

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

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In the matter of)
GENWORTH FINANCIAL, INC.)
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**GENWORTH’S PETITION TO MODIFY OR SET ASIDE THE
JUNE 20, 2012 CIVIL INVESTIGATIVE DEMAND**

I. INTRODUCTION

Genworth Mortgage Insurance Corp. (“Genworth” 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”) issued to Genworth Financial, Inc.¹ (Ex. A.) As described below, the CID as framed by the Bureau would require Genworth to produce nearly every customer-related document created or received during the ordinary course of business over the last decade. This would be extremely disruptive to Genworth’s ongoing business operations in an already challenging environment.

A. Relevant Background

1. The Challenged Reinsurance Programs Have Provided Key Loss Support to the Ceding Companies Through the Down Cycle and Have Not Resulted in Any Harm to Consumers.

Since the financial crisis and the unprecedented decline in home values that began toward the end of 2007, the captive reinsurance arrangements have performed their intended function by supplying Genworth with significant loss and capital benefits as losses on the reinsured books of

¹ Genworth Financial, Inc. (“Genworth Financial”) is a publicly traded company that is the ultimate parent company of Genworth Mortgage Insurance Corp. Although the CID was addressed to Genworth Financial, as advised in John Taggart’s February 3, 2012 letter to Reid Horwitz of the CFPB, Genworth Mortgage Insurance Corp. “is an active writer of first lien residential mortgage insurance and is the only legal entity in the Genworth Financial, Inc. family of companies that has entered into risk and premium ceding arrangements with lender-affiliated reinsurers.” (Ex. B.) Accordingly, this petition is framed based on the undue burden that Genworth Mortgage Insurance Corp. would encounter in responding to the CID.

business accelerated. Indeed, Genworth has already been reimbursed over one billion dollars of losses by the captive reinsurers. Genworth expects to recover more than \$100 million more from these reinsurers in the next few years. The risk transfer for these transactions has been certified by independent actuaries and Genworth's own annual risk transfer testing protocols as reviewed by outside auditors.

But even more important to the CFPB and its mission of addressing consumer wrongs, no consumer has been harmed as a consequence of these arrangements. Pricing for mortgage guaranty insurance is an area governed both by intense competition and state regulatory bodies charged with protecting the consumer interest. Genworth must file and justify premium rates with state regulators. The premium rates paid by consumers for private mortgage insurance are and always have been the same regardless of whether a particular consumer's loan is included in a captive reinsurance structure. Furthermore, premium rates for mortgage insurance were the same following the inception and widespread adoption of captive reinsurance programs as they were prior to the advent of captive reinsurance. Indeed, premium rates remained relatively flat during the years leading up to the financial crisis, even while mortgage lenders pressed for and received coverage for new, untested, and ever riskier mortgage products (many of which helped precipitate the housing bubble).

Finally, the loss experience of the mortgage insurance industry over the past five years demonstrates that the rates actually charged for mortgage insurance were significantly below a level that would adequately cover the risks assumed. Of the seven active writers going into the financial crisis, three are now in runoff and under various stages of supervision by insurance regulators. The remaining four companies are under significant and ongoing loss and capital pressure, and several (including Genworth) are operating below state-mandated capital levels pursuant to waivers that state regulators could revoke at any time.

2. Prior Regulatory Investigations

The CFPB's investigation into whether the use of captive reinsurance arrangements violates the anti-kickback provisions of the Real Estate Settlement Procedures Act ("RESPA") treads old ground. Since 2005, a number of insurance regulators (including the New York Department of Insurance and the Minnesota Department of Commerce) have investigated captive arrangements. Indeed, CFPB inherited this investigation from a long-running investigation commenced by the U.S. Department of Housing and Urban Development Office of the Inspector General ("HUD-OIG"). Genworth has expended considerable time and resources in cooperating with these investigations through the years. None of these investigations resulted in administrative actions being filed against Genworth.

3. Prior Class Action Litigation and Pending Class Actions

In or around 2000, Genworth and the other national mortgage insurers were sued in separate class action lawsuits concerning captive arrangements. In December of 2000, Genworth settled a class action entitled *Douglas et al. v. General Electric Mortgage Insurance Corp. et al.*, Civil Action No. 100-242 (S.D. Ga.). The *Douglas* settlement included a future injunction which provided that captive arrangements would not violate RESPA if certain criteria were satisfied. Although the *Douglas* injunction expired in 2003, Genworth has voluntarily complied with the *Douglas* injunction limitations to this very day.

In recent years, private plaintiffs have filed more than a dozen new class action suits claiming captive reinsurance arrangements violate RESPA. *See, e.g., McCarn v. HSBC USA, Inc.*, 1:12-cv-00375 (E.D. Ca.) (dismissed on standing and statute of limitations grounds); *Samp v. JPMorgan Chase Bank NA*, 5:11-cv-01950 (C.D. Ca.); *Riddle v. Bank of America Corp.*, 2:12-cv-017040 (E.D. Pa.). As explained below, Genworth seeks appropriate confidentiality

treatment for documents and information provided to CFPB in response to the CID given the existence of these pending class actions.

4. Genworth Voluntarily Ceased to Place New Loans into Excess-of-Loss Captive Reinsurance Arrangements by 2008

The use of captive reinsurance on an excess-of-loss basis largely ended in 2008.² With the exception of one captive arrangement that continued until the first quarter of 2009, Genworth ceased placing new loans into excess-of-loss captive arrangements by the middle of 2008.³ Thus, more than three years have passed since the closing dates of the last loans that were placed into these arrangements. This is a fact that will shape the outcome of any litigation, given the applicable three-year limitations period for purported RESPA or CFPA violations. Additionally, Genworth has significant concerns over retroactively applying the CFPA to penalize contracts and conduct that have been fully disclosed to all appropriate insurance regulators for more than a decade. Genworth submits that the attendant burden in producing voluminous data and information must be viewed in light of the significant statute of limitations and retroactivity problems that the CFPB would encounter in attempting to pursue litigation for any purported violation.

5. CID and Procedural History

CFPB issued the CID to Genworth Financial, Inc. on June 20, 2012, after Genworth had voluntarily produced data related to certain captive arrangements in response to an informal January 2012 request from the Bureau. The CID purportedly concerned “whether mortgage lenders and private mortgage insurance providers” engaged in “unlawful acts and practices in

² As previously advised to the Bureau, Genworth has four active quota-share reinsurance agreements. Given HUD’s guidance that quota-share captive reinsurance arrangements constitute “real transfer of risk,” Genworth respectfully suggests that the CID should be limited to excess-of-loss captive arrangements. See August 6, 1997 Retsinas letter.

³ Genworth did place 649 new loans into the PHH excess-of-loss captive arrangement during the first quarter of 2009.

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.” (Ex. A.) The CID contains 20 interrogatories and 25 document requests (many of which contain multiple subparts). The CFPB apparently issued similar Civil Investigative Demands to the other private mortgage insurers.

