

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

_____)
IN THE MATTER OF MGIC INVESTMENT CORP.)
_____)

**MGIC INVESTMENT CORPORATION’S PETITION TO SET ASIDE
OR MODIFY CIVIL INVESTIGATIVE DEMAND**

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INTRODUCTION

The Civil Investigative Demand (CID),¹ as written, must be set aside or modified, as suggested below. In its present form, the CID is unreasonable, overly broad, unduly burdensome, and seeks documents that are already in the possession of the Consumer Financial Protection Bureau (“Bureau” or “CFPB”). CFPB stated in the CID that the purpose of the subject investigation is to determine if there have been violations of sections 5531 and 5536 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (“Dodd-Frank Act”), 12 U.S.C. §§ 5531 and 5536, and the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2601 et seq. Specifically, the focus of the investigation, as evident from the requests as well as other communications with CFPB, is whether the practice of ceding premiums from private mortgage insurance companies to captive reinsurance subsidiaries of certain mortgage lenders violated Section 8 of RESPA. *See e.g.*, CFPB’s January 3, 2012 letter from CFPB’s Reid Horwitz to Jeff Lane of MGIC Investment Corp. (Ex. B)

The CID can not stand in light of the relevant limitations periods here. First, RESPA, the enforcement of which CFPB took over from the Department of Housing and Urban Development (“HUD”), has a 3 year statute of limitations for any government enforcement actions. As all of the courts that examined this issue concluded, the statute of limitations under RESPA begins to run from the date of the closing of the real estate transaction. Thus, the Bureau could only examine the cessions of premiums to lender-affiliated reinsurers for loans that closed

¹ A copy of the CID is attached as Ex. A.

on or after February 1, 2009.² An inquiry relevant to CFPB's general powers to regulate against unfair, deceptive or abusive practices has to be even more narrower as to time because CFPB's authority transfer date was July 21, 2011 and there is no retroactive application to CFPB's powers. Thus, even if CFPB had any supervisory and enforcement authority over MGIC³ (other than enforcement of RESPA), a point MGIC disputes,⁴ that authority could only be exercised with respect to practices or transactions occurring after July 21, 2011.

Notwithstanding the above, the CID seeks records from MGIC going back, in some instances, more than 17 ½ years. Some of the requests in the CID are so overbroad that they literally require the production of every document relating to MGIC's core business of insuring mortgage lenders. CFPB could not possibly articulate a basis why requesting all of the pre-2009 documents constitutes a legitimate purpose of the investigation when no RESPA claim or another claim under the Dodd-Frank Act can be asserted with respect to such conduct. But

² All such cessions were in connection with quota share reinsurance agreements, not excess of loss agreements.

³ The CID was issued to MGIC Investment Corporation, which is a publicly traded holding company, whose principal operating subsidiary, Mortgage Guaranty Insurance Corporation ("MGIC"), is a private mortgage insurer that engaged in the captive reinsurance transactions that are subject of the investigation. Thus, the CID should have been issued to MGIC, and not to MGIC Investment Corporation. For purposes of this Petition, the term "Company" means MGIC.

⁴ The Dodd-Frank Act specifically excepted "insurance" from the definition of "consumer financial product or service." 12 U.S.C. § 5481(15)(C)(i). While the CFPB may contend that MGIC is a "service provider" and as such is subject to CFPB's broad supervisory powers, MGIC disagrees with this position for two reasons. First, a service provider is one that provides a material service to a covered person *in connection with the offering* ... of a consumer financial product—and MGIC's provision of insurance to *lenders* does not qualify as such material service in connection with an offering of a consumer financial product, *see* 12 U.S.C. § 5481(26). Second, section 5517(f) specifically states that the Bureau "shall have no authority to exercise any power to enforce this title with respect to a person regulated by a State insurance regulator." *See* 12 U.S.C. § 5517(f). MGIC, of course, is regulated by the Wisconsin's Office of the Commissioner of Insurance, among other insurance regulators.

even if CFPB takes a position that it is investigating whether cessions of premiums occurring between 2009-2012 in certain arrangements violates RESPA and even if CFPB takes a position that it has jurisdiction over MGIC to seek injunctive relief to prohibit future captive reinsurance arrangements, the CFPB can not articulate a basis how all of the information sought from MGIC over the past 17 ½ years is relevant to this determination or why the limited purpose of the proposed injunction should overcome an incredible burden the compliance with the CID would cause MGIC.⁵

In short, the CID is disproportionately unreasonable and burdensome to the stated purpose of the investigation and must be set aside or modified to fit within the confines of the statute of limitations and CFPB's authority over MGIC.

