

**UNITED STATES OF AMERICA  
CONSUMER FINANCIAL PROTECTION BUREAU**

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In the matter of Civil Investigative Demand )  
Issued to American International Group, Inc. )

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**UNITED GUARANTY'S PETITION TO MODIFY OR SET ASIDE  
JUNE 20, 2012 CIVIL INVESTIGATIVE DEMAND**

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## **I. INTRODUCTION**

United Guaranty Residential Insurance Company (“United Guaranty” or the “Company”) respectfully submits this petition to modify or set aside the Consumer Financial Protection Bureau’s (the “CFPB” or the “Bureau”) June 20, 2012 Civil Investigative Demand (the “CID”, attached hereto as Exhibit A) issued to American International Group, Inc. (“AIG”).<sup>1</sup> As described below, the CID is overly broad and unduly burdensome as it would require United Guaranty to produce nearly every document created or received during ordinary business over the last decade, and in so doing imposes a punitive financial burden on United Guaranty.<sup>2</sup> The extraordinary expense and disruption of normal business activities that would be necessitated by compliance with the CID cannot be justified.

United Guaranty has proposed sensible across-the-board modifications to the CID, designed to lessen the burden and financial expense of collection, review, and production. For electronically stored information, including electronic files and e-mail, United Guaranty requests reasonable restrictions on the time period and custodians to be searched, and that such a search use focused keywords to target specific captives. As to the production of paper files and data, United Guaranty’s proposed modifications aim to impose reasonable restrictions on scope and to

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<sup>1</sup> AIG is a publicly traded company that is the ultimate parent company of United Guaranty. Although the CID was addressed to AIG, United Guaranty is the only AIG-subsiary that insures mortgages covered by RESPA. This petition discusses the burden on United Guaranty. AIG requests the CID be further modified to limit the scope to United Guaranty’s operations in the United States of America.

<sup>2</sup> For example, demand for Production #9 requests documents “relating to any proposed, contemplated, or actual contract or agreement or any modifications of such agreements between you and any Mortgage Lender.” The request is not limited to captive reinsurance. As such, it extends to all Master Policies, every loan certificate issued thereunder, all related foreclosure proceedings, and all documents relating to United Guaranty’s contractual agreement with lenders, regardless of whether that lender has a captive or not.

reduce duplication, thereby sparing United Guaranty the financial and administrative burden of producing duplicative, cumulative, or otherwise unnecessary data.

## **A. Background**

### **1. Prior Regulatory and Civil Actions**

Starting in the late 1990s, United Guaranty and other national mortgage insurers were sued in class action lawsuits that alleged certain practices, including captive reinsurance, violated RESPA. In December of 2000, United Guaranty settled those claims as part of the settlement of *Pedraza v. United Guaranty Corp.*, No. CIV-A 199-239 (S.D. Ga. 1999). The *Pedraza* settlement included an injunction, issued in June 2001, that provided a “safe harbor” for captive reinsurance arrangements. (The *Pedraza* injunction is annexed hereto as Exhibit B). Under the terms of the injunction, captive reinsurance that met certain requirements was “deemed” RESPA-compliant. (See Ex. B at §2).<sup>3</sup> Although the *Pedraza* injunction expired in 2003, United Guaranty has maintained voluntary compliance with the terms of that injunction to this day. Neither HUD nor any other regulator with RESPA authority<sup>4</sup> moved to intervene in *Pedraza*.

Since 2005, a number of insurance regulators (including the New York Department of Insurance, the Colorado Department of Regulatory Agencies – Division of Insurance, and the Minnesota Department of Commerce) have investigated captive reinsurance arrangements.<sup>5</sup>

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<sup>3</sup> For example, the *Pedraza* injunction required United Guaranty to obtain third-party actuarial analysis for each proposed captive reinsurance structure. (Ex. B at §7b). United Guaranty would be willing to produce every such third-party actuarial analysis for its actual captive reinsurance arrangements.

<sup>4</sup> Under RESPA, the CFPB (previously the Department of Housing and Urban Development or “HUD”), shares enforcement authority with state insurance commissioners and attorneys-general. 12 U.S.C. §2607(d).

<sup>5</sup> The CFPB’s investigation into whether the use of captive reinsurance arrangements violates 12 U.S.C. §§ 2607(a) and (b) (the “anti-kickback” and “anti-splitting” provisions of the Real Estate Settlement Procedures Act of 1974 — “RESPA”) thus duplicates the work of other

The CFPB's investigation itself is a continuation of a long-running investigation initiated by the U.S. Department of Housing and Urban Development Office of the Inspector General ("HUD-OIG"). (See January 3, 2012 letter from R. Horowitz to T. Russo, annexed hereto as Exhibit C). United Guaranty has expended considerable time and resources in cooperating with these investigations through the years, including the production of documents and information. None of these investigations resulted in administrative actions being filed against United Guaranty.

Starting in 2006, the plaintiffs' bar has revived these turn-of-the-millennium claims that United Guaranty's captive insurance arrangements (that still comport with the *Pedraza* injunction) violate RESPA. See, e.g., *Alston v. Countrywide Fin. Corp.*, No. 06-CV-08174 (C.D. Cal., Dec. 22, 2006) (transferred to E.D. Pa. under No. 07-CV-03508); *Alexander v. Washington Mut., Inc.*, No. 07-CV-04426 (E.D. Pa., Oct. 22, 2007); *Munoz v. PHH Corp.*, No. 08-CV-00759 (E.D. Cal., June 2, 2008), *McCarn v. HSBC USA, Inc.*, No. 12-cv-00375 (E.D. Cal., Mar. 3, 2012) (dismissed on standing and statute of limitations grounds). As explained below, United Guaranty seeks appropriate confidential treatment for documents and information provided to CFPB in response to the CID given the existence of these pending class actions.

## **2. The CFPB's Current Investigation and the CID**

On January 3, 2012, the CFPB wrote to AIG with an informal request for documents. (Ex. C). As part of the process of responding to that letter, United Guaranty entered into a tolling agreement with the CFPB on January 25, 2012. United Guaranty produced documents in response to the January 3, 2012 letter, including: a list of United Guaranty's affiliates with descriptions, organizational charts, aggregate data back to 2006 regarding certain originations and premium amounts, summary information about United Guaranty's largest captives, and

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regulators over many years, and concomitantly requests United Guaranty to re-produce old data in new forms.

information regarding United Guaranty's captive agreements that were not terminated prior to 2009. United Guaranty then additionally produced, in response to further discussion with the CFPB, aggregate loss information and some captive specific documents.

Following United Guaranty's production of documents, the CFPB issued the CID to AIG on June 20, 2012. The CID sought information about "whether mortgage lenders and private mortgage insurance providers" engaged in "unlawful acts and practices in connection with residential mortgage loans in violation of Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act ['CFPA'], 12 U.S.C. §§ 5531 and 5536, and of the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 *et seq.*" The CID contains 20 interrogatories and 25 document requests.

From July 19, 2012, through December 6, 2012, United Guaranty engaged in a prolonged discussion with the CFPB (both individually and as part of a group of other mortgage insurers that had received similar CIDs) regarding a potential settlement that would resolve the CID, and any potential claims against United Guaranty. As part of that process, the CFPB extended the deadline for the filing of this Petition.

On December 5, 2012, United Guaranty had a telephonic meet-and-confer with the CFPB regarding potential modifications to the CFPB and to address the issues in this Petition, in continuation of the initial meet-and-confer held on July 19, 2012. United Guaranty memorialized the top-level concerns raised in that call via email on the same day. (*See* December 5, 2012 e-mail from W. Burck to D. Gordon, annexed hereto as Exhibit D).

In response to United Guaranty's concerns, the CFPB noted that it was "ready and willing to work with" United Guaranty to ameliorate specific claims of undue burden, and agreed in principle to United Guaranty's suggestions to limit the number of custodians, use of keywords,

use of a rolling production, and costs associated with accessing inactive media. United Guaranty responded with a request for a short extension of the petition deadline, as it might have obviated the need for this Petition. (*See* email thread between W. Burck and D. Gordon, December 7, 2012, annexed hereto as Ex. E). The CFPB declined any further extension of the Petition deadline.

## **II. MODIFICATION OF THE CID IS APPROPRIATE UNDER THE APPLICABLE LEGAL STANDARD**

The CID is overly broad and unduly burdensome in that the disclosure sought is unreasonably expansive, lacks specificity, and would disrupt or seriously hinder United Guaranty's normal operations. As such, modification is appropriate.

Administrative agencies may not use their subpoena powers to go on fishing expeditions. *FDIC v. Garner*, 126 F.3d 1138, 1146 (9<sup>th</sup> Cir. 1997). "It is contrary to the first principles of justice to allow a search through all the respondent's records, relevant or irrelevant, in the hope that something will turn up." *FTC v. Am. Tobacco Co.*, 264 U.S. 306 (1924). Thus, an agency's CID should not be enforced if the demand is not "within the authority of the agency," is "too indefinite," or is "not reasonably relevant to the inquiry." *U.S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). As the D.C. Circuit Court of Appeals has stated, "[t]he gist of the protection is in the requirement . . . that the disclosure sought shall not be unreasonable. Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness." *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1030 (D.C. Cir. 1978). The court further explained that "the requirement of reasonableness . . . comes down to specification of the documents to be produced adequate, but not excessive, for the purposes of the relevant inquiry." *Id.*



Here, the CID is unreasonable on its face and lacks specificity in many critical respects. For example, Request No. 9 seeks “[a]ll documents relating to any proposed, contemplated, or actual contract or agreement or any modifications of such agreements between you and any Mortgage Lender.” As written, this request would seek all documents referencing more than 2,500 mortgage lenders. Put another way, this request seeks, in essence, every document United Guaranty has. Similarly, Request Nos. 5-8, seek every document as it relates to more than 100 captive reinsurance arrangements. These requests also seek documents and information going back to the “Inception” of captive reinsurance arrangements that were begun in the 1990s. (*E.g.* Document Requests 5-8). Thus, responding to such requests would be unduly burdensome as there is no “specification of the documents to be produced” and would require United Guaranty to “search through all [of its] records, relevant or irrelevant, in the hope that something will turn up.”

An administrative subpoena may be also be deemed unduly burdensome if “compliance threatens to unduly disrupt or seriously hinder normal operations of a business.” *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992) (citing *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977)). The CID seeks information and documents—including asking United Guaranty to create documents that do not exist or are not in United Guaranty’s possession<sup>6</sup>—concerning Enumerated Captive Trusts or Enumerated Reinsurance Entities that could be sought more conveniently and far less burdensomely directly from the Enumerated Reinsurance Entities themselves. Moreover, creation of such documents would require the expenditure of a tremendous amount of resources on the part of United Guaranty. Responding to

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<sup>6</sup> For example. Interrogatories 10, 11, and 12, require significant historical information regarding every payment, withdrawal, and accrual of investment income. Interrogatory 14 requires information about how Mortgage Lenders have managed captives — United Guaranty does not have access to that information.

the CID would require individualized interaction with numerous United Guaranty employees, as well as disruption of normal business and IT function as key custodians and managers would need to be involved in the location and collection of documents.

While United Guaranty does not object to producing the summary documents it possesses concerning these entities, it is extremely burdensome and unreasonable for CFPB to expect United Guaranty to create documents to fulfill those requests. United Guaranty estimates that full compliance with the CID as written would cost millions of dollars. The CID's broad and undefined reach, the vast amount of ESI, and the severe disruption that the CID would pose to United Guaranty's daily operations would be impermissible in any context. As such, the CID must be modified.

### **III. GENERAL OBJECTIONS AND REQUEST TO GENERALLY LIMIT CID**

United Guaranty acknowledges its obligation to produce documents and information pursuant to the CID. United Guaranty is committed to responding to the CID in good faith. Indeed, United Guaranty would be willing to provide information or documents in response to nearly all of the interrogatories and document requests.

However, the CID requests essentially every document created by United Guaranty over a period of more than eleven years. The CID's collection, review, and production requirements place a tremendous burden on United Guaranty. United Guaranty would have to undertake a virtually unconstrained search of more than 1300 United Guaranty computer workstations, more than 400 servers, more than 200 terabytes of electronically stored data, including 24 terabytes of shared data storage space and 7 terabytes of email, approximately 400 databases, and more than 32,000 backup tapes. Additionally, for paper documents, United Guaranty maintains 21 storage

facilities across the country, with over 50,000 boxes of paper documents. The estimated weight of this paper is approximately 800 tons.

The burden is significantly exacerbated because the CID's definition of ESI encapsulates data that is inactive, e.g. data stored on back-up tapes—a burdensome, time consuming, and extremely costly demand that is generally disfavored in civil litigation.<sup>7</sup> The CID should be modified to make the burden on United Guaranty commensurate with the CFPB's need for those documents, which United Guaranty respectfully submits is significantly diminished for much of the time period the CFPB has specified.

Against this backdrop, United Guaranty respectfully requests that the Director make the following general and specific modifications to the CID to minimize United Guaranty's burden and expense to comply with the CID. Many of the proposed modifications lessen the undue burden on United Guaranty while simultaneously relieving the CFPB from the burden of a deluge of irrelevant (but arguably covered by the overbroad requests) or duplicative documents.

**A. Searches Necessitated by the CID Should Be Limited To Captives That Were Not Terminated Before January 25, 2009**

The CID contains multiple requests that relate to all of United Guaranty's captives (e.g. Document Request Nos. 4, 5, 6, 7, 8, 9). This scope is unjustifiably excessive. The CFPA allows the CFPB to issue civil investigative demands to those who have documents, tangible things, and information "relevant to a violation" before the CFPB institutes proceedings relating to that violation under Federal law. 12 U.S.C. § 5562(c)(1). The applicable limitations periods

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<sup>7</sup> The CID provides that ESI is defined to include data "regardless of origin or location ... (whether active, archived [or] unsend ...) ... whether stored on cards, magnetic or electronic tapes, disk, computer files, computer or other hard drives, cell phones, Blackberry, or other storage media."

and concerns over retroactivity warrant limiting any searches necessitated by the CID to only those captives that were not terminated prior to January 25, 2009.

The CFPB's investigation, as it has explained, is principally focused on whether captive arrangements violate RESPA's anti-kickback provisions. These purported RESPA violations are subject to a three-year limitations period that runs from the closing date of the residential mortgage. 12 U.S.C. § 2614; *Snow v. First American Title Ins. Co.*, 332 F.3d 356, 359 (5th Cir. 2003) (holding any alleged RESPA violation occurred at the mortgage closing, not the date payments were made); *Mullinax v. Radian Guar. Inc.*, 199 F. Supp. 2d 311, 325 (M.D.N.C. 2002) (holding that any alleged RESPA violation occurred at the mortgage closing and not upon each mortgage insurance payment); *McCarn v. HSBC USA, Inc.*, No. 1:12-cv-00375 2012, WL 5499433 (E.D. Ca. Nov. 13, 2012) (measuring the occurrence of purported violations from the mortgage closing and denying tolling). Given the January 25, 2012 tolling agreement, the CFPB only has the ability to address RESPA violations going back to January 25, 2009. Violations of the CFPA also have a three-year statute of limitations. 12 U.S.C. § 5564(g)(1). However, nothing in Title X indicates that the CFPA was intended to have retroactive effect. Courts disfavor implying retroactive impact absent clear statutory language indicating that intent. *See, e.g., Landgraf v. USI Film Prod.*, 511 U.S. 244, 280 (1994) (holding there is a presumption against applying statutes to conduct preceding enactment of the statute). As such, the CFPB's authority to enforce these sections with respect to conduct that occurred before July 21, 2010 (the date of the CFPA's enactment) is highly questionable. *See Riddle v. Dyncorp Int'l Inc.*, 664 F.3d 940, 943-44 (5th Cir. 2012) (declining to retroactively apply a section of Dodd-Frank creating a new limitations period for retaliation actions under the False Claims Act); *Molosky v. Washington Mutual, Inc.*, 664 F.3d 109, 113 n.1 (6th Cir. 2011) (applying the presumption

against retroactivity as to preemption under the Home Owners' Loan Act as modified by Dodd-Frank); *Taylor v. Fannie Mae*, 839 F. Supp. 2d 259, 263 (D.D.C. 2012) (declining to retroactively apply Dodd-Frank's prohibition on pre-dispute arbitration agreements for Sarbanes-Oxley claims). Here, the reinsurance contracts at issue were entered long before the CFPB or CFPA ever existed.

Accordingly, United Guaranty seeks the reasonable modification to restrict the scope of the interrogatories and document requests to documents and information relating only to those captive reinsurance arrangements that were not terminated prior to January 25, 2009.

**B. The CID Should Be Limited to Documents Created After January 25, 2009**

The CID's "Applicable Time Period" starts on January 1, 2001, and thus requests documents that span an eleven year period. To search eleven years worth of documents is prohibitively expensive and overbroad. *See Gen'l Ins. Co. of Am. v. EEOC*, 491 F.2d 133, 136 (9 Cir. 1974) (affirming determination that subpoena was overbroad when it "reached back in time nearly eight years"); *In re Grand Jury Proceedings*, 707 F. Supp. 1207, 1217 (D. Hawaii 1989) (subpoena was overbroad where statute of limitations was five years but the subpoena sought information dating back eleven years).

On this point, United Guaranty notes that for all e-mail more than 24 months old, a manual process is necessary to restore those e-mails before they can be searched or exported. Those e-mails must be restored on a per-custodian basis, so that the number of custodians and time period will have significant effects on not only the aggregate amount of data that United Guaranty would have to process, but is also determinative of the number of hours that would be required to restore and collect that data in the first instance.

**C. The Scope of Electronic Searches Should Be Limited to Targeted Search Terms for Specific Custodians**

To minimize the burdens imposed by the CID, United Guaranty requests limiting the search, review and production to agreed upon e-mail custodians and search terms. United Guaranty and the CFPB were not able to reach a final agreement as to a list of custodians and search terms prior to the filing of this Petition. As a result, United Guaranty cannot quantify the resulting burden. However, the ability to use search terms and isolate key custodians is critical to providing a cost-justified response to the CID. This is because, like many businesses, United Guaranty has an astronomical amount of electronic data. Aside from the aggregate statistics discussed previously regarding the total corpus of United Guaranty's data, for email alone, the average custodian at United Guaranty has over 2.2 gigabytes of data. A well tuned list of keywords and custodians is important because, as one Federal court has recognized, "the interests of justice and basic fairness are little served by forcing [a party] to undertake an enormously expensive ... review of material that is unlikely to contain non-duplicative evidence." *I-Med Pharma Inc. v. Biomatrix, Inc.*, 2011 WL 6140658, \*6 (D.N.J. Dec. 9 2011) (affirming magistrate decision, based on burden, to excuse plaintiff from reviewing documents produced by search terms, despite plaintiff's previous agreement to search term list).

The CFPB has already acknowledged that the limitation of the CID to specific custodians will "vastly reduce" the burden imposed by the CID. (*See Ex. E*). United Guaranty agrees, and respectfully requests that the CID be limited to targeted searches of the data of no more than six (6) custodians, to be agreed upon between the CFPB and United Guaranty.

**D. The CID's Requests for Data Should Be Limited to "Enumerated Captives"**

As distinct from electronic documents and email, the CID calls for data relating to all captive reinsurance arrangements (e.g. Interrogatory No. 16). The CID also calls for the

production of some documents that United Guaranty may be able to locate without a search, such as reinsurance agreements, trust agreements, and account balance statements (e.g. Document Request No. 9).

United Guaranty has more than 100 captive reinsurance arrangements. As such, these requests pose a significant burden of review and production. Given their volume, United Guaranty would further limit the scope of the CID to only the Enumerated Captives as defined in the CID — i.e. the captives related to [REDACTED]

**E. The CID Should Be Modified To Eliminate the Production of Certain ESI**

The CID's request for Electronically Stored Information ("ESI") such as instant messaging, video conferencing, SMS, MMS, text messaging, sound recordings, cell phones, Blackberry, and other storage media and inactive backup materials is unduly burdensome. As a general matter, United Guaranty does not centrally store instant messages, SMS, MMS, text messaging, or voicemails. Gathering individual cell phones and blackberries from every custodian imposes a significant, manual process that both disrupts United Guaranty's business operations and creates a financial burden. Likewise, United Guaranty should not be required to restore ESI on inactive backup tapes or drives. Requests for such burdensome ESI are routinely rejected in civil litigation absent significant need. *See Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309 (S.D.N.Y. 2003). Here, the CFPB has not articulated any special need justifying its request for materials in an inactive format.

**F. The CID Should Be Modified to Provide Reasonable Meaning to Indefinite Terms and Undefined Terms**

Many of the requests in the CID suffer from imprecise and/or overbroad definitions. As described below, clarifying key definitions and defining certain undefined terms would help to limit the burden to United Guaranty.

**1. Narrow Expansive Definition of “Company”**

The CID’s definition of “Company” is overbroad and unduly burdensome.

The CID defines “Company” as “AIG, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, including prior to the time any such entity was owned or controlled, partly or wholly, by AIG, and all principals, directors, officers, owners, employees, agents, representatives, consultants, attorneys, accountants, independent contractors, and other persons working for or on behalf of the foregoing.”

As previously reported to the CFPB, United Guaranty is the only AIG-affiliated company that has entered into captive reinsurance arrangements with lenders. Given this fact, United Guaranty respectfully requests that the CID be modified to change the definition of “Company” to the following:

**“Company” or “You” or “Your”** shall mean United Guaranty, and all principals, directors, officers, owners, employees, agents, representatives, consultants, attorneys, accountants, independent contractors, and other persons working for or on behalf of the foregoing.

**2. Define “Mortgage Insurance” to Exclude Pool and Bulk Insurance**

The term “mortgage insurance” is undefined. Without clarification, this term would require the production of irrelevant documents.