On July 17, 2012, Erika Brown Lee, Esq., (Counsel for Radian Guaranty Inc.) sent a letter to Donald R. Gordon, Esq., on behalf of Radian, Genworth, and the other national mortgage insurers in advance of a group meet and confer session. (Ex. C.) The letter identified several common issues that the mortgage insurers had with the CFPB’s civil investigative demands, including that:

- (a) the majority of requested categories of documents are burdensome and not reasonably calculated to lead to the discovery of admissible evidence given the applicable limitations periods;
- (b) the CFPB’s procedures on confidentiality do not preclude the CFPB from sharing confidential investigative information with private plaintiffs;
- (c) many of the CID’s definitions are over inclusive;
- (d) the required production format was unduly burdensome;
- (e) there is a substantial burden with retrieving and producing all of the requested electronically stored information;
- (f) the creation of a production log by the time specified in the CID was unduly burdensome; and
- (g) the stated deadline for production was all but impossible given the scope of the requested documents and information.

On July 19, 2012, CFPB hosted a group meet and confer session with Genworth and the other mortgage insurers in Washington, D.C. Genworth was prepared to meaningfully discuss appropriate modifications of the CID at this meet and confer. The CFPB, however, raised the possibility of settling this investigation. The CFPB offered to toll the time to petition for

modification of the CID during settlement negotiations. Genworth and the other insurers opted to explore a potential settlement with the CFPB. As a result, Genworth and CFPB did not discuss the scope of the CID in detail at that time.

On November 19, 2012, CFPB met with a group of mortgage insurers, including Genworth, to engage in further settlement discussions. The parties made significant progress on a number of difficult issues to resolve this matter. Given this progress, the mortgage insurers requested a short extension of time to file a petition to modify or set aside the CID, then due November 26, 2012.⁴ CFPB granted a brief extension to December 3, 2012, which was later extended to December 7, 2012.

The parties have been unable to reach an agreement on the terms of a proposed settlement. On December 5, 2012, Genworth and the CFPB met and conferred telephonically to address the issues in this petition. The CFPB agreed in principle to some of the modifications requested, such as: (1) allowing the rolling production of documents, (2) modifying the format of the production, (3) limiting the production to certain key custodians, (4) limiting the review of electronic documents using search terms, and (5) allowing the production of a limited production log at a later date—however, no final agreement was reached on these items. In addition, the CFPB was not able to tell Genworth whether it would agree to their more specific modification requests, even in principle. Although Genworth asked for a brief extension of time so that the parties would have sufficient time to work through the issues raised herein, the CFPB declined this request.

On December 6, 2012, Genworth sent a letter memorializing the meet and confer (the “December 6, 2012 letter”), and renewing its requests for modification. (Ex. D.) Genworth

⁴ Genworth had entered into a series of tolling agreements and received several extensions from the CFPB while discussions continued.

sought a response from the CFPB by 3:00 p.m. EST on Friday December 7, 2012. Although the CFPB claimed it did not receive the December 6, 2012 letter, the CFPB sent an e-mail on December 7, 2012 addressing some, but not all, of the issues identified above. Genworth will continue to work with the CFPB to reach a resolution on these issues.

However, to avoid waiving its substantial objections to the CID, Genworth filed this petition to modify or set aside the CID under 12 U.S.C. § 5562(f) on December 7, 2012.

II. GENWORTH'S PROPOSAL FOR MODIFICATION

A. Summary of Burden

The CID requests essentially every non-privileged document relating to a product offering that became an integral part of Genworth's day to day operations over a period of more than eleven years. It even asks for documents that have nothing to do with captive reinsurance arrangements, the stated target of the Bureau's investigation. Genworth would face a monumental burden in complying with the CID as written. For example, Genworth would need to cull responsive information from over 322 million e-mail messages. The potentially responsive electronically stored information ("ESI") exceeds 33 terabytes (33,792 gigabytes) over the requested time frame. Moreover, the CID's expansive temporal scope would require Genworth to retrieve documents and data stored offsite. The CID even contains an instruction to produce ESI that is currently inactive—a burdensome and costly demand. Simply stated, the substantial diversion of time and other resources to comply with the CID as written is unduly burdensome, especially in light of Genworth's ongoing business challenges. Modifications to the CID should be granted because the burden imposed on Genworth in complying with the CID is far greater than the CFPB's need to seek documents created more than a decade before it existed.

B. Genworth's Proposal to Modify the CID

As noted above, Genworth has expended significant time and resources to provide voluminous material and detailed information to HUD-OIG and the Minnesota Department of Commerce. Much of what has been produced to these agencies overlaps with the same areas of inquiry as the CID. Thus, as an initial starting point, Genworth is prepared produce all the documents produced to these agencies during their prior investigations, as well as additional reports responsive to the CID's document requests upon written confirmation from the CFPB that Genworth's production will not be shared with third parties.

Genworth acknowledges that the Bureau is entitled to additional documents and information to pursue its investigation, and Genworth is committed to responding to the CID in good faith. Indeed, Genworth is prepared to provide information or documents in response to nearly all of the interrogatories and documents requests.⁵ Against this backdrop, Genworth respectfully requests that the Director make the following general and specific modifications to the CID to minimize Genworth's burden and expense in complying with the CID. Many of the proposed modifications lessen the undue burden on Genworth while allowing the CFPB to take a more focused review of captive arrangements, rather than being inundated with irrelevant documents.

III. GENERAL OBJECTIONS AND REQUEST TO GENERALLY LIMIT CID

Genworth respectfully requests the following general modifications to the CID, in addition to the specific modifications requested discussed later.

⁵ However, Genworth has requested that the following requests be set aside for reasons outlined in its specific objections infra: Interrogatory No. 20 and Document Request No. 9.

A. The CID Is Overly Broad And Unduly Burdensome

The CID is overly broad and unduly burdensome because it would “disrupt or seriously hinder [Genworth’s] normal operations.” *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)). Request No. 9, for example, 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.” Genworth has insurance contracts in place with literally thousands of lenders, the vast majority of which do not involve captive reinsurance arrangements. (Document Request 9). This request is not limited to captive reinsurance arrangements, which is the principal subject matter of this investigation. The CID also seeks documents and information going back to the “Inception” of captive reinsurance arrangements that were begun in the mid-1990s. (*E.g.* Document Requests 5-8). Further, the CID seeks information and documents—including asking Genworth to create documents that do not exist—concerning Enumerated Captive Trusts or Enumerated Reinsurance Entities that could be sought more conveniently and with less burden directly from the Enumerated Reinsurance Entities themselves. While Genworth does not object to producing the summary documents it already possesses concerning these entities, it is extremely burdensome for it to be required to create documents to fulfill those requests. Genworth estimates that full compliance with the CID as written would cost millions of dollars. This is particularly troubling given Genworth’s ongoing business challenges.

