

GIVE USEFUL INFORMATION TO DEFINE EFFECTIVE
COMPLIANCE ACT

DECEMBER 21, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5534]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5534) to amend the Consumer Financial Protection Act of 2010 to provide procedures for guidance issued by the Bureau of Consumer Financial Protection, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Give Useful Information to Define Effective Compliance Act” or the “GUIDE Compliance Act”.

SEC. 2. PROCEDURES FOR BUREAU GUIDANCE.

Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended by adding at the end the following:

“(5) PROCEDURES FOR BUREAU GUIDANCE.—

“(A) DEFINITIONS.—In this paragraph—

“(i) the term ‘Bureau’ means—

“(I) the Director of the Bureau;

“(II) the Deputy Director of the Bureau; and

“(III) any employee of the Bureau described in section 1013(a)(1)(B); and

“(ii) the term ‘guidance’—

“(I) means—

“(aa) an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue; and

“(bb) any written interpretive rule, bulletin, statement of policy, letter, examination manual, frequently asked question, notice, directive, news release, blog post, small entity compliance guide, or other authoritative document issued by the Bureau regarding compliance with a Federal consumer financial law; and

“(II) does not include—

“(aa) a purely internal Bureau policy;

“(bb) a law enforcement communication such as a complaint, consent order, judgment, legal opinion, warning letter, investigatory letter, notice of hearing, civil investigative demand, subpoena, no-action letter, advisory opinion, or any request in lieu of the foregoing;

“(cc) an individualized supervisory communication such as a supervisory letter, report of examination, memorandum of understanding, board resolution, matter requiring attention, or individualized communication or agreement pursuant to the supervisory authority of the Bureau; or

“(dd) a decision issued under subtitle E.

“(B) GUIDANCE REQUIREMENTS.—The Director shall issue guidance that is necessary or appropriate to enable the Bureau to carry out Federal consumer financial law, including facilitating compliance with such law.

“(C) RULEMAKING.—

“(i) PROPOSED RULE.—Not later than 18 months after the date of enactment of this paragraph, the Bureau shall publish in the Federal Register and on the website of the Bureau a proposed rule defining—

“(I) each type of guidance the Bureau shall provide;

“(II) the criteria the Bureau shall use for selecting each type of guidance;

“(III) the process and timelines for requests for guidance;

“(IV) the time periods for the response of the Bureau to a request for each type of guidance; and

“(V) a process for amending or revoking guidance issued under the rule, including a process for public input on any proposal to amend or revoke guidance, unless the Bureau determines public input is not required due to public exigency.

“(ii) FINAL RULE.—Not later than 1 year after the date on which the proposed rule described in clause (i) is published, the Bureau shall publish a final rule based on the proposed rule.

“(D) RELIANCE ON BUREAU GUIDANCE.—No person shall be held liable for any act done or omitted in good faith in conformity with any applicable guidance from the Bureau or any predecessor agency that was in effect at the time of the act or omission, even if the guidance is later revoked, amended, or rendered inconsistent by guidance or action by the Bureau or a determination by a court of competent jurisdiction.

“(E) DEVELOPMENT OF A PENALTY MATRIX.—

“(i) PROPOSED RULE.—Not later than 18 months after the date of the enactment of this subparagraph, the Bureau shall publish in the Federal Register and on the website of the Bureau a proposed rule establishing guidelines for determining the size of any civil monetary penalties issued by the Bureau based on the severity of the actionable conduct in violation of a Federal consumer financial law and the level of culpability. The regulations prescribed under this paragraph shall, to the extent possible, align with any chart, matrix, rule, or guideline published by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors.

“(ii) FINAL RULE.—Not later than 1 year after the date on which the proposed rule described in clause (i) is published, the Bureau shall publish a final rule based on the proposed rule.”.