There are many types of mortgage insurance coverage. It is our understanding that the CFPB is focused on captive reinsurance arrangements on domestic, primary “flow” coverage, rather than pool or bulk insurance. Thus, to streamline United Guaranty’s production and to limit the documents that the CFPB would need to review, United Guaranty respectfully requests that the CID be modified to define “Mortgage Insurance” as “domestic, primary ‘flow’ coverage on first liens under the applicable master policy.”

**3. Re-Define “Captive Mortgage Reinsurance Arrangement” To Exclude External Reinsurance and Internal Reinsurance with United Guaranty-affiliated Companies**

The CID’s definition of “Captive Mortgage Reinsurance Arrangements” is overbroad and unduly burdensome because it does not tie these arrangements to “Reinsurance Entities” as defined by the CID. Thus, the definition of “Captive Mortgage Reinsurance Arrangements” is not limited to captive reinsurance and would require production of documents irrelevant to the CFPB’s investigation, including external reinsurance with unaffiliated third-parties or reinsurance with United Guaranty-affiliated companies.<sup>8</sup>

United Guaranty respectfully requests that the CID be modified to change the definition of “Captive Mortgage Reinsurance Arrangements” to the following:

**“Captive Mortgage Reinsurance Arrangement”** shall refer to any contract, agreement, or other business arrangement to which the Company is or was a party, by which a Reinsurance Entity reinsures any portion of a private mortgage insurance policy or mortgage insurance coverage provided by the Company in exchange for a percentage of premiums paid for that mortgage insurance policy or coverage, and any actions necessitated by, attendant or ancillary to the execution of such an agreement and its provisions, including but not limited to (1) the referral of borrowers to the Company in connection with loans originated by a Mortgage Lender, (2) the

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<sup>8</sup> Due to certain regulatory requirements, United Guaranty is sometimes required to cede a portion of a risk insured by one United Guaranty affiliate to another affiliate. This practice, known as “internal reinsurance,” is standard in the mortgage insurance industry.

creation or operation of one or more Reinsurance Entities to provide reinsurance services to the Company, (3) the receipt through such Reinsurance Entities of some portion of the premiums paid by borrowers to the Company or other forms of payment in connection with such loans, and (4) any other services provided pursuant to such an agreement.

**4. Define “Management”**

The term “management” is undefined and therefore vague and ambiguous.

United Guaranty respectfully requests that the CID be modified to define “management” as only Directors and Officers ranked Senior Vice President or above.

**G. The CID Should Be Limited To “Actual” Arrangements and Agreements**

The CID requests for documents relating to “potential,” “proposed,” or “contemplated” agreements and arrangements are impermissibly vague, overbroad, and unduly burdensome. (*See* Document Requests 4, 6, 9).

It is difficult, if not impossible, to determine what “potential,” “proposed,” and “contemplated” mean in several requests. Even assuming that United Guaranty could reach a common understanding with the CFPB as to what falls within the scope of such “potential,” “proposed,” or “contemplated” agreements, there is no easy way to propose limiting search terms that would not pull in irrelevant data. On a more fundamental level, theoretical agreements are not actionable unless they became “actual” agreements or arrangements. Theoretical agreements and arrangements cannot be relevant to CFPB’s investigation of actual reinsurance arrangements.

United Guaranty respectfully requests that the CID be modified to limit the production of documents to “actual” arrangements and agreements involving Enumerated Reinsurance Entities.

**H. The CID’s Production Format Should Be Modified**

The CID’s production format is unduly burdensome — the document submission standards go far beyond what parties would have to produce to each other in civil litigation. For

example, the CID requires that the production must, *inter alia*: (1) be organized by request and by custodian, (2) be encrypted using Microsoft Bitlocker, (3) be Bates-labeled in a particular format, (4) maintain the original native source of *each* document and preserve *all* metadata (including extraneous fields), (5) contain certain specified fields of metadata in a particular order, and (6) be searchable (i.e. OCR'ed), and numerous other conditions and requirements.

United Guaranty respectfully requests the CID to be modified to (a) eliminate the requirement to identify the document request number to which the document is responsive and (b) allow production of documents in either: (1) PDF or TIFF format or (2) native format (for Excel and other files for which TIFFs would be impractical). Given the broad scope of potentially responsive documents, literal compliance with the CFPB's proposed format would be extremely expensive and time consuming.

**I. The CID Should Be Modified To Remove the Requirement for a Privilege Log for Some Documents**

The CID's requirement to produce a privilege log by the date of production is unduly burdensome. The creation of a privilege log is a process that requires considerable time and resources. For obviously-privileged documents, such as communications with outside counsel and work product drafts, pleadings, and memos relating to private actions and government investigations (including this investigation), this would be an unduly burdensome task.

As previously discussed, captive reinsurance has a significant history of regulatory investigation and lawsuits. As such, the number of privileged communications is considerable. To lessen the burden of logging all such documents, United Guaranty respectfully requests that the CID be modified to exclude the requirement of a privilege log for communications with outside counsel and work product drafts, pleadings, and memos relating to private actions and

government investigations (including, but not limited to, this investigation, the HUD investigation, the New York investigation, and the Minnesota investigation).

**J. The CID Should Be Modified By Amending The Date to Complete the Production and Accepting a Rolling Production**

The CID originally required production of documents by July 19, 2012. Through a series of extensions, this deadline was extended to December 10, 2012.

As discussed above, the CID's written requests seek nearly every document created by United Guaranty over the last decade or more. Production under the CID would require considerable time and resources to identify, reproduce, and review documents for relevance and privilege. It is impossible to complete this in the time required by the CID.

In informal discussions, the CFPB has expressed willingness to accept a rolling production. However, the CFPB has not formally modified the CID to permit a rolling production. As such, United Guaranty request that the Director modify the CID to require production on a rolling basis with full completion no later than 6 months following final confirmation from the CFPB as to the scope of the CID.

**K. The CID Should Be Modified To Guaranty Confidentiality of Produced Documents**

In addition to the burden and scope issues discussed above, United Guaranty is also deeply concerned about the confidentiality of information produced in response to the CID. Many of the requested materials contain trade secrets, sensitive confidential or proprietary information, and confidential consumer information that must be adequately protected from possible loss, mishandling, or disclosure, whether intentional or otherwise. This concern was raised in a letter sent to the CFPB on July 17, 2012, and in subsequent conversations with the CFPB. The CFPB has taken the position that United Guaranty has adequate protection under the CFPB rules. However, the CFPB's rules governing confidential investigative material do not

prohibit the disclosure of “confidential investigative information” to third parties. Rather, the CFPB is only required to give United Guaranty notice before producing United Guaranty’s “confidential investigative information” to third parties.

United Guaranty thus respectfully requests that United Guaranty’s obligations in response to the CID be suspended until the CFPB enters into a suitable confidentiality agreement barring disclosure of United Guaranty’s confidential documents to any third parties.

**L. The Document Identification Requirement in the CID Should Be Set Aside**

United Guaranty also objects to Instruction K of the CID which requires that each document submitted should indicate the document request number to which that document is responsive. Such an undertaking would necessarily add hundreds of hours (if not significantly more) to the review process and thus is unduly burdensome and unreasonable. The burden is further exacerbated due to the significant overlap between the requests, and the ambiguity in many of the requests. Moreover, this requirement would significantly limit United Guaranty’s ability to respond to the CID in a timely fashion.

**IV. REQUEST TO LIMIT SPECIFIC INTERROGATORIES**

United Guaranty does not object to producing any information or documents in response to most of the interrogatories. To the contrary, United Guaranty seeks only to modify the scope of the interrogatories to reduce the undue burden of compliance, including creating spreadsheets based on the manual review of paper records.

United Guaranty incorporates all the prior general objections to each specific interrogatory and does not repeat them below.<sup>9</sup> Many of the general objections cover multiple interrogatories. For example:

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<sup>9</sup> United Guaranty generally objects to each Interrogatory to the extent it asks for privileged information.

- The CID's expansive time frame should be narrowed given the applicable three-year statute of limitations and retroactivity concerns. This objection applies to Interrogatories 2 - 20.
- United Guaranty's objection to the definition of the word "Company" as referring to any company other than United Guaranty applies to Interrogatories 2-9, 15, and 17 - 19.
- United Guaranty's additionally objects to Interrogatories 10, 11, and 12 because they request information concerning Enumerated Captive Trusts or Enumerated Reinsurance Entities that could be sought more conveniently from the Enumerated Reinsurance Entities themselves.
- Additionally, United Guaranty objection to the use of the undefined term, "management," applies to both Interrogatories 4 and 5.

United Guaranty lays out the original text of the relevant Interrogatory and provides its specific objections and a proposed compromise below.

**Interrogatory No. 1:** Identify all persons who participated in responding to this CID and the specific tasks performed by each person.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 1: Subject to and without waiving the General Objections above, this request is overbroad because it seeks privileged and otherwise protected information relating to the work product, confidential advice, and other privileged information provided by United Guaranty's outside counsel.

United Guaranty respectfully requests modifying Interrogatory No. 1 to state the following:

Interrogatory No. 1: Identify all persons employed by United Guaranty who participated in responding to this CID and specific, non-privileged or otherwise protected, information relating to the tasks performed by each person.

**Interrogatory No. 2:** State the Company's correct legal name and principal place of business; the date and state of incorporation; all trade names under which the Company has done business; and the names, titles, and dates of employment of all officers, directors, and principal stockholders or owners.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 2: Subject to and without waiving the General Objections above, this request is overbroad because the relevant "company" is United Guaranty, not AIG. Additionally, this request is overbroad in that it seeks information about "all officers" of the company. This should be limited to officers ranked Senior Vice President or above.

**Interrogatory No. 3:** List each state in which the Company has done business and the period during which the Company has done business in each state.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 3: Subject to and without waiving the General Objections above, this request is overbroad because the relevant "company" is United Guaranty, not AIG.

**Interrogatory No. 4:** Describe the complete management structure of any component of the Company involved in offering, providing, operating or monitoring private mortgage insurance or mortgage insurance reinsurance, identifying all current and former management and supervisory employees, officers and directors (including contractors, if applicable), and any changes in the applicable time period. Information regarding mortgage insurance reinsurance shall be provided since Inception.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 4: Subject to and without waiving the General Objections above, this request is overbroad because it seeks information relating to all of United Guaranty's management structure, including information from AIG, notwithstanding the fact that CFPB's investigation relates to only the captive reinsurance agreements. Additionally, this request is overbroad in that it seeks information about "all officers and directors" of the company. This should be limited to officers ranked Senior Vice President or above.

United Guaranty respectfully requests modifying Interrogatory No. 4 to state the following:

Interrogatory No. 4: Describe the complete management structure of any component of United Guaranty involved in offering, providing, operating or monitoring Captive Mortgage Reinsurance Arrangements, identifying the current management and supervisory employees, including officers ranked Senior Vice President or above.

**Interrogatory No. 5:** Identify all current and former management and supervisory employees employed by the Company (including contractors, if applicable) with responsibilities relating to any Captive Mortgage Reinsurance Arrangement since January 1, 1995. For each employee,

state all current and former titles or positions and the dates each such current and former title or position was held.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 5: Subject to and without waiving the General Objections above, United Guaranty objects to this request as overly broad given the applicable limitations periods and retroactivity issues. Additionally, this request is overbroad because it seeks information relating to "all current and former management and supervisory employees employed by the Company." which is defined to include AIG, over the past eleven years.

United Guaranty respectfully requests modifying Interrogatory No. 4 to state the following:

**Interrogatory No. 5:** Identify all current and former management and supervisory employees employed by the United Guaranty (including contractors, if applicable) with responsibilities relating to any Captive Mortgage Reinsurance Arrangement since January 25, 2009. For each employee, state all current and former titles or positions and the dates each such current and former title or position was held.

**Interrogatory No. 6:** Describe each instance in which the Company has been investigated, sued, prosecuted, or had action taken against it for alleged violations of Section 8 of the Real Estate Settlement Procedures Act ("RESPA"), for allegedly unfair or deceptive acts or practices, or for any other alleged violation of state or federal law, relating to any Captive Mortgage Reinsurance Arrangement, including, where applicable, the names of all parties, the jurisdiction involved, the case number, the claims asserted, and the current status or final resolution of the matter.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 6: Subject to and without waiving the General Objections above, United Guaranty objects to this request as not calculated to lead to the discovery of relevant information, because prior investigations and lawsuits have no relevance to the CFPB's current inquiry, especially given the applicable limitations periods and retroactivity issues.



Nevertheless, in the spirit of good faith, United Guaranty would be willing to respond to this Interrogatory.

**Interrogatory No. 7:** With respect to any instance identified in response to Interrogatory 6, describe every document preservation request or obligation directed to or imposed upon the Company, including the specific nature and extent of the documents sought to be preserved, the exact date that such request or obligation was transmitted to the Company, and the exact date when such request or obligation expired, or will expire.

**United Guaranty's Specific Objections and Proposed Compromise Concerning**

**Interrogatory No. 7:** Subject to and without waiving the General Objections above, United Guaranty has complied with the CID's instruction to suspend any procedures that may result in the destruction of documentary material or tangible things "that are in any way potentially relevant to this investigation." Accordingly, the existence of other preservation demands or the "exact date" when other preservation obligations expire is therefore irrelevant.

As a compromise, United Guaranty respectfully requests modifying Interrogatory No. 7 to require the identification of a representative litigation hold.

**Interrogatory No. 8:** For each Enumerated Captive Mortgage Reinsurance Arrangement to which the Company became a party after January 1, 1995:

- a. identify the Enumerated Reinsurance Entity with which the Company partnered in the Enumerated Captive Mortgage Reinsurance Arrangement;
- b. state the date on which the Enumerated Captive Mortgage Reinsurance Arrangement began;
- c. state the date on which the Enumerated Captive Trust related to the Enumerated Captive Mortgage Reinsurance Arrangement terminated, and if so, whether on a runoff or cut-off basis, and if it has not terminated, state "Active;"
- d. identify all agreements and amendments to agreements governing any aspect of the Enumerated Captive Mortgage Reinsurance Arrangement or related Enumerated Captive Trust, including, without limitation, reinsurance agreements, trust agreements, and agreements to end the Enumerated Captive Mortgage Reinsurance Arrangement; and

- e. if the Enumerated Captive Mortgage Reinsurance Arrangement has terminated, identify the provisions of any operative agreement that authorized or permitted the termination, and all documents relating to the termination.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 8: Subject to and without waiving the General Objections above, United Guaranty objects to the use of the word "partnered" in Interrogatory No. 8(a). The use of "partnered" assumes a specific legal relationship. Additionally, United Guaranty objects to subparts (d) and (e) to the extent they require legal conclusions.

As a compromise, United Guaranty would be willing to provide the information requested in subparts (a)-(c) and produce documents pertaining to subparts (d) and (e).

**Interrogatory No. 9:** Identify each entity that was not a Reinsurance Entity from which the company obtained mortgage insurance reinsurance after January 1, 1995, and as to each such entity:

- a. state the dates on which each business arrangement to obtain such mortgage insurance reinsurance began and ended; and
- b. identify all agreements and amendments to agreements governing any aspect of any such business arrangement.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 9: Subject to and without waiving the General Objections above, United Guaranty objects to this request to the extent it seeks information with respect to internal reinsurance agreements with United Guaranty affiliated companies, pool business, and external reinsurance agreements before January 25, 2009. United Guaranty further objects to this request to the extent it seeks publicly-available information. Additionally, United Guaranty objects to this request to the extent it seeks irrelevant information outside of statute of limitations period. This request facially seeks information unrelated to captive reinsurance, and thus poses an unjustified burden on United Guaranty.

United Guaranty respectfully requests the Director set aside Interrogatory No. 9.

**Interrogatory No. 10:** For each payment into any Enumerated Captive Trust since Inception, state:

- a. the date of the payment;
- b. the amount of the payment;
- c. the payor;
- d. the original source of the payment, if not the payor;
- e. the classification of the payment (*e.g.*, ceded premiums, capital contributions, or interest income);
- f. the provision of the operative agreement permitting or requiring the payment; and
- g. the balance of the Enumerated Captive Trust after the payment.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive Trust, listing each response as a separate row and each category (a through g) as a separate column.

**Interrogatory No. 11:** For each withdrawal or payment from any Enumerated Captive Trust since Inception, state:

- a. the date of withdrawal or payment;
- b. the amount of withdrawal or payment;
- c. the payee;
- d. the classification of the withdrawal (*e.g.* payments on claims, expenses, taxes, or dividends);
- e. the provision of the operative agreement permitting or requiring the withdrawal; and
- f. the balance of the Enumerated Captive Trust after payment.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive Trust, listing each response as a separate row and each category (a through f) as a separate column.

**Interrogatory No. 12:** For all Investment Income relating to an Enumerated Captive Trust since Inception, state:

- a. the date of payment;

- b. the amount of payment;
- c. the payor;
- d. the payee (e.g. the Enumerated Captive Trust or the Enumerated Reinsurance Entity);
- e. the provision of the operative agreement permitting or requiring the payment.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive Trust with which the Investment Income is associated, regardless of whether the Investment Income was in such Enumerated Captive Trust. List each response as a separate row and each category (a through e) as a separate column.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatories Nos. 10, 11, and 12: Subject to and without waiving the General Objections above, United Guaranty objects to these requests to the extent they require United Guaranty to manually create documents not kept in the regular course of business concerning individual payments to Enumerated Captive Trusts. Responding to this request for daily individual payment information for each Enumerated Captive Trust over the past decade and a half would be extremely burdensome as it would require the manual computation, review and input of numerous paper files into an excel spreadsheet. Rather than creating documents that do not exist and cannot be created without great effort, United Guaranty proposes to produce available documents demonstrating this information on an aggregate level, including Quarterly and Year End Summaries.

**Interrogatory No. 13:** For any amount in any Enumerated Captive Trust that was Reclassified since Inception, state:

- a. the date of the reclassification;
- b. the amount reclassified;
- c. the original classification;
- d. the new classification; and

- e. the reason for the reclassification.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive Trust, listing each response as a separate row and each category (a through e) as a separate column.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 13: Subject to and without waiving the General Objections above, United Guaranty objects to this interrogatory as impermissibly vague and respectfully requests clarification of whether the definition of "Reclassified" includes changes to the loan parameters or reinvestment of excess funds to cover quarterly deposits.

Notwithstanding this ambiguity, United Guaranty would be willing to respond to this interrogatory on the assumption that "Reclassified" includes reinvestment of excess funds to cover quarterly deposits.

**Interrogatory No. 14:** For any amount not in an Enumerated Captive Trust that was transferred from any Enumerated Reinsurance Entity since Inception, state:

- a. the date of the transfer;
- b. the amount transferred;
- c. the transferor (i.e., the Enumerated Reinsurance Entity);
- d. the transferee (e.g., the specific entity within the affiliated Enumerated Mortgage Lender);
- e. the classification of the transfer; and
- f. the reason for the transfer.

Provide your response in a separate Excel spreadsheet for each Enumerated Reinsurance Entity, listing each response as a separate row and each category (a through f) as a separate column.

United Guaranty's Specific Objections Concerning Interrogatory No. 14: Subject to and without waiving the General Objections above, United Guaranty objects to this request on the basis that it seeks information not within the control of, nor reasonably capable of being within

the control of, United Guaranty. United Guaranty respectfully requests clarification of whether Interrogatory No. 14 refers only to the release of dividends.

**Interrogatory No. 15:** For all monetary payments and all other transfers of anything of value between the Company and any Enumerated Reinsurance Entity since Inception not identified in response to Interrogatories 9 through 13, state:

- g. the date of the transfer;
- h. the amount or value of the transfer;
- i. the transferor;
- j. the transferee;
- k. the reason for the transfer; and
- l. the provision of the operative agreement, if any, permitting or requiring the transfer.

Provide your response in an Excel spreadsheet, listing each response as a separate row and each category (a through f) as a separate column.

**United Guaranty's Specific Objections and Proposed Compromise Concerning**

**Interrogatory No. 15:** Subject to and without waiving the General Objections above, United Guaranty objects to this request as overly broad and impermissibly vague (i.e. "things of value"). Furthermore, to the extent that Interrogatory No. 15 refers to the ceding of commissions from United Guaranty to the Enumerated Reinsurance Entities, such information is already covered under the CID and is therefore duplicative.

**Interrogatory No. 16:** For each Captive Trust, state:

- a. the current balance (or if the trust has been closed, so state);
- b. the total value of all reinsurance claims paid since Inception;
- c. the total amount of capital contributions paid into the Captive Trust since Inception;
- d. the total of all ceded premiums paid into the Captive Trust since Inception; and

- e. the total amount projected to be paid from the Captive Trust on future reinsurance claims and the basis for the projection.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 16: Subject to and without waiving the General Objections above, United Guaranty objects to this request as overbroad, unduly burdensome, unlikely to lead to the discovery of relevant information, and duplicative of Interrogatories Nos. 8 -12.

United Guaranty respectfully requests modifying Interrogatory No. 16 as follows:

**Interrogatory No. 16:** For each Enumerated Captive Trust, state:

- a. the current balance (or if the trust has been closed, so state);
- b. the total value of all reinsurance claims paid since Inception;
- c. the total amount of capital contributions paid into the Enumerated Captive Trust since Inception;
- d. the total of all ceded premiums paid into the Enumerated Captive Trust since Inception; and
- e. the total loss reserves projected to be paid from the Enumerated Captive Trust on future reinsurance claims and the basis for the projection.

