
What You Should Know About Submitting a Comment to the CFPB's Notice of Proposed Rule for Debt Collection: A Step-by-Step Guide

By Joann Needleman / Jul 02, 2019

The Consumer Financial Protection Bureau's (CFPB or Bureau) Notice of Proposed Rule (NPR) is a dense 500-page document. In the NPR, the CFPB puts forth numerous proposals which seek to clarify numerous debt collection processes that span from communicating with consumers to providing a new validation form. Many agencies and interested stakeholders are now thinking about submitting comments on the NPR to the CFPB. However, very few potential commenters are familiar with the formal process of submitting written comments to a federal agency, let alone determining what they should comment on. Keep in mind that the term "comment" does not necessarily mean that it has to be a criticism. The purpose of making a comment in a rulemaking is to ensure that a particular idea becomes part of the administrative record. An agency or stakeholder's comments to the NPR should reflect a particular point or issue of which the CFPB should be aware.

The following are some actions to consider as well as technical assistance in formulating comments for submission to the CFPB.

Reorganize the NPR

First and foremost, reorganize the NPR so it is simpler to digest and understand. The actual proposed rule starts on page 477. The Section-by-Section Analysis, which describes how the Bureau arrived at its proposals, precedes the rule and starts on page 45. Therefore, reading the NPR in sequential order, it is difficult to grasp and understand the Bureau's analysis. *Here's a tip:* Organize the NPR into 12 separate sections (§ 1006.1 thru 1006.42) plus the three appendices (Appendix A thru Appendix C). Each section should have three subparts: starting with the Proposed Rule, then the Section-by-Section Analysis, and finally the Official Interpretation. Organizing the NPR in this way will provide better context, consistency, and flow and will alleviate having to flip back and forth from the front of the document to the back.

Determining What Sections of the NPR are Relevant

Reorganizing the NPR will also allow you to more easily focus on only those sections that are most relevant for your respective agency. While industry trade associations will be submitting comprehensive comments touching all aspects of the NPR, it is recommended that agencies and interested stakeholders focus only on a few proposals that will have the most impact on the costs of day-to-day operations. The Bureau's rulemaking process is governed by the Administrative Procedures Act, which requires the Bureau to consider and apply a rigorous cost-benefit analysis to its proposals. Certainly, the Bureau is putting forth these proposals with the intent on benefitting consumers, but the same proposals must be weighed against the costs that could be imposed upon the industry. Therefore, to determine what sections are relevant to your agency, you should consider the potential costs to implement these proposals, not only in dollars and cents, but in terms of staff training and additional management and oversight. Looking at the NPR in this way will help drill down those relevant sections and provide a more narrow focus.

What Questions Should be Answered?

If you go through the Section-by-Section Analysis, you will notice that there are literally hundreds of questions posed by the Bureau. Responses to these questions form the comments. It is not suggested, and certainly not recommended, that you answer each and every question posed by the Bureau. However, once you determine which section(s) are relevant, you should review the Bureau's questions with regard to each section. The questions range from the very general (for example, seeking comment on a particular section as a whole), to the very specific, (for example, seeking comment on one aspect of a particular proposal). The section or sections you chose will offer guidance as to what questions warrant a response.

Alternative Comments and Proposals

Keep in mind that you are not limited to just answering the Bureau's questions; you are permitted to make any comment you like, especially if you think the Bureau has overlooked something in its proposals. Providing industry perspective, especially on established operations that could be disrupted by a proposal, is important and should be provided to the Bureau. Your comments should also be an opportunity to provide alternatives to any of the Bureau's proposals. For example, there could be something your agency does that achieves a result the Bureau is trying to accomplish in the NPR. Why not tell the Bureau there is a better way?

Formatting Your Comment

There is no set format or template to submitting a comment. Usually, comments are in the form of a letter which (1) gives an overview of the entity submitting the comment, (2) provides an overarching theme of the comments, and then (3) organizes the topics with comments by heading. If you are answering specific questions, you should recite the question verbatim – and possibly cite the page number – before each comment, followed by the proposed alternatives if any. If you are not answering any specific questions, be sure to refer to the section you are commenting on so that the Bureau can understand the relevance of the comment.

It is important that industry have critical mass when it comes to the filing of comments to the NPR. Comments can be filed electronically on

www.regulations.gov; search for the docket number CFPB 2019-0022. Although the deadline for filing comments is August 19, 2019, 48 consumers have already filed individual comments opposing the NPR and it is anticipated that more consumers will file comments in the next two months. Larger organizations will file their comments closer to the deadline. Don't miss this opportunity to let your voice be heard.