PURPOSE AND SUMMARY

Introduced by Representative Sean Duffy on April 17, 2018, H.R. 5534, the “Give Useful Information to Define Effective (GUIDE)

Compliance Act” amends the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [Pub. L. 111–203] to provide procedures for guidance issued by the Bureau of Consumer Financial Protection (BCFP), including guidance necessary to comply with the law, establishes clear standards for that guidance and how it is issued, and provides a safe harbor for good faith reliance on guidance issued by the Bureau.

BACKGROUND AND NEED FOR LEGISLATION

Since its inception in 2010, the Bureau of Consumer Financial Protection has operated outside of the expected norms for a federal supervisory agency. Criticisms against the Bureau include rule-making driven by political motivations¹, regulation through enforcement², and the tendency to stretch the Bureau’s statutory authority or use novel interpretations of existing law to support the Bureau’s enforcement and litigation.³ The Bureau’s former Director, Richard Cordray, stated:

“We wanted to send a message: There’s a new cop on the beat. Pushing the envelope is a loaded phrase, but that’s absolutely what we did.”⁴

Under the previous Director’s watch this created an uneven playing field for financial services businesses. The Bureau’s consumer complaint portal, an unverified public complaint database of financial service providers and products, was not an accurate indicator of the Bureau’s next rulemaking initiative. Litigation and enforcement actions could not be relied upon to set an industry precedent on which businesses could rely. Previously accepted industry practices could be cause for future litigation from the Bureau.⁵ Ultimately, instead of fulfilling the BCFP’s mandate to protect consumers, its actions achieved the opposite result. Banks stopped offering certain products for fear of litigation and did not introduce new products because of compliance costs and potential legal liability. Credit availability then tightened for consumers and businesses, reduced access to mortgage credit for families looking to purchase a home and limited options for businesses looking to expand.

This approach to consumer protection has been reversed by BCFP Acting Director Mick Mulvaney, who in a memo to staff upon his arrival signaled that the Bureau would commit to enforcing the rule of law and no longer be “pushing the envelope.”⁶ In his memo, Acting Director Mulvaney also promised to engage in more formal rulemakings, only bring lawsuits based on “quantifiable and unavoidable harm”, employ a data based approach to rule-

¹Gary Davis, “Why Reform is Necessary at the CFPB.” (Feb. 2017) Available at <https://www.forbes.com/sites/forbesfinancecouncil/2018/02/07/why-reform-is-necessary-at-the-cfpb/#14a06ba747fa>.

²<https://www.mba.org/issues/residential-issues/cfpb-enforcement-concerns>.

³Michael Grunwald, “Trump Wants to Dismantle Elizabeth Warren’s Agency. Good Luck With That.” (Dec. 2017) Available at <https://www.politico.com/magazine/story/2017/12/03/trump-cfpb-elizabeth-warren-215997>.

⁴*Id.*

⁵supra note 2. “The CFPB has published key consent orders and decisions-including under the Real Estate Settlement Procedures Act (RESPA)-that diverge from prior rules and interpretations of the Department of Housing and Urban Development (HUD) that the industry has relied on for decades.”

⁶See <https://www.consumerfinance.com/wp-content/uploads/sites/14/2018/01/Mulvaney-memo.pdf>.

making, and engage in more robust cost-benefit analysis. While this fresh perspective is welcome, it is necessary for Congress to ensure consumers and businesses remain protected should a subsequent Director choose to stray from this new direction. In the same memo to Bureau staff, Acting Director Mulvaney appropriately noted that:

We are government employees, and we work for the people. That means everyone: those who use credit cards and those who provide the credit; those who take out loans and those who make them; those who buy cars and those who sell them. All of those people are part of what makes this country great, and all of them deserve to be treated fairly by their government.⁷

The new approach to consumer financial regulation by the BCFP demonstrates not only the intent of Congress but also fair and equal treatment for all market participants from the customer to the businesses that serve them. This fair, equal, and transparent system will help foster economic growth and ensure all Americans have equal access to the financial system and wide array of products to serve their individual and specific needs.

