



August 2016

CONSUMER FINANCIAL PROTECTION BUREAU

Observations from Small Business Review Panels

GAO Highlights

Highlights of [GAO-16-647](#), a report to congressional requesters.

Why GAO Did This Study

The Regulatory Flexibility Act, which was amended by the Dodd-Frank Act, requires CFPB to convene Small Business Review Panels (also known as SBREFA panels) for rulemaking efforts that are expected to have a significant economic impact on a substantial number of small entities. These panels are intended to seek direct input early in the rulemaking process from small entities (which can include small businesses, small not-for-profit organizations, and small governmental jurisdictions) that would be impacted by CFPB's rulemakings. This report addresses the extent to which CFPB solicited, considered, and incorporated such inputs into its rulemakings, and the views of small entity representatives on CFPB's rulemaking process.

GAO analyzed and reviewed CFPB's rulemaking processes and documents and conducted semi-structured interviews with 57 of the 69 participants on four panels who agreed to be interviewed. The scope was limited to the four SBREFA panels that had associated final rules as of April 2016.

GAO does not make any recommendations in this report. CFPB generally agreed with our findings.

View [GAO-16-647](#). For more information, contact William Shear at (202) 512-8678 or shearw@gao.gov.

August 2016

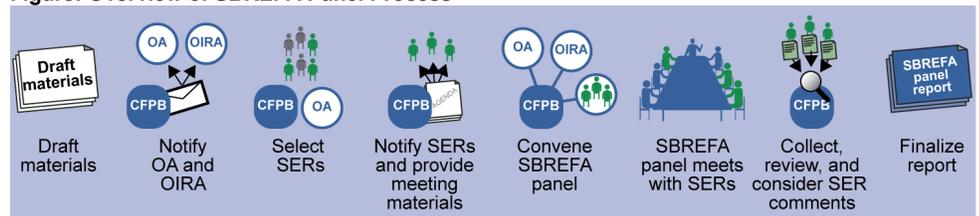
CONSUMER FINANCIAL PROTECTION BUREAU

Observations from Small Business Review Panels

What GAO Found

The Consumer Financial Protection Bureau (CFPB) has taken steps to solicit, consider, and incorporate inputs from small entities into its rulemaking process, as required by the Regulatory Flexibility Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). GAO reviewed documents from the four Small Business Regulatory Enforcement Fairness Act (SBREFA) panels that resulted in final rulemaking as of April 2016 and found CFPB completed required steps for conducting them (see fig.). CFPB addressed required elements for regulatory analyses that are components of the proposed and final rules. Based on a review of selected rules, GAO observed that the discussion of rule proposals and alternatives focused on reactions to proposals and alternatives CFPB presented. Some alternatives that small entity representatives raised at panels were discussed in a significant alternatives section of the proposed rules, while others were not. CFPB officials noted that data needed to make a fuller assessment of some alternatives from small entities were not always available. CFPB officials, consistent with statutory requirements for CFPB rulemakings, also said alternatives that CFPB presents for a panel discussion and in a proposed rule are those they deemed significant and consistent with applicable statutes.

Figure: Overview of SBREFA Panel Process



| | | | |
|------|--|--------|--|
| CFPB | Consumer Financial Protection Bureau | SBREFA | Small Business Regulatory Enforcement Fairness Act |
| OA | Small Business Administration's Office of Advocacy | SER | Small entity representative |
| OIRA | Office of Management and Budget's Office of Information and Regulatory Affairs | | |

Source: GAO analysis of information from CFPB and SBA's Office of Advocacy. | GAO-16-647

GAO interviewed 57 of the 69 small entity representatives who participated in the four SBREFA panels GAO reviewed and found they generally believed the process was useful but also that it could be improved. More than three-quarters stated the materials CFPB provided helped prepare them to provide constructive input, and two-thirds stated their industry was represented on the panels. However, two-thirds stated not enough time was allotted to discuss at least one of the topics on the panel agenda and a third suggested more time or additional meetings would improve the process. While 36 of 57 stated CFPB at least partially considered their comments in its rulemakings, most representatives expressed disagreement with CFPB's final rules for reasons such as increased cost of compliance. Specifically, 7 of 57 were satisfied with CFPB's final rules. CFPB officials noted that the rules for which GAO reviewed SBREFA panels were based on statutory requirements in the Dodd-Frank Act. In its rulemaking process, CFPB is to consider input from multiple sources and makes judgments deemed necessary to accomplish the stated objectives of applicable statutes.

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Abbreviations

| | |
|----------------|--|
| APA | Administrative Procedures Act |
| CFPB | Consumer Financial Protection Bureau |
| Dodd-Frank Act | Dodd-Frank Wall Street Reform and Consumer Protection Act |
| HMDA | Home Mortgage Disclosure Act |
| IRFA | Initial Regulatory Flexibility Analysis |
| MLO | Mortgage Loan Originator Compensation |
| MS | Mortgage Servicing |
| OA | Office of Advocacy |
| OIG | Office of Inspector General |
| OIRA | Office of Information and Regulatory Affairs |
| OMB | Office of Management and Budget |
| RFA | Regulatory Flexibility Act |
| SBA | Small Business Administration |
| SBREFA | Small Business Regulatory Enforcement Fairness Act |
| SER | small entity representative |
| TILA-RESPA | Truth In Lending Act and Real Estate Settlement Procedures Act |
| TRID | TILA-RESPA Integrated Disclosure |

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August 10, 2016

The Honorable David Vitter
Chairman
Committee on Small Business and Entrepreneurship
United States Senate

The Honorable James E. Risch
United States Senate

In certain cases, the Consumer Financial Protection Bureau (CFPB) is required to consider input from small businesses and other groups in its rulemaking process. Specifically, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Regulatory Flexibility Act (RFA) and required CFPB to convene Small Business Review Panels when proposed rules are expected to have a significant economic impact on a substantial number of small entities.¹ CFPB conducts the Small Business Review Panels, also known as Small Business Regulatory Enforcement Fairness Act (SBREFA) panels, to seek direct input from small entities whose business would be impacted by CFPB rulemaking—which can include small businesses, small not-for-profit organizations, and small governmental jurisdictions—before the release of a notice of proposed rulemaking.² One of the purposes of SBREFA is to give small businesses greater opportunity to participate and provide input into the development of regulations. Questions have been raised about the adequacy and thoroughness of CFPB’s analysis of

¹The Regulatory Flexibility Act (RFA) was enacted in 1980, Pub. L. No. 96-354, 94 Stat. 1164 (1980), (codified as amended in 5 USC §§ 601-612). This act was amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Pub. L. No. 104-121, 110 Stat. 857(1996), the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010), and the Small Business Jobs Act of 2010, Pub. L. No. 111-240, 125 Stat. 2504 (2010). The Small Business Regulatory Enforcement Fairness Act of 1996 established a requirement that the Environmental Protection Agency and the Occupational Safety and Health Administration convene SBREFA panels for those rules deemed to have a significant economic impact on a substantial number of small entities (see Pub. L. No. 104-121, § 244, 110 Stat. 857, 867 (1996)). Later, the Dodd-Frank Wall Street Reform and Consumer Protection Act placed the requirement for convening SBREFA panels on CFPB.

²Small organizations encompass any not-for-profit enterprises that are independently owned and operated and not dominant in their field (such as private hospitals and educational institutions), 5 USC, § 601(4).

impacts on small entities during the rulemaking process, and its adherence to RFA.

You asked that we examine CFPB's activities related to rulemaking efforts that involve small entities, including the activities related to conducting SBREFA panels to gather input from small entity representatives. This report addresses (1) the extent to which CFPB solicited, considered, and incorporated small entity inputs into its rulemakings; and (2) the views of the small entity representatives on CFPB's rulemaking process.

To assess the extent to which CFPB solicited, considered, and incorporated small entity inputs into rulemakings, we reviewed applicable laws, regulations, and guidance on CFPB's rulemaking process. We compared the requirements with CFPB's analyses on the impacts of four proposed rules on small entities. Specifically, we analyzed CFPB's rulemaking processes and documents on all final rulemakings in which SBREFA panels were convened and final rules issued. As of April 2016, four CFPB rulemakings involving SBREFA panels had resulted in final rules. The rulemakings were focused on mortgage lending rules: Truth In Lending Act and Real Estate Settlement Procedures Act (TILA-RESPA) Integrated Disclosure, Mortgage Servicing (for TILA and RESPA), Mortgage Loan Originator Compensation, and the Home Mortgage Disclosure Act (HMDA).

To assess the views of small entity representatives in CFPB's rulemaking processes, we contacted all representatives (69) who participated on the SBREFA panels associated with the four rulemakings. We conducted semi-structured interviews to seek the views and insights of representatives on CFPB's outreach efforts and materials provided before the SBREFA panels, the discussions at the panel meetings themselves, CFPB's consideration of representatives' comments, and CFPB's consideration of representatives' inputs for the proposed and final rules. We received responses from 57 of the 69 representatives (83 percent). For more information on our scope and methodology, see appendix I.