RELEVANT PROCEDURAL BACKGROUND

CFPB issued the subject CID on June 20, 2012. In his cover email to the undersigned counsel, Mr. Gordon invited the Company to have a meet and confer session with the CFPB's Staff within days. (Ex. C). MGIC and other mortgage insurers that received similar CIDs jointly approached the CFPB's Staff with a request for a meeting, since the CIDs received by other mortgage insurers were identical in every material respect and, thus, presented the same issues as to the relevancy and scope. By letter dated July 2, 2012, CFPB extended the deadline for the meet and confer to July 19, 2012 and extended the deadline to file a petition to set aside or modify the CID to July 30, 2012. (Ex. D). The representatives of all mortgage insurers met with the CFPB's Staff on July 19, 2012 for the purpose of having a meet and confer. However,

⁵ If CFPB takes a position that it is seeking documents from MGIC in connection with CFPB's investigation of 3rd parties' potential violations of RESPA or the Dodd-Frank Act, the CID can not stand as written because a potential benefit of obtaining relevant information from MGIC is far outweighed by the burden the CID imposes on MGIC, especially considering that the same information can be obtained from the 3rd parties that are subject of the investigation.

the parties did not engage in substantive meet and confer discussions about the scope of the requests in the CID; instead the parties decided to put aside any meet and confer obligations and instead began negotiations of a potential resolution of the matter, which they desired to be completed within the following 30 days. To that end, the parties met on August 3, 2012. By letter dated August 17, 2012, the deadline to file a petition was extended to September 24, 2012, and the deadline for a full compliance with the CID was extended to October 2, 2012. (Ex. E). The parties continued to engage in discussions about a potential resolution, and CFPB granted extensions to October 22, 2012 to file a petition to modify or set aside the CID, and to October 30, 2012 to fully comply with the CID. (Ex. F). By letter dated October 17, 2012, the deadline to file a petition was again extended to November 26, 2012, and the deadline to fully comply with the CID was extended to December 4, 2012. (Ex. G). On November 29, 2012, the CFPB yet again extended the deadline to file the petition to December 7, 2012 and extended the deadline to fully comply with the CID to December 10, 2012. (Ex. H)

As the foregoing demonstrates, while MGIC had numerous interactions with the CFPB between the date the CID was issued and November 29, 2012, the parties did not conduct a substantive meet and confer session. On December 4, 2012, MGIC's counsel contacted the CFPB Staff to request a meet and confer session regarding the scope of the CID.

The parties held a 2 hour telephonic meet and confer session on December 6, 2012. During the conference, MGIC explained the various positions set forth in this Petition and in particular why it was unreasonable for CFPB to seek practically all documents about MGIC's business going back to over 17 years and why such production would be extremely expensive for MGIC. As a compromise, MGIC offered to narrow the requests, answer most of the interrogatories and produce numerous documents, as set forth in Section V of this Petition,

subject to subsequent productions of additional materials, if needed. The CFPB's representatives were not able to make specific concessions to any of MGIC's arguments and proposals. This was not unexpected because CFPB's Staff participating in the meet and confer session had to discuss the proposals with their superiors and formulate a response. The CFPB's representatives requested that MGIC memorialize in writing the specific proposals and promised to respond to same in writing. However, given the unreasonable deadline of December 7, 2012, to file a Petition, literally one day after MGIC had made a new proposal⁶ to the Bureau, it was not practicable for MGIC to submit its proposals in writing and reasonably expect a meaningful response from the CFPB before the deadline. This underscores the unreasonableness of the process by which the CFPB established a deadline to file a Petition without affording sufficient time to formulate a response to MGIC's proposals made during the meet and confer session, which are set forth in the "Specific Objections to Interrogatories & Requests for Production of Documents" Section of this Petition. Equally unreasonable was the decision of the Bureau to set a demand for full compliance with the CID by December 10, 2012, one business day after the Petition was due.⁷

⁶ The Bureau responded to the proposal by requiring MGIC to agree to certain language in two sections of the proposed Consent Order as a condition of further extension of the deadlines.

⁷ While earlier extensions of the deadlines allowed for a slightly longer but also unrealistic 10 days for production following the filing of the Petition, the last extension allowed only 3 days, and in this case one business day. No company, large or small, can locate potentially responsive paper and electronic records going back 17 years, review for responsiveness and privilege, and produce hundreds of thousands (if not millions) of records within 3 days. It is impossible to search for the records (and thus fully comply with the CID) until it is determined, at a minimum, what the responsive records are and what custodians' paper and electronic files need to be examined. While the Staff said in the meet and confer that MGIC has had the CID since June 20, 2012, it was clear to all parties that a major incentive for the settlement discussions was to avoid compliance with and even negotiation of this type of a sweeping request for information. The Staff knew that MGIC was not gathering or reviewing documents while negotiating a potential settlement. Indeed, MGIC entered into a series of