**Interrogatory No. 17:** For each Reinsurance Policy Year relating to any Enumerated Captive Mortgage Reinsurance Arrangement since Inception, state the following as of December 31 of each calendar year:

- a. the number of insured loans subject to reinsurance;
- b. the outstanding principal of the loans identified in response to Subpart a. of this Interrogatory;
- c. the Company's risk in force;
- d. the Enumerated Reinsurance Entity's Risk in Force; and
- e. the number of loans in default.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive Trust, listing each response as a separate row and each category (a through e) as a separate column.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 17: Subject to and without waiving the General Objections above, United Guaranty objects to this interrogatory to the extent it requires the creation of documents not already in existence and not kept in the regular course of business. Additionally, United Guaranty does not ordinarily produce information for each book year on a "calendar-year" basis. Thus, this information will likely need to be reconstructed by hand, which would be unduly burdensome given United Guaranty's limited resources and staff as well as the amount of time such reconstruction would take. As a compromise, United Guaranty would be willing to produce readily available and relevant business records that contain analogous aggregate data, including quarterly and annual reports created on or after January 1, 2009.

**Interrogatory No. 18:** Identify any third party that has provided management, actuarial, accounting, trustee, or financial services to the Company relating to any Captive Mortgage Reinsurance Arrangement, the nature of the services provided, and the year(s) when they were provided.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 18: Subject to and without waiving the General Objections above, United Guaranty would like to clarify that it does not "manage" "Reinsurance Entities," thus no third party has provided "management" services to United Guaranty relating to any "Captive Mortgage Reinsurance Arrangement." Further, providing information on all trustees relating to scores of Captive Reinsurance Arrangements would be unduly burdensome.

United Guaranty respectfully requests modifying Interrogatory No. 18 as follows:

**Interrogatory No. 18:** Identify any third party that has provided actuarial, accounting, trustee, or financial services to United Guaranty relating to any Enumerated Captive Mortgage Reinsurance Arrangement, the nature of the services provided, and the year(s) when they were provided.

**Interrogatory No. 19:** Identify the state(s) in which the Company has its primary domicile or is registered, and any state regulatory agencies to which the Company must report.



United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 19: Subject to and without waiving the General Objections above, United Guaranty objects to this request on the basis that it is overly broad in that it seeks information about United Guaranty's parent company AIG. United Guaranty also objects to this request to the extent it seeks irrelevant information concerning United Guaranty's interactions with non-insurance regulators.

United Guaranty respectfully requests modifying Interrogatory No. 19 as follows:

**Interrogatory No. 19:** Identify the state(s) in which United Guaranty has its primary domicile or is registered, and any state insurance regulatory agencies to which United Guaranty must report.

**Interrogatory No. 20:** If there are documents that would have been responsive to any of the requests for documents set forth below, which were destroyed, misplaced, transferred, deleted, altered, or over-written, identify the documents and explain why they cannot be produced.

United Guaranty's Specific Objections and Proposed Compromise Concerning

Interrogatory No. 20: Subject to and without waiving the General Objections above, United Guaranty objects to this interrogatory as unduly burdensome. It is impossible to respond to this interrogatory without a meaningful meet-and-confer as to the scope of what United Guaranty will produce in response to the CFPB. Further, as discussed below there are significant burden issues with producing documents to the CID.

United Guaranty respectfully requests that the Director set aside Interrogatory 20.

**V. REQUEST TO LIMIT SPECIFIC DOCUMENT REQUESTS**

United Guaranty would be willing to produce many of the documents in response to most of the document requests; however, United Guaranty seeks necessary modifications to some of the requests in order to reduce the undue burden imposed by the CID.

United Guaranty incorporates all the prior general objections as specific objections to the document requests, and does not repeat them below. Many of the general objections cover multiple document requests.<sup>10</sup> For example:

- The undue burden imposed by the CID's expansive time frame given the applicable three-year statute of limitations and United Guaranty's significant retroactivity concerns applies to all Document Requests Nos. 1-25.
- United Guaranty's objection to the definition of the word "Company" as referring to any company other than United Guaranty applies to Document Requests Nos. 2-4, 14, 17-18, 22, and 24-25.
- United Guaranty additionally objects to Document Requests Nos. 11, 12, and 13 because they seek documents concerning Enumerated Captive Trusts or Enumerated Reinsurance Entities that could be sought more conveniently from the Enumerated Reinsurance Entities themselves, and thus the burden to United Guaranty is not justified.
- United Guaranty's objection to the use of the undefined term, "management," applies to Document Request 3.

Subject to and without waiving all the foregoing objections, United Guaranty would be willing to produce documents in response to the CID.

United Guaranty lists its other specific objections and its requests for compromise by modifying the CID below, after laying out the original text of the relevant Document Request.

**Document Request No. 2:** Organization charts of the Company sufficient to show each entity involved in Captive Mortgage Reinsurance Arrangements, and describe each such entity's role in such practices. To the extent that the identity of such entity or its direct or indirect ownership has changed during the applicable time period, submit organization charts sufficient to reflect and explain such change. If such documents were completely and accurately provided in response to the Bureau's letter dated January 3, 2012, certify their completeness and accuracy.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document

Request No. 2: Subject to and without waiving the General Objections above, this request is overly broad and unduly burdensome to the extent it applies to more than United Guaranty's

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<sup>10</sup> United Guaranty additionally generally objects to each Document Request to the extent it asks for privileged information.

domestic, primary flow business, and duplicative to the extent it requires the same information requested in Interrogatory Nos. 4 and 5.

United Guaranty respectfully requests modifying Document Request No. 2 to the following:

**Document Request No. 4:** Organization charts of United Guaranty sufficient to show each entity involved in Captive Mortgage Reinsurance Arrangements in the domestic, primary flow business, and describe each such entity's role in such practices. To the extent that the identity of such entity or its direct or indirect ownership has changed during the applicable time period, submit organization charts sufficient to reflect and explain such change. If such documents were completely and accurately provided in response to the Bureau's letter dated January 3, 2012, certify their completeness and accuracy.

**Demand Request No. 3:** Organization charts showing the complete management structure of any component of the Company involved in offering, providing, operating or monitoring private mortgage insurance or mortgage insurance reinsurance, identifying all current and former management and supervisory employees, officers, directors, or contractors, and any changes during the Applicable Time Period.

**United Guaranty's Specific Objections and Proposed Compromise Concerning Document**

**Request No. 2:** Subject to and without waiving the General Objections above, this request is overly broad and unduly burdensome to the extent it applies to more than United Guaranty's senior management involved in domestic, primary flow business, and duplicative to the extent it requires the same information requested in Interrogatory Nos. 4 and 5.

United Guaranty respectfully requests modifying Document Request No. 3 to the following:

**Demand Request No. 3:** Organization charts showing the complete senior management structure of United Guaranty involved in offering, providing, operating or monitoring private mortgage insurance or mortgage insurance reinsurance in the domestic, primary flow business, identifying all current and former management and supervisory employees, officers, directors, or contractors, and any changes during after January 1, 2009.

**Document Request No. 4:** All documents reflecting or embodying communications relating to actual or potential Captive Mortgage Reinsurance Arrangements, between the Company and any of the following:

- a. any prospective or actual Enumerated Reinsurance Entity;
- b. any third party identified in response to Interrogatory No. 18; and
- c. any federal, state, or local government agency or regulator.

**United Guaranty's Specific Objections and Proposed Compromise Concerning Document**

**Request No. 4:** Subject to and without waiving the General Objections above, it is unclear what is meant by "potential" arrangements, and documents relating to such theoretical arrangements are not relevant to the CFPB's investigation of purported violations. Further, the request for "all" communications between United Guaranty and its state regulators, accountants, and actuaries is overly broad and would require production of a large volume of documents not relevant to the investigation.

United Guaranty respectfully requests modifying Document Request No. 4 to the following:

**Document Request No. 4:** All documents reflecting or embodying communications relating to actual Captive Mortgage Reinsurance Arrangements for the period from January 1, 2009 to present, between United Guaranty and any of the following:

- a. any actual Enumerated Reinsurance Entity; and
- b. any third party identified in response to Interrogatory No. 18.

**Document Request No. 5:** All reports, summaries or presentations, or drafts of the same relating to Captive Mortgage Reinsurance Arrangements since the Inception of any Reinsurance Entity to which the document(s) relate(s).

**United Guaranty's Specific Objections and Proposed Compromise Concerning Document**

**Request No. 5:** Subject to and without waiving the General Objections above, this request is unduly burdensome as it requires "[a]ll reports, summaries or presentations, or drafts" *relating to* scores of Captive Mortgage Reinsurance Arrangements. Furthermore, United Guaranty objects

to this request as it entirely coextensive with Document Request Nos. 4 and 6, and is therefore duplicative.

United Guaranty respectfully requests modifying Document Request No. 5 to state the following:

**Document Request No. 5:** All reports, summaries or presentations, or drafts of the same relating to Enumerated Captive Mortgage Reinsurance Arrangements for the period January 1, 2009 to present.

**Document Request No. 6:** All documents since the Inception of each Reinsurance Entity relating to the creation, promotion, or marketing of actual or potential Captive Mortgage Reinsurance Arrangements, including but not limited to presentations, requests for proposals, negotiations and responses.

United Guaranty’s Specific Objections and Proposed Compromise Concerning Document Request No. 6: Subject to and without waiving the General Objections above, this request is unduly burdensome as it is unclear what is meant by “potential” arrangements, and documents relating to such theoretical arrangements are not relevant to the CFPB’s investigation of purported violations. This request is additionally burdensome as it seeks “[a]ll documents . . . relating to” scores of Captive Mortgage Reinsurance Arrangements.

United Guaranty respectfully requests modifying Document Request No. 6 to state the following:

**Document Request No. 6:** All documents from the period January 1, 2009 to present relating to the creation, promotion, or marketing of actual Enumerated Captive Mortgage Reinsurance Arrangements, including but not limited to presentations, requests for proposals, negotiations and responses.

**Document Request No. 7:** All documents since the Inception of each Reinsurance Entity relating to the legality, profitability, costs, risks, finances, conditions, or structure of Captive Mortgage Reinsurance Arrangements.

United Guaranty’s Specific Objections and Proposed Compromise Concerning Document Request No. 7: Subject to and without waiving the General Objections above, this request is

unduly burdensome as it seeks “[a]ll documents . . . relating to” scores of Captive Mortgage Reinsurance Arrangements. United Guaranty further objects to the extent the request seeks privileged documents relating to the “legality” of the agreements.

United Guaranty respectfully requests modifying Document Request No. 7 to state the following:

**Document Request No. 7:** All third-party reports from the period January 1, 2009 to present relating to the legality, profitability, costs, risks, finances, conditions, or structure of Enumerated Captive Mortgage Reinsurance Arrangements.

**Document Request No. 8:** All documents since the Inception of each Reinsurance Entity relating to the purpose of Captive Mortgage Reinsurance Arrangements, including, but not limited to, decisions to seek, maintain, develop, or cancel Captive Mortgage Reinsurance Arrangements.

United Guaranty’s Specific Objections and Proposed Compromise Concerning Document Request No. 8: Subject to and without waiving the General Objections above, this request is unduly burdensome as it seeks “[a]ll documents . . . relating to” scores of Captive Mortgage Reinsurance Arrangements. Further, the request for documents relating to the “purpose” of Captive Mortgage Reinsurance Arrangements is vague and unexplained, as the purpose of all insurance is to manage risk. Additionally, United Guaranty objects to this request to the extent it seeks privileged information.

As a good faith response to this request, United Guaranty proposes to search for and produce non-privileged documents concerning the decision to enter into the Reinsurance Arrangements not terminated prior to January 25, 2009.

**Document Request No. 9:** All documents relating to any proposed, contemplated, or actual contract or agreement or any modifications of such agreements between you and any Mortgage Lender. This request includes, but is not limited to, any notes or records of any oral, written, or implied contract or agreement for the purchase of mortgage insurance or reinsurance, trust

agreement, commutation agreement, retrocession agreement, indemnification agreement, security agreement, participation agreement, and any related amendment.

United Guaranty Specific Objections and Proposed Compromise Concerning Document

Request No. 9: Subject to and without waiving the General Objections above, United Guaranty objects to this request as overly broad, unduly burdensome, and not calculated to lead to the production of relevant documents. As written, this request is so broad as to swallow every other request and requires the production of virtually every document created by United Guaranty over an almost twelve-year period. Further, as discussed above, it is unclear what is meant by “potential” or “contemplated” arrangements, and documents relating to such theoretical arrangements will not be relevant to the CFPB’s investigation of purported violations. Additionally, to the extent that this request includes internal reinsurance, this request is overbroad. Furthermore, given the breadth of the potentially relevant ESI, United Guaranty believes such production would cause a burden on United Guaranty that is greatly disproportionate to the violations CFPB has the authority to enforce given the applicable statute of limitations and the fact that the majority of relevant captive reinsurance agreements were terminated before or shortly after 2009.

Given the incredible over-breadth of this request, United Guaranty respectfully requests that the Director set aside Document Request No. 9.

**Document Request No. 10:** All documents identified in response to Interrogatory 9.b., and all documents relating to such documents.

United Guaranty’s Specific Objections and Proposed Compromise Concerning Document

Request No. 10: Subject to and without waiving the General Objections above, for the same reasons United Guaranty objected to Interrogatory No. 9, United Guaranty objects to this document request as overbroad, unduly burdensome, and not calculated to lead to the discovery of relevant evidence to the extent this request seeks information with respect to internal

reinsurance agreements, pool business, and external reinsurance agreements before January 1, 2009. The request for “all documents” relating to documents identified in Interrogatory 9(b) is additionally overbroad and unduly burdensome, and United Guaranty respectfully requests that CFPB limit this request to specific agreements.

United Guaranty respectfully requests modifying Document Request No. 10 to state the following:

**Document Request No. 10:** All documents identified in response to Interrogatory 9.b.

**Document Request No. 11:** All documents relating to any accounting of any Enumerated Captive Mortgage Reinsurance Arrangement or Enumerated Captive Trust, including but not limited to any settlement report, summary report, captive report, valuation notice, trust account summary, cession statement, accounting statement, capital deposit or capital deficiency notice, or trust disbursement request.

United Guaranty’s Specific Objections and Proposed Compromise Concerning Document Request No. 10: Subject to and without waiving the General Objections above, United Guaranty objects to this request on the basis that it seek duplicative documents that have already been produced to the Bureau. United Guaranty further objects that many of the documents are cumulative of information sought by the CFPB’s interrogatories. Nevertheless, in the spirit of good faith, United Guaranty would be willing to comply with this request.

**Document Request No. 12:** All documents relating to projections of costs, losses, assets, liabilities, income or profits pertaining to the provision of mortgage insurance reinsurance, including but not limited to business plans, pro forma projections, and documents embodying performance objectives, goals, or expectations for any Enumerated Reinsurance Entity.

United Guaranty’s Specific Objections and Proposed Compromise Concerning Document Request No. 12: Subject to and without waiving the General Objections above, this request is unduly burdensome as it seeks “[a]ll documents . . . relating to” mortgage insurance reinsurance from an unspecified time period.



United Guaranty respectfully requests modifying Document Request No. 12 to state the following:

**Document Request No. 12:** All documents from January 1, 2009 until the present relating to projections of costs, losses, assets, liabilities, income or profits pertaining to the provision of mortgage insurance reinsurance, including but not limited to business plans, pro forma projections, and documents embodying performance objectives, goals, or expectations for any Enumerated Reinsurance Entity.

**Document Request No. 13:** All invoices, bills, receipts, and records of payments relating to any transaction into or from any Enumerated Captive Trust, including but not limited to capital contributions, ceded premiums, Investment Income, payment of reinsurance claims, dividends, income taxes, and expenses.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document

Request No. 13: Subject to and without waiving the General Objections above, this request is unduly burdensome as it seeks "[a]ll documents . . . relating to any transaction into or from any Enumerated Captive Trust" from an unspecified time period. Furthermore, United Guaranty objects to this request to the extent it seeks information United Guaranty has already produced to HUD.

United Guaranty respectfully requests modifying Document Request No. 13 to state the following:

**Document Request No. 13:** All invoices, bills, receipts, and records of payments from January 1, 2009 until the present relating to any transaction into or from any Enumerated Captive Trust, including but not limited to capital contributions, ceded premiums, Investment Income, payment of reinsurance claims, dividends, income taxes, and expenses.

**Document Request No. 14:** One in-force mortgage insurance agreement entered into by the Company for which mortgage insurance reinsurance was obtained from each calendar year for which at least one such policy remains in force.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document

Request No. 14: Subject to and without waiving the General Objections above, United Guaranty

objects to this request because “in-force mortgage insurance agreement” is a vague term. United Guaranty respectfully requests to confirm whether “in-force mortgage insurance agreement” refers to a specimen copy of a Master Policy or to an actual sample policy issued to a Mortgage Lender.

**Document Request No. 15:** All documents relating to the 1997 HUD Retsinas Letter.

United Guaranty’s Specific Objections and Proposed Compromise Concerning Document

Request No. 16: Subject to and without waiving the General Objections above, United Guaranty objects to this request as over broad and unduly burdensome that involves the production of privileged documents. Nevertheless, in the spirit of good faith, United Guaranty would be willing to produce non-privileged actuarial opinions that discuss the Retsinas letter.

**Document Request No. 16:** All actuarial studies, reports, opinions, memoranda internal reviews, or statements, and all related documents and underlying work papers, concerning risk transfer in any Captive Mortgage Reinsurance Arrangement, including but not limited to risk transfer requirements under the Financial Accounting Standards Board (FASB), Statutory Accounting Principles (SAP), Emerging Issues Task Force (EITF), Generally Accepted Accounting Principles (GAAP), or National Association of Insurance Commissioners (NAIC).

United Guaranty’s Specific Objections and Proposed Compromise Concerning Document

Request No. 16: Subject to and without waiving the General Objections above, United Guaranty objects to this request as overly broad and unduly burdensome insofar as it is not limited to any specific captive arrangements or any specific time frame. United Guaranty further objects to the extent that this request seeks “work papers” of third parties that United Guaranty does not have access to.

United Guaranty respectfully requests modifying Document Request No. 16 to state the following:

**Document Request No. 16:** All final actuarial reports or opinions performing a risk transfer analysis created after January 1, 2009.

**Document Request No. 17:** All documents provided to or received from any actuary, financial analyst, auditor, outside consultant or any other person outside the Company, relating to the preparation of any document, including any draft, outline, or other preliminary document, produced in response to Document Requests No. 14 and 15 of this CID.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document Request No. 17: Subject to and without waiving the General Objections above, United Guaranty objects to this request as overbroad, unduly burdensome, and vague. The reference to Document Requests Nos. 14 and 15 appears to be mistaken given Request No. 14's reference to an insurance agreement. United Guaranty respectfully requests clarification of which documents the CFPB is seeking in this request before it can respond. Further, United Guaranty respectfully requests that "any other person outside the Company" be limited as it is overbroad as written.

**Document Request No. 18:** All agreements between the Company and any party identified in response to Interrogatory No. 18.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document Request No. 18: Subject to and without waiving the General Objections above, United Guaranty would like to clarify that it does not "manage" "Reinsurance Entities," thus no third party has provided "management" services to United Guaranty relating to any "Captive Mortgage Reinsurance Arrangement." Further, providing information on all trustees relating to scores of Captive Reinsurance Arrangements would be unduly burdensome.

United Guaranty respectfully requests modifying Document Request No. 18 to state the following:

**Document Request No. 18:** All engagement letters with actuaries, accountants, and auditors identified in response to Interrogatory No. 18.

**Document Request No. 19:** All documents relating to any financial, business, or investment assessment or analysis of any aspect of any Captive Mortgage Reinsurance Arrangement, including but not limited to, rating agency reports or other analyst reports.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document

Request No. 19: Subject to and without waiving the General Objections above, United Guaranty respectfully requests clarification from the CFPB regarding the intended definition of the terms “rating agency reports” and “investment assessment.” Further, United Guaranty objects to this request as overly broad in that it seeks “[a]ll documents *relating to*” scores of arrangements going back many years before the relevant statute of limitations. United Guaranty further objects to the extent that the requested information is publicly available.

United Guaranty respectfully requests modifying Document Request No. 19, once it is clarified, to state the following:

**Document Request No. 19:** All final assessments or analysis by rating agencies with respect to Enumerated Captive Mortgage Reinsurance Arrangement.

**Document Request No. 20:** All reports or financial statements relating to an Enumerated Reinsurance Entity filed with any state regulatory agency identified in response to Interrogatory No. 19 since the Inception of the relevant Reinsurance Entity, including but not limited to, Vermont Captive Insurance Annual Reports and Audited Statutory Financial Statements.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document

Request No. 20: Subject to and without waiving the General Objections above, United Guaranty objects to this request as it seeks documents not in existence. United Guaranty does not prepare or file financial statements for captives, other than sponsored captives. United Guaranty's annual statements contain line items referring to reinsurance. United Guaranty further objects to this request as it seeks documents well beyond the limitations period.

United Guaranty respectfully requests modifying Document Request No. 20 to state the following:

**Document Request No. 20:** Annual reports referring to reinsurance for the period January 1, 2009 to present.

**Document Request No. 21:** All rate filings for mortgage insurance filed with any state regulatory agency.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document Request No. 21: Subject to and without waiving the General Objections above, United Guaranty objects to this request as unduly burdensome and overly broad. To produce United Guaranty's rate filing in all 50 states for this unspecified period of time would be incredibly voluminous. Furthermore, United Guaranty previously produced sample rate filings to HUD-OIG.

United Guaranty respectfully requests modifying Document Request No. 21 to state the following:

**Document Request No. 21:** All sample rate filings for mortgage insurance previously produced to HUD.

**Document Request No. 22:** All documents prepared by or provided to the Company's Board of Directors or any committee of the Board of Directors relating to any Captive Mortgage Reinsurance Arrangement, including but not limited to all reports, summaries, presentations, emails, meeting minutes, or meetings agendas.

United Guaranty's United Specific Objections and Proposed Compromise Concerning Document Request No. 22: Subject to and without waiving the General Objections above, United Guaranty objects to this request as unduly burdensome because it seeks "[a]ll documents . . . relating to" scores of agreements for an unspecified period of time.