We conducted this performance audit from October 2015 through August 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

CFPB Rulemaking and the SBREFA Panel Process

The Dodd-Frank Act, which established CFPB, grants the agency authority to develop rules aimed at protecting consumers in the financial products and services marketplace.³ In particular, the Dodd-Frank Act requires that CFPB consider the

- potential benefits and costs to consumers and covered persons,
- impacts of proposed rules on small banks and credit unions, and
- impact of proposed rules on consumers in rural areas.

The act also requires CFPB to seek input from small entities during the rulemaking process for certain proposed rules. Specifically, when CFPB conducts a rulemaking that it determines will have a significant economic impact on a substantial number of small entities, CFPB must convene a SBREFA panel to seek direct input from small entities before issuing proposed rules for public comment, in addition to its normal rulemaking outreach to the public. This requirement extends beyond the typical rulemaking process, established under the Administrative Procedures Act, which encompasses the publication of most rules in the Federal Register and a period for public comment.⁴ The SBREFA panel requirement applies to CFPB, the Environmental Protection Agency, and the Occupational Safety and Health Administration.

Once convened, the SBREFA panel has 60 days to solicit input from small entities on a draft proposal of a rule and report this input as well as its findings in a panel report.⁵ The Regulatory Flexibility Act, as amended by the Dodd-Frank Act, requires CFPB to consider the input of small

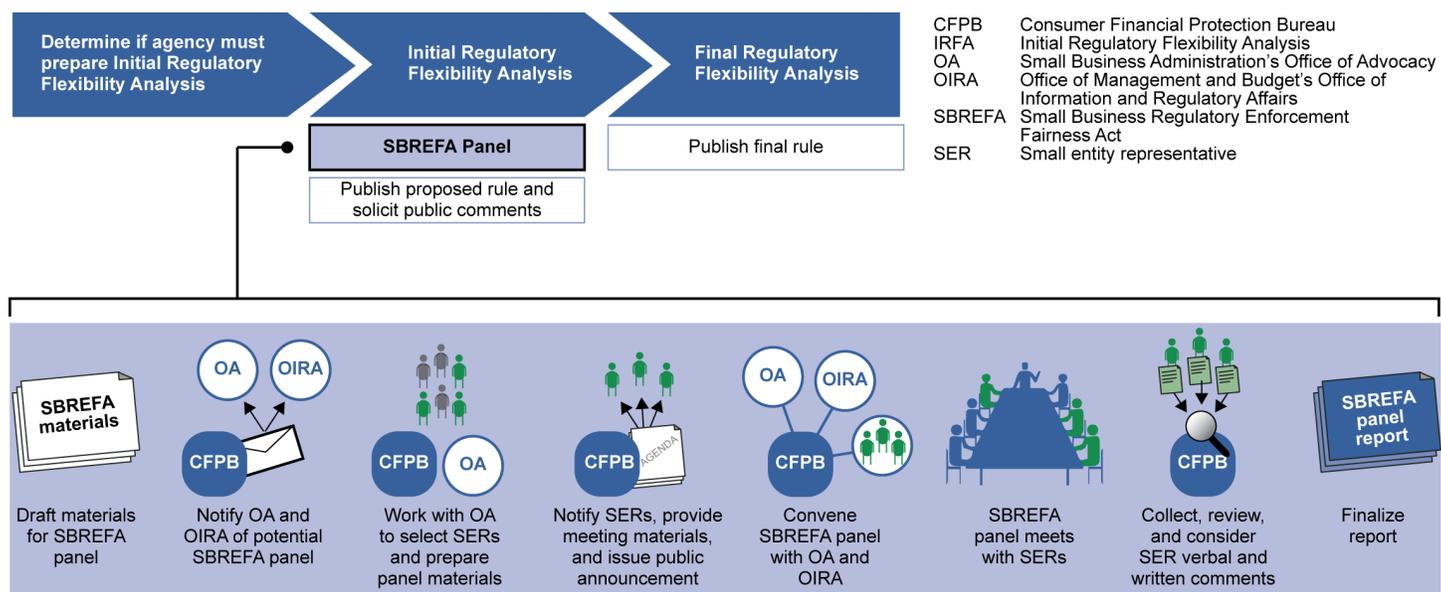
³CFPB is authorized to exercise its authorities under federal consumer financial law to administer, enforce, and otherwise implement the provisions of federal consumer financial law, Dodd-Frank Act, § 1022 (a).

⁴The Administrative Procedures Act (APA) (5 U.S.C. §§ 551-59, 701-06, 1305, 3105, 3344, 5372, 7521) was passed in 1946 to clarify the process of making regulations, and allow greater accessibility and participation by the public in the rulemaking process. In general, APA requires the publication in the *Federal Register* of most rules, and a period for public comment.

⁵The SBREFA panel report is publicly released in conjunction with publication of the proposed rule in the *Federal Register*.

entity representatives, which is reflected in the panel report, when drafting its proposed rule. See figure 1 for an overview of CFPB's rulemaking process and the SBREFA panel process.⁶

Figure 1 : Overall Rulemaking Steps and Process for Small Business Regulatory Enforcement Fairness Act Panels



Source: GAO analysis of information from CFPB and SBA's Office of Advocacy. | GAO-16-647

The SBREFA panels are chaired by CFPB and include other government agency representatives from the Small Business Administration's (SBA) Office of Advocacy and the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs. Once CFPB has made the determination to convene a SBREFA panel, it must identify the appropriate number and mix of small entity representatives for the purpose of obtaining advice and recommendations from the individuals about the potential impacts of the proposed rule. These representatives are to be selected from small businesses, not-for-profit organizations, and

⁶Section 1100G of the Dodd-Frank Act amended some provisions of RFA, requiring CFPB to convene a SBREFA panel to seek direct input from small entities before issuing rules that the agency expects could have a significant economic impact on a substantial number of small entities.

government jurisdictions. Specifically, the Regulatory Flexibility Act, as amended by the Dodd-Frank Act, requires that CFPB identify these small entity representatives in consultation with the Chief Counsel for Advocacy of SBA.⁷ A small business must meet certain statutory definitions and SBA size standards to be eligible to participate in the SBREFA panel process.⁸

Before meeting with small entity representatives, CFPB, in collaboration with SBA's Office of Advocacy and OMB's Office of Information and Regulatory Affairs, develops an information package to share with small entity representatives. These materials typically contain information about the background and requirements for the proposed rule, an overview of the proposed rule (including a preliminary assessment of the potential impacts), and any alternatives under consideration, as presented by CFPB.⁹ CFPB also provides small entity representatives with an agenda and a list of potential discussion topics for the panel meeting, a fact sheet and other verbal and written information about their role in the process, and questions posed to small entity representatives on the impacts of the proposed rules for the meeting. CFPB officials also mentioned that they sometimes observed operations relevant to the rulemaking at a financial services organization.

Initial and Final Regulatory Flexibility Analyses

When CFPB convenes a SBREFA panel, the panel must assess certain impacts of proposed rules before their release for public comment as a Notice of Proposed Rulemaking. Accordingly, topics of discussion for the panel meeting with small business representatives address subject areas that CFPB is required to assess in its rulemakings. In particular, CFPB must prepare an Initial Regulatory Flexibility Analysis with the following required elements:

⁷5 U.S.C. § 609(b)(2), (4).

⁸Agencies must use the size standards contained in SBA's regulations for small business size standards, 13 C.F.R. § 121.201, or follow the consultation procedures in 5 U.S.C. § 601(3) of RFA. See Small Business Administration, Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (Washington, D.C.: May 2012).

⁹The materials provided to the SBREFA panel must include "any material the agency has prepared in connection with the RFA, including any draft proposed rule," 5 U.S.C. § 609(b)(4).

-
- a description and estimate, where feasible, of the number of small entities to which the proposed rule will apply;
 - a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule;
 - an identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap, or conflict with the proposed rule;
 - a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities;
 - a description of any projected increase in the cost of credit for small entities (and, if so, any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize any increase in the cost of credit for small entities); and
 - a description of the advice and recommendations of representatives of small entities relating to the issues described above.¹⁰

Subsequent to the panel meeting with small entity representatives, the panel must prepare a report that summarizes the input of the small entity representatives and recommendations of the panel members. Accordingly, CFPB collaborates with SBA's Office of Advocacy and OMB's Office of Information and Regulatory Affairs to prepare the report, which is required to be completed within 60 days after the panel convenes. It is publicly released in conjunction with the release of the proposed rule as a Notice of Proposed Rulemaking in the Federal Register. Once the proposed rules are publicly released, another comment period is open to any interested parties, organizations, and the public in general.