ARGUMENT

THE CID MUST BE SET ASIDE OR MODIFIED AS IT DOES NOT MEET THE STANDARD FOR ENFORCING ADMINISTRATIVE SUBPOENAS

While CFPB's CID powers have not yet been subject to judicial evaluation, case law interpreting CIDs in the context of other statutes where these investigative tools are used, *e.g.*, 15 U.S.C. § 57b-1(c)(1) (FTC civil investigative demand); 18 U.S.C. § 1968(a) (RICO civil investigative demand); 31 U.S.C. § 3733(a)(1) (False Claims Act civil investigative demand), provides helpful guidance in evaluating the propriety of the CID at issue. *E.g.*, *United States v. Markwood*, 48 F.3d 969, 975-76 (6th Cir. 1995); *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1087 (D.C. Cir. 1992). In evaluating a CID or another administrative subpoena, courts consider whether an agency has authority to issue the CID and to proceed with the investigation, whether procedural requirements have been followed, whether the demand is sufficiently definite, whether the information sought is reasonably relevant to the investigation, and whether the agency is already in possession of the materials it seeks. *United States v. Morton Salt, Co.*, 338 U.S. 632, 652 (1950); *United States v. Powell*, 379 U.S. 48, 57-58 (1964). Additionally, courts look at whether the CID imposes an undue burden on the subject. *Invention Submission*, 965 F.2d at 1089-90.

While courts generally defer to a government agency's issuance of a CID, *e.g.*, *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501 (1943), courts are not powerless to stop agency overreach. *See e.g.*, *Chattanooga Pharm. Asso. v. United States*, 358 F.2d 864 (6th Cir. 1966);

tolling agreements to facilitate the settlement process, such that the Bureau would not be (and in fact it has not been) prejudiced by any delay that the settlement negotiations have engendered. MGIC believes that this process is blatantly unfair and unbecoming of an agency that seeks to positively reform the regulatory process, as it has stated. Notwithstanding the above, as MGIC discussed during the meet and confer session held on December 6, 2012, MGIC, in good faith and without waiving its objections to the CID, will begin the production of certain documents responsive to the requests.

United States v. Union Oil Co., 343 F.2d 29 (9th Cir. 1965), *aff'g In re Petition of Union Oil Co. of Cal.*, 225 F. Supp. 486 (S.D. Cal. 1963); *Moog, Inc. v. United States*, No. MISC.CIV-90-215E, 1991 U.S. Dist. LEXIS 13364 (W.D.N.Y. Mar. 29, 1991).⁸ The courts have permitted the enforcement of agency subpoenas with the understanding and with the warnings that administrative investigatory authority has real limits.⁹ Courts have recognized that “Congress clearly did not intend the CID to be used routinely,” *United States v. Witmer*, 835 F. Supp. 208, 218 (M.D. Pa 1993), and that notwithstanding Congress’s “broad visitorial power” over corporations, *Oklahoma Press Publ’g Co. v. Walling*, 327 U.S. 186, 204 (1946), agency power is not limitless. And since the subject of a CID generally bears the burden of proof when challenging it, *e.g., Id.* at 217-18 (subject must make “appropriate defense” to prove inconvenience), this makes it all the more important that an agency’s demands be limited in scope and clearly stated. *See Petition of Gold Bond Stamp Co. v. United States*, 221 F. Supp. 391, 397 (D. Minn. 1963).

⁸ Actual judicial review is an important safeguard for CIDs. *See generally* Hon. V.R. Hansen, Proposed Civil Investigative Demand, 11 (Apr. 25, 1958), *available at* [HTTP://WWW.JUSTICE.GOV/JMD/LS/LEGISLATIVE HISTORIES/PL87-664/ADDRESS-PROPOSED-CIVIL-INVESTIGATIVE-DEMAND-1958.PDF](http://www.justice.gov/jmd/ls/legislative_histories/pl87-664/address-proposed-civil-investigative-demand-1958.pdf) (“To those persons who feel that the civil investigative demand may be abused by the executive officer, I believe the final answer is that the reviewing power of the court affords a true safeguard . . .”).

⁹ *See Oklahoma Press Pub’g Co.*, 327 U.S. at 218-19 (Murphy, J. dissenting) (“Administrative law has increased greatly in the past few years and seems destined to be augmented even further in the future. But attending this growth should be a new and broader sense of responsibility on the part of administrative agencies and officials. Excessive use or abuse of authority can not only destroy man’s instinct for liberty but will eventually undo the administrative processes themselves. Our history is not without a precedent of a successful revolt against a ruler who ‘sent hither swarms of officers to harass our people.’ . . . To allow a non-judicial officer, unarmed with judicial process, to demand the books and papers of an individual is an open invitation to abuse of that power. . . . Liberty is too priceless to be forfeited through the zeal of an administrative agent.”).