To minimize the burdens imposed by the CID, Genworth attempted to negotiate limiting the production to agreed upon e-mail custodians and relevant search terms, which the CFPB has agreed to in principle. Unfortunately, due to the impending deadline for filing this petition, Genworth and CFPB have not yet agreed to the specific search terms and custodians. As a result, Genworth cannot quantify exactly how burdensome complying with the CID would be at

this junction. As noted above, Genworth possesses over 21.6 terabytes (22,118.4 gigabytes) of ESI from the requested period of time, including over 322 million e-mail messages. Genworth also has over 12 terabytes (12,288 gigabytes) of data in shared drives. These staggering figures exclude the additional ESI that resides on individual computers. As one might expect, searching this volume of data is not a simple task. In fact, Genworth's IT department has advised that it takes 24 hours of computer time to run a single search term across this huge amount of data.⁶

The CID's broad reach, the vast amount of ESI at issue, and the severe disruption that the CID would pose to Genworth's daily operations would be impermissible in any context. But these concerns are only exacerbated given the applicable three-year statute of limitations and the fact that Genworth's excess-of-loss reinsurance agreements were all terminated in early 2009 or earlier.

B. The CID's Time Period Should Be Narrowed

The current time periods require production of documents from January 1, 2001 or the "Inception" of captive reinsurance agreements, which often reaches the 1990s.

This temporal scope is unjustifiably excessive. The CFPB allows 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). As described below, the applicable limitations periods and concerns over retroactivity warrant defining the applicable time period as January 2009 to the present. Subpoenas seeking documents well beyond the applicable statute of limitations should be limited to a more reasonable time period. *Gen'l Ins. Co. of Am. v. EEOC*, 491 F.2d 133, 136 (9th Cir. 1974) (affirming determination that subpoena was overbroad when it "reached back in

⁶ In addition to significant burdens associated with ESI, Genworth also has a voluminous amount of potentially responsive paper records that are stored offsite. It is impossible to estimate the volume of potentially responsive paper documents at this time.

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).

As we understand it, the CFPB’s investigation is principally focused on whether captive arrangements violate RESPA’s anti-kickback provisions. 12 USC § 2607. Indeed, the Bureau’s January 3, 2012 request for information stated that the Bureau has “opened an investigation into ceding practices” by Genworth to examine “compliance with Section 8 of RESPA.” (Ex. E.) 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 RESPA violations from the mortgage closing date 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.

Ordinarily, violations of CFPA also have a three-year statute of limitations.⁷ 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).

⁷ Genworth objects to the CID to the extent the CFPB claims it has jurisdiction over Genworth as a “service provider” under the CFPA.

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 subject reinsurance contracts at issue were entered long before the CFPB or CFPA ever existed.

To be clear, Genworth's objection to the applicable time frame is not a blanket objection. Genworth does not object to producing key background and historical documents (*e.g.*, underlying reinsurance contracts, amendments thereto). Indeed, many of these documents are contained in the prior productions to HUD-OIG and the Minnesota Department of Commerce that Genworth has agreed to produce to the Bureau once the Bureau adequately addresses Genworth's confidentiality concerns. Accordingly, Genworth seeks the reasonable modification to restrict the temporal scope of the interrogatories and document requests to information and documents from January 1, 2006 to the present. This is a reasonable and fair proposal given the applicable three-year statute of limitations and retroactivity concerns. Genworth further notes that the CFPB's January 3, 2012 information request defined the "relevant time" as "January 1, 2006, through the present." (Ex. E.)

C. Genworth Seeks Clarification of Key Definitions 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 will help to

limit the burden to Genworth. In turn, the resulting production will be more focused on what the CFPB presumably wants for its investigation. The Bureau has agreed to consider these proposals, but has not yet agreed to or rejected them.

1. Narrow Expansive Definition of “Company”

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

The CID defines “Company” as “Genworth Financial, 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 Genworth Financial, 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.”

As previously reported to the CFPB, Genworth Mortgage Insurance Corp. “is the only legal entity in the Genworth Financial, Inc. family of companies that has entered into risk and premium ceding arrangements with lender-affiliated reinsurers.” (Ex. B.) Given this fact, Genworth respectfully request that the CID be modified to change the definition of “Company” to the following:

“Company” or **“You”** or **“Your”** shall mean Genworth Mortgage Insurance Corp., 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 primary “flow” coverage, rather than pool or bulk insurance. Thus, to streamline Genworth’s production and limit the documents that

CFPB would need to review, Genworth respectfully requests that the CID be modified to define “Mortgage Insurance” as “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 Genworth-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 investigation, including external reinsurance or reinsurance with Genworth-affiliated companies.

Genworth 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 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.

It is unclear exactly what information Genworth must provide to comply with the CID's requests referring to "management".

Genworth respectfully requests that the CID be modified to define "management" as "Genworth's officers and employees with significant responsibilities and authority to enter into or modify Captive Reinsurance Arrangements."

D. Narrow Requests 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 Genworth 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 will not pull in irrelevant data. On a more fundamental level, theoretical agreements are not actionable unless they became "actual" agreements or arrangements. As such, theoretical agreements and arrangements are of questionable relevance to the Bureau's inquiry.

Genworth respectfully requests that the CID be modified to limit the production of documents to "actual" arrangements and agreements.

E. Modify the CID's Production Format to be Less Burdensome

The CID's production format is unduly burdensome.

The CID's document submission standards go 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 Bitblocker, (3) be Bates-labeled in a particular format, (4) maintain the original native source of

each document and preserve *all* metadata, (5) contain certain specified fields of metadata in a particular order, and (6) be searchable. Given the vast number of potentially responsive documents, literal compliance with the CFPB's proposed format would be extremely expensive and time consuming.

Genworth 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, together with a load file. At the meet and confer, the CFPB seemed amenable to this proposition, but we have not heard back from them on this issue.

F. Narrow Custodians and 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, Genworth does not centrally store instant messages, SMS, MMS, text messaging, or voicemails. Moreover, Genworth's comprehensive enterprise-wide email storage system only captures mail going back to January 2010, so tracing relevant emails prior to that time will additionally require resorting to the archive files found on individual custodian's laptops and work stations. Gathering individual cell phones and blackberries from every custodian is incredibly burdensome. Likewise, Genworth 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.

As described above, Genworth and the Bureau discussed limiting the custodians and reducing the terabytes of data through the use of search terms at the meet and confer. The CFPB seemed generally receptive to this approach, however no agreement has been reached on the specific lists of custodians and search terms.

Genworth respectfully requests that this request be limited to mutually agreeable custodians and agreed upon search terms.

G. Modify the CID 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.

The Bureau agreed that, although the CID requests Genworth to provide a privilege log on the date of compliance, Genworth could provide a privilege log at a later date. Genworth and the CFPB agreed to discuss the timing of the privilege log and possible ways to reduce the burden in creating a privilege log at a later date, but no agreement has yet been reached.

Genworth 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 this investigation).

H. Modify the Date to Complete the Production and Accept 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 Genworth in the last eleven years. Production under the CID will require considerable time and resources to identify, reproduce, and review documents for relevance and privilege. It is impossible to complete this in the timeframe imposed by the CID.

At the meet and confer, the CFPB expressed willingness to accept a rolling production.

I. Confidentiality Concerns

In addition to the burden and scope issues discussed above, Genworth also is deeply concerned about the confidentiality of information produced in response to the CID. Many of the requested materials contain trade secrets and sensitive confidential proprietary information. This concern was raised in the July 17, 2012 Letter, in subsequent conversations with CFPB, and at the December 5, 2012 meet and confer. The CFPB has taken the position that Genworth 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 Genworth notice before producing Genworth's "confidential investigative information" to third parties.