After the comment process is complete for a proposed rule and CFPB has decided to finalize the rule and continues to find that the proposed rule will have a significant economic impact on a substantial number of small entities, CFPB then must prepare a Final Regulatory Flexibility

¹⁰5 U.S.C. § 603 (b)-(d). The Initial Regulatory Flexibility Analysis must also include a description of the reasons why action by the agency is being considered and a succinct statement of the objectives of, and legal basis for, the proposed rule.

Analysis in conjunction with the final rule. This final analysis must include the following elements:

- description and estimate of the number of small entities to which the proposed rule will apply or an explanation of why no such estimate is available;
- description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule;
- description of the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including reasons for selecting the alternative adopted and rejecting other significant alternatives; and
- description of the steps taken to minimize any additional cost of credit for small entities.¹¹

Inspector General Affirmed CFPB's Compliance with Section 1100G of the Dodd-Frank Act

The Office of Inspector General (OIG) for the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau has reviewed certain aspects of CFPB's rulemaking process, including the SBREFA panel process. In its September 2014 report, the OIG concluded that CFPB complied with Section 1100G of the Dodd-Frank Act in its operation of the SBREFA panels and rulemaking processes.¹²

The OIG also found that CFPB's interim policies and procedures had been in use for approximately 2 years without being updated or finalized. The interim policies had afforded CFPB staff significant discretion in their rulemaking approach to regulatory analysis, which contributed to a variance in documentation and inconsistent knowledge transfer practices. At the time of the OIG review, CFPB used interim guidance to detail the

¹¹5 U.S.C. § 604 (a)(4)-(6). The Final Regulatory Flexibility Analysis must also include a description of the reasons why action by the agency is being considered, significant issues raised by public comments to the Initial Regulatory Flexibility Analysis and any changes to the proposed rule made as a result, and the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration to the proposed rule.

¹²Office of Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau: *The CFPB Complies With Section 1100G of the Dodd-Frank Act, But Opportunities Exist for the CFPB to Enhance Its Process*, 2014-SR-C-013, September 2014.

agency's rulemaking process, which included utilizing the SBREFA process as required under the Dodd-Frank Act. CFPB used the interim guidance in the development and issuance of the four rules we reviewed, all of which were published in the Federal Register as proposed rules for public comment prior to September 2014.

The OIG made recommendations for CFPB to finalize its interim guidance documents and enhance data repository measures. CFPB finalized its internal guidance documents in 2014. As of March 2016, the OIG noted that CFPB had agreed with its recommendations. OIG staff also told us that corrective actions were underway and that the recommendations remained open as they awaited further documentation from CFPB to close out the recommendations, as of June 2016.

CFPB Met Requirements to Solicit, Consider, and Incorporate Small Business Inputs into Rulemakings

CFPB Met Requirements for Conducting SBREFA Panels

CFPB Selected and Informed Panel Participants and Solicited Their Input

CFPB, in collaboration with SBA's Office of Advocacy and OMB's Office of Information and Regulatory Affairs, accomplished required steps for conducting the four panels that we reviewed—including soliciting the input of small entity representatives at panel meetings. In addition, before the panel discussions CFPB worked with SBA's Office of Advocacy to identify and select candidates to be small entity representatives. CFPB, SBA's Office of Advocacy, and OMB's Office of Information and Regulatory Affairs also worked collaboratively to develop and send materials to small entity representatives before panel meetings. The materials included information on the draft proposed rule (with a preliminary assessment of the potential impacts), discussion questions, and the SBREFA process.

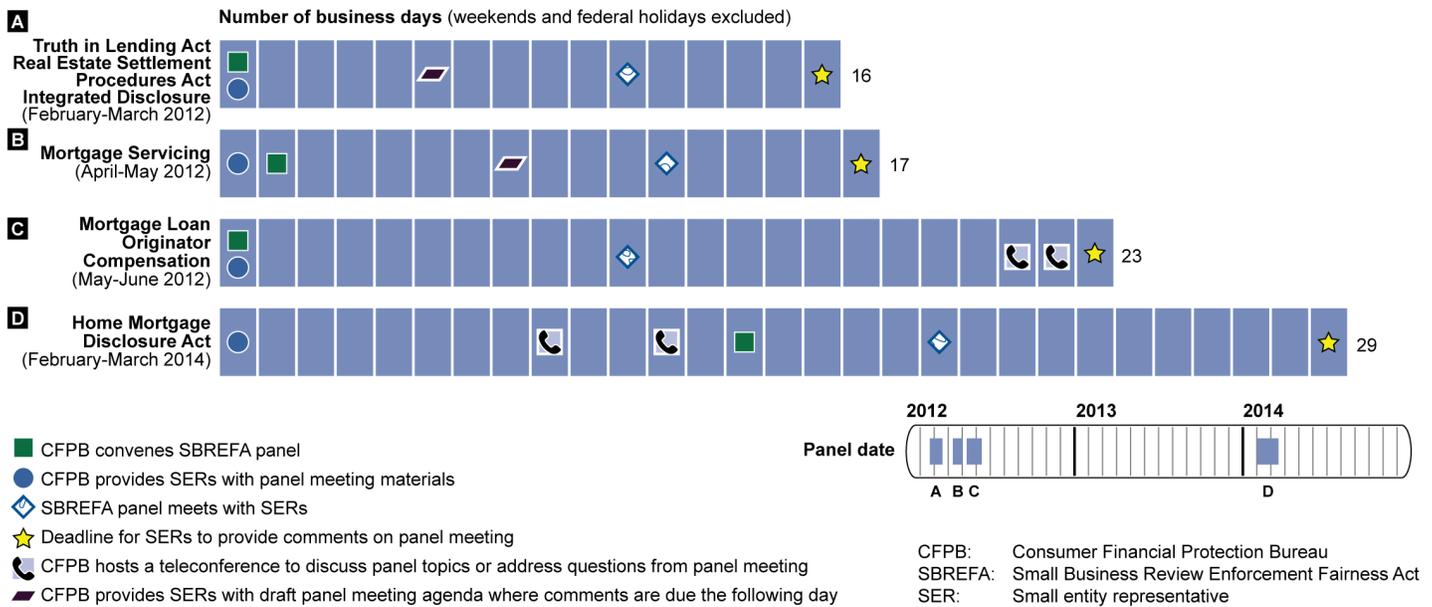
Time Frames to Solicit Inputs
from Small Entity
Representatives Varied

Based on our analysis of testimonial and documentary evidence, we found evidence of collaboration between CFPB and SBA's Office of Advocacy concerning the selection of small entity representatives. In doing so, we noted that different representatives appeared in each of the four panels. We also found that CFPB worked with trade associations to identify potential candidates for small entity representatives and further vetted organizations to help ensure that a variety of entity types were represented at the panel meeting, including those of varying sizes and from different geographic areas.

The time frames afforded to small entity representatives to provide input before panel meetings generally increased over time (see fig. 2). CFPB's actions occurred within the context of a Regulatory Flexibility Act requirement, to complete panel reports 60 calendar days after the panels were convened. CFPB defines "convened" as the date on which CFPB, SBA's Office of Advocacy, and OMB's Office of Information and Regulatory Affairs formally established the panel, not the date on which the panel meeting with small entity representatives occurred.¹³ In earlier panels, CFPB either convened the panels shortly before providing representatives with materials or concurrently. Then, representatives had from 10 to 11 business days to review materials before panel meetings. For the most recently completed panel we reviewed (HMDA), CFPB first sent out materials and allowed 18 business days for representatives to provide input before the panel meeting. During this period, CFPB hosted teleconferences with representatives to help prepare them for the panel meeting. Then CFPB held the meeting 5 business days after convening the panel.

¹³By way of contrast, EPA's SBREFA panels are convened at the first formal meeting of the panel members. See *EPA's Action Development Process: Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Act*, at 64 (2006).

Figure 2: Milestones Related to Input from Small Entity Representatives during Panel Process, 2012-2014



Source: GAO analysis of CFPB information. | GAO-16-647

Note: The timelines above illustrate CFPB's outreach activities to small entity representatives in business days before and after the SBREFA panel was convened. The panel is required to issue a panel report 60 calendar days after the panel is convened.

CFPB officials said that their process has evolved to extend time spent on outreach to small entity representatives; specifically, they conducted more outreach with small entity representatives prior to convening the panel in connection with those regulations for which the Dodd-Frank Act did not mandate a specific issuance date (as with the HMDA panel). CFPB officials explained that the agency had less flexibility on the earlier panels because of the time frames required by the Dodd-Frank Act for the completion of the associated rules.

Similarly, the time allowed for small entity representatives to provide comments after the panel meetings (which were all-day meetings) varied. For instance, on the first panel to discuss the rule on the TILA-RESPA Integrated Disclosure, the panel provided an additional 5 business days for representatives to submit comments after the panel meeting. Therefore, representatives were given a total of 16 business days to review materials and provide input. For the HMDA rule, CFPB provided an additional 10 business days after the panel meeting for representatives to provide comments, giving representatives a total of 29

CFPB Completed Required Reporting on Panels

business days to review materials, meet with the panel, and provide inputs to the rulemaking.