With respect to the CID at issue, MGIC does not dispute that CFPB can generally seek documents from MGIC in connection with CFPB's investigation of alleged violations of RESPA and the Dodd-Frank Act or that the CFPB followed the procedural requirements in issuing the CID. However, where as here (i) these matters were for many years investigated by HUD, the agency with prior RESPA enforcement responsibility, (ii) the CFPB possesses much of the information previously given to HUD, and (iii) most if not all of the agreements and transactions under review occurred long ago and are time barred, the normal powers to issue this type of a sweeping CID must be tempered. As stated in more detail below, MGIC asserts that the CID should be set aside or modified because (i) it is not reasonably relevant to the stated purpose of the investigation, (ii) it is not sufficiently definite with respect to certain requests, and (iii) the requests are overbroad and plainly unreasonable vis-a-vis the fairly limited relevant scope of matters that CFPB could reasonably inquire into. In light of the above, the incredible burden of time and expense that MGIC would incur if it had to comply with the CID as written makes the CID even more unreasonable. Indeed even requiring MGIC to file this Petition because the Bureau won't immediately agree to particular language in a proposed settlement order is unreasonable.

I. THE CID IS NOT REASONABLY RELEVANT TO A STATED PURPOSE OF THE INVESTIGATION BECAUSE RESPA STATUTE OF LIMITATIONS IS THREE YEARS AND CFPB'S AUTHORITY DID NOT ARISE PRIOR TO JULY OF 2011.

At the investigative stage, agencies understandably have limited information regarding potential violations of the law. *Powell*, 379 U.S. at 57; *Oklahoma Press*, 327 U. S. at 216. Limited knowledge coupled with a reasonable belief that a law has been violated is what gives the agencies the power to conduct an investigation in the first instance. *Morton Salt*, 338 U.S. at 642-43. However, the limited knowledge does not allow an agency to investigate

conduct that it has no authority to regulate and enforce, including claims that are indisputably time-barred by a statute of limitations. *Powell*, 379 U.S. at 57. *Cf. EEOC v. Ocean City Police Dep't*, 820 F.2d 1378, 1380 (4th Cir. 1987) vacated on other grounds, 486 U.S. 1019 (1988) (en banc) (refusing enforcement of an EEOC subpoena based on a charge which could not be pursued for lack of timeliness and stating “[o]rdinary logic indicates that it is beyond the authority of EEOC to investigate charges which cannot be pursued.”). *Id.* This is precisely the situation here: any claims CFPB could bring against MGIC under RESPA for excess of loss captive reinsurance transactions are barred by the applicable statute of limitations, and CFPB has no authority (especially over MGIC) to investigate any transactions occurring prior to July 21, 2011. Thus, an all-encompassing CID seeking information about all of MGIC’s business with the lenders going back 17 years can not be reasonably linked to a legitimate purpose of a CFPB investigation that can only result in RESPA charges for conduct occurring between 2009 and 2012 and for charges under the Dodd-Frank Act for conduct occurring after July, 2011.

A. RESPA’s 3 Year Statute of Limitations Bars Any Claims For Conduct Occurring Prior to 2009.

RESPA requires that CFPB bring actions for violations of section 2605, 2607, or 2608 within 3 years “from the date of the occurrence of the violation.” 12 U.S.C. § 2614. Courts have universally concluded that the date of the occurrence of the violation is the loan closing date. *Drennan v. PNC Bank*, 622 F.3d 275, 281 (3d Cir. 2010) (citing *Snow v. First Am. Title Ins. Co.*, 332 F.3d 356, 360 (5th Cir. 2003)); *McCarn v. HSBC USA, Inc.*, No. 1:12-CV-00375-LJO, 2012 WL 5499433 (E.D. Cal. Nov. 13, 2012); *Morilus v. Countrywide Home Loans, Inc.*, 651 F. Supp. 2d 292, 306 (E.D. Pa. 2008)); *Edwards v. First Am. Title Corp.*, 517 F. Supp. 2d 1199, 1204; (C.D. Cal. 2007); *Mullinax v. Radian Guar. Inc.*, 199 F. Supp. 2d 311, 325-26 (M.D.N.C. 2002).

None of the loans which MGIC insured and reinsured with lender-affiliated reinsurers on an excess of loss basis closed on or after February 1, 2009, an operative deadline here.¹⁰ It is plain, therefore, that CFPB can not bring any action against MGIC for any RESPA violations on account of the excess of loss captive mortgage reinsurance transactions, and with respect to quota share transactions, only for those loans that closed after February 1, 2009. Since CFPB can not bring any action on account of the excess of loss transactions,¹¹ CFPB does not have authority to investigate these transactions and seek documents from 2001 (*see* Instruction C from the CID) and for many requests, documents going as far back as 1995 (*see* Definitions of “Inception” and “Reinsurance Entity” in the CID). CFPB cannot compel production of this information because it is not relevant to a legitimate investigation. Moreover, there is no need to seek to enjoin any captive mortgage reinsurance excess of loss arrangements since no new MGIC-insured loans became subject to those arrangements after December 31, 2008.