FORMALIZING THE GUIDANCE PROCESS AT THE BCFP

Guidance can play an integral role in business decision making. Clear, reliable guidance can provide businesses with reliable information to form the basis for making decisions and investments without concern that their actions could lead to enforcement orders or fines in the future. Guidance can also improve the supervision process as examiners have an easier time determining compliance with additional reference points. Therefore, it is good policy to encourage regulators to share insights on how to comply with their rules.

There are several examples of finalized rules from the BCFP that lack the necessary guidance to provide much needed clarity for businesses. For instance, during the Financial Institutions Subcommittee’s hearing examining reforms to improve transparency and accountability at the Bureau, the President of the American Land Title Association (ALTA), Steven Day, shared examples where Bureau guidance would have helped to clarify confusing rules. Specifically, Mr. Day referred to compliance hurdles associated with the BCFP’s TILA–RESPA Integrated Disclosure (TRID) rule, where the Bureau hosted webinars but did not provide written guidance, causing headaches in sharing this information with inquiring customers.⁸ In his testimony Mr. Day also compared the guidance shared by federal regulators concerning third-party service providers:

“Unlike similar guidance from prudential regulators, the Bureau’s bulletin provided little direction to banks and nonbanks. The Bulletin was two and a half pages long,

⁷*Id.*

⁸United States. Cong. House. Committee on Financial Services. *Hearing on Improving Transparency and Accountability at the Bureau of Consumer Financial Protection Bureau*. June 6, 2018. 115th Cong. 2nd sess. (statement of Steven G. Day, American Land Title Association). Available at <https://financialservices.house.gov/uploadedfiles/hhrg-115-ba15-wstate-sday-20180606.pdf>.

compared with 16 pages of guidance from the Office of the Comptroller of the Currency (OCC) and the 14-page document from the Federal Reserve Board.”⁹

To resolve this issue, the GUIDE Compliance Act creates a process for the BCFP to issue formal and reliable written guidance¹⁰ on how to comply with its written regulations along with the creation of a civil money penalty matrix similar to those used by all other federal financial regulators. Guidance developed under the GUIDE Compliance Act is designed to interpret requirements of a regulation that was adopted as part of a formal Administrative Procedures Act (APA) process.

HEARINGS

The Subcommittee on Financial Institutions held a hearing examining matters relating to H.R. 5534 on June 6, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 13, 2018, and ordered H.R. 5534 to be reported favorably to the House, as amended, by a recorded vote of 38 yeas to 14 nays (recorded vote no. FC-206), a quorum being present. Before the motion to report was offered, the Committee adopted, by voice vote, an amendment in the nature of a substitute offered by Mr. Duffy.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the as amended. The motion was agreed to by a recorded vote of 38 yeas to 14 nays (Record vote no. FC-206), a quorum being present.

⁹*Id.* at 11–12.

¹⁰Guidance can come in the form of advisory opinions, bulletins, no-action letters, statements of policy, and answers to Frequently Asked Questions (FAQs).

Record vote no. FC-206

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)		X	
Mr. King	X			Ms. Velázquez		X	
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks			
Mr. Pearce				Mr. Capuano			
Mr. Posey	X			Mr. Clay			
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers	X			Mr. Cleaver			
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross	X			Mr. Ellison			
Mr. Pittenger				Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee		X	
Mr. Messer	X			Mr. Delaney		X	
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty		X	
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas		X	
Mr. Hill	X			Mr. Gottheimer			
Mr. Emmer	X			Mr. Gonzalez (TX)		X	
Mr. Zeldin	X			Mr. Crist		X	
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 5534 will help to clarify any new guidance issued by the BCFP in order to make guidance clear and succinct for implementation.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 19, 2018.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5534, the GUIDE Compliance Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 5534—GUIDE Compliance Act

H.R. 5534 would require the Consumer Financial Protection Bureau (CFPB) to issue guidance to facilitate compliance with federal consumer financial laws. The agency would be required to issue rules that define various types of guidance; establish a procedure for issuing, amending, and revoking guidance; and develop a process for receiving public input on guidance. H.R. 5534 also would require the CFPB to establish guidelines to determine the size of civil monetary penalties imposed by the agency.

