that respect to treat confidential supervisory information as confidential and privileged. "Accordingly, the Board will not normally disclose this information to the public. The Board... will not authorize disclosure unless the person requesting disclosure is able to show a substantial need... that outweighs the need to maintain confidentiality."^{xlix}

In the CFPB's case, there do not seem to be many real restrictions on the "other" disclosures that the Director may authorize. As long as it is legal, the Director seems to be able to disclose any confidential information that it wishes. The only limitation on this is that before disclosing the confidential information, "the CFPB *may, as it deems appropriate under the circumstances*, provide written notice to the person to whom the confidential information pertains that the CFPB intends to disclose its confidential information."^l

The preamble to the rule indicates that the CFPB does not intend for this provision to eviscerate the general prohibition on the disclosure of confidential information. Rather, the CFPB intends for this provision to be invoked when "there is an unforeseen and exigent need" to disclose the information for purposes or in a manner that is not otherwise provided for in the regulations.^{li}

In the preamble, the Bureau also notes that the other federal bank regulatory agencies retain similar discretion to disclose confidential information. While it is true that the other agencies have discretion to disclose confidential supervisory information, those agencies do not operate under the singular, consumer-centric focus that the CFPB operates under – they have to concern themselves with the safety and soundness of the institutions they supervise. They therefore lean towards maintaining confidentiality. The OCC, for example, has discretion to release non-public OCC information, but its exercise of discretion is "based on its weighing of all appropriate factors, including the requestor's fulfilling of certain requirements [dictated by OCC rules]."^{lii} Moreover, the OCC's policy concerning non-public OCC information is to treat such information as confidential and privileged.^{liii} Therefore, the OCC, like the Board, will not commonly disclose the information to third parties.

Privacy Act Provisions

The Bureau's Privacy Act regulations implement the federal Privacy Act by setting forth the procedures by which an individual may request information about the records that the CFPB maintains about him or her. As with its other regulations, the CFPB tracked the statute and modeled its Privacy Act regulations on the rules of other federal agencies.^{liv}

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Persons can request access to, or amendment of, records about them that are contained in systems of records that the CFPB maintains. They can also ask for an accounting of previous disclosures made about them. But the Bureau has exempted three systems of records from these disclosure requirements. To the extent that they contain investigatory materials compiled for law enforcement purposes, the following three systems are exempt: (1) CFPB.002 Depository Institution Supervision Database, (2) CFPB.003 Non-Depository Institution Supervision Database, and (3) CFPB.004 Enforcement Database.

If, however, by the withholding of the material the requesting individual would be denied a right, privilege, or benefit to which he or she would otherwise be entitled, the material will be disclosed to the individual.^{lv} One caveat is that the disclosure must not reveal the identity of an information source who had received an express promise from the CFPB that his or her identity would be held in confidence.

The Privacy Act rules include a directive that the Bureau's Chief Privacy Officer must institute a training program to instruct CFPB employees and contractors about the Privacy Act.^{lvi}

Disclosure of CFPB Information in Connection with Legal Proceedings

The provisions of the rule related to disclosure of CFPB information in connection with legal proceedings “are intended only to inform the public about CFPB procedures concerning the service of process and responses to subpoenas, summons, or other demands or requests for official information or action.”^{lvii} They are modeled after similar regulations of other federal agencies (sometimes referred to as *Touhy* regulations).^{lviii}

These provisions authorize the General Counsel of the Bureau to accept service of process, respond to summonses and complaints, subpoenas, court orders, and litigation demands. They require parties demanding documents or testimony from the CFPB in legal proceedings in which the United States or the CFPB is not a party to provide certain information before the CFPB will respond to the demand. They also prohibit CFPB employees or former employees from giving expert testimony on behalf of anyone other than the United States or a party represented by the CFPB or Department of Justice.^{lix}

4. State Notification

State attorneys general and state regulators (collectively, “State Official”) may file suits to enforce the Consumer Financial Protection Act and its implementing regulations. The Bureau's interim final rule sets forth the requirements for how the State Official must notify the Bureau and relevant prudential regulator, if any, of an action.^{lx}

Generally, State Officials must notify the Bureau at least 10 days before initiating any court proceeding or administrative or regulatory proceeding against any covered person to enforce the Act or a regulation prescribed thereunder. In the event that a State Official initiates an emergency action “to protect the public interest or prevent irreparable harm,” the notice need only be delivered as soon as is practicable but not later than 48 hours after initiation of the action or proceeding.

