

CFPB Revamps Its Rule Suggestion Box To Boost Public Input

By Jon Hill

Law360 (February 16, 2022, 9:11 PM EST) -- The Consumer Financial Protection Bureau is moving to get more use out of its rulemaking suggestion box, highlighting efforts that it says are intended to help the public take advantage of a little-used mechanism for recommending new rules and other regulatory changes.

In a Wednesday statement, the CFPB said it is taking steps to make it easier for individuals, small businesses and other outside parties to submit so-called petitions for rulemaking directly to the agency.

Those steps include overhauling part of the CFPB's website to add instructions clarifying what these petitions should contain and publicizing an email address where they can be sent. Once received, petitions will be posted online in public dockets for review and comment, the agency said.

"Americans should be able to easily exercise their Constitutional rights without hiring a high-priced lawyer or lobbyist," CFPB Director Rohit Chopra said in a statement. "Our new program will broaden access to the agency's rulemaking process."

Under federal law, government agencies must give members of the public "the right to petition for the issuance, amendment or repeal of a rule." It is then up to the agencies to review and respond to these rulemaking petitions, though agencies have wide discretion to decide how to handle them.

But how well-known this right to petition is is another matter. In Wednesday's announcement, the CFPB said many people "believe that they must hire former government officials, lawyers, or lobbyists in order to be heard by an agency."

Indeed, the CFPB's website shows just three rulemaking petitions received since 2018, none of them from consumers or consumer advocacy groups. And only one was successful — a 2018 petition from the Bank Policy Institute and American Bankers Association that led to a joint rule codifying limits on the use of supervisory guidance by the CFPB and other banking agencies.

The CFPB said Wednesday that the petitions submitted by the public will help the agency to "identify consumer protection issues worthy of reform, rulemaking, or in need of further clarification."

The agency also said former officials and others who are "paid to influence the agency's rulemaking agenda behind the scenes" will now be directed to submit rulemaking petitions, bringing their requests out into public view.

"The CFPB is committed to transparency and listening to the concerns, suggestions, and ideas of the public it serves," the agency said.

Wednesday's announcement was described by the CFPB as the latest in a series of actions meant to strengthen ethics and transparency standards at the agency. Late last year, for example, Chopra issued staff guidance on reporting interactions with former employees, citing concerns about the potential for "revolving door" misconduct.

The agency also said its petition process changes are "in line" with a set of pro-transparency recommendations put out in 2014 by the Administrative Conference of the United States.

"The traditional criticism has been that it's large stakeholders that engage most frequently with agencies across the board, so this may help democratize the policy process a bit," said Eamonn Moran, a former attorney with the CFPB's Office of Regulations who is now of counsel at Morgan Lewis & Bockius LLP.

Moran noted that the statutory basis for these petitions also employs terminology that could conceivably allow for the public to make requests that extend beyond just notice-and-comment rules.

As a result, by encouraging wider use of petitions, the CFPB could be opening the door to feedback on a broader range of policies, procedures, guidance documents and other rule-like items that the public hasn't really engaged with before now, according to Moran.

"That opportunity could be interesting to watch," he said.

Still, the longer-term impact on CFPB policymaking is hard to gauge, given that it will depend in significant part on whether the petition mechanism actually attracts attention. How much weight the CFPB will give to petitions in shaping its agenda is also murky.

According to the CFPB, petitions, along with any public comments received on them, will be forwarded to the relevant agency office for consideration. The ensuing review will then vary depending on the nature of the petition and the complexity of the agency action it is proposing.

But when it comes to the ultimate decision of whether to grant a petition, the suggestion box may still look like something of a black box to some.

"I would hope that there would be more granularity provided in terms of processes and procedures so that the public has a better idea of what happens when a petition is evaluated," Moran said.

--Editing by Kelly Duncan.