CFPB, SBA's Office of Advocacy, and OMB's Office of Information and Regulatory Affairs also collaborated to prepare panel reports as required. The panel reports we reviewed summarized the topics addressed during the panel discussions as well as the recommendations from the panels. These topics were consistent with the elements of the Initial Regulatory Flexibility Analysis that rulemakings under RFA, including those in the SBREFA process, must address. The panel reports also included written comments by small entity representatives within the appendices of the reports.

The agencies generally completed the reports within the deadline of 60 days after the panel was convened.¹⁴ In preparing the panel reports, CFPB and SBA's Office of Advocacy noted the challenges presented by the 60-day deadline. During this period, the panel sends materials to small entity representatives with time for review, conducts a formal meeting with the small entity representatives to gather their input, and provides time for the representatives to provide written comments before drafting the panel report. As previously discussed, CFPB considers a panel to be convened on the date it was established, not the date it met. Therefore, the later the panel meets with the small entity representatives, the more challenging it becomes to prepare the panel report within the deadline. After the panel report is prepared by the three agencies, CFPB makes it publicly available as part of its Notice of Proposed Rulemaking in the Federal Register. For the rulemakings we reviewed, the panel reports were publicly released approximately 2–4 months after the reports were completed and approximately 4–6 months after the panels were convened.¹⁵

¹⁴One of the panel reports in our review, addressing the Mortgage Loan Originator Compensation rules, was finalized 2 days beyond the 60-day requirement. According to CFPB, this occurred because it determined that in order to allow additional opportunities for representatives to understand and comment on proposals under consideration, it would offer two additional conference calls, not required by statute, with small entity representatives.

¹⁵Panel members (CFPB, SBA's Office of Advocacy, and OMB's Office of Information and Regulatory Affairs) collaboratively prepare the panel report, which is subsequently publicly released with the Notice of Proposed Rulemaking in the *Federal Register*.

CFPB Addressed Required Elements of Initial and Final Regulatory Flexibility Analyses

CFPB addressed required elements for Initial and Final Regulatory Flexibility Analyses under the Regulatory Flexibility Act, as amended by the Dodd-Frank Act, and also for more general rulemaking requirements. Based on our review, CFPB's Notices of Proposed Rulemaking that accompany the four proposed rules incorporated the required elements of an Initial Regulatory Flexibility Analysis. Similarly, the Notices of Final Rulemaking associated with these four rules addressed the required elements in the Final Regulatory Flexibility Analysis.

Each of the Notices of Proposed Rulemaking also included discussion of the required elements that apply to CFPB rulemakings generally, beyond the Regulatory Flexibility Act requirements. The elements are:

- the potential benefits and costs to consumers and covered persons;¹⁶
- impacts of proposed rules on depository institutions and credit unions with \$10 billion or less in total assets;¹⁷ and
- impact of proposed rules on consumers in rural areas.¹⁸

Although CFPB addressed the general requirements, CFPB acknowledged that its assessments of impacts on consumers in rural areas in the proposed and final rules were sometimes not fully known because of limited information. In such cases, CFPB generally stated that it had limited information on such impacts and would continue seeking information and data on the impacts.¹⁹

¹⁶This requirement includes consideration of the potential reduction of access by consumers to financial products or services, Dodd-Frank Act, § 1022 (b)(2)(A)(i) (codified at 12 U.S.C. § 5512(b)(2)(A)(i)).

¹⁷Dodd-Frank Act § 1022(b)(2)(A)(ii) (codified at 12 U.S.C. § 5512(b)(2)(A)(ii)) and § 1026 (codified at 5 U.S.C. § 5516).

¹⁸Dodd-Frank Act, § 1022(b)(2)(a)(ii) (codified at 12 U.S.C. § 5512(b)(2)(A)(ii)).

¹⁹In January 2013, CFPB issued a rule that designated rural areas on a county-by-county basis using definitions developed by OMB. In 2015, CFPB expanded the definition of "rural" to include census blocks that the Bureau of the Census defines as being outside of urban areas, allowing additional areas to be considered rural.

Information on Panels Focused on CFPB Proposals and Alternatives

Our review of the rulemaking documents indicates that the discussion of the rule proposals and alternatives in panel reports, and the Notices of Proposed Rulemaking, focused on reactions to the proposals and alternatives that CFPB presented. In cases in which the documents included alternatives put forth by small entity representatives, the alternatives proposed by small entity representatives were typically focused on who should be exempt from a proposed rule or how much time should be allowed to implement it. The Regulatory Flexibility Act requires that each CFPB Initial Regulatory Flexibility Analysis include, among other things, a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rules on small entities and any increase in the cost of credit for small entities.²⁰ CFPB makes judgments about which alternatives meet this requirement. The following examples illustrate the CFPB focus in the rulemaking documents that we reviewed:

- **Panel materials:** As described earlier, panel materials include an overview of the proposed rule and any alternatives under consideration, as presented by CFPB. In the panel materials disseminated for each of the four rulemakings, CFPB presented its “Outline of Proposals under Consideration and Alternatives Considered.” Consistent with its internal guidance, CFPB developed the proposals and alternatives presented in these documents to facilitate inputs from small entity representatives. For example, in the panel materials for the TILA-RESPA Integrated Disclosure rulemaking, CFPB presented alternative prototypes for the “Loan Estimate” and “Settlement Disclosure” documents. According to CFPB, testing on these alternative prototypes with consumers was completed in January 2012, before the SBREFA panel met with representatives in March 2012.
- **Panel reports:** The panel reports generally comprehensively discussed different aspects of proposals and alternatives presented by CFPB. In reviewing the alternatives in the panel reports, we found that the discussions also principally addressed the proposed rules and alternatives presented by CFPB in the panel materials. Accordingly, the majority of comments from representatives in the panel reports

²⁰See 5 U.S.C. § 603 (c); 5 U.S.C. § 603 (d)(1)(B).

were focused on their reactions to CFPB's proposed rules and alternatives. Furthermore, some of the comments reflected discussions over which entities should be exempt from the proposed rules and time frames to implement them. For instance, on the HMDA rulemaking, representatives conveyed their positions on the appropriate threshold for exemption from certain reporting requirements. CFPB officials said that it was not often the case that small entity representatives offered a large volume of alternatives. The SBREFA panel republishes the small entity representatives' written comments in an appendix of the panel report. In some cases, panel reports include summaries of small entity representatives' ideas for alternatives to CFPB's proposed rules—that is, the discussion ranged beyond numeric exemption thresholds and implementation time frames. For example, in the report on Mortgage Loan Originator Compensation, small entity representatives asserted that the economic costs of origination vary with the loan balance, and therefore, a flat loan origination fee was unsuitable.

- **Proposed rules:** The Notices of Proposed Rulemaking contained discussion and assessment of CFPB's proposed alternatives. We found that some alternatives posed by representatives as part of the SBREFA panel process were discussed and assessed in the proposed rule and others were not. For example, for the proposed rule on Mortgage Loan Originator Compensation, CFPB discussed an alternative proposal from small entity representatives in the section of the proposed rule discussing significant alternatives.²¹ We also observed that CFPB often used the significant alternatives section of the Notice of Proposed Rulemaking to further elaborate on its own proposed rules. In an example of an alternative not presented in the significant alternatives section of the proposed rule, small entity representatives for the HMDA rulemaking sought an alternative for “CFPB to limit the addition of data points to those mandated by the Dodd-Frank Act and only as necessary to meet the HMDA purposes” to address concerns about the burdens and costs associated with new data points, particularly those not specifically enumerated in the

²¹This section of the proposed rule, which is titled “Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact on the Proposed Rule on Small Entities,” is contained in the Initial Regulatory Flexibility Analysis.

Dodd-Frank Act.²² In its notice of proposed rulemaking, CFPB acknowledged concerns about the proposals to add new data points to the HMDA reporting requirements, but did not explicitly present the alternative offered by small entity representatives to limit the addition of new data points.²³ During the comment period for this proposed rule, SBA's Office of Advocacy commented on this alternative emphasizing that these data points were not statutorily required and urged CFPB to exempt small entities from collecting such data points until CFPB had the opportunity to determine whether the additional information furthered the goals of HMDA. As required by the RFA, CFPB responded to the comments of the Office of Advocacy, including its comment on discretionary data points, in its Final Regulatory Flexibility Analysis, which was published in the final HMDA rule.²⁴ Other interested parties can identify or comment on alternatives as part of the proposed rule comment period.