The notice should include a complete and unredacted copy of any proposed complaint or similar document that is the subject of the notice.^{lxi} It should also address whether there may be a need to coordinate the prosecution of the action or proceeding “so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.”^{lxii} (The CFPB can intervene as a party in actions brought by State Officials, or otherwise participate in the action as appropriate).

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The interim rule requires this notice to remain confidential upon receipt by the Bureau.^{lxiii} Further, the state does not waive any privilege by providing the proposed filing to the Bureau.^{lxiv} Nevertheless, the Bureau “may share the substance or fact of the notice” with another entity with the consent of the State Official who provided the notice,^{lxv} and “after consultation” with the State Official may choose to share the information with another state or federal government entity when “necessary” to protect the public interest.^{lxvi} Thus, it appears that the CFPB could actually divulge the existence of the notice and/or its contents even without the State Official’s consent.

The notice also must include the following information: the court or body where the action or proceeding will be initiated, the identities of the parties, the nature of the action, the anticipated filing date, the alleged facts underlying the action, and contact information.^{lxvii}

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The interim rules will have an immediate and significant impact on all institutions subject to the Bureau’s jurisdiction. If you have any questions about the rules, or would like assistance with submitting comments before the September 26 deadline, please contact Melanie Brody, Paul Hancock, Stephanie Robinson, David McDonough or any other member of K&L Gates’ Mortgage Banking and Consumer Financial Products group.

Authors:

Melanie Brody

Partner
melanie.brody@klgates.com
+1. 202.778.9203

Paul F. Hancock

Partner
paul.hancock@klgates.com
+1. 305.539.3378

David G. McDonough, Jr.

Associate
david.mcdonough@klgates.com
+1. 202.778.9207

Stephanie C. Robinson

Associate
stephanie.robinson@klgates.com
+1. 202.778.9856

ⁱ Consumer Financial Protection Act of 2010, Title X of Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (codified in scattered sections of 12, 15, 18, 22, & 42 U.S.C.).

ⁱⁱ Under the Act, the term “federal consumer financial law” means “the provisions of [the Act], the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H.” *Id.* § 5481(14). The term “enumerated consumer laws” means: (1) the Alternative Mortgage Transaction Parity Act of 1982; (2) the Consumer Leasing Act; (3) the Electronic Fund Transfer Act except with respect to section 920; (4) the Equal Credit Opportunity Act; (5) the Fair Credit Billing Act; (6) the Fair Credit Reporting Act except with respect to sections 615(e) and 628; (7) the Home Owners Protection Act; (8) the Fair Debt Collection Practices Act; (9) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act; (10) sections 502 through 509 of the Gramm-Leach-

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Bliley Act except for section 505 as it applies to section 501(b); (11) the Home Mortgage Disclosure Act; (12) the Home Ownership and Equity Protection Act; (13) the Real Estate Settlement Procedures Act; (14) the S.A.F.E. Mortgage Licensing Act; (15) the Truth in Lending Act; (16) the Truth in Savings Act; (17) section 626 of the Omnibus Appropriations Act; and (18) the Interstate Land Sales Full Disclosure Act.

ⁱⁱⁱ See Joint Statement of Principles on Consumer Financial Protection by the Consumer Financial Protection Bureau and the Presidential Initiative Working Group of the National Association of Attorneys General (Apr. 11, 2011).

^{iv} *Id.*

^v 129 S. Ct. 2721 (2009).

^{vi} Rules Relating to Investigations, 76 Fed. Reg. 45,168 (July 28, 2011) (to be codified at 12 C.F.R. pt. 1080).

^{vii} *Id.* at 45,171.

^{viii} *Id.*

^{ix} *Id.* at 45,172.

^x *Id.*

^{xi} *Id.*

^{xii} *Id.* at 45,173.

^{xiii} *Id.* at 45,172-73.

^{xiv} *Id.*

^{xv} *Id.*

^{xvi} *Id.* at 45,173.

^{xvii} *Id.*

^{xviii} Rules of Practice for Adjudication Proceedings, 76 Fed. Reg. 45,338, 45,358 (July 28, 2011) (to be codified at 12 C.F.R. pt. 1081).

^{xix} *Id.* at 45,358-65.

^{xx} *Id.* at 45,365.

^{xxi} *Id.*

^{xxii} *Id.*

^{xxiii} *Id.* at 45,367.

^{xxiv} *Id.* at 45,340.

^{xxv} *Id.* at 45,367.

^{xxvi} *Id.*

^{xxvii} *Id.* at 45,367-68.