United Guaranty respectfully requests modifying Document Request No. 22 to state the following:

**Document Request No. 22:** All reports, summaries, presentations, meeting minutes, or meetings agendas prepared by or provided to the Company's Board of Directors or any committee of the Board of Directors relating to any Captive Mortgage Reinsurance Arrangement created after January 1, 2009.

**Document Request No. 23:** All documents relating to the announcement by Freddie Mac in 2008 of guidelines capping acceptable gross ceded premiums on newly ceded risk at 25 percent effective June 1, 2008.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document

Request No. 23: Subject to and without waiving the General Objections above, United Guaranty objects to this request as unduly burdensome as it seeks “[a]ll documents *relating to*” scores of agreements going back many years.

United Guaranty respectfully requests modifying Document Request No. 23 to state the following:

**Document Request No. 23:** All documents relating to the announcement by Freddie Mac in 2008 of guidelines capping acceptable gross ceded premiums on newly ceded risk at 25 percent effective June 1, 2008 concerning the Enumerated Captive Reinsurance Arrangements.

**Document Request No. 24:** All documents relating to the stated intention of Mortgage Guaranty Insurance Company (“MGIC”) that it would not participate in excess-of-loss Captive Mortgage Reinsurance Arrangements with premium cessions in excess of 25% after March 31, 2003, including, but not limited to, MGIC’s subsequent reversal of this stated intention.

United Guaranty's Specific Objections and Proposed Compromise Concerning Document

Request No. 24: Subject to and without waiving the General Objections above, United Guaranty objects to this request as unduly burdensome as this request seeks documents relating to an incident involving a different company that occurred over nine years ago. Absent an agreement on search terms and a more defined timeframe, it would be unreasonably difficult for United Guaranty to identify and locate all responsive documents to this request, to the extent any responsive documents exist.

**VI. CONCLUSION**

For the reasons stated above, United Guaranty respectfully requests the Director to modify or set aside the CID as requested above.

Dated: December 7, 2012  
New York, New York

Respectfully Submitted,

s/Michael B. Carlinsky \_\_\_\_\_

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# EXHIBIT A





United States of America  
Consumer Financial Protection Bureau

# Civil Investigative Demand

To **American International Group, Inc.**  
180 Maiden Lane  
New York, New York 10038  
Attention: Thomas Russo  
Executive Vice President & GC

This demand is issued pursuant to Section 1052 of the Consumer Financial Protection Act of 2010 and 12 C.F.R. Part 1080 to determine whether there is or has been a violation of any laws enforced by the Bureau of Consumer Financial Protection.

## Action Required (choose all that apply)

Appear and Provide Oral Testimony

Location of Investigational Hearing	Date and Time of Investigational Hearing
	Bureau Investigators

Produce Documents and/or Tangible Things, as set forth in the attached document, by the following date 07/19/2012

Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date 07/19/2012

## Notification of Purpose Pursuant to 12 C.F.R. § 1080.5

The purpose of this investigation is to determine whether mortgage lenders and private mortgage insurance providers or other unnamed persons have engaged in, or are engaging in, unlawful acts and practices in connection with residential mortgage loans in violation of Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act, 12 U.S.C. §§ 5531 and 5536, and the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. The purpose of this investigation is to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

### Custodian / Deputy Custodian

Lucy Morris /  
Noah Van Dyke

### Bureau Counsel

Donald R. Gordon  
Crystal Sumner

### Date Issued

06/20/2012

### Signature

Name / Title **Kent Markus / Chief of Enforcement**

### Service

The delivery of this demand to you by any method prescribed by Section 1052 of the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5562, is legal service and may subject you to a penalty imposed by law for failure to comply.

### Travel Expenses

Request a travel voucher to claim compensation to which you are entitled as a witness before the Bureau pursuant to Section 1052 of the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5562.

### Right to Regulatory Enforcement Fairness

The CFPB is committed to fair regulatory enforcement. If you are a small business under Small Business Administration standards, you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

### Paperwork Reduction Act

This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CIVIL INVESTIGATIVE DEMAND FOR  
PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES**

**I. Definitions**

As used in this Civil Investigative Demand, the following definitions shall apply:

A. **"Affiliate"** or **"Affiliates"** shall mean any person that controls, is controlled by, or under common control with another person.

B. **"And,"** as well as **"or,"** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any request in this Civil Investigative Demand all information that otherwise might be construed to be outside the scope of the request.

C. **"Any"** shall be construed to include **"all,"** and **"all"** shall be construed to include the word **"any."**

D. **"Captive Mortgage Reinsurance Arrangement"** shall refer to any contract, agreement, or other business arrangement to which the Company is or was a party, which reinsures any portion of a private mortgage insurance policy or mortgage insurance coverage provided by the Company in exchange for a percentage of premiums paid for that mortgage insurance policy or coverage, and any actions necessitated by, attendant or ancillary to the execution of such an agreement and its provisions, including but not limited to (1) the referral of borrowers to the Company in connection with loans originated by a Mortgage Lender, (2) the creation or operation of one or more Reinsurance Entities to provide reinsurance services to the Company, (3) the receipt through such Reinsurance Entities of some portion of the premiums paid by borrowers to the Company or other forms of payment in connection with such loans, and (4) any other services provided pursuant to such an agreement.

E. **"Captive Trust"** shall mean any trust used in connection with a Captive Mortgage Reinsurance Arrangement to which the Company is or was a party, including any accounts, funds, or property held in the name of such trust.

F. **"CID"** shall mean the Civil Investigative Demand, including the Definitions, Instructions, and Requests.

G. **"CFPB"** or **"Bureau"** shall mean the Consumer Financial Protection Bureau.

H. **"Chief of Enforcement"** refers to the Assistant Director of the Division of Enforcement.

I. **"Company"** or **"You"** or **"Your"** shall mean American International Group, Inc., its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, including prior to the time any such entity was owned or controlled, partly or wholly, by American International Group, Inc., and all principals, directors, officers, owners, employees, agents, representatives, consultants, attorneys, accountants,

independent contractors, and other persons working for or on behalf of the foregoing.

J. **“Document”** shall mean any written matter of every type and description, including any book, record, report, memorandum, paper, communication, tabulation, chart, log, electronic file, or other data or data compilation stored in any medium. **“Document”** shall also mean any non-identical copy (such as a draft or annotated copy) of the foregoing, however and by whomever prepared, produced, disseminated, or made, regardless of origin or location. **“Document”** shall also include **Electronically Stored Information**.

K. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**

L. **“Electronically Stored Information,”** or **“ESI,”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including but not limited to electronic mail, instant messaging, videoconferencing, SMS, MMS, or other text messaging, and other electronic correspondence (whether active, archived, unsent, or in a deleted items folder), word-processing files, spreadsheets, databases, unorganized data, document metadata, presentation files, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, cell phones, Blackberry, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

M. **“Enumerated Captive Mortgage Reinsurance Arrangement”** shall mean any Captive Mortgage Reinsurance Arrangement with an Enumerated Reinsurance Entity.

N. **“Enumerated Captive Trust”** shall mean any Captive Trust affiliated with an Enumerated Reinsurance Entity.

O. **“Enumerated Mortgage Lender”** shall mean any current or past affiliate of the following entities that originated any residential mortgage loans that were reinsured:

A large black rectangular redaction box covers the list of entities mentioned in paragraph O.

P. **“Enumerated Reinsurance Entity”** shall mean any Reinsurance Entity affiliated with an Enumerated Mortgage Lender.

Q. **“Identify”** or **“the identity of”** shall be construed to require identification of (a) natural persons by name, title or position, present business affiliation, present business address and telephone number, or if a present business affiliation or present business address is not known, the last known business and home addresses; (b) businesses or other organizations by name, address, identities of natural persons who are officers, directors, or managers of the business or organization, and contact persons, and (c) documents by title, date, author(s), recipient(s), type of document, Bates number, or some other means of identifying the document, and its present or

last known location or custodian.

R. **“Inception”** shall mean the date upon which the relevant Reinsurance Entity was formed.

S. **“Investment Income”** shall mean all dividends, interest, profits, capital gains, or other income or proceeds resulting from the investment of the assets in the relevant Captive Trust.

T. **“Mortgage Lender”** shall mean any current or past entity that originated any residential mortgage loans that were reinsured.

U. **“Person”** shall mean an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

V. **“Reclassified”** shall mean any change in the accounting, other financial reporting, or contractual treatment of Investment Income, expenses or Captive Trust assets and liabilities under any operative agreement, including, but not limited to, re-characterization of dividend or other investment income as a capital contribution.

W. **“Referring to”** or **“relating to”** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, comprising, showing, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

X. **“Reinsurance Entity”** shall mean any affiliate of a Mortgage Lender that has offered mortgage insurance reinsurance to the Company or been a party to a Captive Mortgage Reinsurance Arrangement at any time since January 1, 1995.

Y. **“Reinsurance Policy Year”** shall mean all mortgage insurance policies issued by the Company during the relevant calendar year and subsequently reinsured by a Reinsurance Entity.

Z. **“Risk in Force”** shall mean the aggregate outstanding exposure of an insurer or reinsurer to actual or potential insurance or reinsurance claims, expressed in dollars.

AA. **“1997 HUD Retsinas Letter”** shall mean the letter dated August 6, 1997, from Nicholas P. Retsinas, Assistant Secretary for Housing – Federal Housing Commissioner, addressed to Sandor Samuels, General Counsel, Countrywide Funding Corporation.

## II. Instructions

A. **Sharing of Information:** This CID relates to an official, nonpublic, law enforcement investigation currently being conducted by the Consumer Financial Protection Bureau. The Bureau may make its files available to other civil and criminal federal, state, or local law enforcement agencies pursuant to 12 C.F.R. §§ 1070.43(b)(1) and 1070.45(a)(5). Information you provide may be used in any civil or criminal proceeding by the Bureau or other agencies. As stated in 12 C.F.R. § 1080.14, information you provide pursuant to this CID is subject to the requirements and procedures relating to the disclosure of records and information set forth in 12 C.F.R. § 1070.

**B. Meet and Confer:** You must contact Donald Gordon at (202) 435-7357 as soon as possible to schedule a meeting (telephonic or in person) to be held within **ten (10)** calendar days after receipt of this CID in order to confer regarding your production of documents and information.

**C. Applicable Time Period for Responsive Materials:** Unless otherwise directed, the applicable time period for the request shall be from January 1, 2001, until the date of full and complete compliance with this CID.

**D. Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege, the claim must be asserted no later than the date set for the production of the material. Any such claim must include a schedule of the items withheld that states, as to each such item, the:

1. type, specific subject matter, and date of the withheld item;
2. names, addresses, positions, and organizations of all authors and recipients of the item;
3. specific grounds for claiming that the item is privileged; and
4. interrogatory or request to which the privileged document is responsive.

In addition, the person who submits the schedule and the attorney stating the grounds for a claim that any item is privileged must sign it. In accordance with 12 C.F.R. § 1080.8(b), a person withholding material solely based on a claim of privilege shall comply with these requirements (which are set forth in 12 C.F. R. § 1080.8) in lieu of filing a petition for an order modifying or setting aside a demand under 12 C.F.R. § 1080.6(d), as described below. If only portions of the responsive material are privileged, those portions may be redacted from the responsive material, which must be submitted in a way that makes clear where the redactions were made. If all of the content on a particular page is privileged, a blank, sequentially numbered page should be included in the production where the responsive material, had it not been privileged, would have been located.

**E. Document Retention:** You are required to retain all documentary materials and other tangible things that were relied upon or used in the preparation of the responses to this CID. In addition, during the pendency of this investigation and any related enforcement action, the Bureau may require the submission of additional documentary material or tangible things. Accordingly, during the pendency of this investigation and any related enforcement action, you must suspend any routine or non-routine procedures that may result in the destruction of documentary material or tangible things that are in any way potentially relevant to this investigation, as described in the CID's Notification of Purpose Pursuant to 12 C.F.R. § 1080.5. You are required to prevent the unlawful destruction of relevant material irrespective of whether you believe such material is protected from future disclosure or discovery by privilege or otherwise. See 18 U.S.C. §§ 1505, 1519.

**F. Modification of Requests:** If you believe that the scope of the search or response required by this CID can be narrowed consistent with the Bureau's need for documents or

information, you are encouraged to discuss such possible modifications, including modifications of the requirements of these instructions, with Donald Gordon at (202) 435-7357. Modifications must be agreed to in writing by the Chief of Enforcement or a Bureau employee to whom the Chief of Enforcement has delegated the authority to act under 12 C.F.R. § 1080.6(c).

**G. Petition for Order Modifying or Setting Aside Demand:** Pursuant to 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(d), you may petition the Bureau for an order modifying or setting aside this CID. The petition must be filed with the Executive Secretary of the Bureau and a copy must be provided to the Chief of Enforcement within twenty calendar days after service of the CID or, if the return date is less than twenty calendar days after service, prior to the return date. The Chief of Enforcement or any employee to whom he or she has delegated authority to act under 12 C.F.R. § 1080.6(d) may rule upon a request for extensions of time to file a petition, but such requests are disfavored.

The petition shall set forth all factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. The petition must also be accompanied by a signed statement representing that you have conferred with Donald Gordon at (202) 435-7357 in a good faith effort to resolve the issues raised by the petition and have been unable to do so. If some of the matters in controversy have been resolved by agreement, the statement shall specify the matters so resolved and the matters remaining unresolved. The statement shall recite the date, time, and place of each such conference, and the names of all parties participating in each such conference. The Director of the Bureau or a person authorized to perform the functions of the Director of the Bureau in accordance with the law will rule upon the petition.

**H. Certification:** The person to whom the CID is directed or, if not a natural person, any person having knowledge of the facts and circumstances relating to the production, shall certify that the response to this CID is complete. This certification shall be made on the form declaration included with this CID, or by a sworn affidavit.

**I. Scope of Search:** This CID covers materials and information in your possession, actual or constructive custody, or control.

**J. Document Production:** All responsive documents available in electronic format must be produced electronically in native file format, including all metadata. We encourage the electronic production of all materials responsive to this CID. Please follow the enclosed Document Submission Standards for further instructions about the production of documents. As stated in the Document Submission Standards, all produced documents shall be clearly marked with unique, sequential numbers on each page, if imaged documents, or as part of the file name, if native documents.

**K. Document Identification:** Documents that may be responsive to more than one request of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each request to which the document is responsive.

**L. Sensitive Personally Identifiable Information:** If any material called for by these

requests contains sensitive personally identifiable information, sensitive health information of any individual, or Suspicious Activities Reports, please contact Donald Gordon at (202) 435-7357 before sending those materials to discuss ways to protect such information during production. You must encrypt electronic copies of such material with BitLocker encryption software. When submitting encrypted material, you must clearly designate the type of encryption software used and provide the encryption key, certificate or passcode in a separate communication.

For purposes of this CID, sensitive personally identifiable information includes an individual's Social Security number alone or an individual's name, address, or phone number *in combination with* one or more of the following: date of birth; Social Security number; driver's license number or other state-identification number, or a foreign country equivalent; passport number; financial-account number; credit-card number; or debit-card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

**M. Information Identification:** Each interrogatory in this CID shall be answered separately and fully in writing under oath. All information submitted shall clearly and precisely identify the request(s) to which it is responsive.

**N. Declaration Certifying Records of Regularly Conducted Business Activity:** Attached is a Declaration Certifying Records of Regularly Conducted Business Activity, which may limit the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Declaration and provide it with your response.

### **III. Requests**

#### **Interrogatories**

1. Identify all persons who participated in responding to this CID and the specific tasks performed by each person.
2. State the Company's correct legal name and principal place of business; the date and state of incorporation; all trade names under which the Company has done business; and the names, titles, and dates of employment of all officers, directors, and principal stockholders or owners.
3. List each state in which the Company has done business and the period during which the Company has done business in each state.
4. Describe the complete management structure of any component of the Company involved in offering, providing, operating or monitoring private mortgage insurance or mortgage insurance reinsurance, identifying all current and former management and supervisory employees, officers and directors (including contractors, if applicable), and any changes in the applicable time period. Information regarding mortgage insurance reinsurance shall be provided since Inception.
5. Identify all current and former management and supervisory employees employed by the Company (including contractors, if applicable) with responsibilities relating to any Captive Mortgage Reinsurance Arrangement since January 1, 1995. For each employee, state all current and former titles or positions and the dates each such current and former title or position was held.
6. Describe each instance in which the Company has been investigated, sued, prosecuted, or had action taken against it for alleged violations of Section 8 of the Real Estate Settlement Procedures Act ("RESPA"), for allegedly unfair or deceptive acts or practices, or for any other alleged violation of state or federal law, relating to any Captive Mortgage Reinsurance Arrangement, including, where applicable, the names of all parties, the jurisdiction involved, the case number, the claims asserted, and the current status or final resolution of the matter.
7. With respect to any instance identified in response to Interrogatory 6, describe every document preservation request or obligation directed to or imposed upon the Company, including the specific nature and extent of the documents sought to be preserved, the exact date that such request or obligation was transmitted to the Company, and the exact date when such request or obligation expired, or will expire.
8. For each Enumerated Captive Mortgage Reinsurance Arrangement to which the Company became a party after January 1, 1995:



- a. identify the Enumerated Reinsurance Entity with which the Company partnered in the Enumerated Captive Mortgage Reinsurance Arrangement;
  - b. state the date on which the Enumerated Captive Mortgage Reinsurance Arrangement began;
  - c. state the date on which the Enumerated Captive Trust related to the Enumerated Captive Mortgage Reinsurance Arrangement terminated, and if so, whether on a run-off or cut-off basis, and if it has not terminated, state "Active;"
  - d. identify all agreements and amendments to agreements governing any aspect of the Enumerated Captive Mortgage Reinsurance Arrangement or related Enumerated Captive Trust, including, without limitation, reinsurance agreements, trust agreements, and agreements to end the Enumerated Captive Mortgage Reinsurance Arrangement; and
  - e. if the Enumerated Captive Mortgage Reinsurance Arrangement has terminated, identify the provisions of any operative agreement that authorized or permitted the termination, and all documents relating to the termination.
9. Identify each entity that was not a Reinsurance Entity from which the company obtained mortgage insurance reinsurance after January 1, 1995, and as to each such entity:
- a. state the dates on which each business arrangement to obtain such mortgage insurance reinsurance began and ended; and
  - b. identify all agreements and amendments to agreements governing any aspect of any such business arrangement.
10. For each payment into any Enumerated Captive Trust since Inception, state:
- a. the date of the payment;
  - b. the amount of the payment;
  - c. the payor;
  - d. the original source of the payment, if not the payor;
  - e. the classification of the payment (*e.g.*, ceded premiums, capital contributions, or interest income);
  - f. the provision of the operative agreement permitting or requiring the payment; and
  - g. the balance of the Enumerated Captive Trust after the payment.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive Trust, listing each response as a separate row and each category (a through g) as a separate column.

11. For each withdrawal or payment from any Enumerated Captive Trust since Inception, state:

- a. the date of withdrawal or payment;
- b. the amount of withdrawal or payment;
- c. the payee;
- d. the classification of the withdrawal (e.g. payments on claims, expenses, taxes, or dividends);
- e. the provision of the operative agreement permitting or requiring the withdrawal; and
- f. the balance of the Enumerated Captive Trust after payment.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive Trust, listing each response as a separate row and each category (a through f) as a separate column.

12. For all Investment Income relating to an Enumerated Captive Trust since Inception, state:

- a. the date of payment;
- b. the amount of payment;
- c. the payor;
- d. the payee (e.g. the Enumerated Captive Trust or the Enumerated Reinsurance Entity);
- e. the provision of the operative agreement permitting or requiring the payment.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive Trust with which the Investment Income is associated, regardless of whether the Investment Income was in such Enumerated Captive Trust. List each response as a separate row and each category (a through e) as a separate column.

13. For any amount in any Enumerated Captive Trust that was Reclassified since Inception, state:

- a. the date of the reclassification;
- b. the amount reclassified;
- c. the original classification;
- d. the new classification; and
- e. the reason for the reclassification.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive Trust, listing each response as a separate row and each category (a through e) as a separate column.

14. For any amount not in an Enumerated Captive Trust that was transferred from any Enumerated Reinsurance Entity since Inception, state:

- a. the date of the transfer;
- b. the amount transferred;
- c. the transferor (i.e., the Enumerated Reinsurance Entity);

- d. the transferee (e.g., the specific entity within the affiliated Enumerated Mortgage Lender);
- e. the classification of the transfer; and
- f. the reason for the transfer.

Provide your response in a separate Excel spreadsheet for each Enumerated Reinsurance Entity, listing each response as a separate row and each category (a through f) as a separate column.

15. For all monetary payments and all other transfers of any thing of value between the Company and any Enumerated Reinsurance Entity since Inception not identified in response to Interrogatories 9 through 13, state:

- a. the date of the transfer;
- b. the amount or value of the transfer;
- c. the transferor;
- d. the transferee;
- e. the reason for the transfer; and
- f. the provision of the operative agreement, if any, permitting or requiring the transfer.

Provide your response in an Excel spreadsheet, listing each response as a separate row and each category (a through f) as a separate column.

16. For each Captive Trust, state:

- a. the current balance (or if the trust has been closed, so state);
- b. the total value of all reinsurance claims paid since Inception;
- c. the total amount of capital contributions paid into the Captive Trust since Inception;
- d. the total of all ceded premiums paid into the Captive Trust since Inception; and
- e. the total amount projected to be paid from the Captive Trust on future reinsurance claims and the basis for the projection.

17. For each Reinsurance Policy Year relating to any Enumerated Captive Mortgage Reinsurance Arrangement since Inception, state the following as of December 31<sup>st</sup> of each calendar year:

- a. the number of insured loans subject to reinsurance;
- b. the outstanding principal of the loans identified in response to Subpart a. of this Interrogatory;
- c. the Company's risk in force;
- d. the Enumerated Reinsurance Entity's Risk in Force; and
- e. the number of loans in default.