With respect to quota share transactions into which premiums were ceded after February 1, 2009, CFPB could reasonably request information related to those transactions, including requesting a reasonable amount of older information if such information provided context or other information necessary to permit CFPB investigators to “satisfy themselves” that the course of MGIC’s conduct was “consistent with the law and the public interest.” *See Morton Salt Co.*, 338 U.S. at 652. *Cf. NLRB v. Line*, 50 F.3d 311, 314-15 (5th Cir. 1995). If CFPB wishes to investigate whether it should enjoin such captive mortgage reinsurance transactions,

¹⁰ MGIC entered into a Tolling Agreement with CFPB, effective February 1, 2012 (Declaration of Dan Stilwell ¶ 2).

¹¹ CFPB did not state that the purpose of the investigation is anything other than a determination of whether captive mortgage reinsurance arrangements comply with Section 8 of RESPA or the Dodd-Frank Act. MGIC reserves the right to supplement this Petition if CFPB identifies a different RESPA-related purpose of the investigation.

MGIC is willing to provide CFPB with a sufficient and reasonable set of information with which to review such transactions. However, CFPB's requests for all information on transactions and practices going back to 1995 has no reasonable basis to any actionable claims or the proposed injunction.

When an agency issues a subpoena, it "must show that the investigation will be conducted pursuant to a legitimate purpose." *Powell*, 379 U.S. at 57. A legitimate investigation could include only investigation of conduct that may be actionable at the time the investigation is undertaken. *Id.* at 56 n.15 (explaining that a three year statute of limitations for ordinary tax liability did not limit the agency's investigation of potential fraud occurring more than 3 years prior to the issuance of the subpoena because there was no statute of limitations with respect to tax fraud actions). While the Court in *Powell* rejected the argument that the three year statute of limitations for ordinary tax liability limited the IRS's ability to investigate claims of fraud that had no limitations, *see id.* at 58-59 (Douglas, J. dissenting), the Court did not entertain an idea that an agency could investigate claims for which the statute of limitations had run.¹² The Court in *Ocean City Police Dep't*, 820 F.2d 1378 further supported a proposition that an agency can not investigate matters for which the agency can not bring any claims.

In *Ocean City Police Dep't*, a terminated employee untimely filed a discrimination charge with the EEOC. *Id.* Nevertheless, the agency issued a subpoena to the employer, and the latter refused to comply on the grounds that the documents sought were not necessary to the investigation. *See id.* The EEOC denied the petition, and after the

¹² The *Powell* holding reflects the parties' positions stated in the briefs to the Court that the IRS could not investigate time barred claims but it remained authorized to investigate claims not time-barred. (Br. of U.S., at *5-*6, *8-*9, *15, 1964 WL 95302). The Court's reasoning in *Powell* demonstrates that conduct can only be legitimately investigated if claims as to that conduct are not time-barred.

administrative appeal was denied, the EEOC brought enforcement proceedings in federal court. The District Court granted the EEOC's application, but the Fourth Circuit, sitting *en banc*, reversed. *See id.* The Court of Appeals reasoned that the EEOC could not pursue documents for a charge that was untimely. *See id.* at 1380.

Even though CFPB's investigatory powers are arguably broader than those of the EEOC, the same result reached in the *Ocean City Police Dep't* is warranted here. The question of whether CFPB can issue a subpoena for documents that are irrelevant (as is the case, for example, with respect to captive arrangements that terminated prior to February 1, 2009) to the claims is strictly a legal one and does not involve the agency's expertise or any factual determinations. Simply put, CFPB's investigation into time-barred claims is not a legitimate investigation that CFPB is authorized to engage in because CFPB has no authority to do anything with respect to the time-barred claims. This is especially true here in the District of Columbia where the RESPA statute of limitations has been held to constitute a jurisdictional limitation. *Hardin v. City Title & Escrow Co.*, 797 F.2d 1037 (D.C. Cir. 1986). Accordingly, the CID must be set aside or modified to allow CFPB to seek only those documents that have a reasonable relationship to actionable RESPA claims.¹³

¹³ CFPB may argue that each payment of premium to MGIC within the actionable period (Feb. 1, 2009-Feb. 1, 2012), a portion of which was then ceded to lender-affiliated reinsurers, triggers a new RESPA occurrence for purposes of the statute of limitations, such that CFPB can investigate the reinsurance transactions underlying such premium cessions. This argument, however, was squarely rejected by a federal court in *Mulinax*:

To avoid this time-bar, Plaintiffs contend that a violation of the statute occurs upon each monthly payment for primary mortgage insurance premiums that a borrower makes after the settlement closing,

...