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^{xxviii} *Id.* at 45,368.

^{xxix} Freedom of Information Act, 5 U.S.C. § 552.

^{xxx} Privacy Act of 1974, 5 U.S.C. § 552a.

^{xxxi} Disclosure of Records and Information, 76 Fed. Reg. 45,372 (July 28, 2011) (to be codified at 12 C.F.R. pt. 1070).

^{xxxii} See Treasury Department FOIA Rule, 65 Fed. Reg. 40,503 (June 30, 2000) (codified at 31 C.F.R. pt. 1).

^{xxxiii} See 12 C.F.R. Part 261.

^{xxxiv} 76 Fed. Reg. at 45,382.

^{xxxv} 5 U.S.C. § 552(b)(4).

^{xxxvi} 76 Fed. Reg. 45,379.

^{xxxvii} 65 Fed. Reg. at 40,507.

^{xxxviii} 76 Fed. Reg. at 45,383.

^{xxxix} *Id.* at 45,373.

^{xl} *Id.* at 45,389.

^{xli} See 76 Fed. Reg. 45,390.

^{xlii} *Id.* at 45,378.

^{xliii} *Id.*

^{xliv} 76 Fed. Reg. 45,378. Confidential supervisory information does not include documents prepared by a financial institution for its own business purposes and that the CFPB does not possess.

^{xlv} *Id.* at 45,374. See, e.g., Federal Reserve Board Regulations, 12 C.F.R. Part 261.

^{xlvi} 76 Fed. Reg. at 45,389.

^{xlvii} *Id.* at 45,374.

^{xlviii} *Id.* at 45,390.

^{xlix} 12 C.F.R. § 261.22.

^l 76 Fed. Reg. at 45,390.

^{li} *Id.* at 45,374.

^{lii} 12 C.F.R. § 4.35.

^{liii} 12 C.F.R. § 4.36.

^{liv} See, e.g., Federal Reserve Board Regulations at 12 C.F.R. Part 261a.

^{lv} 76 Fed. Reg. at 45,393.

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^{lvi} *See id.*

^{lvii} 76 Fed. Reg. 45,386.

^{lviii} *Id.* at 45,373. These regulations derive their name from the Supreme Court case *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), which upheld the authority of the Department of Justice to issue regulations governing the production of official files, documents, records, and information pursuant to 5 U.S.C. § 22, the precursor to 5 U.S.C. § 301.

^{lix} 76 Fed. Reg. at 45,388.

^{lx} State Official Notification Rules, 76 Fed. Reg. 45,174 (July 28, 2011) (to be codified at 12 C.F.R. pt. 1082).

^{lxi} 76 Fed. Reg. at 45,176.

^{lxii} *Id.*

^{lxiii} *Id.*

^{lxiv} *Id.*

^{lxv} *Id.*

^{lxvi} *Id.*

^{lxvii} *Id.*

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K&L Gates' Mortgage Banking & Consumer Financial Products practice provides a comprehensive range of transactional, regulatory compliance, enforcement and litigation services to the lending and settlement service industry. Our focus includes first- and subordinate-lien, open- and closed-end residential mortgage loans, as well as multi-family and commercial mortgage loans. We also advise clients on direct and indirect automobile, and manufactured housing finance relationships. In addition, we handle unsecured consumer and commercial lending. In all areas, our practice includes traditional and e-commerce applications of current law governing the fields of mortgage banking and consumer finance.

For more information, please contact one of the professionals listed below.

LAWYERS

Boston

R. Bruce Allensworth	bruce.allensworth@klgates.com	+1.617.261.3119
Irene C. Freidel	irene.freidel@klgates.com	+1.617.951.9154
Stanley V. Ragalevsky	stan.ragalevsky@klgates.com	+1.617.951.9203
Brian M. Forbes	brian.forbes@klgates.com	+1.617.261.3152
Andrew Glass	andrew.glass@klgates.com	+1.617.261.3107
Phoebe Winder	phoebe.winder@klgates.com	+1.617.261.3196

Charlotte

John H. Culver III	john.culver@klgates.com	+1.704.331.7453
Amy Pritchard Williams	amy.williams@klgates.com	+1.704.331.7429

Chicago

Michael J. Hayes Sr.	michael.hayes@klgates.com	+1.312.807.4201
----------------------	---------------------------	-----------------

Dallas

David Coale	david.coale@klgates.com	+1.214.939.5595
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Miami

Paul F. Hancock	paul.hancock@klgates.com	+1.305.539.3378
-----------------	--------------------------	-----------------