Provide your response in a separate Excel spreadsheet for each Enumerated Captive

Trust, listing each response as a separate row and each category (a through e) as a separate column.

18. Identify any third party that has provided management, actuarial, accounting, trustee, or financial services to the Company relating to any Captive Mortgage Reinsurance Arrangement, the nature of the services provided, and the year(s) when they were provided.
19. Identify the state(s) in which the Company has its primary domicile or is registered, and any state regulatory agencies to which the Company must report.
20. If there are documents that would have been responsive to any of the requests for documents set forth below, which were destroyed, misplaced, transferred, deleted, altered, or over-written, identify the documents and explain why they cannot be produced.

#### **Requests for Documents**

1. All documents relied upon to complete any of the Interrogatories set forth above.
2. Organization charts of the Company sufficient to show each entity involved in Captive Mortgage Reinsurance Arrangements, and describe each such entity's role in such practices. To the extent that the identity of such entity or its direct or indirect ownership has changed during the applicable time period, submit organization charts sufficient to reflect and explain such change. If such documents were completely and accurately provided in response to the Bureau's letter dated January 3, 2012, certify their completeness and accuracy.
3. Organization charts showing the complete management structure of any component of the Company involved in offering, providing, operating or monitoring private mortgage insurance or mortgage insurance reinsurance, identifying all current and former management and supervisory employees, officers, directors, or contractors, and any changes during the Applicable Time Period.
4. All documents reflecting or embodying communications relating to actual or potential Captive Mortgage Reinsurance Arrangements, between the Company and any of the following:
  - a. any prospective or actual Enumerated Reinsurance Entity;
  - b. any third party identified in response to Interrogatory No. 18; and
  - c. any federal, state, or local government agency or regulator.
5. All reports, summaries or presentations, or drafts of the same relating to Captive

Mortgage Reinsurance Arrangements since the Inception of any Reinsurance Entity to which the document(s) relate(s).

6. All documents since the Inception of each Reinsurance Entity relating to the creation, promotion, or marketing of actual or potential Captive Mortgage Reinsurance Arrangements, including but not limited to presentations, requests for proposals, negotiations and responses.
7. All documents since the Inception of each Reinsurance Entity relating to the legality, profitability, costs, risks, finances, conditions, or structure of Captive Mortgage Reinsurance Arrangements.
8. All documents since the Inception of each Reinsurance Entity relating to the purpose of Captive Mortgage Reinsurance Arrangements, including, but not limited to, decisions to seek, maintain, develop, or cancel Captive Mortgage Reinsurance Arrangements.
9. All documents relating to any proposed, contemplated, or actual contract or agreement or any modifications of such agreements between you and any Mortgage Lender. This request includes, but is not limited to, any notes or records of any oral, written, or implied contract or agreement for the purchase of mortgage insurance or reinsurance, trust agreement, commutation agreement, retrocession agreement, indemnification agreement, security agreement, participation agreement, and any related amendment.
10. All documents identified in response to Interrogatory 9.b., and all documents relating to such documents.
11. All documents relating to any accounting of any Enumerated Captive Mortgage Reinsurance Arrangement or Enumerated Captive Trust, including but not limited to any settlement report, summary report, captive report, valuation notice, trust account summary, cession statement, accounting statement, capital deposit or capital deficiency notice, or trust disbursement request.
12. All documents relating to projections of costs, losses, assets, liabilities, income or profits pertaining to the provision of mortgage insurance reinsurance, including but not limited to business plans, pro forma projections, and documents embodying performance objectives, goals, or expectations for any Enumerated Reinsurance Entity.
13. All invoices, bills, receipts, and records of payments relating to any transaction into or from any Enumerated Captive Trust, including but not limited to capital contributions, ceded premiums, Investment Income, payment of reinsurance claims, dividends, income taxes, and expenses.
14. One in-force mortgage insurance agreement entered into by the Company for which mortgage insurance reinsurance was obtained from each calendar year for which at least

one such policy remains in force.

15. All documents relating to the 1997 HUD Retsinas Letter.
16. All actuarial studies, reports, opinions, memoranda, internal reviews, or statements, and all related documents and underlying work papers, concerning risk transfer in any Captive Mortgage Reinsurance Arrangement, including but not limited to risk transfer requirements under the Financial Accounting Standards Board (FASB), Statutory Accounting Principles (SAP), Emerging Issues Task Force (EITF), Generally Accepted Accounting Principles (GAAP), or National Association of Insurance Commissioners (NAIC).
17. All documents provided to or received from any actuary, financial analyst, auditor, outside consultant or any other person outside the Company, relating to the preparation of any document, including any draft, outline, or other preliminary document, produced in response to Document Requests No. 14 and 15 of this CID.
18. All agreements between the Company and any party identified in response to Interrogatory No. 18.
19. All documents relating to any financial, business, or investment assessment or analysis of any aspect of any Captive Mortgage Reinsurance Arrangement, including but not limited to, rating agency reports or other analyst reports.
20. All reports or financial statements relating to an Enumerated Reinsurance Entity filed with any state regulatory agency identified in response to Interrogatory No. 19 since the Inception of the relevant Reinsurance Entity, including but not limited to, Vermont Captive Insurance Annual Reports and Audited Statutory Financial Statements.
21. All rate filings for mortgage insurance filed with any state regulatory agency.
22. All documents prepared by or provided to the Company's Board of Directors or any committee of the Board of Directors relating to any Captive Mortgage Reinsurance Arrangement, including but not limited to all reports, summaries, presentations, emails, meeting minutes, or meetings agendas.
23. All documents relating to the announcement by Freddie Mac in 2008 of guidelines capping acceptable gross ceded premiums on newly ceded risk at 25 percent effective June 1, 2008.
24. All documents relating to the stated intention of Mortgage Guaranty Insurance Company ("MGIC") that it would not participate in excess-of-loss Captive Mortgage Reinsurance Arrangements with premium cessions in excess of 25% after March 31, 2003, including, but not limited to, MGIC's subsequent reversal of this stated intention.

25. Documents sufficient to describe the Company's document retention and destruction policies, including, but not limited to, any documents changing, altering, or suspending those policies and procedures.

**CERTIFICATE OF COMPLIANCE**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746, declare that:

1. All of the documents and information required by the enclosed Civil Investigative Demand which are in the possession, custody, control, and knowledge of the person to whom the demand is directed have been submitted to the Document Custodian and Deputy Custodian identified in the enclosed Civil Investigative Demand.
2. All documents and answers submitted in response to the enclosed Civil Investigative Demand are true, correct, and complete.
3. If a document or tangible item responsive to this Civil Investigative Demand has not been submitted, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.
4. If an interrogatory or a portion of an interrogatory has not been fully answered or a report or a portion of a report has not been completed, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.

I certify under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title



**DECLARATION CERTIFYING RECORDS OF**  
**REGULARLY CONDUCTED BUSINESS ACTIVITY**  
**Pursuant to 28 U.S.C. § 1746**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by \_\_\_\_\_ as \_\_\_\_\_ and by reason of my position am authorized and qualified to certify the authenticity of the records produced by American International Group, Inc., and submitted with this Declaration.
2. The documents produced and submitted with this Declaration by American International Group, Inc., are true copies of records of regularly conducted activity that were:
  - a. made at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person with knowledge of those matters;
  - b. kept in the course of the regularly conducted business activity; and
  - c. made by the regularly conducted business activity as a regular practice.

I certify under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Signature

## CID Document Submission Standards

**These standards must be followed for all documents you submit in response to the CID.**

### **General Instructions**

1. A cover letter should be included with each production.  
The following information should be included in the letter:
  - a. List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production by the unique number assigned to it, and readily apparent on the physical media.
  - b. List of custodians, identifying:
    - i. The Bates range (and any gaps therein) for each custodian, and
    - ii. Total number of images for each custodian, and
    - iii. Total number of native files for each custodian
  - c. List of fields in the order in which they are listed in the metadata load file.
  - d. Time zone in which emails were standardized during conversion (email collections only).
2. Documents created or stored electronically **MUST** be produced in their original electronic format, not printed to paper or PDF.
3. Data may be produced on CD, DVD, USB thumb drive, or hard drive; use the media requiring the least number of deliverables.
  - a. Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container:  
"MAGNETIC MEDIA – DO NOT X-RAY"  
"MAY BE OPENED FOR POSTAL INSPECTION"
  - b. CD-R CD-ROMs formatted to ISO 9660 specifications;
  - c. DVD-ROM for Windows-compatible personal computers; and
  - d. USB 2.0 thumb drives for Windows-compatible personal computers;
  - e. USB 3.0 or USB 3.0/eSATA external hard disk drives, formatted in a Microsoft Windows-compatible file system (FAT32 or NTFS), uncompressed data.
4. Label all media with the following:
  - a. Case number
  - b. Production date
  - c. Bates range
  - d. Disk number (1 of X), if applicable
  - e. Name of producing party
5. Organize productions first by request number and second by custodian, unless otherwise instructed.
6. All productions must be produced free of computer viruses.
7. All produced media must be encrypted using Microsoft Bitlocker. No other third party encryption utilities are accepted without prior approval.
  - a. Data deliveries should be encrypted at the disc level.
  - b. Decryption keys should be provided separately from the data delivery via email or phone.

8. Passwords for documents, files, compressed archives and encrypted media should be provided separately either via email or in a separate cover letter from the data.

### **Delivery Formats**

#### **Standards for Submission of Electronically Stored Information (“ESI”) and Any Other Documents Submitted in Electronic Form**

Before submitting any ESI that does not conform completely to the listed specifications, you must confirm with the Bureau that the proposed formats and media types that contain such ESI will be acceptable. You are encouraged to discuss your specific form of submission, and any related questions with the Bureau as soon as is practicable.

The Bureau’s preference is to receive productions in native format based on specifications outlined below.

- **De-duplication**  
De-duplication of documents shall be discussed on a case by case basis. In the event de-duplication is agreed and applied across custodians, each custodian should be identified in the Custodian field in the meta-data load file.
- 1. **Bates Numbering Documents**  
The Bates number must be a unique, consistently formatted identifier, i.e., an alpha prefix unique to each producing party and each custodian along with a fixed length number, i.e., ABC-DEF0000001, where ABC indicates entity and DEF indicates custodian. This format must remain consistent across all productions for each custodian. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted.
- 2. **Document Retention / Preservation of Metadata**  
The recipient of this CID should use reasonable measures to maintain the original native source documents in a manner so as to preserve the metadata associated with these electronic materials as it existed at the time of the original creation.

## 1. Native Production

### a. Data File

The data file (.DAT) contains all of the fielded information (metadata) that will be loaded.

- i. The first line of the .DAT file must be a header row identifying the field names.
- ii. The .DAT file must use the following default delimiters:
 

Comma		ASCII character (020)
Quote	”	ASCII character (254)
Newline	␣	ASCII character (174)
- iii. Date fields should be provided in the format: mm/dd/yyyy
- iv. All attachments should sequentially follow the parent document/email.
- v. All metadata associated with email, audio files, and native electronic document collections must be produced and linked via the NATIVELINK field.
- vi. Produce extracted metadata for each document in the form of a .DAT file, and include these fields:

Field Name	Description
BATES_BEGIN	First Bates number of native file document/email
BATES_END	Last Bates number of native file document/email **The LASTBATES field should be populated for single page documents/emails.
ATTACH_BEGIN	First Bates number of attachment range
ATTACH_END	Last Bates number of attachment range
PARENT_BATES	First Bates number of parent document/Email **This PARENT_BATES field should be populated in each record representing an attachment “child” document
CHILD_BATES	First Bates number of “child” attachment(s); can be more than one Bates number listed depending on the number of attachments **The CHILD_BATES field should be populated in each record representing a “parent” document
REQ_NUM	Responsive to Interrogatory number or Document Request number
CUSTODIAN	Email: mailbox where the email resided

	Native: Individual(s) from whom the document originated. The first custodian listed should be the author.
FROM	Email: Sender Native: Author(s) of document **semi-colon should be used to separate multiple entries
TO	Recipient(s) **semi-colon should be used to separate multiple entries
CC	Carbon copy recipient(s) **semi-colon should be used to separate multiple entries
BCC	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple entries
SUBJECT	Email: Subject line of the email Native: Title of document (if available)
DATE_SENT	Email: Date the email was sent Native: (empty)
TIME_SENT	Email: Time the email was sent Native: (empty) **This data must be a separate field and cannot be combined with the DATE_SENT field
DATE_RECVD	Email: Date the email was received. Native: (empty)
TIME_RECVD	Email: Time the email was received. Native: (empty)
NATIVELINK	Hyperlink to the email or native file document **The linked file must be named per the BATES_BEGIN number
FILE_EXT	The file type extension representing the Email or native file document; will vary depending on the email format
AUTHOR	Email: (empty) Native: Author of the document
DATE_CREATED	Email: (empty) Native: Date the document was created
TIME_CREATED	Email: (empty) Native: Time the document was created **This data must be a separate field and cannot be combined with the DATE_CREATED field
DATE_MOD	Email: (empty) Native: Date the document was last modified
TIME_MOD	Email: (empty) Native: Time the document was last modified

	**This data must be a separate field and cannot be combined with the DATE_MOD field
DATE_ACCESSSD	Email: (empty) Native: Date the document was last accessed
TIME_ACCESSSD	Email: (empty) Native: Time the document was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSSD field
PRINTED_DATE	Email: (empty) Native: Date the document was last printed
FILE_SIZE	Size of native file document/email in KB
PGCOUNT	Number of pages in native file document/email *if TIFs are
FILEPATH	Email: (empty) Native: Path where native file document was stored including original file name.
FILENAME	Email: (empty) Native: original file name.
INTFILEPATH	Email: original location of email including original file name. Native: (empty)

**b. Document Text**

Searchable text of the entire document must be provided for every record, at the document level.

- i. Extracted text must be provided for all documents that originated in electronic format.

Note: Any document in which text cannot be extracted must be OCR'd.

- ii. For redacted documents, provide the OCR text for the redacted version
- iii. The text should be delivered in the following method:

As multi-page ASCII text files with the files named the same as the Bates\_Begin field. Text files can be placed in a separate folder or included with the .TIF files. The number of files per folder should be limited to 500 files.

**c. Linked Native Files**

Copies of original email and native file documents/attachments must be included for all electronic productions.

- i. Native file documents must be named per the BATES\_BEGIN number.
- ii. The full path of the native file must be provided in the .DAT file in the NATIVELINK field.
- iii. The number of native files per folder should not exceed 500 files.

**d. Images**

In the event that TIFs must be produced in the native production, an image cross reference file must be provided. Instructions are provided in the following Scanned Paper section for TIF productions.

**2. Scanned Paper**

The following describes the specifications for producing image-based productions to the Bureau and the load files required.

- a. Metadata Load File. Paper or Scanned Image productions should contain at minimum the following metadata fields:

Field Title	Description
Bates_Begin	The bates label of the first page of the document
Bates_End	The bates label of the last page of the document
Attach_begin	The bates label of the first page of a family of documents
Attach_end	The bates label of the last page of a family of documents
Page_Count	Number of images per document.
Custodian	The custodian in whose file the document was found

\*If bibliographic coding is available, it may be requested.

**b. Images**

- i. Images should be single-page, Group IV TIF files, scanned at 300 dpi.
- ii. File names should be titled after endorsed bates number.
- iii. Bates numbers should be endorsed on the lower right corner of all images.
- iv. The number of TIF files per folder should not exceed 500 files.

**c. Image Cross Reference File**

The image cross-reference file is needed to link the images to the database. It is a comma-delimited file consisting of seven fields per line. There must be a line in the cross-reference file for every image in the database.

Field Title	Description
ImageID	The unique designation use to identify an image.
	<i>Note: This imageID key <b>must</b> be a unique and fixed length number. This number will be used in the.DAT file as the ImageID field that links the database to the images. The format of this image key must be consistent across all productions. We recommend that the format be an eight digit number to allow for the possible increase in the size of a production.</i>
VolumeLabel	Optional
ImageFilePath	The full path to the image file.
DocumentBreak	The letter "Y" denotes the first page of a document. If this field is blank, then the page is not the first page of a document.
FolderBreak	Leave empty
BoxBreak	Leave empty
PageCount	Optional
	<i>*This file should not contain a header row.</i>

## SAMPLE:

IMG0000001,OPTIONALVOLUMENAME,E:\001\IMG0000001.TIF,Y,,,3  
 IMG0000002,OPTIONALVOLUMENAME,E:\001\IMG0000002.TIF,,,,  
 IMG0000003,OPTIONALVOLUMENAME,E:\001\IMG0000003.TIF,,,,  
 IMG0000004,OPTIONALVOLUMENAME,E:\001\IMG0000003.TIF,Y,,,1  
 IMG0000005,OPTIONALVOLUMENAME,E:\001\IMG0000003.TIF,Y,,,2  
 IMG0000006,OPTIONALVOLUMENAME,E:\001\IMG0000003.TIF,,,,

**d. Document Text**

Searchable text of the entire document must be provided for every record, at the document level.

- i. OCR text must be provided for all documents that originated in hard copy format.
- ii. For redacted documents, provide OCR for the redacted version.
- iii. The text should be delivered in the following method:  
As multi-page ASCII text files with the files named the same as the Bates\_Begin field. Text files can be placed in a separate folder or included with the .TIF files. The number of files per folder should be limited to 500 files.

**e. PDF File Production**

When approved, Adobe PDF files may be produced in lieu of TIF images for scanned paper productions:

- i. PDF files should be produced in separate folders named by the Custodian.
- ii. All PDFs must be unitized at the document level, i.e. each PDF should represent a discrete document; a single PDF cannot contain multiple documents.
- iii. All attachments should sequentially follow the parent document.



- iv. All PDF files must contain embedded text that includes all discernible words within the document, not selected text only. This requires all layers of the PDF to be flattened first.
- v. If PDF files are Bates endorsed, the PDF files must be named by the Bates range.
- vi. The meta-data load file listed in 2.a. should be included.

### 3. Audio Files

If audio files must be produced further discussion must be had to confirm compatible file format, preservation of quality, and any original metadata.

Additionally, the call information (metadata) related to each audio recording must be provided. The metadata file must be produced in a delimited text format. Field names must be included in the first row of the text file.

The metadata must include, at a minimum, the following fields:

- CALLER\_NAME or CALLER\_ID: Caller's name or identification number
- CALLING\_NUMBER: Caller's phone number
- DATE: Date of call
- DURATION: Duration of call
- TIME: Time of call
- CALLED\_PARTY: Name of the party called
- CALLED\_NUMBER: Called party's phone number
- FILENAME: Filename of audio file

### 4. Video Files

If video files must be produced further discussion must be had to confirm compatible file format, preservation of quality, and any original metadata.

### 5. Transactional Data

If transactional data must be produced further discussion must be had to ensure the intended export is properly composed. If available, a data dictionary should accompany the production, if unavailable; a description of fields should accompany transactional data productions.

- SQL Backup file
- MS Access
- XML
- CSV
- TSV
- Excel (with prior approval)

## 6. Electronic Phone Records

If electronic Phone Records must be produced further discussion must be had to confirm compatible file format. The Bureau requires the following format and metadata:

- a. Delimited text file with header information detailing the field structure.
- b. Comma Separated Value file (.csv) with header information detailing the field structure.
- c. MS Excel spreadsheet with header information detailing the field structure. The metadata must include, at a minimum, the following fields:

- ACCT\_NUMBER: Caller's telephone account number
- CALLING\_NUMBER: Caller's phone number
- CALLED\_NUMBER: Called party's phone number
- DATE: Date of call
- START\_TIME: Start time of call
- END\_TIME: End time of call
- DURATION: Duration in minutes of the call

## 7. Hard Copy Submission

The Bureau strongly encourages you to submit all documents in electronic form. All documents kept as ESI in the ordinary course of business, or otherwise currently held in electronic form, must be submitted in electronic form.

For any documents submitted in hard copy form:

- a. Original documents shall not be submitted;
- b. Documents shall be produced in the order in which they appear in your files, without being shuffled or otherwise rearranged;
- c. Documents shall have unique, sequential numbers clearly marked on each page; and
- d. If documents are removed from their original folders, binders, covers, or containers in order to be produced, the documents shall be identified in a manner so as clearly to specify the folder, binder, cover, or container from which such documents came.



**PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

The authority citation for part 84 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 7. Revise § 84.13(b) to read as follows:

**§ 84.13 Debarment and suspension; Drug-Free Workplace.**

(b) Recipients and subrecipients shall comply with the requirements of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*), as set forth at 2 CFR part 2429.

**PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES**

The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

■ 9. Revise § 1000.46 to read as follows:

**§ 1000.46 Do drug-free workplace requirements apply?**

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations in 2 CFR part 2429 apply.

Dated: July 15, 2011.

Shaun Donovan,  
Secretary.

[FR Doc. 2011-19129 Filed 7-27-11; 8:45 am]

BILLING CODE 4210-67-P

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1080**

[Docket No. CFPB-2011-0007]

RIN 3170-AA03

**Rules Relating to Investigations**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection ("CFPB" or "Bureau"), pursuant to the Consumer Financial Protection Act of 2010, is adopting its Rules Relating to Investigations in order to describe the Bureau's procedures for investigations pursuant to section 1052 of the Act. The Bureau invites interested members of

the public to submit written comments to this interim final rule setting forth those rules.

**DATES:** This interim final rule is effective on July 28, 2011. Written comments must be received on or before September 26, 2011.

**ADDRESSES:** You may submit comments, identified by *Docket No. CFPB-2011-0007*, by any of the following methods:

- **Electronic:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail or Hand Delivery/Courier in Lieu of Mail:** Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1801 L Street, NW., Washington, DC 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036, (202) 435-7275.