CFPB officials emphasized that they solicited alternatives from small entity representatives, but were not required to list in the Notice of Proposed Rulemaking all alternatives offered by the small entity representatives. They only had to include those that they deemed significant and consistent with applicable statutes of the proposed rule.²⁵ The officials also noted that data needed to make a fuller assessment of some alternatives from small entities were not always available. In developing the panel materials, CFPB officials stated that the agency sought to balance the need to develop enough information for consideration before the panel convened against providing such complete information that it would appear the agency had reached a conclusion on

²²*Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Home Mortgage Disclosure Act (HMDA) Rulemaking*, April 24, 2014, p. 21. The panel report, which summarizes the small entity representatives' comments on the issue of additional data points (such as information about applicants and borrowers; loan features and pricing; unique identifiers for loans, properties, and loan originators; and other information that CFPB may deem appropriate) was publicly released in conjunction with the proposed rule (which references a CFPB website address to access the panel report).

²³79 Fed. Reg. 51731, 51853 (Aug. 29, 2014). CFPB discussed concerns tied to specific data points in part V, "Section-by-Section Analysis", of the Notice of Proposed Rulemaking. See 79 Fed. Reg. at 51761-51810.

²⁴80 Fed. Reg. 66127, 66300 (Oct. 28, 2015).

²⁵See 5 U.S.C. §603(c).

the content of the rule. As mentioned earlier, CFPB and SBA’s Office of Advocacy officials emphasized the challenge of completing the panel report within 60 days of convening the SBREFA panel. At the same time, CFPB officials stated that the public, including trade associations and small entities themselves, had opportunities to comment and provide additional information on the proposed rule after the SBREFA process was completed during the public comment period.

Small Entity Representatives Generally Viewed Panel Process as Useful, but Expressed Their Views on Areas for Improvement

Small entity representatives’ views on the panel process were generally positive, but they also suggested areas for improvement. When asked their overall views on the SBREFA process (question 29 of structured interview, see app. II), 25 of 57 representatives we interviewed said the SBREFA process was good, 20 stated that they were glad to have served as small entity representatives, and 18 said the process was a good opportunity to be heard.²⁶ For instance, 1 representative said her voice was heard and she would participate on another SBREFA panel if asked in the future. Another said the SBREFA panel was a learning process for CFPB and he would “jump at the opportunity” to be a part of it again.

Conversely, 13 of the 57 representatives stated that they felt CFPB treated the process as a formality. For example, 1 said CFPB was good at following processes but felt that it did not listen to input. He added that he felt CFPB’s mind was made up before the panel took place. Another felt the panel was more symbolic than meaningful—there was no reflection of input from small entity representatives in the rule and that representatives were not given a valid role in the rulemaking. Furthermore, 7 representatives felt the process was hindered by CFPB’s lack of knowledge of their industry. For example, one said CFPB staff did not have enough practical experience and during the panel meeting there was limited time to talk about the actual rule because small entity representatives had to explain certain banking processes to CFPB.

²⁶Because our question was open-ended, an interviewee could have commented on several issues and would have been counted more than once. Likewise, not all interviewees provided a response to every open-ended question. Thus in the responses for question 29, the tally of the categories of responses (63) added to more than the total number of representatives we interviewed (57) while at the same time all these coded responses came from only 38 interviewees.

Finally, 15 representatives felt the SBREFA process could be improved. For instance, one said she would have liked more detailed discussion with live beta or mock-up testing with her operational people so they could test some of the things CFPB proposed. She believes this would have produced a better rule. Another said there should have been a second panel meeting after publishing the proposed rule to discuss the topics again and so that representatives could better evaluate it. This representative further noted that with two panels, during the first panel CFPB could focus on closing its knowledge gaps in relation to how industries operate their businesses.²⁷

**Small Entity
Representatives Generally
Stated CFPB's Outreach
Efforts and Materials
Helped Prepare Them for
Panels**

As discussed previously, CFPB conducted outreach efforts to prepare small entity representatives to provide constructive input during the panel meeting and the efforts varied by panel (see table 1). For all panels, CFPB provided the representatives with materials that included the draft proposal for rulemaking, discussion questions, and a fact sheet describing the SBREFA process. For the panels on the TILA-RESPA Integrated Disclosure and Mortgage Servicing rules, CFPB also provided representatives with a draft agenda for the panel meeting and the opportunity to comment. For the HMDA panel only, CFPB conducted two sets of teleconferences before the panel meeting to discuss elements of the draft proposal for rulemaking.

²⁷The formal panel process must be concluded within 60 days from the formal convening of the panel to the completion of its report. According to statute, the SBREFA process must be completed prior to the Notice of Proposed Rulemaking.

Table 1: CFPB’s Outreach Efforts to Help Prepare Small Entity Representatives for Meetings with SBREFA Panels

| Rule | Provided panel materials | Solicited feedback on meeting agenda | Conducted teleconferences ⁺ |
|------|--------------------------|--------------------------------------|--|
| TRID | ✓ | ✓ | ✗ |
| MS | ✓ | ✓ | ✗ |
| MLO | ✓ | ✗ | ✗ |
| HMDA | ✓ | ✗ | ✓ |

Source: CFPB. | GAO-16-647

Legend:

✓: Yes

✗: No

CFPB: Consumer Financial Protection Bureau

SBREFA: Small Business Regulatory Enforcement Fairness Act

TRID: Truth in Lending Act - Real Estate Settlement Procedures Act Integrated Disclosure

MS: Mortgage Servicing

MLO: Mortgage Loan Originator Compensation

HMDA: Home Mortgage Disclosure Act

⁺These are teleconferences that address elements of CFPB’s draft proposal for rulemaking, and were held in addition to the teleconferences that introduce small entity representative to the SBREFA process.

Of the 57 small entity representatives we interviewed, 31 believed CFPB’s outreach efforts prepared them to provide constructive input during the SBREFA panel meeting (question 6) and 15 said CFPB efforts partially prepared them (see table 2). The HMDA panel had the greatest share of representatives who said CFPB’s outreach efforts prepared them to provide constructive input and the Mortgage Loan Originator Compensation panel had the smallest share. Seven representatives from the HMDA panel specifically mentioned the teleconferences were helpful when asked about CFPB’s outreach efforts.

Table 2: Responses of Small Entity Representatives to Question 6: “Did CFPB’s Outreach Efforts Prepare You to Provide Constructive Input during SBREFA Panel Meetings?”

| Rule | Yes | No | Partial | Do not recall | Total |
|--------------|-----------|----------|-----------|---------------|-----------|
| TRID | 8 | 3 | 4 | 1 | 16 |
| MS | 6 | 2 | 4 | 0 | 12 |
| MLO | 3 | 2 | 6 | 1 | 12 |
| HMDA | 14 | 2 | 1 | 0 | 17 |
| Total | 31 | 9 | 15 | 2 | 57 |

Source: GAO tabulation of responses to structured interviews. | GAO-16-647

Legend:

CFPB: Consumer Financial Protection Bureau

SBREFA: Small Business Regulatory Enforcement Fairness Act

TRID: Truth in Lending Act - Real Estate Settlement Procedures Act Integrated Disclosure

MS: Mortgage Servicing

MLO: Mortgage Loan Originator Compensation

HMDA: Home Mortgage Disclosure Act

Notes: We interviewed small entity representatives who participated on the SBREFA panels that CFPB convened during the TRID, Mortgage Servicing, Mortgage Loan Originator Compensation, and HMDA rulemakings. We interviewed 57 of 69 small entity representatives who participated in SBREFA panels for the four rulemakings.

Furthermore, when asked how were CFPB’s outreach efforts constructive or not constructive (question 7), 12 small entity representatives stated they needed more time to prepare for the panel. For example, responses from representatives included not enough time to prepare responses to the information CFPB requested; not enough time to reach out to other businesses and suppliers to gauge the proposal’s impacts; and not enough time to perform their day-to-day duties at their companies when preparing for the panel. CFPB officials stated that the role of small entity representatives does not include reaching out to other businesses or entities. As discussed previously, the time CFPB had available for outreach in the first three panels was constrained by the deadlines imposed by the Dodd-Frank Act to promulgate implementing regulations.

When asked how CFPB’s outreach could be improved (question 8), 10 of 57 small entity representatives suggested CFPB obtain more knowledge of industry practices before convening the panels. For example, one representative believed CFPB was surprised by answers representatives provided to their questions because the agency lacked real world experience; the representative suggested CFPB do site visits with typical

small entities to become better informed. Another representative said CFPB did not know what entities regulated its business or its reporting requirements, and that CFPB did not understand day-to-day operations in their line of business. CFPB officials stated they were diligent in their desire to understand business practices so they focused their attention on these areas during outreach. In addition, 7 of 57 said CFPB could provide better guidance about the role of small entity representatives in the process or what to expect at the panel meeting. For example, one representative believed some comments from small entity representatives at the panel meeting were not helpful because expectations were not set, including the type of input CFPB was seeking. As discussed previously, CFPB provides written and verbal guidance to representatives on what to expect in the panel and their role in the SBREFA process.