B. CFPB's General Authority Provides Even a Shorter Time Period for Relevant Documents

As stated above, MGIC disputes that CFPB has general authority over MGIC because mortgage insurance is specifically exempt from the definition of “consumer financial product or service,” 12 U.S.C. § 5481(5) and § 5481(15)(C)(i), and, therefore, MGIC is not a “covered person,” as defined in 12 U.S.C. § 5481(6). Furthermore, MGIC is not a “service provider” as this term is defined in Section 5481(26), and Section 5517(f) specifically states that the Bureau has no authority to exercise any power over MGIC (other than with respect to RESPA enforcement) because MGIC is regulated by the Wisconsin Commissioner of Insurance.

To the extent CFPB is investigating whether captive mortgage reinsurance transactions constitute “unfair, deceptive, or abusive act or practice” committed by someone other than MGIC, and CFPB seeks documents from MGIC that might be relevant to this investigation, the scope of the CID is disproportionate and unreasonable compared to the burden the compliance with the CID would cause MGIC, in essence a third party from whom information is sought. *United States v. Theodore*, 479 F.2d 749 (4th Cir. 1973) (“We agree . . . that ‘this judicial protection against the sweeping or irrelevant order is *particularly* appropriate in

The Court can find no statutory support or legislative history that suggests that Congress intended to provide such an uneven benefit. At the very least it can be said that Congress did not expressly provide for such a result. If Congress had intended the statute of limitations to float in this way, it could have so provided in explicit language. Given RESPA's focus on the settlement transaction itself and the use of the phrase “at the time of the violation”, the Court finds that any violation of RESPA occurred, if at all, when Plaintiffs initially obtained primary mortgage insurance from Radian on the date of the closing.

199 F. Supp. 2d at 325. Indeed every court to examine the RESPA statute of limitations question has concluded that the statute runs from the time of closing. The CFPB's limitation's theory has no judicial support.

matters where the demand for records is directed not to the taxpayer but to a third-party who may have had some dealing with the person under investigation.’”) (quoting *United States v. Harrington*, 388 F.2d 520, 523 (2nd Cir. 1968)).

Furthermore, CFPB can only make a determination of “unfair, deceptive, or abusive” nature of an act or practice occurring after July 21, 2011, the designated transfer date selected by the Secretary of the Treasury in accordance with Section 1062 of the Dodd-Frank Act, 12 U.S.C. § 5582. Section 1036 of the Dodd-Frank Act has no retroactive application, *see* Dodd-Frank Wall Street Reform & Consumer Protection Act, Pub. L. No. 111-203, § 1037, 124 Stat. 1376 (2010), which makes it plainly unreasonable for CFPB to seek documents as far back as 1995 when investigating conduct occurring after July 21, 2011. At most, CFPB could investigate the underlying reinsurance transactions giving rise to the payments made after July 21, 2011. Even if CFPB were entitled to some historical documents underlying these transactions to inform its investigation, it could not be entitled to all information potentially going back to 1995. Even if *some* of that information is relevant, that fact does not justify an entire request. *Cf. FTC v. Am. Tobacco Co.*, 264 U.S. 298, 307 (1924) (citation omitted) (“We assume for present purposes that even some part of the presumably large mass of papers . . . may be so connected with [the] charges . . . as to be relevant, but that possibility does not warrant a demand for the whole.”).

Nor can CFPB’s claim of injunctive relief justify access to all documents because MGIC has not entered into new subject excess of loss captive mortgage reinsurance transactions for more than 3 years now, and is unlikely to do so in any near future. Thus, there is no rational basis for CFPB to subject MGIC to a massive production of electronic and paper records going back 17 years. Given a limited number of payments actually occurring after July 21, 2011, the

CID must be set aside as written or modified to comport to the legitimate scope of what CFPB can investigate and prohibit via its rule-making authority.

II. THE CID MUST BE SET ASIDE OR MODIFIED BECAUSE IT IS UNDULY BURDENSOME

A CID will not be enforced if it is unduly burdensome to its subject. *Invention Submission*, 965 F.2d at 1089-90. A CID is unduly burdensome when it “threatens to unduly disrupt or seriously hinder normal operations of a business.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977). In determining whether a CID is unreasonably and unduly burdensome, courts consider the amount of material sought, the difficulty in transferring that material to the government, and the costs in relation to the subject corporation’s resources. *See Witmer*, 835 F. Supp. at 219-20.

The following examples provide important reference points to evaluate the CID at issue and demonstrate why the CID is unduly burdensome. A request, the compliance with which was going to cost a corporate subject several thousand dollars, was held not to be unduly burdensome. *In re Grand Jury Investigation*, 459 F. Supp. 1335, 1340-41 (E.D. Pa. 1978) (\$2,199.80 not oppressive for “multi-million-dollar corporation”). Similarly, a request was held not to be burdensome for a large company that received nearly \$2 billion under one contract with the federal government when the request involved a search for a single document likely located in one of five filing cabinets that contained unprivileged material, combined with the government’s offer to travel to the company’s location to inspect the documents on-site. *Witmer*, 835 F. Supp. at 219-20. Nor was the request held to be burdensome for Texaco when other similarly situated large gas producers demonstrated that the productions were not taxing on them. *Texaco, Inc.*, 555 F.2d at 882-83. However, where a request was going to disrupt subject’s business, the request was held to be unduly burdensome. *In re Grand Jury Subpoena Duces*

