

THE
NATIONAL LAW REVIEW

CFPB Spring 2018 rulemaking agenda contains significant changes under Mulvaney's leadership

Friday, May 11, 2018

The CFPB's Spring 2018 rulemaking agenda has been published by the Office of Information and Regulatory Affairs (OIRA) as part of its Spring 2018 Unified Agenda of Federal Regulatory and Deregulatory Actions. (OIRA is part of the Office of Management and Budget.) It represents the CFPB's first rulemaking agenda that reflects the CFPB's rulemaking plans under the Trump Administration and Mick Mulvaney's leadership. The agenda's preamble indicates that the information in the agenda is current as of March 15, 2018 and identifies the regulatory matters that the Bureau "reasonably anticipates...having under consideration during the period from May 1, 2018, to April 30, 2019."

The [preamble](#) notes that the CFPB "is under interim leadership" and lists the matters that, "in light of this status, Bureau leadership is prioritizing during coming months." Those matters are:

- Meeting specific statutory responsibilities
- Continuing selected rulemakings that were already underway
- Reconsidering two regulations issued under the prior leadership

The CFPB previously announced its plans to reconsider its [payday lending rule](#) and [HMDA/Regulation C rule](#). The Spring 2018 agenda estimates the issuance of notices of proposed rulemakings (NPRM) for these two rules in, respectively, February 2019 and January 2019.

Most significantly, the Bureau states in the preamble that Mr. Mulvaney "has decided to classify as 'inactive' certain other rulemakings that had been listed in previous editions of the Bureau's Unified Agenda in the expectation that final decisions whether and when to proceed with such projects will be made by the Bureau's next permanent director." It also states that several items listed as potential long-term projects in the CFPB's Fall 2017 rulemaking agenda have been designated "inactive." The Bureau indicates that the change in designation "is not intended to signal a substantive decision on the merits of the projects."

The noteworthy items [designated "inactive"](#) are:

- Overdrafts (This was a "prerule stage" item in the Fall 2017 agenda.)
- "Larger Participants" (This was both a "proposed rule stage" and "long-term actions" item in the Fall 2017 agenda which stated (as did prior agendas) that the Bureau was considering "larger participant" rules "in markets for consumer installment loans and vehicle title loans for purposes of supervision" as well as possible other "larger participant" regulations based on market trends and developments. It also stated that the Bureau was "considering whether rules to require registration of these or other non-depository lenders would facilitate supervision.")
- Student Loan Servicing (This was a "long-term actions" item in the Fall 2017 agenda.)

In addition to reconsidering the payday lending and HMDA rules, the other key rulemaking initiatives listed on the Spring 2018 agenda are:

- Debt Collection. The agenda states that the Bureau "is preparing a proposed rule focused on FDCPA collectors that may address such issues as communication practices and consumer disclosures." It estimates the issuance of a NPRM in March 2019.

Ballard Spahr
LLP

Article By [Ballard Spahr LLP](#)
[Barbara S. Mishkin](#)
[Consumer Finance Monitor](#)

[Financial Institutions & Banking](#)
[All Federal](#)

- **Business Lending Data.** Dodd-Frank Section 1071 amended the ECOA to require financial institutions to collect and maintain certain data in connection with credit applications made by women- or minority-owned businesses and small businesses. Such data includes the race, sex, and ethnicity of the principal owners of the business. In May 2017, the CFPB issued a RFI and a white paper on small business lending in conjunction with a field hearing on small business lending. The RFI was intended to inform the CFPB's rulemaking to implement Dodd-Frank Act section 1071. The Spring 2018 agenda states that the information received in response to the RFI "will help the Bureau determine how to implement [Section 1071] efficiently while minimizing burdens on lenders." It estimates a March 2019 date for prerule activities.
- **Privacy Notices.** In July 2106, the CFPB issued a proposal to amend Regulation P, which implements the Gramm-Leach-Bliley Act (GLBA), to implement a GLBA amendment that provided financial institutions that meet certain conditions with an exemption from the GLBA requirement to deliver annual privacy notices to customers. The Spring 2018 agenda indicates that the CFPB expects to issue a final rule in June 2018.

The key long-term actions items listed in the Spring 2018 agenda are:

- **Inherited Regulations.** These are the existing regulations that the CFPB inherited from other agencies through the transfer of authorities under the Dodd-Frank Act. Previously listed on the Fall 2017 agenda as a "prerule stage" item, the Spring 2018 lists the CFPB's review of the inherited regulations as a "long-term actions" item. In the preamble, the CFPB indicates that it expects to focus its initial review on the subparts of Regulation Z that implement TILA with respect to open-end credit and credit cards in particular. By way of example, the CFPB states that it expects to consider adjusting rules concerning the database of credit card agreements it is required to maintain by the CARD Act "to reduce burden on issuers that submit credit card agreements to the Bureau and make the database more useful for consumers and the general public."
- **Consumer reporting.** This was previously listed in the Fall 2017 agenda as a "long-term actions" item. The Spring 2018 agenda indicates that the Bureau will evaluate potential additional rules or amendments to existing regulations governing consumer reporting, with possible topics for consideration to include the accuracy of credit reports, including the processes for resolving consumer disputes, identity theft, or other issues.
- **Consumer Access to Financial Records.** This was also previously listed in the Fall 2017 agenda as a "long-term actions" item. In November 2016, the CFPB [issued a RFI](#) about market practices related to consumer access to financial information. The Spring 2018 agenda states that the Bureau will continue to monitor market developments and evaluate possible policy responses to issues identified, including potential rulemaking. Possible topics the Bureau might consider include specific acts or practices and consumer disclosures. In addition, the Bureau plans to consider "whether clarifications or adjustments are necessary with respect to existing regulatory structures that may be implicated by current and potential developments in this area."
- **Regulation E Modernization.** This is another item that was previously listed in the Fall 2017 agenda as a "long-term actions" item. The Spring 2018 agenda states that the Bureau "will evaluate possible updates to the regulation, including but not limited to how providers of new and innovative products and services comply with regulatory requirements" and that "potential topics for consideration might include disclosure provisions, error resolution provisions, or other issues."

Copyright © by Ballard Spahr LLP

Source URL: <https://www.natlawreview.com/article/cfpb-spring-2018-rulemaking-agenda-contains-significant-changes-under-mulvaney-s>