As part of CFPB's outreach efforts, they provided materials to the small entity representatives, including a draft proposal of the rule (with a preliminary assessment of the potential impacts), discussion questions for the panel meeting, and a fact sheet on the SBREFA process. Of the 57 small entity representatives we interviewed, 44 stated the CFPB materials prepared them to provide constructive input at the panel meeting (question 11). Also, 33 stated CFPB provided these materials with time for sufficient review before the panel (question 10). Although most representatives responded favorably regarding the materials and the usefulness of the materials, 17 commented that the materials omitted some information or guidance that could have better prepared them to participate in the panel meeting (question 12). For example, one small entity representative suggested CFPB include examples of the types of impacts for which they were looking and another suggested CFPB include how it calculated cost increases.

Representation of Industry on Panels Mostly Viewed Positively, with One Exception

Although 38 of 57 small entity representatives stated CFPB had selected participants who represented their respective industries (question 14), most small entity representatives on the Mortgage Loan Originator Compensation panel did not believe their industry was well represented (see table 3 below). This sentiment was consistent across the industry representatives we interviewed. For this panel, the mortgage broker industry had the most representatives (7 of 17) of the five industries represented (the other four groups were commercial banks, credit unions, mortgage companies, and nonprofit housing organizations). However, several mortgage brokers believed their industry was not well-represented. For example, one mortgage broker said his industry should have had more representation because of the effects the rule has had on

mortgage brokers. In contrast, representatives from another industry said their industry was not well represented because so many mortgage brokers were on the panel. As discussed previously, CFPB works with SBA's Office of Advocacy to determine the appropriate number of panelists to represent each industry.

Table 3: Responses of Small Entity Representatives to Question 14: "Was Your Industry Represented among the Small Entity Representatives Who Participated in the Panel?"

| Rule | Yes | No | Partial | Do not recall | Total |
|--------------|-----------|-----------|----------|---------------|-----------|
| TRID | 11 | 2 | 3 | 0 | 16 |
| MS | 10 | 1 | 0 | 1 | 12 |
| MLO | 3 | 7 | 2 | 0 | 12 |
| HMDA | 14 | 0 | 3 | 0 | 17 |
| Total | 38 | 10 | 8 | 1 | 57 |

Source: GAO tabulation of responses to structured interviews. | GAO-16-647

Legend:

TRID: Truth in Lending Act - Real Estate Settlement Procedures Act Integrated Disclosure

MS: Mortgage Servicing

MLO: Mortgage Loan Originator Compensation

HMDA: Home Mortgage Disclosure Act

Notes: We interviewed small entity representatives who participated on the Small Business Regulatory Enforcement Fairness Act (SBREFA) panels that the Consumer Financial Protection Bureau (CFPB) convened during the TRID, Mortgage Servicing, Mortgage Loan Originator Compensation, and HMDA rulemakings. We interviewed 57 of 69 small entity representatives who participated in SBREFA panels for the four rulemakings.

Some Small Entity Representatives Stated More Time Was Needed for Discussion during Panels

In our interviews, we asked the 57 small entity representatives if enough time had been provided during the meetings of the SBREFA panels to collect their advice and recommendations on the following topics (question 15):

- a. **Applicability.** A description and estimate of the number of small entities to which the proposed rule will apply.
- b. **Compliance.** A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

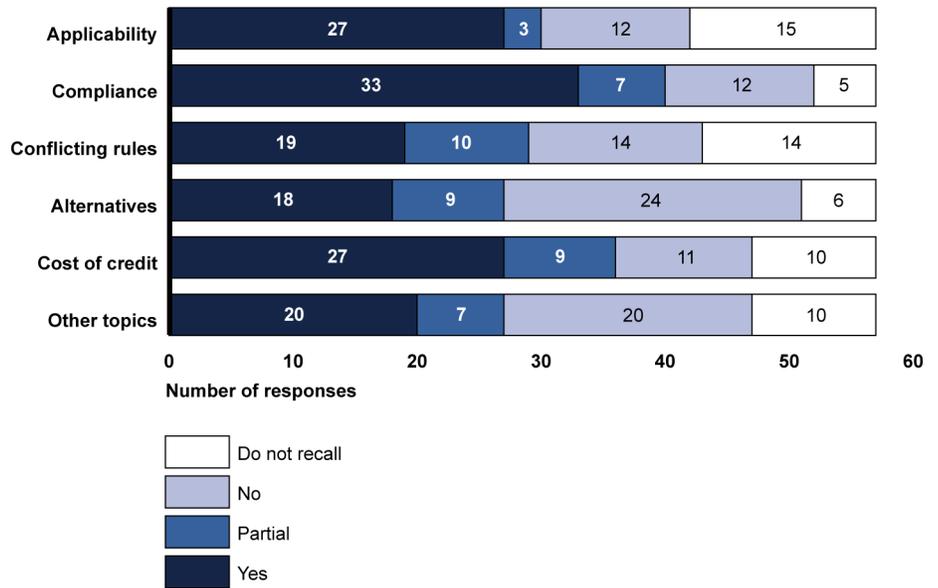
-
- c. **Conflicting rules.** An identification of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule.
 - d. **Alternatives.** Significant alternatives to the proposed rule that minimize any significant economic impact on small entities and that minimize increases in the cost of credit for small entities.
 - e. **Cost of credit.** Any projected increase in the cost of credit for small entities.
 - f. **Other topics.** Any additional topics related to the rulemaking.²⁸

Representatives had varying recall about the specific topics of the panel discussions and their views about them (the panel meetings were held 2–4 years before our interviews).²⁹ Therefore, their responses should be viewed with caution. More representatives were able to recall discussions about compliance (question 15b) and alternatives (question 15d). Of the 57 small entity representatives, 38 mentioned that there was not sufficient time for discussion for at least one of the six topics at panel meetings compared to 2 who said there was time to discuss all topics. Figure 3 illustrates the small entity representatives' responses.

²⁸Section 609(b) of the RFA requires that the SBREFA panel collect advice and recommendations of each individual small entity representative, on issues related to elements of the initial regulatory flexibility analysis, including applicability, compliance, conflicting rules, and significant alternatives that minimize significant economic impact on small entities. 5 U.S.C. § 609(d)(4). Section 603(d) requires CFPB, for its initial regulatory flexibility analyses, to consult with small entities on projected increases in the cost of credit for small entities and significant alternatives that minimize the cost of credit for small entities. 5 USC § 603(d)(2)(B). CFPB typically collects the views of small entities about the cost of credit issues through the SBREFA panels.

²⁹The SBREFA panels for three rulemakings—TILA-RESPA Integrated Disclosure, Mortgage Servicing, and Mortgage Loan Originator Compensation—were held more than 4 years ago and for HMDA, 2 years ago.

Figure 3: Responses of Small Entity Representatives to Question 15: “Did the SBREFA panel provide time to collect your advice and recommendations on each of the following: (applicability, compliance, conflicting rules, alternatives, cost of credit, other topics)?”



Source: GAO. | GAO-16-647

Notes: We interviewed small entity representatives who participated on the Small Business Regulatory Enforcement Flexibility Act (SBREFA) panels that the Consumer Financial Protection Bureau convened during Truth in Lending Act - Real Estate Settlement Procedures Act Integrated Disclosure, Mortgage Loan Originator Compensation, Mortgage Servicing, and Home Mortgage Disclosure Act rulemakings. We interviewed 57 of 69 small entity representatives who participated in SBREFA panels for the four rulemakings.

Furthermore, 19 stated that at least one topic important to their business or industry was not discussed during the panel meeting (question 16). For example, one representative noted that they did not discuss how the rule would impact costs for consumers. CFPB officials stated that at the end of each panel meeting representatives were given a final opportunity to bring up any issues they believed were not focused on or given enough attention. When asked how CFPB’s conduct of the panel meetings could be improved (question 17), 19 representatives suggested more time or additional meetings would improve the process.

A Majority of Representatives Said Their Views Were Characterized at Least Partially Accurately in the Panel Report and Were at Least Partially Considered in Rulemaking

A majority of small entity representatives that we interviewed said that CFPB at least partially reported their views accurately (question 19) and appeared to at least partially take them into consideration during rulemaking (question 21).

- Of the 57 small entity representatives we interviewed, 25 stated their views were accurately characterized in the panel report. For instance, one said that she thought CFPB represented her views verbatim. Another stated she was glad to see her written comments included in the report. Twelve representatives stated the characterization of their views in the panel report was partially accurate. For instance, some representatives (5 of 12) said CFPB did not characterize some of their views with proper detail or tone.
- Six representatives stated their views were not accurately characterized in the panel report. For instance, one of the six said she felt CFPB wrote the report before the panel took place.
- Fourteen representatives did not remember seeing the panel report or did not recall how their views were characterized in it. As discussed previously, the representatives' written comments were published in the appendixes of the panel reports.

Most of the 57 representatives felt CFPB at least partially considered their views, concerns, and suggestions in its rulemaking (question 21).