**SUPPLEMENTARY INFORMATION:** This discussion contains the following sections:

- (a) Background
- (b) Section-by-Section Summary
- (c) Procedural Requirements

**(a) Background**

The Bureau is adopting Rules Relating to Investigations ("Rules") that implement provisions of the Consumer Financial Protection Act of 2010 ("Act")<sup>1</sup> that relate to the Bureau's

<sup>1</sup> The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, Public Law 111-203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.* Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes these Rules on behalf of the CFPB.

investigations. Specifically, these Rules will govern investigations undertaken pursuant to section 1052 of the Act, 12 U.S.C. 5562, which authorizes the Bureau to investigate whether persons have engaged in conduct that violates any provision of Federal consumer financial law.

In developing these Rules, the Bureau considered the investigative procedures of other law enforcement agencies. Specifically, the Bureau reviewed the procedures currently used by the Federal Trade Commission ("FTC"), the Securities and Exchange Commission ("SEC"), and the prudential regulators for guidance. In light of the similarities between section 1052 of the Act and section 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41 *et seq.*, the Bureau drew most heavily from the FTC's nonadjudicative procedures in constructing the Rules.

The Rules describe a number of Bureau policies and procedures that apply in a nonadjudicative setting. Among other things, these Rules set forth (1) the Bureau's authority to conduct investigations, and (2) the rights of persons from whom the Bureau seeks to compel information in investigations.

In particular, the Rules lay out the Bureau's authority to conduct investigations before instituting judicial or administrative adjudicatory proceedings under Federal consumer financial law. The Rules authorize the Assistant Director of the Division of Enforcement to issue civil investigative demands for documentary material, tangible things, written reports or answers to questions, and oral testimony, which may be enforced in district court by either the General Counsel or the Assistant Director of the Division of Enforcement. The Rules also detail the authority of the Bureau's investigators to conduct investigations and hold investigational hearings pursuant to civil investigative demands for oral testimony.

Furthermore, the Rules set forth the rights of persons from whom the Bureau seeks to compel information in an investigation. Specifically, the Rules describe how such persons should be notified of the purpose of the Bureau's investigation. The Rules detail the procedures for filing a petition for an order modifying or setting aside a civil investigative demand, which will be ruled upon by the Bureau Director. They also describe the process for obtaining copies of or access to documents or testimony provided to the Bureau. In addition, the Rules describe a person's right to counsel at investigational hearings.

**(b) Section-by-Section Summary***Section 1080.1 Scope*

This section describes the scope of the Rules. It makes clear that these Rules only apply to investigations under section 1052 of the Act.

*Section 1080.2 Definitions*

This section defines several terms used throughout the Rules. Many of these definitions also may be found in section 1051 of the Act.

*Section 1080.3 Policy as to Private Controversies*

This section states the Bureau's policy of pursuing investigations that are in the public interest. Section 1080.3 is consistent with the Bureau's mission to protect consumers by investigating potential violations of Federal consumer financial law.

*Section 1080.4 By Whom Conducted*

This section explains that Bureau investigators are authorized to conduct investigations pursuant to section 1052 of the Act.

*Section 1080.5 Notification of Purpose*

This section provides that a person compelled to provide information to the Bureau or testify in an investigational hearing must be advised of the nature of the conduct constituting the alleged violation under investigation and the applicable provisions of law. This section implements the requirements for civil investigative demands described in section 1052(c)(2) of the Act.

*Section 1080.6 Civil Investigative Demands*

This section lays out the Bureau's procedures for issuing civil investigative demands. It authorizes the Assistant Director of the Division of Enforcement to issue civil investigative demands for documentary material, tangible things, written reports or answers to questions, and oral testimony. This section details the information that must be included in civil investigative demands and the requirement that responses be made under a sworn certificate. Section 1080.6 also authorizes the Assistant Director of the Division of Enforcement to negotiate and approve the terms of compliance with civil investigative demands and grant extensions for good cause. Finally, this section describes the procedures for seeking an order to modify or set aside a civil investigative demand, which will be ruled upon by the Bureau Director.

*Section 1080.7 Investigational Hearings*

This section describes the procedures for investigational hearings initiated pursuant to a civil investigative demand for oral testimony. It also lays out the roles and responsibilities of the Bureau investigator conducting the investigational hearing, which include excluding unauthorized persons from the hearing room and ensuring that the investigational hearing is transcribed, the witness is duly sworn, the transcript is a true record of the testimony, and the transcript is provided to the designated custodian.

*Section 1080.8 Withholding Requested Material*

This section describes the procedures that apply when persons withhold material responsive to a civil investigative demand. It requires that they assert a privilege by the production date and, if so directed in the civil investigative demand, also submit a detailed schedule of the items withheld. Section 1080.8 also sets forth the procedures for handling the disclosure of privileged or protected information or communications.

*Section 1080.9 Rights of Witnesses in Investigations*

This section describes the rights of persons compelled to submit information or provide testimony in an investigation. It details the procedures for obtaining a copy of submitted documents or a copy of or access to a transcript of the person's testimony. This section also describes a witness's right to make changes to his or her transcript and the rules for signing the transcript.

Section 1080.9 lays out a person's right to counsel at an investigational hearing and describes his or her counsel's right to advise the witness as to any question posed for which an objection may properly be made. It also describes the witness's or counsel's rights to object to questions or requests that the witness is privileged to refuse to answer. This section states that counsel for the witness may not otherwise object to questions or interrupt the examination to make statements on the record but may request that the witness have an opportunity to clarify any of his or her answers. Finally, this section authorizes the Bureau investigator to take all necessary action during the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language.

*Section 1080.10 Noncompliance With Civil Investigative Demands*

This section authorizes the Assistant Director of the Division of Enforcement, the General Counsel, or their delegees, to initiate an action to enforce a civil investigative demand in connection with the failure or refusal of a person to comply with, or to obey, a civil investigative demand. In addition, they are authorized to seek civil contempt or other appropriate relief in cases where a court order enforcing a civil investigative demand has been violated.

*Section 1080.11 Disposition*

This section explains that an enforcement action may be instituted in federal or state court or through administrative proceedings when warranted by the facts disclosed by an investigation. This section further provides that the Bureau may refer investigations to appropriate federal, state, or foreign government agencies as appropriate. It also authorizes the Assistant Director of the Division of Enforcement to close the investigation when the facts of an investigation indicate an enforcement action is not necessary or warranted in the public interest.

*Section 1080.12 Orders Requiring Witnesses To Testify or Provide Other Information and Granting Immunity*

This section authorizes the Assistant Director of the Division of Enforcement to request approval from the Attorney General for the issuance of an order requiring a witness to testify or provide other information and granting immunity under 18 U.S.C. 6004. It also sets forth the Bureau's right to review the exercise of these functions, and states that the Bureau will entertain an appeal from an order requiring a witness to testify or provide other information only upon a showing that a substantial question is involved, the determination of which is essential to serve the interests of justice. Finally, this section describes the applicable rules and time limits for such appeals.

*Section 1080.13 Custodians*

This section describes the procedures for designating a custodian and deputy custodian for material produced pursuant to a civil investigative demand in an investigation. It also states that these materials are for the official use of the Bureau, but, upon notice to the custodian, must be made available for examination during regular office hours by the person who produced them.

*Section 1080.14 Confidential Treatment of Demand Material and Non-Public Nature of Investigations*

Section 1080.14 explains that documentary materials and tangible things obtained by the Bureau pursuant to a civil investigative demand are subject to the requirements and procedures relating to disclosure of records and information in part 1070 of this title. This section also states that investigations generally are non-public. A Bureau investigator may disclose the existence of an investigation to the extent necessary to advance the investigation.

**(c) Procedural Requirements**

*(1) Regulatory Requirements*

The Rules relate solely to agency procedure and practice and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Although the Rules are exempt from these requirements, the Bureau invites comment on them. Because no notice of proposed rulemaking is required, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2) do not apply.

*(2) Section 1022(b)(2) Provisions*

The CFPB has conducted an analysis of benefits, costs, and impacts<sup>2</sup> and consulted with the prudential regulators, the Department of Housing and Urban Development, the Securities and Exchange Commission, the Department of Justice, and the Federal Trade Commission, including with respect to whether the Rules are consistent with any relevant prudential, market, and systemic objectives administered by such agencies.<sup>3</sup>

The Bureau concludes that, on balance, the Rules are beneficial to consumers and covered persons alike. The Rules do not impose any obligations on consumers or have any direct impact on their access to credit. Conversely, they provide a clear,

efficient mechanism for investigating compliance with the Federal consumer financial laws, which benefits consumers because the Rules offer a systematic process for protecting them from unlawful behavior.

The Rules impose certain obligations on covered persons who receive civil investigative demands in Bureau investigations. Specifically, as described above, the Rules set forth the process for complying with or objecting to civil investigative demands for documentary material, tangible things, written reports or answers to questions, and oral testimony. The obligations in the Rules stem from express language in the Act. As such, the Rules do not impose additional burdens on covered persons beyond those Congress imposed in the Act. In fact, the Rules implement the statutory requirements and provide clear guidelines to recipients of civil investigative demands, providing a level of clarity and certainty that is beneficial to those obligated under the Act to comply with such demands. Moreover, ensuring compliance with Federal consumer financial law ultimately benefits covered persons by ensuring that scrupulous actors are not competitively disadvantaged in the marketplace.

Furthermore, because section 1052 of the Act and the Rules are largely based on section 20 of the FTC Act and its corresponding regulations, they present an existing, stable model of investigatory procedures that should not impose new compliance costs. The entities subject to the Bureau's jurisdiction are accustomed to complying with these or similar procedures for responding to demands for information or testimony from regulators. Thus, they do not face a significant cost of adjusting to a new procedural landscape for investigations; rather, they benefit from the Bureau's adoption of an existing model.

The Rules contemplate that the Bureau will exercise its discretion to modify demands or extend the time for compliance for good cause. The Bureau can assess the cost of compliance with a civil investigative demand in a particular circumstance and take appropriate steps to mitigate any unreasonable compliance burden, a process providing flexibility that benefits covered persons.

Further, the Rules have no unique impact on insured depository institutions or insured credit unions with less than \$10 billion in assets described in section 1026(a) of the Act, and do not have a unique impact on rural consumers.

**List of Subjects in 12 CFR Part 1080**

Administrative practice and procedure, Banks, Banking, Consumer protection, Credit, Credit unions, Federal Reserve System, Investigations, Law enforcement, National banks, Savings associations, Trade practices.

For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1080 to Chapter X in Title 12 of the Code of Federal Regulations to read as set forth below.

**TITLE 12—BANKS AND BANKING**

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

**PART 1080—RULES RELATING TO INVESTIGATIONS**

Sec.

- 1080.1 Scope.
- 1080.2 Definitions.
- 1080.3 Policy as to private controversies.
- 1080.4 By whom conducted.
- 1080.5 Notification of purpose.
- 1080.6 Civil investigative demands.
- 1080.7 Investigational hearings.
- 1080.8 Withholding requested material.
- 1080.9 Rights of witnesses in investigations.
- 1080.10 Noncompliance with civil investigative demands.
- 1080.11 Disposition.
- 1080.12 Orders requiring witnesses to testify or provide other information and granting immunity.
- 1080.13 Custodians.
- 1080.14 Confidential treatment of demand material and non-public nature of investigations.

**Authority:** Pub. L. 111–203, Title X.

**§ 1080.1 Scope.**

The rules of this part apply to Bureau investigations conducted pursuant to section 1052 of the Act, 12 U.S.C. 5562.

**§ 1080.2 Definitions.**

For the purposes of this part, unless explicitly stated to the contrary:

*Act* means the Consumer Financial Protection Act of 2010, as amended, Public Law 111–203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.*

*Assistant Director of the Division of Enforcement* means the head of the Division of Enforcement or any Bureau employee to whom the Assistant Director of the Division of Enforcement has delegated authority to act under this part.

*Bureau* means the Bureau of Consumer Financial Protection.

*Bureau investigation* means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation.

*Bureau investigator* means any attorney or investigator employed by the

<sup>2</sup> Section 1022(b)(2)(A) addresses the consideration of the potential benefits and costs of regulation to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services; the impact of proposed rules on depository institutions and credit unions with \$10 billion or less in total assets as described in Section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

<sup>3</sup> The President's July 11, 2011, Executive Order 13579 entitled "Regulation and Independent Regulatory Agencies," asks the independent agencies to follow the cost-saving, burden-reducing principles in Executive Order 13563; harmonization and simplification of rules; flexible approaches that reduce costs; and scientific integrity. In the spirit of Executive Order 13563, the CFPB has consulted with the Office of Management and Budget regarding this interim final rule.

Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

*Custodian* means the custodian or any deputy custodian designated by the Bureau for the purpose of maintaining custody of information produced pursuant to this part.

*Director* means the Director of the Bureau or a person authorized to perform the functions of the Director in accordance with the law.

*Division of Enforcement* means the division of the Bureau responsible for enforcement of Federal consumer financial law.

*Documentary material* means the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium, including electronically-stored information.

*Electronically stored information (ESI)* means any information stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

*General Counsel* means the General Counsel of the Bureau or any Bureau employee to whom the General Counsel has delegated authority to act under this part.

*Person* means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

*Violation* means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

#### § 1080.3 Policy as to private controversies.

The Bureau shall act only in the public interest and will not initiate an investigation or take other enforcement action when the alleged violation is merely a matter of private controversy and does not tend to affect adversely the public interest.

#### § 1080.4 By whom conducted.

Bureau investigations are conducted by Bureau investigators designated and duly authorized under section 1052 of the Act, 12 U.S.C. 5562, to conduct such investigations.

#### § 1080.5 Notification of purpose.

Any person compelled to furnish documentary material, tangible things, written reports or answers to questions, oral testimony, or any combination of such material, answers, or testimony to

the Bureau shall be advised of the nature of the conduct constituting the alleged violation that is under investigation and the provisions of law applicable to such violation.

#### § 1080.6 Civil investigative demands.

(a) *In general.* In accordance with section 1052(c) of the Act, the Assistant Director of the Division of Enforcement may issue a civil investigative demand in any Bureau investigation directing the person named therein to produce documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau; to submit tangible things; to provide a written report or answers to questions; to appear before a designated representative at a designated time and place to testify about documentary material, tangible things, or other information; and to furnish any combination of such material, things, answers, or testimony.

##### (1) *Documentary material.*

(i) Civil investigative demands for the production of documentary material shall describe each class of material to be produced with such definiteness and certainty as to permit such material to be fairly identified, prescribe a return date or dates that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction, and identify the custodian to whom such material shall be made available. Documentary material for which a civil investigative demand has been issued shall be made available as prescribed in the civil investigative demand.

(ii) Production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

##### (2) *Tangible things.*

(i) Civil investigative demands for tangible things shall describe each class of tangible things to be produced with such definiteness and certainty as to permit such things to be fairly identified, prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and

submitted, and identify the custodian to whom such things shall be submitted.

(ii) Submissions of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

##### (3) *Written reports or answers to questions.*

(i) Civil investigative demands for written reports or answers to questions shall propound with definiteness and certainty the reports to be produced or the questions to be answered, prescribe a date or dates at which time written reports or answers to questions shall be submitted, and identify the custodian to whom such reports or answers shall be submitted.

(ii) Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath. Responses to a civil investigative demand for a written report or answers to questions shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all of the information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted to the custodian.

##### (4) *Oral testimony.*

(i) Civil investigative demands for the giving of oral testimony shall prescribe a date, time, and place at which oral testimony shall be commenced, and identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted. Oral testimony in response to a civil investigative demand shall be taken in accordance with the procedures for investigational hearings prescribed by §§ 1080.7 and 1080.9 of this part.

(ii) Where a civil investigative demand requires oral testimony from an entity, the civil investigative demand shall describe with reasonable particularity the matters for examination and the entity must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf. Unless

a single individual is designated by the entity, the entity must designate the matters on which each designee will testify. The individuals designated must testify about information known or reasonably available to the entity and their testimony shall be binding on the entity.

(b) *Manner and form of production of ESI.* When a civil investigative demand requires the production of ESI, it shall be produced in accordance with the instructions provided by the Bureau regarding the manner and form of production. Absent any instructions as to the form for producing ESI, ESI must be produced in the form in which it is ordinarily maintained or in a reasonably usable form.

(c) *Compliance.* The Assistant Director of the Division of Enforcement is authorized to negotiate and approve the terms of satisfactory compliance with civil investigative demands and, for good cause shown, may extend the time prescribed for compliance.

(d) *Petition for order modifying or setting aside demand—in general.* Any petition for an order modifying or setting aside a civil investigative demand shall be filed with the Executive Secretary of the Bureau with a copy to the Assistant Director of the Division of Enforcement within twenty (20) days after service of the civil investigative demand, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the civil investigative demand, including all appropriate arguments, affidavits, and other supporting documentation. The attorney who objects to a demand must sign any objections.

(1) *Statement.* Each petition shall be accompanied by a signed statement representing that counsel for the petitioner has conferred with counsel for the Bureau in a good-faith effort to resolve by agreement the issues raised by the petition and has been unable to reach such an agreement. If some of the matters in controversy have been resolved by agreement, the statement shall specify the matters so resolved and the matters remaining unresolved. The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties participating in each such conference.

(2) *Extensions of time.* The Assistant Director of the Division of Enforcement is authorized to rule upon requests for extensions of time within which to file such petitions. Requests for extension of time are disfavored.

(3) *Disposition.* The Director has the authority to rule upon a petition for an order modifying or setting aside a civil investigative demand.

(e) *Stay of compliance period.* The timely filing of a petition for an order modifying or setting aside a civil investigative demand shall stay the time permitted for compliance with the portion challenged. If the petition is denied in whole or in part, the ruling will specify a new return date.

(f) *Public disclosure.* All such petitions and the responses thereto are part of the public records of the Bureau unless the Bureau determines otherwise for good cause shown.

#### § 1080.7 Investigational hearings.

(a) Investigational hearings, as distinguished from hearings in adjudicative proceedings, may be conducted pursuant to a civil investigative demand for the giving of oral testimony in the course of any Bureau investigation, including inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Bureau.

(b) Investigational hearings shall be conducted by any Bureau investigator for the purpose of hearing the testimony of witnesses and receiving documentary material, tangible things, or other information relating to any subject under investigation. Such hearings shall be under oath or affirmation and stenographically reported, and a transcript thereof shall be made a part of the record of the investigation. The Bureau investigator conducting the investigational hearing also may direct that the testimony be recorded by audio, audiovisual, or other means, in which case the recording shall be made a part of the record of the investigation as well.

(c) In investigational hearings, the Bureau investigators shall exclude from the hearing room all persons except the person being examined, his or her counsel, the officer before whom the testimony is to be taken, any investigator or representative of an agency with which the Bureau is engaged in a joint investigation, and any individual transcribing or recording such testimony. At the discretion of the Bureau investigator, and with the consent of the person being examined, persons other than those listed in this paragraph may be present in the hearing room. The Bureau investigator shall certify or direct the individual transcribing the testimony to certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the

witness. A copy of the transcript shall be forwarded promptly by the Bureau investigator to the custodian designated in § 1080.13.

#### § 1080.8 Withholding requested material.

(a) Any person withholding material responsive to a civil investigative demand or any other request for production of material shall assert a claim of privilege not later than the date set for the production of material. Such person shall, if so directed in the civil investigative demand or other request for production, submit, together with such claim, a schedule of the items withheld which states, as to each such item, the type, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged. The person who submits the schedule and the attorney stating the grounds for a claim that any item is privileged must sign it.

(b) A person withholding material solely for reasons described in this subsection shall comply with the requirements of this subsection in lieu of filing a petition for an order modifying or setting aside a civil investigative demand pursuant to § 1080.6(d).

(c) Disclosure of privileged or protected information or communications produced pursuant to a civil investigative demand shall be handled as follows:

(1) The disclosure of privileged or protected information or communications shall not operate as a waiver if:

(i) The disclosure was inadvertent;

(ii) The holder of the privilege or protection took reasonable steps to prevent disclosure; and

(iii) The holder promptly took reasonable steps to rectify the error, including notifying a Bureau investigator of the claim and the basis for it.

(2) After being notified, the Bureau investigator must promptly return, sequester, or destroy the specified information and any copies; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if he or she disclosed it before being notified; and, if appropriate, may sequester such material until such time as a hearing officer or court rules on the merits of the claim of privilege or protection. The producing party must preserve the information until the claim is resolved.

(3) The disclosure of privileged or protected information or communications shall waive the

privilege or protection as to undisclosed information or communications only if:

- (i) The waiver is intentional;
- (ii) The disclosed and undisclosed information or communications concern the same subject matter; and
- (iii) They ought in fairness to be considered together.

**§ 1080.9 Rights of witnesses in investigations.**

(a) Any person compelled to submit documentary material, tangible things, or written reports or answers to questions to the Bureau, or to testify in an investigational hearing, shall be entitled to retain a copy or, on payment of lawfully prescribed costs, request a copy of the materials, things, reports, or written answers submitted, or a transcript of his or her testimony. The Bureau, however, may for good cause deny such a request and limit the witness to inspection of the official transcript of the testimony. Upon completion of transcription of the testimony of the witness, the witness shall be offered an opportunity to read the transcript of his or her testimony. Any changes in form or substance that the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness unless the witness cannot be found, is ill, waives in writing his or her right to signature, or refuses to sign. If the transcript is not signed by the witness within thirty (30) days of being afforded a reasonable opportunity to review it, the Bureau investigator, or the individual transcribing the testimony acting at the Bureau investigator's direction, shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(b) Any witness compelled to appear in person at an investigational hearing may be accompanied, represented, and advised by counsel as follows:

(1) Counsel for a witness may advise the witness, in confidence and upon the initiative of either counsel or the witness, with respect to any question asked of the witness for which an objection pursuant to paragraph (b) (2) of this section may properly be made. If the witness refuses to answer a question, counsel may briefly state on the record if he or she has advised the witness not to answer the question and the legal grounds for such refusal.