Using information from the CFPB, CBO estimates that enacting the bill would require the agency to hire four employees to handle the preparation of the additional guidance that the agency would be required to issue and to implement new procedures for issuing guidance. CBO estimates those efforts would cost \$1 million annually, beginning in 2021. In addition, CBO estimates that it would cost the agency about \$1 million to issue the required rules under the bill. (Spending by the CFPB is considered direct spending.) Over the 2019-2028 period, CBO estimates that implementing the bill would increase direct spending by \$9 million.

Under H.R. 5534, the CFPB also would be required to issue a rule to establish new guidelines for determining the size of the civil monetary penalties it issues and to align those guidelines with those published by other financial regulators. CBO estimates that amending current agency penalty guidelines would affect civil penalties collected by the CFPB (which are recorded in the budget as revenues) and the subsequent direct spending of those penalties. However, because any changes would be dependent on the outcome of future agency rules, CBO has no basis to determine whether future civil monetary penalties would be higher or lower than under current law.

Because enacting H.R. 5534 would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 5534 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5534 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the pro-

visions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires directed rule makings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 5534 as the “Give Useful Information to Define Effective Compliance Act”

Section 2. Procedures for Bureau guidance

This section cites the requirements to be carried out by the Director in issuing guidance that is necessary and appropriate to enable the Bureau to carry out Federal consumer financial law, including facilitating compliance with such law. This section also sets forward the definition for guidance as well as the proposed rule.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

CONSUMER FINANCIAL PROTECTION ACT OF 2010

**TITLE X—BUREAU OF CONSUMER
FINANCIAL PROTECTION**

* * * * *

Subtitle B—General Powers of the Bureau

* * * * *

SEC. 1022. RULEMAKING AUTHORITY.

(a) **IN GENERAL.**—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) **RULEMAKING, ORDERS, AND GUIDANCE.**—

(1) **GENERAL AUTHORITY.**—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) **STANDARDS FOR RULEMAKING.**—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) **EXEMPTIONS.**—

(A) **IN GENERAL.**—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objec-

tives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

- (i) the total assets of the class of covered persons;
- (ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and
- (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—

(A) IN GENERAL.—Notwithstanding any other provisions of Federal law and except as provided in section 1061(b)(5), to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(B) DEFERENCE.—Notwithstanding any power granted to any Federal agency or to the Council under this title, and subject to section 1061(b)(5)(E), the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.

(5) PROCEDURES FOR BUREAU GUIDANCE.—

(A) DEFINITIONS.—*In this paragraph—*

(i) *the term “Bureau” means—*

- (I) the Director of the Bureau;*
- (II) the Deputy Director of the Bureau; and*
- (III) any employee of the Bureau described in section 1013(a)(1)(B); and*

(ii) *the term “guidance”—*

(I) means—

(aa) an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue; and

(bb) any written interpretive rule, bulletin, statement of policy, letter, examination manual, frequently asked question, notice, directive, news release, blog post, small entity compliance guide, or other authoritative document issued by the Bureau regarding compliance with a Federal consumer financial law; and

(II) does not include—

(aa) a purely internal Bureau policy;

(bb) a law enforcement communication such as a complaint, consent order, judgment, legal opinion, warning letter, investigatory letter, notice of hearing, civil investigative demand, subpoena, no-action letter, advisory opinion, or any request in lieu of the foregoing;

(cc) an individualized supervisory communication such as a supervisory letter, report of examination, memorandum of understanding, board resolution, matter requiring attention, or individualized communication or agreement pursuant to the supervisory authority of the Bureau; or

(dd) a decision issued under subtitle E.