Genworth thus respectfully requests that Genworth's obligations in response to the CID be suspended until the CFPB enters into a suitable confidentiality agreement barring disclosure of Genworth's confidential documents to any third parties. As indicated above, Genworth is ready to make a production to the CFPB upon receiving written confirmation that the CFPB will not share Genworth's production with any third parties.

IV. REQUEST TO LIMIT SPECIFIC INTERROGATORIES

Genworth does not object to producing any information or documents in response to most of the interrogatories. To the contrary, Genworth 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.

Genworth incorporates all the prior general objections to each specific interrogatory and does not repeat them below.⁸ Many of the general objections cover multiple interrogatories. For example:

- 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.
- Genworth's objection to the definition of the word "Company" as referring to any company other than Genworth Mortgage Insurance Corp. applies to Interrogatories 2-9, 15, and 17 - 19.
- Genworth additionally objects to Interrogatories 10, 11, 12, and 15 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, Genworth's objection to the use of the undefined term, "management," applies to both Interrogatories 4 and 5.

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

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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatory

No. 4: Subject to and without waiving the General Objections above, this request is overbroad

⁸ Genworth generally objects to each Interrogatory to the extent it asks for privileged information.

because it seeks information relating to all of Genworth Mortgage's management structure although CFPB's investigation relates to only the captive reinsurance agreements.

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

Interrogatory No. 4: Identify the key employees involved in assessing, evaluating, or offering captive reinsurance structures to lenders.

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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatory

No. 6: Subject to and without waiving the General Objections above, Genworth 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, Genworth will respond to this Interrogatory.⁹

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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatory

No. 7: Subject to and without waiving the General Objections above, Genworth has complied with the CID's instruction to suspend any procedures that may result in the destruction of

⁹ Although Genworth agrees to produce information to this request, and others, it raises its objections to avoid waiving them.

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, Genworth respectfully requests modifying Interrogatory No. 7 to require the production 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.

Genworth’s Specific Objections and Proposed Compromise Concerning Interrogatory

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

As a compromise, Genworth will 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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatory

No. 9: Subject to and without waiving the General Objections above, Genworth objects to this request to the extent it seeks information with respect to internal reinsurance agreements with Genworth affiliated companies, pool business, and external reinsurance agreements outside of the limitations period. Genworth further objects to this request to the extent it seeks publicly-available information. Genworth's utilization of external reinsurance is reported in Schedule F of its publicly available annual reports.

Genworth respectfully requests modifying Interrogatory No. 9 to state the following:

Interrogatory No. 9: Identify each external entity that was not a Reinsurance Entity from which the company obtained mortgage insurance reinsurance on flow business after January 1, 2006, 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. produce all agreements and amendments to agreements governing any aspect of any such business arrangement.

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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatories

Nos. 10, 11, and 12: Subject to and without waiving the General Objections above, Genworth objects to these requests to the extent they require Genworth to create documents not already in existence concerning individual payments. 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. It would require the manual 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, Genworth 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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatory

No. 13: Subject to and without waiving the General Objections above, Genworth 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, Genworth will respond to this interrogatory on the assumption that "Reclassified" includes reinvestment of excess funds to cover quarterly deposits by producing relevant documents containing this information.

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.

Genworth's Objections and Request for Modification to Interrogatory No. 14: Subject to and without waiving the General Objections above, Genworth objects to this Interrogatory as vague and ambiguous. Genworth respectfully requests clarification as to what this interrogatory is seeking. Additionally, Genworth objects to this interrogatory to the extent it seeks information not within the control of Genworth.

Interrogatory No. 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.

Genworth's Objections and Request for Modification to Interrogatory No. 15: Subject to and without waiving the General Objections above, Genworth objects to this Interrogatory as vague and ambiguous. The undefined term "thing of value" is impermissibly vague, and Genworth respectfully requests clarification of its use in this context.

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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatory

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

Notwithstanding these objections, in the spirit of good faith, Genworth will answer this Interrogatory by producing relevant documents.

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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatory

No. 17: Subject to and without waiving the General Objections above, Genworth objects to this interrogatory to the extent it requires the creation of documents not already in existence.

Genworth 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 may be a lengthy process due to limited resources and staff.

As a compromise, Genworth will produce readily available business records that contain analogous aggregate data, including quarterly and annual reports.

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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatory

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

Genworth 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 Genworth Mortgage relating to any Enumerated Captive Mortgage Reinsurance Arrangement, the nature of the services provided, and the year(s) when they were provided.

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.

Genworth's Specific Objections and Proposed Compromise Concerning Interrogatory

No. 20: Subject to and without waiving the General Objections above, Genworth objects to this interrogatory as unduly burdensome. It is impossible to respond to this interrogatory without an

agreement as to the scope of what Genworth will produce in response to the CFPB. Further, as discussed below there are significant burden issues with producing documents to the CID as written.

Genworth respectfully requests the Director to set aside Interrogatory 20.

V. REQUEST TO LIMIT SPECIFIC DOCUMENT REQUESTS

Genworth does not object to producing any documents in response to most of the document requests. Genworth simply seeks necessary modifications to reduce the undue burden imposed by the CID.

Genworth 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.¹⁰ For example:

- The undue burden imposed by the CID's expansive time frame given the applicable three-year statute of limitations and Genworth's significant retroactivity concerns applies to all Document Requests Nos. 1-25.
- Genworth's objection to the definition of the word "Company" as referring to any company other than Genworth Mortgage Insurance Corp. applies to Document Requests Nos. 2-4, 14, 17-18, 22, and 24-25.
- Genworth 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.
- Genworth's objection to the use of the undefined term, "management," applies to Document Request 3.

Subject to and without waiving all the foregoing objections, Genworth intends to produce documents in response to the CID.

¹⁰ Genworth additionally generally objects to each Document Request to the extent it asks for privileged information.

Genworth 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. 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.

Genworth'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 Genworth Mortgage and its state regulators, accountants, and actuaries would require production of a large volume of documents not relevant to the investigation.

Genworth 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, 2006 to present, between Genworth Mortgage Insurance Corp. 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).

Genworth'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.

Genworth 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, 2006 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.

Genworth'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.

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

Document Request No. 6: All documents from the period January 1, 2006 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.

Genworth'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. Genworth further objects to the extent the request seeks privileged documents relating to the “legality” of the agreements.

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

Document Request No. 7: All third-party reports from the period January 1, 2006 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.

Genworth’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.

As a good faith response to this request, Genworth proposes to search for and produce documents concerning the decision to enter into the Reinsurance Arrangements.

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.

Genworth’s Specific Objections and Proposed Compromise Concerning Document

Request No. 9: Subject to and without waiving the General Objections above, Genworth 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 the company 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. As described earlier, Genworth would need to cull responsive information from over 322 million e-mail messages. The potentially responsive ESI, alone, is in excess of 33 terabytes (33,792 gigabytes). The burden this would cause 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, Genworth respectfully requests the Director to 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.