(2) Where it is claimed that a witness is privileged to refuse to answer a question or to produce other evidence,

the witness or counsel for the witness shall object on the record to the question or requirement and may state briefly and precisely the ground therefor. The witness and his or her counsel shall not otherwise object to or refuse to answer any question, and they shall not otherwise interrupt the oral examination.

(3) Any objections made under the rules in this part will be treated as continuing objections and preserved throughout the further course of the hearing without the necessity for repeating them as to any similar line of inquiry. Cumulative objections are unnecessary. Repetition of the grounds for any objection will not be allowed.

(4) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (b)(1) and (2) of this section, interrupt the examination of the witness by making any objections or statements on the record. Petitions challenging the Bureau's authority to conduct the investigation or the sufficiency or legality of the civil investigative demand shall be addressed to the Bureau in advance of the hearing. Copies of such petitions may be filed as part of the record of the investigation with the Bureau investigator conducting the investigational hearing, but no arguments in support thereof will be allowed at the hearing.

(5) Following completion of the examination of a witness, counsel for the witness may, on the record, request that the Bureau investigator conducting the investigational hearing permit the witness to clarify any of his or her answers. The grant or denial of such request shall be within the sole discretion of the Bureau investigator conducting the hearing.

(6) The Bureau investigator conducting the hearing shall take all necessary action to regulate the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language. Such Bureau investigator shall, for reasons stated on the record, immediately report to the Bureau any instances where an attorney has allegedly refused to comply with his or her obligations under the rules in this part, or has allegedly engaged in disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of the hearing. The Bureau will thereupon take such further action, if any, as the circumstances warrant, including suspension or disbarment of the attorney from further practice before the Bureau or exclusion from further

participation in the particular investigation.

**§ 1080.10 Noncompliance with civil investigative demands.**

(a) In cases of failure to comply in whole or in part with Bureau civil investigative demands, appropriate action may be initiated by the Bureau, including actions for enforcement.

(b) The Assistant Director of the Division of Enforcement and the General Counsel are authorized to:

(1) Institute, on behalf of the Bureau, an enforcement proceeding in the district court of the United States for any judicial district in which a person resides, is found, or transacts business, in connection with the failure or refusal of such person to comply with, or to obey, a civil investigative demand in whole or in part if the return date or any extension thereof has passed; and

(2) Seek civil contempt or other appropriate relief in cases where a court order enforcing a civil investigative demand has been violated.

**§ 1080.11 Disposition.**

(a) When the facts disclosed by an investigation indicate that an enforcement action is warranted, further proceedings may be instituted in federal or state court or pursuant to the Bureau's administrative adjudicatory process. Where appropriate, the Bureau also may refer investigations to appropriate federal, state, or foreign governmental agencies.

(b) When the facts disclosed by an investigation indicate that an enforcement action is not necessary or would not be in the public interest, the investigational file will be closed. The matter may be further investigated, at any time, if circumstances so warrant.

(c) The Assistant Director of the Division of Enforcement is authorized to close Bureau investigations.

**§ 1080.12 Orders requiring witnesses to testify or provide other information and granting immunity.**

(a) The Assistant Director of the Division of Enforcement is hereby authorized to request approval from the Attorney General of the United States for the issuance of an order requiring a witness to testify or provide other information granting immunity under 18 U.S.C. 6004.

(b) The Bureau retains the right to review the exercise of any of the functions delegated under paragraph (a) of this section. Appeals to the Bureau from an order requiring a witness to testify or provide other information will be entertained by the Bureau only upon a showing that a substantial question is involved, the determination of which is



essential to serve the interests of justice. Such appeals shall be made on the record and shall be in the form of a brief not to exceed fifteen (15) pages in length and shall be filed within five (5) days after notice of the complained of action. The appeal shall not operate to suspend the hearing unless otherwise determined by the Bureau investigator conducting the hearing or ordered by the Bureau.

#### § 1080.13 Custodians.

(a) The Bureau shall designate a custodian and one or more deputy custodians for material to be delivered pursuant to a civil investigative demand in an investigation. The custodian shall have the powers and duties prescribed by section 1052 of the Act, 12 U.S.C. 5562. Deputy custodians may perform all of the duties assigned to custodians.

(b) Material produced pursuant to a civil investigative demand, while in the custody of the custodian, shall be for the official use of the Bureau in accordance with the Act; but such material shall upon reasonable notice to the custodian be made available for examination by the person who produced such material, or his or her duly authorized representative, during regular office hours established for the Bureau.

#### § 1080.14 Confidential treatment of demand material and non-public nature of investigations.

(a) Documentary materials and tangible things the Bureau receives pursuant to a civil investigative demand are subject to the requirements and procedures relating to the disclosure of records and information set forth in part 1070 of this chapter.

(b) Bureau investigations generally are non-public. Bureau investigators may disclose the existence of an investigation to potential witnesses or third parties to the extent necessary to advance the investigation.

Dated: July 22, 2011.

**Sam Valverde,**

*Deputy Executive Secretary, Department of the Treasury.*

[FR Doc. 2011-19035 Filed 7-25-11; 4:15 pm]

BILLING CODE 4810-25-P

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1082

[Docket No. CFPB-2011-0005]

RIN 3170-AA02

#### State Official Notification Rules

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** Section 1042(c) of the Consumer Financial Protection Act of 2010 ("Act"), requires the Bureau of Consumer Financial Protection ("CFPB" or "Bureau") to prescribe rules establishing procedures that govern the process, described in section 1042(b) of the Act, by which state officials notify the CFPB of actions or proceedings undertaken pursuant to the authority granted in section 1042(a) to enforce the Act or regulations prescribed thereunder. This interim final rule with a request for public comment sets forth those rules.

**DATES:** This interim final rule is effective on July 28, 2011. Written comments are invited and must be received on or before September 26, 2011.

**ADDRESSES:** You may submit comments, identified by *Docket No. CFPB-2011-0005*, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail or Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1801 L Street, NW., Washington, DC 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

#### FOR FURTHER INFORMATION CONTACT:

Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036, (202) 435-7275.

**SUPPLEMENTARY INFORMATION:** The CFPB issues these State Official Notification Rules ("Rules"), pursuant to sections 1042(b) and (c) of the Consumer Financial Protection Act of 2010

("Act").<sup>1</sup> 12 U.S.C. 5552(b), (c). These Rules are promulgated as an interim final rule with a request for comment. The CFPB invites interested members of the public to submit written comments addressing the issues raised herein.

#### A. Background

These Rules will govern the process by which state officials notify the CFPB of actions or proceedings undertaken under section 1042(a) of the Act, 12 U.S.C. 5552(a), to enforce the Act, or regulations prescribed thereunder.

The Rules implement a procedure for the timing and content of the notice required to be given to the CFPB, set forth the responsibilities of CFPB employees and others who receive the notice, and specify the rights of the CFPB to participate in an action brought by a state official. In drafting these Rules, the CFPB endeavored to create a process that would both provide the CFPB and the relevant prudential regulators with timely notice of pending actions and account for the investigation and litigation needs of state law enforcement agencies. In keeping with this approach, the Rules provide for a default notice period of at least 10 days, with exceptions for emergencies and other extenuating circumstances, and require substantive notice that is both straightforward and comprehensive. The Rules further make clear that the CFPB can participate as appropriate in an action brought by state officials under the Act or a regulation prescribed thereunder, provide for confidential treatment of information disclosed to the CFPB and prudential regulators under these Rules, and establish that provision of notice shall not constitute a waiver of any applicable privilege. In addition, the Rules specify that the notice provisions do not create any procedural or substantive rights for parties in litigation against the United States or against a state which brings an action under the Act or a regulation prescribed thereunder.

#### B. Section Summary

The Rules are set forth in a single section, with several paragraphs, each of which is addressed below.

##### *Section 1082.1(a) Notice Requirement*

This paragraph sets out the timing and process for the provision of notice

<sup>1</sup> The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, Public Law 111-203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.* Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes these Rules on behalf of the CFPB.

# EXHIBIT B

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

FILED  
U.S. DIST. COURT  
BRUNSWICK DIV

MARIE O. PEDRAZA, on behalf of herself )  
and all other persons similarly situated, )

Plaintiff, )

v. )

UNITED GUARANTY CORPORATION )  
and UNITED GUARANTY RESIDENTIAL )  
INSURANCE COMPANY, )

Defendants. )

Civil Action File No.: 01 JUN 25 AM 9 50 CV 199-239  
CLERK Judge Anthony Ajaimo  
SO. DIST. OF GA.

INJUNCTION

INJUNCTION

Upon review and consideration of the Settlement Agreement dated December 15, 2000 (the "Agreement"), relating to each of the above-captioned cases, the Settlement Hearing held on June 15, 2001, the memoranda and arguments of counsel, and any objections to the Settlement,

IT IS HEREBY ORDERED, pursuant to Fed. R. Civ. P. 65 and the Court's authority to enter equitable relief, that United Guaranty Corporation and United Guaranty Residential Insurance Company are hereby enjoined and restrained according to the terms set forth below:

1. The following definitions shall be applicable to this relief:

A. "Actuary" means a Member of the American Academy of Actuaries from either (i) a third party, nationally recognized actuarial firm, or (ii) one of the Big Five accounting firms.

B. “Affiliate” means a person (natural or legal) that directly or indirectly controls, is controlled by, or is under common control with a Defendant; where “control” of a person or entity means the ownership of more than fifty percent (50%) of such person’s or entity’s equity securities having the power to elect directors or other members of such person’s or entity’s governing body, or the ability (through other ownership, contractual rights or otherwise) to elect a majority of the members of such person’s or entity’s board of directors or other governing body or to cast a majority of the votes on such board.

C. “Agency” means the Federal National Mortgage Association (commonly known as Fannie Mae), the Federal Home Loan Mortgage Corporation (commonly known as Freddie Mac) or any or all Federal Home Loan Banks, and any successors to such entities.

D. “Agency Pool Insurance” means mortgage guaranty insurance on a Pool delivered to an Agency that is (i) supplemental to the Primary Credit Enhancement, and (ii) has an aggregate loss limit for the Pool.

E. “Certificate” means a writing, including in an electronic format, which evidences the fact that primary mortgage insurance coverage is being issued by a Defendant where such coverage forms the basis of a person’s inclusion as a Class Member.

F. “Challenged Practice” means (i) Agency Pool Insurance, (ii) a Defendant’s entry into contracts of reinsurance with a Lender, (iii) Performance Notes, (iv) the provision by a Defendant of contract underwriting services to a Lender, (v) Uncaptive Transactions, and (vi) Restructuring Transactions.

G. “Class Member” means a member of one of the Settlement Classes that the Court has certified in this action.

H. “Commitment” (whether or not such term is capitalized) means, with respect to the Defendant to which the Certificate applies, a commitment (whether in writing or by electronic transmission) by such Defendant to issue a Certificate, except that if a Certificate is issued without a commitment having previously been issued, for all purposes hereunder, the Certificate shall be deemed to be both a Certificate and a commitment.

I. “Covered Loan” means a mortgage loan secured by property located in the United States (including, but not limited to, any federally-related mortgage loan as that term is defined by the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601-2617 and its implementing regulations (collectively RESPA)) made to a Class Member that is insured by a Certificate.

J. “Defendant” means United Guaranty Corporation and United Guaranty Residential Insurance Company and their respective parents, successors, assigns, affiliates.

K. “Final Approval” means the last date on which all of the following have occurred:

(a) The Court enters judgments finally approving the settlement of all of the actions that have been consolidated for settlement purposes pursuant to Preliminary Approval (“Actions”) in a manner substantially consistent with the terms and intent of the Agreement.

(b) Either: (i) Thirty-five (35) days have passed after completed service on the parties to the Actions and all objectors to the settlement, if any, of notice of entry of the Court’s judgment finally approving the settlement of the Actions and within such time, no appeal is taken or extension for such appeal is granted, or (ii) if an appeal is taken with respect to the Court’s judgment finally approving the settlement of any of the Actions, the

appellate court has by final order affirmed the Court's judgment finally approving the settlement of the Actions – or has denied review, or the appellant otherwise has exhausted all appellate remedies.

Notwithstanding the preceding subparagraphs (a) and (b), in the event a defendant in any of the Actions has withdrawn or purported to withdraw from the settlement, or terminated or purported to terminate the Agreement at least ten (10) days prior to Final Approval, the date for Final Approval shall be deemed not to have occurred, but only as to that Action, and Final Approval shall be deemed to have occurred as to any other Actions in which the Defendant has not withdrawn or purported to withdraw.

L. “High Down Payment Loans” are mortgage loans that under the requirements of an Agency do not require primary mortgage guaranty insurance or other credit enhancement to be eligible for purchase by such Agency.

M. “Lender” means, with respect to each Class Member, (a) all persons (natural or legal) that selected or influenced the selection of a Defendant to be the provider of primary mortgage insurance with respect to such Class Member's loan, (b) all persons (natural or legal) who made a federally related mortgage loan within the meaning of RESPA to such Class Member, (c) any person (natural or legal) alleged to have been both (i) affiliated in any way with a person described in (a) or (b) hereof, and (ii) a beneficiary of a Challenged Practice engaged in by Defendant, (d) any assign of a Covered Loan, beneficiary of an interest in a Covered Loan, or successor to a person described in (b) hereof, including, without limitation, any Agency, and (e) all predecessors, successors, affiliates, and parents of any of the foregoing persons.

N. "Performance Note" means a promissory note issued by a Defendant and purchased by a Lender where, at some point during the duration of the note, the interest rate can be adjusted based on the performance of the mortgage insurance on specified mortgage loans originated by the Lender and insured by the Defendant.

O. "Pool" means a specified pool of first mortgage loans, which may include loans originated after the effective date of the policy of Agency Pool Insurance and during the term of the policy.

P. "Preliminary Approval" of this Agreement means the orders of the Court entered on December 20, 2000.

Q. "Primary Credit Enhancement" means primary mortgage guaranty insurance and any other credit enhancement that is prior to Agency Pool Insurance or, in the case of High Down Payment Loans, the homeowner's equity in his home.

R. "Released Person" means in this action the Defendant and all Lenders with respect to Class Members.

S. "Restructuring Transaction" ("RT") means a transaction in which the Defendant agrees with an Agency, on or before the date specified loans purchased by an Agency have been closed, to restructure existing primary mortgage insurance coverage on those loans into a different form of coverage. The transaction may also require one or both parties to provide services in connection with the restructuring, or may provide for changes in existing policies or procedures relating to specified mortgage loans.

T. "Uncaptive Transaction" means a transaction between Defendant and a Lender which provides for the Lender to assume specified claim payment risks in return for payment of a fee to the Lender in connection with primary mortgage insurance issued by the Defendant

with respect to an identified group of mortgage loans made by the Lender, but which is not a reinsurance arrangement.

2. Defendant shall not engage in any of the Challenged Practices in a manner that violates RESPA. In light of the uncertainty raised by Plaintiffs regarding the proper application of RESPA to those Challenged Practices covered below, to the extent a Defendant engages in a Challenged Practice in conformity with paragraphs 4-9 below, such conduct shall be deemed to be in compliance with RESPA.

3. Defendant shall not engage in any Challenged Practice that is subject to RESPA, except as provided in paragraphs 4 through 9 below.

4. Defendant shall not engage in the practice of issuing Performance Notes, other than Performance Notes issued pursuant to obligations to issue Performance Notes that were entered into prior to December 1, 2000, and further provided that the Commitment to insure each loan related to any such note was issued within 31 days of Preliminary Approval;

5. Defendant shall not permit any new loans to be added under any Uncaptive Transaction other than Commitments which were issued prior to the shorter of (i) 45 days after Preliminary Approval or (ii) the date on which, had Defendant given notice to the Lender within 5 days after Preliminary Approval to the effect that no new Commitments or loans would become subject to the Transaction, that notice would have precluded new Commitments or loans from becoming subject to the transaction;

6. Defendant shall not provide Agency Pool Insurance except in accordance with paragraphs (a), (b) and (c) below.

a. No later than the date on which a policy of Agency Pool Insurance becomes effective, an officer of Defendant whose primary job responsibilities include



risk management, risk pricing, actuarial risk analysis or equivalent functions, or an Actuary, shall prepare an analysis in writing based upon the model referred to in paragraph 6(b), demonstrating that the sum of (i) the present value of premium revenue from the Agency Pool Insurance, plus (ii) the present value of investment earnings (the sum of the present values in clauses (i) and (ii) is herein referred to as the "Present Value Inflow"), is greater than the sum of (iii) the present value of expected losses plus (iv) the present value of the expected marginal expenses of writing and administering the Agency Pool Insurance business (the sum of the present values in clauses (iii) and (iv) is herein referred to as the "Present Value Outflow").

b. The written analysis in paragraph 6(a) shall be based upon the output of a model that will present cash flows and their timing sufficient to determine whether the Present Value Inflow is greater than the Present Value Outflow. To determine present values of cash flows, premiums and expenses may be assumed to be paid at the beginning of each year, and claims and investment income may be assumed to be paid at the end of each year. The model shall take into account the following, in each case, with respect to a particular policy of Agency Pool Insurance and the Pool:

(i) the financial terms of the policy, including the premium, the aggregate risk, any deductible and the method of computing claim payments;

(ii) the expected claim frequency, considering the expected mix of loans in the Pool, including loan-to-value ratios and loan type, geographic dispersion, the Defendant's experience with the performance of loans originated or purchased by the lender or lenders whose deliveries comprise the Pool and, to the extent the Defendant in good faith believes that inclusion of such

experience from other lenders deemed comparable to such lender or lenders is meaningful in assessing the expected claim frequency, such experience from such lenders, and such other characteristics as may be relevant in assessing expected claims frequency for the Pool;

(iii) the expected timing of claim payments;

(iv) the expected claim severity, after taking account of any Primary Credit Enhancement or any reinsurance provided by a company that is not an affiliate of the Defendant;

(v) the expected investment earnings, which shall be computed for the model in the first year on the sum of first year premiums less first year expenses. The sum of first year premium less first year expenses plus first year investment earnings less first year claim payments is called first year end-of-year balance. Investment earnings in the second year will be calculated on the first year end-of-year balance plus second year premiums less second year expenses. The second year end-of-year balance is the sum of the first year end-of-year balance plus the second year premium less the second year expenses plus the second year investment earnings less the second year claims. Investment earnings for the third and subsequent years are calculated in the same manner; and

(vi) the expected marginal administrative costs of the Agency Pool Insurance transaction, which shall be computed by taking into account only direct labor costs and out-of-pocket costs attributable to the Agency Pool Insurance transaction other than reinsurance provided by an Affiliate of the

Defendant that is not retroceded to an insurer that is not an Affiliate of a Defendant.

Future cash flows (positive and negative) shall be discounted to present value using the discount rate equal to the yield used to compute the expected investment earnings under paragraph 6(b)(v). The inputs to the model, to the extent not expressly defined above, shall be supported by reasoned quantitative analysis and judgment based on data reasonably available to the Defendant. It is recognized that, for example, to the extent supported by such analysis, judgment, and data, expected claim frequency may be lower than the expected claim frequency that would apply to new risk written in the Defendant's business in general.

c. Defendant shall obtain a written opinion from an Actuary to the effect that, while such opinion does not constitute an audit, the Actuary is of the opinion that the inputs to the model contemplated by paragraphs 6(a) and 6(b) are reasonable and that, based on such inputs, the Present Value Inflow is greater than the Present Value Outflow. An opinion need not be obtained for a particular Agency Pool Insurance transaction if an opinion meeting the requirements of this subparagraph has previously been obtained for an Agency Pool Insurance transaction and the matters set forth in paragraph 6(b)(i)-(vi) inclusive above do not vary materially between the two transactions.

7. Defendant shall not enter into any treaty of reinsurance with a reinsurer affiliated with a Lender ("CMR") except in accordance with paragraphs (a) and (b) below.

a. The CMR must actually provide reinsurance to Defendant by adhering to the following requirements:

(i) There must be a legally binding contract for reinsurance;

(ii) The CMR must provide capital satisfying the laws of the jurisdiction in which it was chartered and must establish reserves computed under the laws of the jurisdiction of the Defendant and the CMR, whichever is higher; and

(iii) Premium may only be paid as received by the Defendant, and if the reinsurance agreement is terminated, no consideration may be paid by the Defendant in connection with the termination for loans that have been insured for less than 36 months prior to the effective date of the termination.

b. Defendant shall obtain a written opinion from an Actuary to the effect that (i) the net premium ceded, after taking into account the ceding commission, if there is a ceding commission, is commensurate with or reasonably related to the risk transferred, and (ii) there is a real transfer of risk, which, without limiting by implication other methods of showing that such a transfer has occurred, will occur if there is a reasonable probability that the CMR may realize a loss from the reinsurance arrangement. An opinion need not be obtained for a particular treaty of reinsurance transaction if an opinion meeting the requirements of this subparagraph has previously been obtained for a treaty of reinsurance transaction and the matters set forth in clauses (b)(i)-(ii) inclusive above do not vary materially between the two transactions.