Tecum, 405 F. Supp. 1192, 1198 (N.D. Ga. 1975) (holding that request would disrupt subject's business and was disproportional in cost compared with subject's net income).¹⁴

The CID here and its effects on MGIC in terms of costs and disruptions is similar to the request in the 1975 *Grand Jury* case. Request for Production No. 9 is particularly instructive why the CID is overly broad. In this Request, CFPB seeks all documents relating to "proposed," "contemplated," or "actual" contracts or agreements between MGIC and any Mortgage Lender. Since MGIC's business is insurance of mortgage lenders and its affiliates,¹⁵ all of MGIC's documents related to its business (underwriting, accounting, claims, actuarial, etc) are potentially responsive to this Request as are all of the documents dealing with MGIC's affiliates' business. Collecting, reviewing, and producing millions of records going back to 2001 to comply with this Request alone would severely disrupt MGIC's business. This Request is not unique, however. Numerous other requests and interrogatories are similarly overbroad and unduly burdensome, as specified below. *See* Specific Objections to Requests Nos. 2-25 and Interrogatory Nos. 2-20.

¹⁴ The 1975 *Grand Jury* case involved an antitrust investigation of SMCRC, a nonprofit organization with annual gross revenue of \$3,261,581 and gross expenses of \$3,251,947. The subpoena at issue would have required 125,700 to 243,294 hours to comply with at a cost of \$908,811 to \$1,759,015.62. The court held that if the burdensome subpoena were to be enforced, the government would need to advance the costs incurred by the organization in complying with the subpoena. *Id.* at 1199-1200.

¹⁵ The CID defines a "Mortgage Lender" as any entity that originated mortgage loans that were reinsured by any reinsurer, irrespective of whether the entity is or was affiliated with the lender. Because many of the loans subject to captive reinsurance transactions may have been purchased by the reinsurer's affiliated lender from unaffiliated correspondent lenders, this definition would encompass hundreds, if not thousands, of entities. Moreover, it is entirely possible that numerous other lenders with whom MGIC has done business had reinsured, through affiliates, risks underwritten by other mortgage insurers, thus forcing MGIC to investigate such lenders to confirm this point.

If the CID is not set aside or modified, MGIC would be forced to potentially search the paper records of hundreds of its employees. (Declaration of Dan Stilwell ¶4). Such search and retrieval will disrupt the operations of numerous departments within the Company. (*Id.*). In addition to searching for, reviewing, and producing hundreds of thousands of paper records, compliance with the CID, as written, would also force MGIC to spend millions of dollars in assembling, reviewing and producing electronic records, particularly emails. As MGIC informed the CFPB's Staff during the meet and confer session, MGIC's recent experiences inform a likely cost estimate for producing the emails in response to the CID as written. In connection with a recent matter, MGIC obtained 3 quotes from nationally reputable vendors to retrieve emails from the back up tapes.¹⁶ The quotes ranged from \$64,600 to \$114,500 to process 100 tapes (meaning there is a snap-shot of what emails existed at the end of approximately 52 days in a given year, *e.g.*, every Friday); from \$177,100 to \$378,250 to process 350 tapes (approximately 3 days a week for a given year); and from \$357,100 to \$796,500 to process 750 tapes (approximately every day for a given year). (Declaration of Dan Stilwell ¶6).

The retrieval, search and production of all emails in response to the CID will be exponentially higher here, as MGIC has approximately 25,720 tapes for the period December, 1999-August, 2006. Even the low estimate of the retrieval of the December, 1999-August, 2006 emails would cost in excess of \$5,000,000. In addition, MGIC will have to search the emails for the period August, 2006-present, search all electronic records and, arguably, produce MGIC's entire databases, such as those that house reinsurance accounting data. (Declaration of Dan

¹⁶ MGIC does not maintain any emails sent or received prior to December of 1999. For a period of December, 1999 through August, 2006, the emails are stored on back up tapes. There are on average 2 email back ups for that period. The tapes do not save new incremental material; rather each tape is a snap-shot of all emails that existed at the time the tape was created. Emails sent or received after August of 2006 are archived in a separate searchable database. (Declaration of Dan Stilwell ¶ 5).