Genworth’s Specific Objections and Proposed Compromise Concerning Document Request No. 10: Subject to and without waiving the General Objections above, for the same reasons Genworth objected to Interrogatory No. 9, Genworth 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 outside of the limitations period. The request for “all documents” relating to documents identified in Interrogatory 9(b) is additionally overbroad and unduly burdensome, and Genworth respectfully requests that CFPB limit this request to specific agreements.

Genworth 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. 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.

Genworth's Specific Objections and Proposed Compromise Concerning Document

Request No. 14: Subject to and without waiving the General Objections above, Genworth objects to this request because "in-force mortgage insurance agreement" is a vague term.

Genworth 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. 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)>.

Genworth's Specific Objections and Proposed Compromise Concerning Document

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

Genworth 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.

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.

Genworth's Specific Objections and Proposed Compromise Concerning Document

Request No. 17: Subject to and without waiving the General Objections above, Genworth 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. Genworth respectfully requests clarification of which documents the CFPB is seeking in this request before it can respond. Further, Genworth 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.

Genworth's Specific Objections and Proposed Compromise Concerning Document

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

Genworth 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.

Genworth's Specific Objections and Proposed Compromise Concerning Document

Request No. 19: Subject to and without waiving the General Objections above, Genworth respectfully requests that CFPB define "rating agency reports" and "investment assessment."

Further, Genworth objects to this request to the extent it seeks "[a]ll documents *relating to*" scores of arrangements going back many years before the relevant statute of limitations.

Genworth further objects to the extent that the requested information is publicly available.

Genworth 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.

Genworth's Specific Objections and Proposed Compromise Concerning Document

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

Genworth 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, 2006 to present.

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

Genworth's Specific Objections and Proposed Compromise Concerning Document Request No. 21: Subject to and without waiving the General Objections above, Genworth objects to this request as unduly burdensome and overbroad. Genworth's rate filing in all 50 states would be incredibly voluminous. Genworth previously produced sample rate filings to HUD-OIG and will direct CFPB's attention to those documents within the production.

Genworth 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.

Genworth's Specific Objections and Proposed Compromise Concerning Document Request No. 22: Subject to and without waiving the General Objections above, Genworth objects to this request as unduly burdensome because it seeks "[a]ll documents . . . relating to" scores of agreements going back many years.

Genworth 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.

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.

Genworth's Specific Objections and Proposed Compromise Concerning Document

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

Genworth 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 as concerns 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.

Genworth's Specific Objections and Proposed Compromise Concerning Document

Request No. 24: Subject to and without waiving the General Objections above, Genworth notes that this requests seeks documents relating to an incident involving a different company over nine years ago. Absent an agreement on search terms, it will be difficult to identify and locate documents responsive to this request (if any).

VI. CONCLUSION

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

Dated: December 7, 2012
New York, New York

Respectfully Submitted,



Reid L. Ashinoff
Benito Delfin, Jr.
Melanie McCammon

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CERTIFICATION

Pursuant to 12 C.F.R. 1080.6(e)(1), counsel for petitioner Genworth Financial, Inc., hereby certifies that they have conferred with Donald Gordon, counsel for the Consumer Financial Protection Bureau, both in person and by phone, e-mail, and letter correspondence, including the December 5, 2012 meet and confirm and December 6, 2012 letter, in a good faith effort to resolve by agreement all modifications sought in this Petition, but have been unable to reach such an agreement.

Dated: December 7, 2012
Los Angeles, California



Benito Delfin, Jr.

17778608

UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

_____)
In the matter of)
GENWORTH FINANCIAL, INC.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2012, I caused the foregoing Petition to Modify or Set Aside the June 20, 2012 Civil Investigative Demand to be served by electronic mail and Federal Express to:

Mr. Jeffrey Riley
Executive Secretary of the
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Mr. Kent Markus
Assistant Director of the Office of Enforcement
of the Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Mr. Donald Gordon
Enforcement Attorney
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Ms. Crystal Sumner
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Dated: December 7, 2012
Los Angeles, California



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Exhibit A



United States of America
Consumer Financial Protection Bureau

Civil Investigative Demand

To **Genworth Financial, Inc.**
6620 West Broad Street
Richmond, Virginia 23230
Attention: **Leon E. Roday**
Senior Vice President, GC, and Secretary

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 (check 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 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 Genworth Financial, 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 Genworth Financial, 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**.

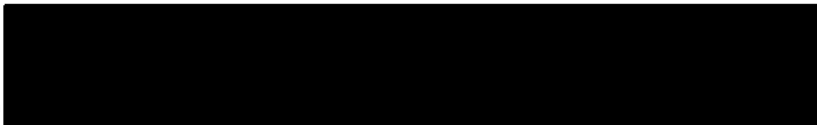
K. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**

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:



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 31st 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 Genworth Financial, Inc., and submitted with this Declaration.
- 2. The documents produced and submitted with this Declaration by Genworth Financial, 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.

I. 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_ACCESSD	Email: (empty) Native: Date the document was last accessed
TIME_ACCESSD	Email: (empty) Native: Time the document was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSD 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 must 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:

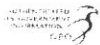
• ACCT_NUMBER:	Caller's telephone account number
• CALLING_NUMBER:	Caller's phone number
• CALLED_NUMBER:	Called party's phone number
• DATE:	Date of call
• START_TIME:	Start time of call
• END_TIME:	End time of call
• DURATION:	Duration in minutes of the call

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.



45168

Federal Register / Vol. 76, No. 145 / Thursday, July 28, 2011 / Rules and Regulations

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")¹ that relate to the Bureau's

¹ 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 contemptuous 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 delegates, 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 impacts² 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.³

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,

² 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.

³ 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.

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

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"),¹ 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

¹ 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



Genworth Mortgage Insurance

8325 Six Forks Road
 Raleigh, NC 27615
 919 846 4100
 800 444 5664
 genworth.com
 mortgageinsurance.genworth.com

VIA Federal Express and E-Mail

February 3, 2012

Mr. Reid Horwitz, Esq.
 Consumer Financial Protection Bureau
 1801 L Street NW
 Washington, D.C. 20036

Re: CFPB's January 3, 2012 Request for Information Concerning Ceding Practices Between
 MI Carriers and Lenders (the "Request")

Dear Mr. Horwitz:

In partial response to the above-referenced Request, enclosed is a disk containing (i) a spreadsheet in the format requested, showing certain data relating to reinsurance arrangements to which Genworth Mortgage Insurance Corporation (GMIC) is or has been a party, and (ii) an organizational chart showing GMIC and its mortgage insurance-related affiliates and their relationship to their ultimate parent. In further response to the Request, be advised as follows:

GMIC is an active writer of first lien residential mortgage insurance and is the only legal entity in the Genworth Financial, Inc. family of companies that has entered into risk and premium ceding arrangements with lender-affiliated reinsurers. As noted in the organizational chart, GMIC's parent company is Genworth Mortgage Holdings, LLC, a North Carolina based insurance holding company. Genworth Mortgage Holdings, LLC, in turn, is a direct, majority-owned¹ subsidiary of Genworth Financial, Inc., a publicly traded financial services company. GMIC's principal place of business for all relevant periods has been Raleigh, North Carolina.