8. Defendant shall not provide to a Lender services incident to underwriting a mortgage loan (including, data entry; pre-qualification; validation of findings from an automated underwriting service; verification of employment, income and the like; appraisal review; and pre-funding and post funding quality control) (such services are collectively referred to as "Contract Underwriting Services") unless the Contract Underwriting Services are provided on terms specified in writing and the prices and fees for such Services conform to the requirements of paragraph 8(a).

a. The compensation paid by a Lender shall be at a rate which, at a minimum, is expected to compensate the provider fully for the expected marginal cost to be incurred in providing the Contract Underwriting Services. In calculating the marginal cost, the provider shall have no obligation to include any expenses other than direct labor costs and out-of-pocket expenses, and, without intending to limit the manner in which marginal cost can be calculated under fee structures that are not based on a charge to perform a specified task, such as underwriting single file, the calculation can be based upon an estimate of the marginal effort expected of the personnel of the provider to perform a particular Contract Underwriting Service. Such prices or fees charged for such Services can be measured in the aggregate for each Lender and its Affiliates (to the extent such affiliation is known to the provider) (or for a distinct business division of a Lender) for whom such Services are provided. In the case of loans submitted to the Defendant for mortgage insurance, it shall be permissible to charge a lower fee (or no fee) for services that would have been performed as part of such submission at no cost to the lender.

b. An officer of Defendant whose job responsibilities include management of Contract Underwriting Services shall certify in writing that, in the good faith judgment of such officer, the requirements of paragraph 8(a) are satisfied. The certificate shall be provided within ninety (90) days of the inception of the contract relationship between the provider and lender and at least annually thereafter. A certificate need not be obtained for a particular contract underwriting agreement if a certificate meeting the requirements of this subparagraph has previously been given for a contract underwriting agreement and the matters set forth in paragraph 8(a) do not vary materially between the two transactions.

9. Defendant shall not enter into a RT with an Agency unless such Defendant obtains a written opinion or opinions stating that the expected value of any risk that it assumes or transfers as part of the transaction plus the expected value of any additional costs or benefits that it receives or provides as part of the transaction, when combined together, result in an approximate net positive or at least a neutral change in value of the transaction. By way of example, factors that may be considered in valuing the transaction may include premium flows, prepayment risks, expected claim payments, claim stop-losses, expenses, services provided, data obtained, investment income, statutory, rating agency or other capital, the opportunity cost of capital, taxes, and other similar or relevant factors. The opinions required by this subparagraph must be based on (i) an Actuary's assessment of the expected value of any risk assumption or risk transfer, and (ii) the certification by an appropriate officer of the Defendant that calculates and explains the net value of the transaction to the Defendant. It shall not be necessary to obtain opinions for a particular RT if opinions meeting the requirements of this

subparagraph have previously been obtained for a RT and the factors or assumptions upon which those opinions were made do not vary materially between the two transactions.

10. The Court recognizes that the opinions required by paragraphs 6, 7, 8, and 9 are not intended to be guarantees of the conclusions expressed in such opinions but are only intended to express the good faith conclusion of the person rendering the opinion. Such opinions may recite that they are based upon assumptions, qualifications, and limitations of the type generally described in the opinion and may rely on facts provided by a Defendant, provided that the person rendering the opinion shall state in the opinion such person's belief that such assumptions, qualifications, limitations, and reliance are customary for opinions of such type.

11. In the event that an exemption is obtained from the Department of Housing and Urban Development ("HUD") for any product or practice described in paragraphs 4-9 on terms substantially the same as those described in those paragraphs, the injunction described in paragraphs 4-9 shall be dissolved forthwith with respect to that product or practice without need for further judicial action to effectuate such dissolution.

12. All Class Members shall hereby be enjoined and restrained from prosecuting any suit against any Released Person with respect to the fees, charges, conduct, services, acts, or omissions of any Released Person relating to (a) all matters within the scope of the Releases in section V of the Agreement, and (b) Agency Pool Insurance, (c) the Defendant's entry into treaties of reinsurance with a reinsurer affiliated with a Lender, (d) Performance Notes, (e) the provision by a Defendant of Contract Underwriting Services to a Lender, (f) Uncaptive Transactions, and (g) RTs associated in any way with any Covered loan transaction of such Class Member consummated on or before December 31, 2003.

13. In the event that subsequent to the execution of this Agreement, state or federal law pertaining to any of the Challenged Practices substantively alters the obligations of the Defendants from those contained in this Injunction, Defendant shall not be enjoined from conforming its practices accordingly. For purposes of this provision, "federal law" shall include any enacted act of Congress, in addition to any subsequently promulgated rule, regulation or interpretation meeting the requirements of 12 U.S.C. § 2617(a) and 24 C.F.R. § 3500.4(a), which specifically modifies, amends, or alters those standards.

14. There shall be no bond posted, in consideration of the nature of this case.



15. This Injunction shall be effective upon Final Approval of the Settlement Agreement and upon its entry and service on Defendants. This injunction shall dissolve by its terms, without the need for judicial action on December 31, 2003, unless earlier dissolved in accordance with paragraph 11 and 13.

Dated: June 22, 2001

  
\_\_\_\_\_  
United States District Judge

2012 MISC American International Group-0001  
UNITED STATES DISTRICT COURT  
Southern District of Georgia

Case Number: 1:99-cv-00239  
Date Served: June 25, 2001  
Served By: Sherry L. Taylor

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Melvin J. Klein, Esq.  
Kent F. Brooks, Esq.  
Kenneth E. Nelson, Esq.  
James D. Benefield III, Esq.

Copy placed in Minutes  
 Copy given to Judge  
 Copy given to Magistrate

# EXHIBIT C



1801 L Street NW, Washington, DC 20036

January 3, 2012

Via E-Mail & Overnight Delivery

Thomas Russo  
Executive Vice President & General Counsel  
American International Group, Inc.  
180 Maiden Lane  
New York, New York 10038

Re: Ceding Practices between MI Carriers and Lenders

Dear Mr. Russo:

The U.S. Department of Housing and Urban Development ("HUD") has transferred authority to the Consumer Financial Protection Bureau (hereafter "Bureau") to investigate premium ceding practices by private mortgage insurance ("MI") carriers, lenders and their captive reinsurers within the private MI industry (hereafter "ceding practices").<sup>1</sup> The Bureau has accordingly opened an investigation into ceding practices by United Guaranty Corporation and any other entity that American International Group, Inc. controls (collectively referred to hereafter as "you," "your," or "the company") involved in such practices. We are writing to you as a prior recipient of a formal discovery request from HUD in connection with this matter to apprise you of the current status of the Bureau's investigation and to request additional information.

**Nature of the CFPB Investigation**

As in HUD's investigation, the Bureau is examining the company's compliance with Section 8 of RESPA in connection with real estate settlements involving ceding practices. Possible areas of inquiry relevant to this investigation include, but are not limited to: the number and type of loan originations for which the company provided MI services; all criteria used by lenders to determine whether and how many borrowers they referred to the company; the nature and amount of payments made by MI carriers to lenders and/or their captive reinsurers; the nature and type of services provided by captive reinsurers to the company, including but not limited to, the type of risk of loss the captive reinsurers undertook; and the type of Section 8 disclosures that were provided to borrowers.

**Information Sought**

This letter focuses only on ceding practices concerning "flow" MI policies, and not "bulk" or "pool" MI policies. To assist our investigation, we request that you provide the following documents and information for the time period beginning January 1, 2006, through the present (hereafter "relevant time"):

---

<sup>1</sup> The term MI, as used herein, excludes government-sponsored mortgage insurance such as FHA, VA, and USDA-backed insurance.

1. The name of the company's current ultimate parent entity, its principal place of business, all names under which any MI carrier(s) has (have) done business during the relevant time, and its (their) principal place(s) of business. The response here, and everywhere else where relevant, should include any entity acquired by the company during the relevant time to the extent that such entity relates to the provision of MI, and a description of the current status of your company to the extent that any of its MI funds or operations are in run-off, cut-off, retro-termination, commutation, or have ceased operation, and the date(s) each such event occurred or are scheduled to occur.
2. A copy of the current organizational chart of the company that includes, but is not limited to, the depiction of each entity that has been involved in MI, with a description of each such entity's role in such practices. To the extent that the identity of any such entity and/or its direct or indirect ownership has changed during the relevant time, please submit organizational charts that reflect and explain each such change.

Using a separate copy of the attached spreadsheets (see Attachment A) for each entity owned by the company that is involved in the provision of MI, please provide the following data in Excel for the relevant time:

3. The number and total dollar amount of originations involving loans backed by the company's MI policies ("MI Loans"), stated separately for each lender by calendar year<sup>2</sup> and month. See Attachment A, Tables 1-6, Columns A and B. For purposes of this and all subsequent requests, please treat multiple loans to the same borrower as separate loans.
4. The number and total dollar amount of originations of MI Loans for which a percentage of the premium was ceded to a lender's captive reinsurer<sup>3</sup> ("MI Captive Loans"), stated separately for each lender by calendar year and month. See Attachment A, Tables 1-6, Columns C and D.
5. The net cede rate, which is the percentage of MI premiums ceded to a captive reinsurer net of all ceding expenses, in connection with the MI Captive Loans, stated separately for each lender by calendar year and month. See Attachment A, Tables 1-6, Column E.
6. The total dollar amount ceded to captive reinsurers in connection with the MI Captive Loans, stated separately for each lender by calendar year and month. See Attachment A, Tables 1-6, Column F.
7. The percentage of MI Captive Loans, stated separately for each lender by calendar year, which were made up of: (a) single-premium payments that were borrower-paid; (b) single-premium payments that were lender-paid; (c) multi-premium payments that were

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<sup>2</sup> "Calendar year," as that term is used in this letter, means all MI policies issued by the company during that year.

<sup>3</sup> "Captive reinsurer," as that term is used in this letter, includes any entity receiving ceded premiums for the benefit of a lender, regardless of whether the lender created or controls the captive reinsurer.

borrower-paid; and (d) multi-premium payments that were lender-paid. See Attachment A, Tables 1-6, Columns G-J.

Please provide this information within the next thirty (30) days to Reid B. Horwitz. This information may be submitted electronically to the following address: [reid.horwitz@cfpb.gov](mailto:reid.horwitz@cfpb.gov). It may also be submitted by overnight mail in one of the following digital media formats: CD-R CD-ROM optical disks formatted to ISO 9660 specifications; DVD-ROM optical disks for Windows-compatible personal computers; or USB 2.0 flash drives. If it is submitted by overnight mail (Federal Express or UPS), it should be sent to Reid B. Horwitz, 1801 L Street NW, Attn: 1750 Pennsylvania Avenue NW, 10<sup>th</sup> Floor, Washington, DC, 20036.

### Document Preservation

Because this is an active ongoing investigation, to the extent that you have not already done so, the company, including AIG Management Systems, should immediately suspend its routine procedures for document destruction that involve documents relevant to this matter during its pendency, regardless of whether you believe such materials are protected from discovery by privilege or otherwise. See, e.g., 18 U.S.C. § 1519. You should also take other measures as necessary to prevent the destruction of similarly relevant electronically-stored information ("ESI"). You should anticipate that much of the materials that may be relevant to this matter are stored on your current and former computer systems and other media and devices (including personal digital assistants, voice-messaging systems, online repositories and cell phones).

ESI should be afforded the broadest possible definition and includes, but is not limited to, potentially relevant information electronically, magnetically, or optically stored as:

- Digital communications (e.g., email, voice mail, instant messaging);
- Word processed documents (e.g., Word or WordPerfect documents and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data files);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images)
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook, PST, Yahoo, blog tools);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations);
- Network Access and Server Activity Logs;
- Project Management Application Data; and
- Back Up and Archival Files (e.g., Zip, .GHO).

ESI resides not only in areas of electronic, magnetic, and optical storage media reasonably accessible to you, but also in areas you may deem not reasonably accessible. You should preserve potentially relevant materials from both of these sources. You should also preserve all ESI in its

native formats, including but not limited to spreadsheets, databases, and presentations. You should also preserve all metadata relating to potentially relevant documents and information. Moreover, in addition to office-based and company-wide workstations, servers, and desktops, you should also preserve potentially relevant materials residing on home and portable systems, including, but not limited to, personal and office portable and home computers, thumb drives, CD-R disks, PDAs, smart phones, voice mailboxes, or other forms of ESI storage. If employees, officers, or board members used online or browser-based email accounts or services (e.g., AOL, Gmail, Yahoo Mail) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted, and Archived Message folders) should be preserved. Please note that paper preservation of ESI is inadequate because hard copies do not preserve electronic searchability or metadata.

This obligation extends beyond ESI and hard copies in your care, possession, or custody and includes ESI and written materials in the custody of others that are subject to your direction or control. This obligation also extends to preserving documents and other tangible items that may be required to access, interpret, or search potentially relevant ESI, including logs, control sheets, specifications, indices, naming protocols, file lists, network diagrams, flow charts, instruction sheets, data entry forms, abbreviation keys, user IDs, password rosters, keys and other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals, and license keys for applications required to access the ESI. This obligation further extends to preserving any cabling, drivers, and hardware, other than a standard CD or DVD optical drive, if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, Zip drives, and other legacy or proprietary devices.

### **Tolling Agreement**

Also, please indicate within the next week your willingness to agree to a tolling agreement that would operate to toll and suspend the running of any unexpired statute of limitations applicable to any action or proceeding against the company arising out of this matter. A tolling agreement is appended as Attachment B.

Please contact me at 202-435-7752 as soon as possible to set up a telephone call to be held within the next 10 days to discuss any issues you may have about your response. To the extent that compliance with the technical production guidance described herein creates any issues, please make sure to have someone conversant with such technical issues available for this call.

Sincerely,



Reid B. Horwitz

Attachments

# EXHIBIT D



**Brad Rosen**

---

**From:** William Burck  
**Sent:** Wednesday, December 05, 2012 4:38 PM  
**To:** 'Donald Gordon (CFPB) (Donald.Gordon@cfpb.gov)'  
**Cc:** 'Crystal Sumner (CFPB) (Crystal.Sumner@cfpb.gov)'; 'Sara Millard (millarsf@ugcorp.com)'; 'Peter Tsapatsaris (tsapatp@ugcorp.com)'; Brad Rosen; William Burck  
**Subject:** UG's Proposal Re: Narrowing CID

Don:

Thank you for taking the time this morning to meet and confer with us by phone concerning the CFPB's CID. On behalf of United Guaranty ("UG"), we very much appreciate the CFPB's ongoing willingness to engage in a dialogue on the scope of production and related issues. As you know, we remain of the view that the scope and volume of documents purportedly compelled by the CID would impose a significant and undue burden on UG. Below I summarize the key issues we discussed:

- Cost of ESI search and review. The process is often prohibitively expensive without reasonable limitations on scope:
  - Reasonable time limitations: The lack of a time limitation imposes a significant burden on United Guaranty because the cost of retrieving old documents is often prohibitive. For ESI in particular, the longer the time period, the larger the corpus of data that needs to be sifted and the more non-responsive documents that must be manually reviewed.
  - We would propose limiting the scope of the CID to ESI relevant to captives still in force in 2009 — only one of which is an Enumerated Captive (██████████), and at that, limiting the data searches to periods after January 1, 2006.
    - UG is not proposing similar limits on documents or data that is easily segregated, such as the reinsurance agreements and other transactional documents and related documentation, financial data, or dedicated paper files.
  - Key Custodians: Similarly, UG would propose limiting any ESI searches to the key agreed-upon custodians as a way to reduce the burden of searching and reviewing documents.
  - Keywords: After isolating key custodians, in order to avoid the expense of reviewing every electronic document, we would propose a set of reasonable keywords to reduce the burden of review on United Guaranty.
  - Definition of ESI: UG would propose eliminating handheld devices, including phones, blackberries, or PDAs, from the scope of the search, as these devices require a manual process that will be expensive in terms of attorney and IT personnel time.
- Voluminous Requests:
  - For data and documents that can be segregated, we would limit the scope of the CID to enumerated captives. Given the number of UG's captives, the requests will result in voluminous data that imposes substantial burden on UG.
  - A specific example — UG's rate filings. Some were previously produced to HUD, and they are quite voluminous and we do not think they would be of use to the Bureau. Another example would be in the periodic account statements for the captives — each statement contains historical data of account balances, claims payments, premium ceded, etc., and producing every account statement/cession statement will be very duplicative and voluminous. We would seek to limit this to the most recent statement and a historical statement.

- As part of our discussion, we suggested that we work with the CFPB to ensure that it has uncorrupted copies of all data previously produced to regulators.
- Definition of "Company":
  - United Guaranty is the only AIG company that provides mortgage insurance/purchased reinsurance from lender-captives — the scope of the CID should be limited to UG as it otherwise imposes a significant and undue financial burden on AIG.
- Clarifications:
  - We raised that there is a distinction between "calendar year" and "book year" data and that UG's data is kept on a book year basis. Transforming data to a calendar year basis is a manual process. (Not discussed on our call, but similarly, some data may only exist in quarterly, rather than monthly format.)
  - We raised that there is a practice of "internal reinsurance" to meet regulatory requirements whereby some portion of risk is ceded between United Guaranty subsidiaries — we would like to confirm that the scope of the CID does not reach those documents, as it would reduce the burden to UG.
  - We would limit the scope of the CID to primary flow coverage on first liens, both for accuracy and because it will help alleviate the burden of the amount of documents that will need to be reviewed.
- Outside Counsel: Creation of a privilege log is a time consuming, expensive process. As to correspondence between UG and outside counsel that relates to investigations and civil litigation concerning similar issues -- information which is undoubtedly privileged -- UG would propose not having to log those documents. Given the civil litigations and multi-year regulatory investigations by Minnesota, HUD, and others, there is likely significant amount of correspondence with outside counsel that would otherwise need to be logged, imposing significant burden on UG with no benefit to the CFPB.
- Relief from specific Bureau production requirements:
  - A blanket requirement of producing native files imposes a significant additional production burden on UG because of the nature of ESI review. The ability to produce TIFF or PDF images with load files, rather than native files for ESI saves significant cost. UG is willing to produce native files for excel, and willing to work with the Bureau to provide native files on request if necessary.
  - The requirement to identify the request or requests each document is responsive to is burdensome, especially in light of the overlapping nature of many of the requests.

We are hopeful we will be able to reach agreement on the proper scope of the CID to ensure that the CFPB has access to the information it needs for its inquiry while protecting UG from undue burden and unnecessary costs which could quickly run into the millions of dollars. We look forward to hearing from you soon and please do not hesitate to contact us with any questions.

Regards,

Bill Burck

# EXHIBIT E

**Brad Rosen**

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**From:** William Burck  
**Sent:** Friday, December 07, 2012 2:29 PM  
**To:** 'Donald.Gordon@cfpb.gov'; 'millarsf@ugcorp.com'  
**Cc:** 'Crystal.Sumner@cfpb.gov'; 'Navid.Vazire@cfpb.gov'; 'Kim.Ravener@cfpb.gov'; 'Peter Tsapatsaris (tsapatp@ugcorp.com)'; Brad Rosen  
**Subject:** RE: CID to United Guaranty - potential accommodations

Don:

Thank you for your email. We believe your suggestions are productive and welcome the invitation for further discussion of ways to address our concerns that the CID is overly broad and unduly burdensome. With that in mind, we note that it is highly unlikely that we would be able to reach specific agreement even on custodians, key word searches, and other proposals in your email today prior to the deadline for filing a petition to set aside or modify the CID. Would the Bureau be willing to extend the deadline for filing a petition so that we can confer further to reach specific agreements on the proposals in your email, as well as other open issues? A short extension may obviate the need for a petition.

Regards,

Bill

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**From:** [Donald.Gordon@cfpb.gov](mailto:Donald.Gordon@cfpb.gov) [<mailto:Donald.Gordon@cfpb.gov>]  
**Sent:** Friday, December 07, 2012 1:25 PM  
**To:** [millarsf@ugcorp.com](mailto:millarsf@ugcorp.com); William Burck  
**Cc:** [Crystal.Sumner@cfpb.gov](mailto:Crystal.Sumner@cfpb.gov); [Navid.Vazire@cfpb.gov](mailto:Navid.Vazire@cfpb.gov); [Kim.Ravener@cfpb.gov](mailto:Kim.Ravener@cfpb.gov)  
**Subject:** CID to United Guaranty - potential accommodations

Sara and Bill,

This message is intended to follow up our teleconference this week discussing the parameters of and potential accommodations regarding the CID issued by the Bureau.

The Bureau is ready and willing to work with you to ameliorate any specific claims of undue burden imposed by the CID. We are closely reviewing the concerns you raised during our telephonic meet & confer and in your subsequent email, and we would like initially to propose several accommodations to significantly reduce the volume of data that needs to be searched and analyzed in response to the CID. Other accommodations may also be possible.

First, we agree that limiting the search for responsive data to a set of relevant custodians would vastly reduce any burden imposed by the CID. We expect that the limitation on custodians should sufficiently reduce the overall volume of data at issue, and alleviate other concerns you have raised regarding the scope of the CID. We ask that you propose a list of potential custodians, along with their dates of employment and descriptions of their roles at the company, and we will endeavor to select a sample subset. The production of organizational charts of supervisory and management employees for all relevant periods of time, as called for in the CID, would also aid us.

Second, in principle, we also agree that a list of keywords will alleviate the search burden. To the extent you have raised concerns about the scope of certain requests, we believe the use of keyword searches combined with the narrowed custodian list would eliminate those concerns and create a targeted process for document collection and production. If you propose such a list for consideration, we will promptly review and return to you any critical additions, amendments, or subtractions.

Third, we can also agree to a reasonable timetable for a rolling production, provided that you agree to extend the tolling agreement for a commensurate period of time. The rolling production will also need a set end date for certification of the production. We are prepared to negotiate that timeline with you.

Lastly, we are prepared to discuss ways in which we might limit or eliminate searches of media that are demonstrably less accessible, such as any data contained on back-up tapes. As you know, such claims need to be substantiated by specific facts regarding your data storage and availability, as well as estimates of the attendant costs of retrieval.

We look forward to working with you cooperatively to manage the document production process. Please let us know if you have any outstanding concerns, and we will be happy to confer further. In addition, our Technology and Innovation staff are available for further consultation as needed.

Regards,

Don

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**Donald R. Gordon**  
Enforcement Attorney  
Consumer Financial Protection Bureau

Tel: 202 435 7357

Mob: 202 258 1847

[consumerfinance.gov](http://consumerfinance.gov)

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