(B) **GUIDANCE REQUIREMENTS.**—The Director shall issue guidance that is necessary or appropriate to enable the Bureau to carry out Federal consumer financial law, including facilitating compliance with such law.

(C) **RULEMAKING.**—

(i) **PROPOSED RULE.**—Not later than 18 months after the date of enactment of this paragraph, the Bureau shall publish in the Federal Register and on the website of the Bureau a proposed rule defining—

(I) each type of guidance the Bureau shall provide;

(II) the criteria the Bureau shall use for selecting each type of guidance;

(III) the process and timelines for requests for guidance;

(IV) the time periods for the response of the Bureau to a request for each type of guidance; and

(V) a process for amending or revoking guidance issued under the rule, including a process for public input on any proposal to amend or revoke guidance, unless the Bureau determines public input is not required due to public exigency.

(ii) **FINAL RULE.**—Not later than 1 year after the date on which the proposed rule described in clause (i) is published, the Bureau shall publish a final rule based on the proposed rule.

(D) **RELIANCE ON BUREAU GUIDANCE.**—No person shall be held liable for any act done or omitted in good faith in conformity with any applicable guidance from the Bureau or any predecessor agency that was in effect at the time of the act or omission, even if the guidance is later revoked, amended, or rendered inconsistent by guidance or action by the Bureau or a determination by a court of competent jurisdiction.

(E) **DEVELOPMENT OF A PENALTY MATRIX.**—

(i) **PROPOSED RULE.**—Not later than 18 months after the date of the enactment of this subparagraph, the Bureau shall publish in the Federal Register and on the website of the Bureau a proposed rule establishing guidelines for determining the size of any civil monetary penalties issued by the Bureau based on the sever-

ity of the actionable conduct in violation of a Federal consumer financial law and the level of culpability. The regulations prescribed under this paragraph shall, to the extent possible, align with any chart, matrix, rule, or guideline published by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors.

(ii) FINAL RULE.—Not later than 1 year after the date on which the proposed rule described in clause (i) is published, the Bureau shall publish a final rule based on the proposed rule.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) SIGNIFICANT FINDINGS.—

(A) IN GENERAL.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(B) CONFIDENTIAL INFORMATION.—The Bureau may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with paragraphs (4), (6), (8), and (9).

(4) COLLECTION OF INFORMATION.—

(A) IN GENERAL.—In conducting any monitoring or assessment required by this section, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

(B) **METHODOLOGY.**—In order to gather information described in subparagraph (A), the Bureau may—

(i) gather and compile information from a variety of sources, including examination reports concerning covered persons or service providers, consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with covered persons and service providers, and review of available databases; and

(ii) require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.

(C) **LIMITATION.**—The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers.

(5) **LIMITED INFORMATION GATHERING.**—In order to assess whether a nondepository is a covered person, as defined in section 1002, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.

(6) **CONFIDENTIALITY RULES.**—

(A) **RULEMAKING.**—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(B) **ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.**—

(i) **EXAMINATION AND FINANCIAL CONDITION REPORTS.**—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) **PROVISION OF OTHER REPORTS TO THE BUREAU.**—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(C) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(7) REGISTRATION.—

(A) IN GENERAL.—The Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

(B) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.

(C) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(8) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(9) CONSUMER PRIVACY.—

(A) IN GENERAL.—The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person or service provider to the Bureau; or

(ii) as may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) TREATMENT OF COVERED PERSON OR SERVICE PROVIDER.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978, to a disclosure by a covered person or service provider subject to this subsection, the covered person or service provider shall be treated as if it were a “financial institution”, as defined in section 1101 of that Act (12 U.S.C. 3401).