- Seventeen of 57 representatives believed CFPB considered their views, concerns, and suggestions. One of the 17 said he believed that CFPB considered his views but did not implement them in the rulemaking. Another said CFPB took all of the representatives' concerns seriously, listened, and considered input where it had the latitude to do so, but he recognized CFPB had to include specific requirements in the Dodd-Frank Act.³⁰
- Nineteen representatives stated CFPB partially considered their views in its rulemaking. One of the 19 said CFPB appeared to have heard the representatives and took some things into consideration, but he felt CFPB "was on a mission and knew how they wanted the rule to be." Another believed CFPB tried to understand her concerns but the

³⁰For example, the Dodd-Frank Act mandated CFPB to include in its HMDA rule several data fields in the reporting requirements.

final rule did not reconcile with the depths of her concerns; she noted some of this was due to requirements in the Dodd-Frank Act.

- Fifteen said CFPB did not appear to consider their views in its rulemaking. One representative said she felt defeated when she saw what came out after the panel; she thought CFPB was really listening but did not address any of the major areas of concern raised during the panel. Another thought CFPB officials already had their mind made up as to what should be in the rule. As discussed previously, CFPB uses the panel report to inform its proposed rule.

When asked if CFPB amended its proposed rule based on comments the representative made during the panel or in writing (question 23), 32 believed the agency did. Although most small entity representatives felt their views were at least partially considered in the rulemakings and most felt the agency amended its final rule based on their comments, most representatives expressed disagreement with CFPB's final rules for reasons such as increased cost of compliance. Specifically, 7 of the 57 stated they were satisfied with the final rules (question 27). CFPB officials noted that the rules for which GAO reviewed SBREFA panels were based on statutory requirements in the Dodd-Frank Act, all involving issues related to mortgage lending.

In its rulemaking process, CFPB is to consider input from multiple sources and make judgments deemed necessary to accomplish the stated objectives of applicable statutes.

Agency Comments

We provided a draft of this report to CFPB, SBA's Office of Advocacy, and OMB for their review and comment. In its written comments (reproduced in app. III), CFPB generally agreed with our findings. CFPB, SBA's Office of Advocacy, and OMB's Office of Information and Regulatory Affairs also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, CFPB, SBA's Office of Advocacy, OMB, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-8678 or ShearW@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report are listed in appendix IV.



William B. Shear
Director, Financial Markets and Community Investment

Appendix I: Objectives, Scope, and Methodology

This report addresses (1) the extent to which the Consumer Financial Protection Bureau (CFPB) solicited, considered, and incorporated small entity inputs into its rulemakings; and (2) the views of the small entity representatives on CFPB's rulemaking process.

To assess the extent to which CFPB solicited, considered, and incorporated small business inputs into rulemakings, we interviewed and gathered information from CFPB, the Office of Advocacy at the Small Business Administration, and the Office of Information and Regulatory Affairs of the Office of Management and Budget about the process for Small Business Regulatory Enforcement Fairness Act (SBREFA) panels. We also contacted trade associations and industry participants to gain their perspectives on the SBREFA panel process. This work did not encompass any computer-generated data from agencies requiring a data reliability assessment. We also reviewed applicable laws, regulations, and guidance governing requirements for CFPB's rulemaking process involving small business interests. We compared these requirements with CFPB's analyses related to impacts of proposed rules on small businesses for four rulemakings. Specifically, we analyzed CFPB's rulemaking processes and documents related to all rulemakings for which SBREFA panels were convened and final rules were issued.

As of April 2016, four CFPB rulemaking efforts involving SBREFA panels had resulted in final rules. These rulemakings were focused on mortgage lending and included rules associated with

- Truth-in-Lending Act and Real Estate Settlement Procedures Act (TILA-RESPA) Integrated Disclosure,
- Mortgage Servicing (for TILA and RESPA),
- Mortgage Loan Originator Compensation, and the
- Home Mortgage Disclosure Act.

To obtain the views of small entity representatives, we conducted semi-structured interviews with small entity representatives who participated in the four panels to gain a general understanding of their insights on the SBREFA process. We developed a structured interview guide to inquire about seven stages of the process: (1) notification of rulemaking, (2) outreach to small entity representatives, (3) materials to review, (4) the panel meeting, (5) CFPB consideration of small entity representatives' comments, (6) proposed rulemaking, and (7) final rule. We asked direct questions for each stage as well as open-ended questions about activities in the stages or for any additional comments.

We contacted all 69 small entity representatives who participated in the four panels and completed interviews with 57 (an 83 percent response rate). Of those for whom we did not conduct interviews, 6 declined our interview request and 6 were unavailable for an interview during our audit time frame. Table 4 below shows how many small entity representatives we interviewed by panel. A copy of the structured interview questions and results of the close-ended questions are included in appendix II. This work did not encompass any computer-generated data requiring a data reliability assessment.

Table 4: Numbers of Small Entity Representatives We Interviewed, Who Declined Our Interview Request, or Who We Were Unable to Interview during the Audit Time Frame, by Panel

| Rule | Interviewed | Declined our interview request | Unable to interview during audit time frame | Total |
|--------------|-------------|--------------------------------|---|-----------|
| TRID | 16 | 0 | 0 | 16 |
| MS | 12 | 2 | 2 | 16 |
| MLO | 12 | 2 | 3 | 17 |
| HMDA | 17 | 2 | 1 | 20 |
| Total | 57 | 6 | 6 | 69 |

Source: GAO. | GAO-16-647

Legend:

TRID: Truth in Lending Act - Real Estate Settlement Procedures Act Integrated Disclosure

MS: Mortgage Servicing

MLO: Mortgage Loan Originator Compensation

HMDA: Home Mortgage Disclosure Act

Notes: We interviewed small entity representatives who participated on the Small Business Regulatory Enforcement Fairness Act (SBREFA) panels that the Consumer Financial Protection Bureau (CFPB) convened during the TRID, Mortgage Servicing, Mortgage Loan Originator Compensation, and HMDA rulemakings.

We conducted the interviews by telephone from February 10, 2016, to March 28, 2016. Each interview was conducted by a team of at least two analysts. To verify the information collected during the interviews, we reviewed the narrative and close-ended responses for consistency and reached consensus among analysts who conducted the interviews on the content of the interview data. The structured interviews contained a mixture of close-ended and open-ended questions. For most questions, including close-ended questions, the small entity representatives responded with a narrative answer. Based on insights from conducting the interviews and the relative importance of each question, we assigned

each question into one of three categories of content analysis: (1) none, (2) Tier 1, or (3) Tier 2.

- None. Questions we assigned no content analysis were lower-priority questions, from which we deemed little information of value would be gleaned from conducting content analysis.
- Tier 1. For this analysis, two analysts independently reviewed all the small entity representatives' responses to the question, developed their own categories of responses, and coded the responses to those categories. Then the analysts reconciled differences in their categories and coding to reach consensus. Questions we assigned Tier 1 analysis were the highest-priority questions (we deemed that information of high value would be gleaned from conducting content analysis).
- Tier 2. For this analysis, one analyst reviewed all the small entity representatives' responses to the question, developed categories of responses, and coded the responses to those categories. Then another analyst reviewed the categories and coding for logic and errors. Questions we assigned to the Tier 2 analysis were priority questions (we deemed that information of value would be gleaned from conducting content analysis).

We conducted this performance audit from October 2015 through August 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Small Entity Representative Structured Interview Questions and Results for Closed-Ended Questions

We provided the following interview questions and preambles to the small entity representatives prior to our interviews. At the start of each interview, we reminded the representatives that the interview was intended to collect their opinions on the SBREFA process. We also recognized that the panels had taken place several years earlier and encouraged the representatives to answer to the best of their ability.

CFPB Notification of Rulemaking

For rulemakings that require the Consumer Financial Protection Bureau (CFPB) to convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel, CFPB must assure that small entities have an opportunity to participate in the rulemaking through reasonable techniques.

1. When did you first hear CFPB was considering rulemaking on [Rule]?
2. CFPB uses several techniques to notify small entities of its rulemaking. Which of the following techniques notified you of this particular rulemaking?

| | |
|---|----|
| Press release | 5 |
| Notice on CFPB website | 4 |
| Notice in trade publications | 15 |
| Direct notification (such as a phone call or email) | 12 |
| Open conferences or public hearings | 3 |
| Soliciting comments online | 1 |
| Any other techniques | 32 |

CFPB Outreach to Small Entity Representatives

The SBREFA panel is responsible for collecting advice and recommendations from each small entity representative on issues related to CFPB's proposed rule. However, the quality of advice and recommendations depends on how prepared small entity representatives are to participate in the panel process. CFPB's timing and method of outreach to you and the other small entity representatives prior to your meeting with the SBREFA panel is intended to foster a more thoughtful rulemaking process.