By prior verbal agreement with your office, we are providing with this submission data on the four lender-affiliated reinsurance arrangements that are currently active. All of these are quota share treaties. In addition, because the CFPB has expressed a particular interest in information relating to [REDACTED] we are providing data on that arrangement as well. By March 5th (30 days hence) we intend to provide similar data on the arrangements GMIC had with [REDACTED]

You will note that some of the data fields show annual data and others show quarterly data. This deviation from the format the CFPB provided is driven by systems, resources and database

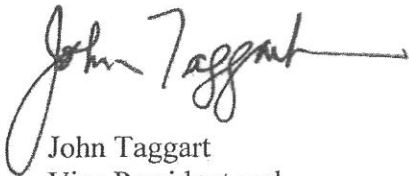
¹ Minority shares in GMIC and the LLC are held by other Genworth entities but 100% ownership of both flows up to Genworth Financial, Inc.

Mr. Reid Horwitz, Esq.
February 3, 2012
Page 2

considerations. Quarterly production data (columns A-D) are not readily available without systems work but we are hopeful we will be able to provide such data by March 5th. It is our understanding that, as a general matter, the CFPB will accept quarterly data rather than insist on monthly figures. In addition, as requested by the CFPB, the production numbers will reflect, where appropriate, both loans originated by the affiliated lender and loans purchased by that lender.

We trust the foregoing is responsive to the Request. You and your staff should feel free to contact the undersigned with questions or concerns. My direct line is 919-846-4181 and my e-mail is john.taggart@genworth.com. You may also contact Art O'Connor at 919-870-2455, art.oconnor@genworth.com.

Sincerely,

A handwritten signature in black ink that reads "John Taggart". The signature is written in a cursive style with a long horizontal line extending to the right.

John Taggart
Vice President and
Associate General Counsel

Enclosures

cc: Reid Ashinoff, Esq.
Stephen Cooke, Esq.
Art O'Connor, Esq.

Exhibit C



Erika Brown Lee
Senior Counsel

801 Pennsylvania Avenue, N.W. • Washington, D.C. 20004-2623
ebrownlee@fulbright.com • Direct: 202 662 0398 • Main: 202 662 0200 • Facsimile: 202 662 4643

July 17, 2012

Donald R. Gordon
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

Re: Civil Investigative Demand

Dear Don:

As you know, this firm represents Radian Group Inc., and Radian Guaranty Inc., (“Radian”) in connection with the Civil Investigative Demand (“CID”) that the Consumer Financial Protection Bureau served on June 20, 2012. In addition to representing Radian, I also have a limited delegation of authority from other mortgage insurance companies on whom your office served similar CIDs. These companies are United Guaranty Residential Insurance Company, Mortgage Guaranty Insurance Company, Genworth Mortgage Insurance Corporation, Republic Mortgage Insurance Company and Triad Guaranty Insurance Corporation (collectively, with Radian, “the MI Companies”). Pursuant to this limited delegation of authority, the MI Companies have asked me to discuss their common issues and concerns with you.

Let me begin by thanking you for agreeing to meet with me and other representatives of the MI Companies on July 19 to discuss our observations and concerns regarding the CIDs. We also appreciate the extension on the Meet & Confer and petition deadlines. This letter is intended as a brief overview of the issues that we would like to address at the meeting. In addition to these issues, we will of course be prepared to discuss specific interrogatories and document requests contained in the CIDs.

Our initial observation is that we respectfully believe it would be inappropriate to treat the MI Companies as targets of an enforcement action alleging that captive mortgage reinsurance arrangements violate the Real Estate Settlement Procedures Act (“RESPA”) or Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (“Dodd-Frank Act”), the statutory provisions cited as the basis of the CIDs. To begin with, the MI Companies do not believe they violated any of these statutory provisions. However, beyond that, the statute of limitations under both RESPA and Section 1036 of the Dodd-Frank Act is three years. 12 U.S.C. § 2614; 12 U.S.C. § 5564(g)(1). The mortgage reinsurance arrangements you seek to investigate have almost all been terminated or commuted, many in 2009 or earlier. Thus, the

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statute of limitations for any claim, if there ever was one to assert, has likely expired, notwithstanding the tolling agreement many of the MI Companies agreed to enter into with the Bureau earlier this year.

Beyond this substantial statute of limitations issue, we would like to point out an even more fundamental concern about the authority of the Bureau to pursue an action against an insurance company under Section 1036, because the MI Companies (i) are not a "covered person or service provider," (ii) have not acted to "offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law" nor to "engage in any unfair, deceptive, or abusive act or practice" under 12 U.S.C. § 5536(a)(1), but rather (iii) to the contrary, are expressly exempted as being in "the business of insurance" from the definition of "financial product or service" under the statute. 12 U.S.C. § 5481(15)(C). Moreover, even if the MI Companies could otherwise be subject to Section 1036, that section cannot be applied retroactively, thus leaving the Bureau the sole option of proceeding under Section 8 of RESPA. There, the Bureau, by the express terms of the statute, is limited to an action to "enjoin violations" of RESPA. 12 U.S.C. § 2607(d)(4). Here there is nothing to enjoin. Even assuming, incorrectly in our view, that the mortgage reinsurance arrangements the Bureau seeks to investigate were ever a "violation" of RESPA, these arrangements have been terminated or commuted, and for the types of captives at issue here are now prohibited by GSE eligibility requirements. Thus, the MI Companies do not believe any injunctive relief would be necessary. Nevertheless, we of course would be willing to discuss prospective changes to practices and procedures as appropriate.

In addition to these potential issues with respect to the MI Companies in this context, the immediate burden imposed on the MI Companies under the extensive breadth and scope of the CIDs (with requests going back in time to the 1990s, and in many instances attempting to seek all documents with respect to dozens of captive reinsurance arrangements (e.g., Document Requests 5-8), and in one instance, seeking all documents with respect to over 1,000 mortgage lenders (e.g., Document Request 9)) would have a significant detrimental effect on their business if they are forced to reallocate resources from the critical strategic initiatives underway as the housing finance system corrects itself.

While we understand how the Bureau might request documents from the 1990s that had continuing impact in the applicable limitations period, providing daily payment and transfer data all the way back to the "inception" of very old reinsurance arrangements, and information concerning historical enforcement actions, would be excessively burdensome, and may not be feasible.

Moreover, as you know, the MI Companies are deeply concerned about the confidentiality of information produced in response to the CIDs. While we understand that a letter addressing confidentiality is forthcoming, we may ultimately seek to file a petition to set aside the demand under 12 U.S.C. § 5562(f) if we do not receive adequate assurances that such information will remain confidential, and will not be disclosed to individuals outside the Bureau.

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As I noted above, we are prepared to discuss each interrogatory and document request individually at our July 19 meeting. However, the MI Companies believe that rather than attempt to respond to individual specifications, we should discuss conceptually how to provide the Bureau with materials that substantially respond to the CIDs but that would be considerably less burdensome on us. In fact, we believe it would likely be more helpful to the Bureau as well. The mortgage reinsurance arrangements that you seek to investigate have already been thoroughly investigated over many years by other state and federal agencies, including the New York Department of Insurance, the Minnesota Department of Commerce, and the Inspector General of the Department of Housing and Urban Development. An extensive amount of data and documentation has been provided to and examined by these agencies over the last five or six years. Much of what has been provided to these agencies covers the same areas of inquiry in the CIDs. In light of this, the MI Companies propose to provide the Bureau with materials previously given to these agencies. The Bureau can then follow up with targeted inquiries once it has reviewed this initial, much more manageable production of information.