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) REPORTS.—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

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MINORITY VIEWS

H.R. 5534, the “Give Useful Information to Define Effective (“GUIDE”) Compliance Act,” would direct the Consumer Financial Protection Bureau (“Consumer Bureau”) to issue a formal rule in the Federal Register establishing a scheme for the issuance of guidance materials and activities to the general public, including regulated entities. Specifically, this rule would have to define: (1) each type of guidance that the Consumer Bureau will provide; (2) the criteria for selecting each of these types; (3) the time periods by which the Consumer Bureau will respond to requests for guidance; and (4) the process, including a public notice and comment, by which guidance can be revoked or rescinded, unless the Consumer Bureau determines that a comment period is not needed due to public exigency.

We support considering ways that all Federal financial regulators, including the Consumer Bureau, could strengthen their guidance frameworks, and recognize this well-intended aim of H.R. 5534. However, H.R. 5534 goes too far.

The Consumer Bureau issues a wide variety of guidance, including interpretative rules, general statements of policy, and non-rule guidance. As underscored in the Consumer Bureau’s Request for Information (“RFI”) regarding its guidance implementation and support:¹

“The Dodd-Frank Act transferred to the [Consumer] Bureau rulemaking authority that previously had been exercised by seven other Federal agencies. Those agencies used a variety of methods for providing guidance to industry on interpretive questions arising under the statutes and regulations they administered. Such guidance is ‘widely understood to be an essential instrument of [F]ederal administration’ and facilitates compliance with Federal law. In particular, it allows agencies to articulate their positions in a ‘relatively low cost and flexible’ way and facilitates stakeholders’ knowledge of agency positions and intentions ahead of enforcement or similar actions.”²

In describing the importance of agencies’ flexible use of guidance materials in the RFI, the Consumer Bureau cited several sources,³ including *Hector v. USDA*,⁴ in which the Seventh Circuit Court of Appeals noted that “[i]t would be no favor to the public to discour-

¹ Consumer Financial Protection Bureau, Docket No. CFPB–2018–0013, available at: https://files.consumerfinance.gov/f/documents/cfpb_rfi_guidance-and-implementation_032018.pdf.

²*Id.*, at page 3.

³For example, see Nicholas R. Parrillo, “Federal Agency Guidance: An Institutional Perspective,” at 28 (Oct. 12, 2017) (Yale L. Sch.), available at: <https://www.acus.gov/report/agency-guidance-final-report>; and John F. Manning, “Nonlegislative Rules,” 72 Geo. Wash. L. Rev. 893, at 914–15 (2004).

⁴*Hector v. USDA*, 82 F.3d 165, 167 (7th Cir. 1996).

age the announcement of agencies' interpretations by burdening the interpretative process with cumbersome formalities". The RFI also pointed to *Cnty. Nutrition Inst. v. Young*,⁵ in which the D.C. Circuit Court of Appeals "[r]ecognize[d] that such guidelines have the not inconsiderate benefits of apprising the regulated community of the agencies' interpretations as well as informing the exercise of discretion by agents and officers in the field."

We are concerned that the bill would mandate a complex and burdensome new scheme on the Consumer Bureau that would impose unprecedented administrative and operational constraints on the agency's capacity to issue guidance. Limiting the agency's use of guidance materials would unduly hamstring its ability to be nimble and responsive in communicating with the general public about how it interprets Federal consumer financial laws and force it to create a formal process for its guidance framework. We believe that H.R. 5534 would ultimately decrease, not promote, the overall effectiveness and accessibility of the Consumer Bureau's guidance materials.

We also are troubled with the broad liability shield created in the bill that would prohibit the Consumer Bureau from holding people who fail to comply with guidance, that has later been altered or rescinded, accountable for their misconduct, as long as they can assert that they have relied in good-faith on even outdated guidance materials.

For these reasons, we oppose H.R. 5534.

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⁵*Cnty. Nutrition Inst. v. Young*, 818 F.2d. 943, 949 (D.C. Cir. 1987).