3. When were you first asked to participate on the CFPB SBREFA panel?

**Appendix II: Small Entity Representative
Structured Interview Questions and Results for
Closed-Ended Questions**

4. How were you asked to participate?
5. What outreach did CFPB make to you prior to its SBREFA panel?
6. Did CFPB’s outreach efforts prepare you to provide constructive input during the SBREFA panel meeting?

| | |
|-------------|----|
| Yes | 31 |
| No | 9 |
| Partially | 15 |
| Do Not Know | 2 |

7. How were CFPB’s outreach efforts constructive, or not constructive?
8. Do you have suggestions on how CFPB’s outreach could be improved?

| | |
|-----|----|
| Yes | 39 |
| No | 18 |

SBREFA Panel Materials

Prior to your meeting with the SBREFA panel, CFPB provided you with (1) the draft proposal, (2) discussion questions, and (3) a fact sheet on the SBREFA process.

9. Did CFPB provide any additional materials prior to your meeting with the SBREFA panel other than the three listed above?

| | |
|-------------|----|
| Yes | 14 |
| No | 37 |
| Do Not Know | 6 |

10. From your perspective, did CFPB provide the materials with time for sufficient review prior to the SBREFA panel meeting?

| | |
|-------------|----|
| Yes | 33 |
| No | 15 |
| Partially | 6 |
| Do Not Know | 3 |

**Appendix II: Small Entity Representative
Structured Interview Questions and Results for
Closed-Ended Questions**

11. Did the materials provided by CFPB prepare you to provide constructive input during the panel?

| | |
|-------------|----|
| Yes | 44 |
| No | 2 |
| Partially | 9 |
| Do Not Know | 2 |

12. Was anything not included in the materials that could have better prepared you to participate in the panel?

| | |
|-------------|----|
| Yes | 17 |
| No | 37 |
| Do Not Know | 3 |

13. Do you have any other comments about the meeting materials?

SBREFA Panel Meeting

The SBREFA panel convened a meeting in the Washington, D.C. area with you and the other small entity representatives to collect your advice and recommendations on CFPB's proposed rule. The following questions relate to your participation on and observation of that meeting.

14. Was your industry represented among the small entity representatives who participated in the panel?

| | |
|-------------|----|
| Yes | 38 |
| No | 10 |
| Partially | 8 |
| Do Not Know | 1 |

15. Did the SBREFA panel provide time to collect your advice and recommendations on each of the following:

- a. A description and estimate of the number of small entities to which the proposed rule will apply.

| | |
|-----------|----|
| Yes | 27 |
| No | 12 |
| Partially | 3 |

**Appendix II: Small Entity Representative
Structured Interview Questions and Results for
Closed-Ended Questions**

| | |
|-------------|----|
| Do Not Know | 15 |
|-------------|----|

- b. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

| | |
|-------------|----|
| Yes | 33 |
| No | 12 |
| Partially | 7 |
| Do Not Know | 5 |

- c. An identification of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule.

| | |
|-------------|----|
| Yes | 19 |
| No | 14 |
| Partially | 10 |
| Do Not Know | 14 |

- d. Significant alternatives to the proposed rule which minimize any significant economic impact on small entities.

| | |
|-------------|----|
| Yes | 18 |
| No | 24 |
| Partially | 9 |
| Do Not Know | 6 |

- e. Any projected increase in the cost of credit for small entities.

| | |
|-------------|----|
| Yes | 27 |
| No | 11 |
| Partially | 9 |
| Do Not Know | 10 |

**Appendix II: Small Entity Representative
Structured Interview Questions and Results for
Closed-Ended Questions**

f. Any additional topics related to the rulemaking.

| | |
|-------------|----|
| Yes | 20 |
| No | 20 |
| Partially | 7 |
| Do Not Know | 10 |

16. Was there a topic or topics that are important to your business or industry that was not discussed during the panel?

| | |
|-------------|----|
| Yes | 19 |
| No | 31 |
| Partial | 5 |
| Do Not Know | 2 |

17. Do you have suggestions on how CFPB's conduct of this panel could have been improved?

| | |
|-----|----|
| Yes | 43 |
| No | 14 |

18. Do you have any other comments about the panel meeting?

CFPB's Consideration of Your Comments

The SBREFA panel is required to summarize the comments voiced by small entity representatives in its panel report. Additionally, small entity representatives may submit written comments to the SBREFA panel to be included in the report. CFPB must consider the SBREFA panel report as it develops its proposed rulemaking.

19. Were your views, concerns, and suggestions accurately characterized by CFPB in the SBREFA panel report?

| | |
|-------------|----|
| Yes | 25 |
| No | 6 |
| Partially | 12 |
| Do Not Know | 14 |

**Appendix II: Small Entity Representative
Structured Interview Questions and Results for
Closed-Ended Questions**

20. Did you submit written comments to the SBREFA panel?

| | |
|-------------|----|
| Yes | 37 |
| No | 13 |
| Do Not Know | 7 |

21. Did CFPB consider your voiced and written views, concerns, and suggestions in its rulemaking?

| | |
|-------------|----|
| Yes | 17 |
| No | 15 |
| Partially | 19 |
| Do Not Know | 6 |

22. Do you have any other comments about how the panel considered your comments?

CFPB's Proposed Rulemaking

When CFPB published its proposed rulemaking in the Federal Register, which included the SBREFA panel report, it initiated a public notice and comment period where small entities could submit comments based on the proposed rule.

23. Did CFPB amend its proposed rule based on comments you made during the panel or in writing?

| | |
|-------------|----|
| Yes | 32 |
| No | 22 |
| Do Not Know | 3 |

24. Were you satisfied with the proposed rule CFPB published in the Federal Register?

| | |
|-------------|----|
| Yes | 8 |
| No | 26 |
| Partially | 21 |
| Do Not Know | 2 |

25. Did you submit written comments on the proposed rule during the notice and comment period?

| | |
|-------------|----|
| Yes | 29 |
| No | 24 |
| Do Not Know | 4 |

CFPB's Final Rule

After CFPB considers the comments submitted during the notice and comment period, it can publish a final rule to the Federal Register.

26. Did CFPB amend its final rule based on comments you made during the proposed rule's notice and comment period?

| | |
|-------------|----|
| Yes | 18 |
| No | 28 |
| Do Not Know | 11 |

27. Were you satisfied with the final rule?

| | |
|-------------|----|
| Yes | 7 |
| No | 26 |
| Partially | 23 |
| Do Not Know | 1 |

28. Has CFPB's

| | |
|-------------|----|
| Yes | 20 |
| No | 27 |
| Partially | 8 |
| Do Not Know | 2 |

Closing

29. In view of the questions we have asked and your responses is there anything else you would like us to know about the SBREFA process for this CFPB panel or any comment you have about serving as a small entity representative?

Appendix III: Comments from the Consumer Financial Protection Bureau



1700 G Street, N.W., Washington, DC 20552

July 18, 2016

Mr. William B. Shear
Director, Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Shear:

Thank you for the opportunity to comment on the Government Accountability Office's draft report, titled *Consumer Financial Protection Bureau: Observations from Small Business Review Panels (GAO-16-647)*. I appreciate GAO's engagement with the Consumer Financial Protection Bureau over the course of this review.

While the report does not make any recommendation to the Bureau, it contains several important findings. GAO recognizes in the report that the Bureau meets the requirements for participation by small entity representatives pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA), including soliciting and considering small businesses' inputs as part of the SBREFA panel process. The report also finds that the Bureau works collaboratively with small businesses, trade associations, and SBA's Office of Advocacy as it identifies potential small entity representatives, and that the Bureau actively solicits comments and proposed alternatives as part of the SBREFA panel process.

It is encouraging to note that a majority of representatives interviewed by GAO positively viewed the SBREFA panel process and the Bureau's involvement in that process, including its outreach to small entity representatives. It is also reassuring that 44 out of 57 representatives interviewed by GAO found that the materials that the Bureau provided as a part of this process "prepared them to provide constructive input at the panel meeting." GAO also found several areas where participants identified portions of the process that they viewed as needing improvement, including the need for more details, where available, more input, and more time to discuss and provide advice on alternative proposals. As noted in GAO's report, the Bureau's process has evolved to include more time for outreach to and comments from small entity representatives for those rulemakings that do not include a statutorily mandated issuance date.

The Bureau has worked hard to ensure that small businesses have a robust opportunity to provide input as part of the SBREFA panel process and we will continue these efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Sokolov', is written over a thin horizontal line.

Dan Sokolov
Deputy Associate Director for Research, Markets & Regulations

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

William B. Shear, (202) 512-8678, shearw@gao.gov

Staff Acknowledgments

In addition to the contact named above, Debra Johnson (Assistant Director), Andrew Pauline (Assistant Director), Barry Kirby (Analyst in Charge), Timothy Bober, Alyssia Borsella, Emily Chalmers, William Chatlos, Tiffani Humble, Davis Judson, Anne Kruse, John McGrail, Marc Molino, Alexandra Martin-Arseneau, Barbara Roesmann, and Elizabeth Wood made key contributions to this report.

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