If the Bureau is not prepared to accept this reasonable alternative approach, we will need to work to significantly limit the scope of the CIDs in order to be able to respond. While we have specific concerns regarding each interrogatory and document request, we have the following across-the-board suggestions and requests for narrowing the CIDs as well:

a) Time period: The time period of our responses should be limited to the relevant statute of limitations plus older documents (e.g., agreements) that continue to have relevance in the limitations period.

b) The definition of "Company": Rather than being directed to the MI Companies themselves, the CIDs are directed to the MI Companies' holding companies and numerous affiliate companies that, in many cases, have no involvement in mortgage insurance. We propose to limit the definition of "Company" to the relevant MI Company and any affiliate of it that is actually involved in the provision of mortgage insurance to lenders.

c) The definition of "mortgage insurance": The CIDs do not define "mortgage insurance." We propose to define "mortgage insurance" as primary "flow" coverage on first liens under the applicable master policy. This is the type of coverage most relevant to the arrangements that the Bureau seeks to investigate.

d) "Actual" versus "potential"/"enumerated" versus "non-enumerated" captives: Numerous requests seek information relating to "potential" arrangements. It is difficult, if not impossible, to interpret what "potential" means. Further, it is not possible with any degree of certainty to identify theoretical arrangements which may have been considered and discarded by individuals at the MI Companies over the relevant time frame. Additionally, if the theoretical arrangements were never implemented, there most certainly cannot have been any RESPA violation, or violation of any other applicable statutory provision giving the Bureau jurisdiction. In all such cases, the specification should be restricted to *actual* arrangements. Moreover, the

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requests would be far more manageable if restricted to cover only the enumerated captives identified in the CIDs.

e) Production format: The document submission standards are extremely onerous. The standards mandate that the production (1) be organized by request and by custodian, (2) be encrypted using Microsoft Bitblocker, (3) be bates-labeled in a particular format, (4) maintain the original native source of *each* document and preserve *all* metadata, (5) contain certain specified fields of metadata in a particular order, (5) be searchable, and numerous other conditions and requirements. We request that the Bureau agree that document productions can be made in PDF or TIF format, or in their native format (*i.e.* Excel files). In addition, we propose to eliminate the requirement that we identify, for each document produced, the document request number to which that document is responsive.

f) Electronically stored information (“ESI”): All of the MI Companies have severe limitations on their ability to provide ESI. Many, if not all, MI Companies will simply be unable to provide such information going back to the inception of the mortgage reinsurance arrangements, which in most cases date from the mid-to-late 1990s. We propose that the Bureau agree to set aside its request for ESI at this time, subject to re-visiting the issue after an initial document production.

g) Privilege log: The requirement of a privilege log should be excused for all outside counsel communications, work product drafts and pleadings and memos relating to private actions and government investigations, including this investigation.

h) Time period for petition to modify or set aside the CID: In light of the parties’ understanding that there will be a “rolling production” of documents, there likely will need to be additional meet-and-confer discussions beyond our July 19 meeting. Once the parties have completed this meet-and-confer process, to the extent they have reached impasse on any issue or there remain unresolved disagreements about further production of documents or information, the MI Companies should be permitted 21 days from the last meet-and-confer date to file a formal petition to modify or set aside the demand.

In closing, we would be remiss if we did not point out that the former captive reinsurance business of the MI Companies complied with the terms of injunctions entered against some of the MI Companies by the United States District Court for the Southern District of Georgia (in the *Baynham, Downey, Douglas and Pedraza* actions), with each arrangement supported by actuarial opinions. Each of the MI Companies has been subject to repeated examinations by their domiciliary insurance regulator as well as the other regulators identified above, and have developed their structures in full compliance with GSE standards and applicable state and federal law. The same price was paid for mortgage insurance — regardless of whether the loan was placed into a captive or not. Further, numerous captives have at this juncture made payments (as per the original design of the reinsurance arrangements) that have provided a significant benefit to the MI Companies. As a consequence, there is very little likelihood of any violation of law at

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this stage and the heavy burden imposed on the MI Companies by the CIDs seems disproportionate to that low probability.

The MI Companies look forward to discussing all of these issues with you further, and to reaching a satisfactory resolution, in our July 19 meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Erika Brown Lee". The signature is written in a cursive, flowing style.

Erika Brown Lee

EMB/gmh

Exhibit D

SNR DENTON 

SNR Denton US LLP
601 South Figueroa Street
Suite 2500
Los Angeles, CA 90017-5704 USA

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December 6, 2012

Donald R. Gordon, Esq.
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: December 5, 2012 Meet and Confer

Dear Mr. Gordon:

As you know, we represent Genworth Mortgage Insurance Corp. (“Genworth”) regarding the June 20, 2012 Civil Investigative Demand (the “CID”) issued by the Consumer Financial Protection Bureau (the “CFPB” or the “Bureau”).

Thank you for taking the time to engage in a telephonic meet and confer session with us yesterday to discuss potential modifications to the CID. I write to confirm: (1) agreed upon modifications and next steps; and (2) Genworth’s proposed modifications and requests for clarification as to certain requests and definitions.

As we explained during the meet and confer, Genworth believes that the CID as written is extremely broad and unduly burdensome. The CID lacks a reasonable temporal scope and the broad categories of documents sought would—in some instances—encompass every business record from the last decade. Compounding the overbreadth of the CID is the large amount of electronically-stored information (“ESI”) that Genworth would need to search to comply with the CID as written. As advised, Genworth has over 33 terabytes of electronically-stored information (“ESI”) and hundreds of millions of e-mails. We cannot begin to estimate the volume of potentially responsive paper documents at this time.

I. Points of Agreement and Agreed Upon Next Steps

Below are the areas that we believe the parties have reached an agreement on, subject to final approval from the necessary CFPB individuals.

A. Rolling Production

Although the CID requests that all documents must be produced by the compliance date, we agreed that producing documents on a rolling basis would be acceptable. Genworth commits to supplying documents and information promptly in good faith as material becomes available.

B. Modification to Format of Production

Genworth objected to the CID's requested format for the production as burdensome. As a compromise the Bureau seemed amenable to accepting: (1) PDF scans of hard copy documents, or (2) native files. We agreed to provide a corresponding load file.