New York

Philip M. Cedar	phil.cedar@klgates.com	+1.212.536.4820
Elwood F. Collins	elwood.collins@klgates.com	+1.212.536.4005
Steve H. Epstein	steve.epstein@klgates.com	+1.212.536.4830
Drew A. Malakoff	drew.malakoff@klgates.com	+1.216.536.4034

San Francisco

Jonathan Jaffe	jonathan.jaffe@klgates.com	+1.415.249.1023
Elena Grigera Babinecz	elena.babinecz@klgates.com	+1.415.882.8079

Seattle

Holly K. Towle	holly.towle@klgates.com	+1.206.370.8334
----------------	-------------------------	-----------------

Washington, D.C.

Costas A. Avrakotos	costas.avrakotos@klgates.com	+1.202.778.9075
David L. Beam	david.beam@klgates.com	+1.202.778.9026
Melanie Hibbs Brody	melanie.brody@klgates.com	+1.202.778.9203
Krista Cooley	krista.cooley@klgates.com	+1.202.778.9257
Daniel F. C. Crowley	dan.crowley@klgates.com	+1.202.778.9447
Eric J. Edwardson	eric.edwardson@klgates.com	+1.202.778.9387
Steven M. Kaplan	steven.kaplan@klgates.com	+1.202.778.9204
Phillip John Kardis II	phillip.kardis@klgates.com	+1.202.778.9401
Rebecca H. Laird	rebecca.laird@klgates.com	+1.202.778.9038
Laurence E. Platt	larry.platt@klgates.com	+1.202.778.9034

And the Plot Thickens: the CFPB Issues a Quartet of Interim Final Rules Laying Out Its Investigatory and Enforcement Procedures

Phillip L. Schulman	phil.schulman@klgates.com	+1.202.778.9027
Nanci L. Weissgold	nanci.weissgold@klgates.com	+1.202.778.9314
Kris D. Kully	kris.kully@klgates.com	+1.202.778.9301
Morey E. Barnes	morey.barnes@klgates.com	+1.202.778.9215
Kathryn M. Baugher	kathryn.baugher@klgates.com	+1.202.778.9435
Emily J. Booth	emily.booth@klgates.com	+1.202.778.9112
Holly Spencer Bunting	holly.bunting@klgates.com	+1.202.778.9853
Jessica M. Flathmann Sandler	jessica.sandler@klgates.com	+1.202.778.9488
Rebecca Lobenherz	becky.lobenherz@klgates.com	+1.202.778.9177
Melissa S. Malpass	melissa.malpass@klgates.com	+1.202.778.9081
David G. McDonough, Jr.	david.mcdonough@klgates.com	+1.202.778.9207
Stephanie C. Robinson	stephanie.robinson@klgates.com	+1.202.778.9856
Tori K. Shinohara	tori.shinohara@klgates.com	+1.202.778.9423
Kerri M. Smith	kerri.smith@klgates.com	+1.202.778.9445
David Tallman	david.tallman@klgates.com	+1.202.778.9046
Kathryn Sellig Williams	kathryn.williams@klgates.com	+1.202.778.9122

PROFESSIONALS

Government Affairs Advisor / Director of Licensing

Washington, D.C.

Stacey L. Riggin	stacey.riggin@klgates.com	+1.202.778.9202
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Regulatory Compliance Analysts

Washington, D.C.

Dameian L. Buncum	dameian.buncum@klgates.com	+1.202.778.9093
Teresa Diaz	teresa.diaz@klgates.com	+1.202.778.9852
Robin L. Gieseke	robin.gieseke@klgates.com	+1.202.778.9481
Brenda R. Kittrell	brenda.kittrell@klgates.com	+1.202.778.9049
Dana L. Lopez	dana.lopez@klgates.com	+1.202.778.9383
Patricia E. Mesa	patty.mesa@klgates.com	+1.202.778.9199
Daniel B. Pearson	daniel.pearson@klgates.com	+1.202.778.9881
Jeffrey Prost	jeffrey.prost@klgates.com	+1.202.778.9364

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Anchorage Austin Beijing Berlin Boston Brussels Charlotte Chicago Dallas Dubai Fort Worth Frankfurt Harrisburg Hong Kong London Los Angeles Miami Moscow Newark New York Orange County Palo Alto Paris Pittsburgh Portland Raleigh Research Triangle Park San Diego San Francisco Seattle Shanghai Singapore Spokane/Coeur d'Alene Taipei Tokyo Warsaw Washington, D.C.

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