C. Exchange of Key Custodians List

Given the 33 terabytes of ESI and hundreds of millions of potentially responsive e-mails, Genworth offered to provide the CFPB with a top-ten list of proposed key custodians. With that in mind, we identify the following 10 key custodians whose day-to-day responsibilities have included either managing relationships with lenders who had a captive arrangement with Genworth or internal accounting and tracking of the captive reinsurance arrangements:

1. Irene Chen
2. Sandy Reese
3. Steve Hitchings
4. Matt Palmgren
5. Jacqui Gwynette
6. Jean Bradley
7. Shirley Bankers
8. Dave Tubolino
9. Rohit Gupta
10. Ed Connors

We identify these individuals in an effort to narrow the number of custodians and corresponding ESI that Genworth must search. As of this writing, each of the individuals named above is a current employee of Genworth Mortgage Insurance Corporation, and each has at least 8 years of tenure with the company. We anticipate that a search of the ESI for these ten (utilizing appropriate search terms) will lead to a significant volume of relevant documents and could very well satisfy the Bureau's needs on this front.

D. Continuing Dialogue on Preliminary Search Terms

We discussed narrowing the search for responsive ESI by using a set of agreed-upon search terms and custodians. The CFPB agreed with this proposal in principle. Genworth will compile an initial set of preliminary search terms that we will share with the Bureau for review and comment. As discussed, any such list would be subject to modification if the agreed set does not either meaningfully filter the ESI or capture relevant documents.

E. Suspension of Production of Privilege Log

Although the CID requests Genworth to provide a privilege log on the date of compliance, the Bureau agreed that Genworth could provide a privilege log at a later date. We

agreed to discuss the timing of the privilege log and possible ways to reduce the burden in creating a privilege log at a later date.

II. Genworth's Proposed Modifications

During the meet and confer, we discussed several modifications to the CID. The Bureau stated that it would take these modifications under advisement and get back to us as soon as possible.

A. Confidentiality

Confidentiality is an extremely important issue to Genworth. As discussed, Genworth is concerned that the CFPB's regulations do not provide sufficient protection for confidentiality because the Bureau has discretion to produce confidential investigatory materials in response to requests from third parties. We request written confirmation that the Bureau agrees not to share any documents or information provided in response to the CID with any third parties.

B. Modification to the Scope of ESI Requested

It would be costly and burdensome for Genworth to restore and search inactive data as requested by the CID. Genworth also submits that the collection of ESI from handheld devices is burdensome challenging and disruptive task, and given the ephemeral nature of this media, not likely to lead to relevant evidence. Genworth proposes limiting ESI to producing readily accessible e-mails and electronic documents that are used in the ordinary course of business such as Word, PowerPoint, and Excel files.

C. Limiting the Applicable Timeframe

The CID seeks information and documents going back in time to the mid 1990s. Genworth believes that the proposed time frame is unreasonable given the burden it would impose on Genworth. Please note that Genworth's comprehensive enterprise-wide email storage system only captures mail going back to January 2010, and tracing relevant emails prior to that time will require resorting to the archive files found on individual custodian's laptops and work stations. Further, RESPA's three-year statute of limitations and retroactivity concerns militate in favor of narrowing the applicable time frame substantially. Genworth proposes to limit the scope of the CID to January 1, 2006 to the present with the understanding that relevant historical information will also be provided. As noted, the materials produced in prior investigations includes documents that predate January 1, 2006, but in recognition of the relative ease of producing these materials, Genworth will include all documents supplied to other regulators regardless of date. Please note that by supplying these prior productions Genworth does not waive its objections to the CID's timeframe.

D. Modifications and Clarification As to Certain Defined And Undefined Terms

We discussed clarifying certain terms used within the CID.

1. Genworth requests that the defined term "Company" be limited to refer only to Genworth Mortgage Insurance Corp., which managed all of Genworth's captive mortgage reinsurance agreements, and not its ultimate parent company, Genworth Financial, Inc. Thus, Genworth proposes to modify the definition of "Company" to state the following:

"Company" or **"You"** or **"Your"** shall mean Genworth Mortgage Insurance Corp., 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. Genworth requests that the undefined term "mortgage insurance" should be defined so that only "flow" coverage, rather than pool or bulk insurance, is included. Captive reinsurance arrangements in general were available for flow business only. Thus, Genworth proposes to define "Mortgage Insurance" as the following:

"Mortgage Insurance" shall mean "primary 'flow' coverage on first liens under the applicable master policy.

3. The defined term "Captive Reinsurance Mortgage Arrangements" would require production of documents concerning Genworth's external reinsurance and internal reinsurance with Genworth-affiliated companies. Genworth proposes to define "Captive Mortgage Reinsurance Arrangements":

"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 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. The undefined term "management" is vague. Thus, Genworth proposes to define "Management" as: Genworth's officers and employees with significant responsibilities and authority to enter into or modify Captive Reinsurance Arrangements.

5. Additionally, Genworth requests clarification of the following:

- The undefined term "reclassified" in Interrogatory Number 13. Genworth assumes the term means the reinvestment of trust funds otherwise eligible for

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Donald R. Gordon
December 6, 2012
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withdrawal to cover required capital deposits, and will answer based on that assumption unless advised otherwise.

- The undefined term “in-force mortgage agreement” in Document Request Number 14 is ambiguous. Genworth requests confirmation as to whether “in-force mortgage insurance agreement” refers to a specimen copy of a Master Policy, a copy of an actual policy issued to a Mortgage Lender, or some other document.
- Document Request Number 17, seeks documents relating to documents produced in response to Document Requests 14 and 15. Genworth seeks clarification as to whether this request is meant to refer to Document Requests 15 and 16.

6. Requests seeking documents relating to “potential,” “proposed,” or “contemplated” agreements and arrangements are unduly burdensome because it would be difficult to design searches for such theoretical arrangements (which are of questionable relevance). Genworth proposes limiting Document Requests 4, 6, and 9 to “actual” agreements.

E. Modification to Document Request Number 9

Document Request 9, as written, seeks nearly every document in Genworth’s possession from a period of over a decade. Genworth has thousands of agreements with mortgage lenders, the vast majority of which do not have captive reinsurers. Thus, if we correctly understand the scope of your investigation, Document Request 9 by its terms call for the production of millions of irrelevant documents. Genworth proposes striking Request No. 9 because the remainder of the document requests amply addresses the Bureau’s need for information to continue its investigation.

* * *

Genworth looks forward to your prompt response to these proposals. If we do not hear from you by 3:00 P.M. Friday December 7, 2012, then Genworth will have no recourse but to assume that all of these proposals have been rejected and to file a petition challenging the CID.

Respectfully,



Ben Delfin

cc: Art. W. O’Connor, Esq.
Reid L. Ashinoff, Esq.
Crystal Sumner, Esq.

Exhibit E



Consumer Financial
Protection Bureau

1801 L Street NW, Washington, DC 20036

January 3, 2012

Via E-Mail & Overnight Delivery

Leon E. Roday
Senior Vice President, General Counsel and Secretary
Genworth Financial, Inc.
6620 West Broad Street
Richmond, Virginia 23230

Re: Ceding Practices between MI Carriers and Lenders

Dear Mr. Roday:

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").¹ The Bureau has accordingly opened an investigation into ceding practices by Genworth Mortgage Insurance Corp. and any other entity that Genworth Financial, 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 MI carriers. 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"):

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



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Letter to Genworth Financial, Inc.
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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 year² 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 reinsurer³ ("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

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

³ "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.



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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. 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, 10th 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 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



301 L Street NW, Washington, DC 20543

Letter to Genworth Financial, Inc.
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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