Stilwell ¶7). The cost of searching, retrieval, and processing of emails after 2006 as well as all electronic records would be at least \$250,000. (Declaration of Dan Stilwell ¶6). Thus, just a production of emails and electronic records responsive to this CID would cost MGIC over \$5,250,000 (*Id.* at 7).¹⁷ In addition, MGIC will incur very significant legal and other fees to actually review for responsiveness and privilege this mountain of electronic and paper records requested by CFPB. (*Id.*). Even a low estimate of the costs MGIC is likely to incur in complying with the CID as written would be unduly burdensome to MGIC, considering its size and financial losses it suffered in each of the last 5 years, and in the first three quarters of 2012. (Affidavit of Dan Stilwell ¶8). A request is unduly burdensome when a company suffering multi-million dollar losses in its operations over a 5 year period is required to spend millions of dollars to produce 17 years' worth of data in connection with an investigation of potential claims that are largely time barred. This constitutes the quintessential impermissible taxing of the corporate resources. *Witmer*, 835 F. Supp. at 220.

MGIC does not have the financial resources of the magnitude Texaco had in 1977 to comply with a far narrower request. Nor is MGIC's petition driven by a blanket refusal to comply with the CID "as a matter of principle." Full compliance with the CID as written would cause a real and substantial burden to MGIC and its constituents, including the employees and the shareholders. The CID must be set aside or modified as overly broad and unduly burdensome.

¹⁷ A more precise determination of the costs for searching and retrieving the data cannot be made at this time because the figures depend, in large part, on the time period to be searched, the number of custodians where records are examined and the search terms used.

SPECIFIC OBJECTIONS TO DEFINITIONS, INSTRUCTIONS AND REQUESTS

All of the below-stated objections and proposals were communicated to the CFPB's Staff during the December 6, 2012 meet and confer session.

A. OBJECTIONS TO DEFINITIONS

Many definitions set forth in the CID are overbroad, unreasonable, and irrelevant to the stated purpose of the investigation. As a result, every interrogatory or a request for production using the objectionable definitions renders that interrogatory and request overbroad and unreasonable. The Company respectfully requests to modify the following definitions in the CID as set forth below.

The definition of **“Captive Mortgage Reinsurance Arrangement”**: This term covers any arrangement which reinsures any portion of a private mortgage insurance coverage. The definition is not limited to arrangements where reinsurance is provided by the affiliates of lenders. Thus, any requests for documents relating to “captive mortgage reinsurance arrangements” would seek not only documents relating to “captive” arrangements but to all reinsurance arrangements. Documents relating to such arrangements are not relevant to the stated purpose of the investigation. The Company therefore respectfully requests a modification to the CID to change the definition of “captive mortgage reinsurance arrangement” to apply only to reinsurance arrangements where reinsurance is provided by reinsurers affiliated with the lenders.

The definitions of **“Company,” “You,” and “Your”**: Rather than being directed to Mortgage Guaranty Insurance Corporation, the CID is directed to MGIC Investment Corporation, which is a publicly traded holding company that has never engaged in captive reinsurance transactions. The definition also purports to include all subsidiaries, affiliates, and other joint ventures as well as companies controlled, partly or wholly, by MGIC Investment

Corporation, that also have no involvement in mortgage insurance or captive reinsurance arrangements. The Company respectfully requests a modification to the CID to limit the definition of “Company” to MGIC Investment Corporation, Mortgage Guaranty Insurance Corporation and MGIC Reinsurance Corporation of Vermont.

The definition of “**Document**” includes “Electronically Stored Information,” which itself is defined to include sound recordings, cell phones, Blackberry, or other storage media, among other things. This definition is impermissibly overbroad as it would, for example, require the Company to access all such devices for an unidentified group of employees as well as force the Company to attempt to obtain similar access to the devices belonging to the employees of the Company’s agents, consultants, and other third parties whom the Company does not control. The Company respectfully requests a modification to the CID to limit the definition of “Document” to hard copy documents, e-mails, and other electronic documents created or accessed by a group of selected Company employees whose duties and responsibilities at the Company included negotiation, drafting, execution or performance of captive mortgage reinsurance transactions between February 1, 2009 and February 1, 2012.

The definition of “**Mortgage Lender**”: The CID definition encompasses any entity that *originated* any residential mortgage loans that were reinsured. This definition is impermissibly broad as it would cover thousands of mortgage brokers and other originators, and would force MGIC to significantly widen the search for potentially relevant materials. The Company respectfully requests a modification to the CID to limit the definition of “Mortgage Lender” to any entity that *funded* any residential mortgage loans that were reinsured by the entity’s affiliated reinsurer.

The CID does not define “**mortgage insurance**” even though the CID states that the purposes of the investigation is to determine whether ... “mortgage insurance providers ... have engaged in ... unlawful acts,” The Company respectfully requests a modification to the CID to define “mortgage insurance” only as primary “flow” coverage on first liens under the applicable master policy and to exclude from the definition any other form of coverage, such as “bulk” or “pool” coverage.

B. OBJECTIONS TO INSTRUCTIONS

Instruction D: This instruction requires, in part, to identify on a privilege log (schedule), “an interrogatory or request to which the privileged document is responsive.” The Company respectfully requests a modification to the CID to delete this requirement, since the documents will be produced in the way they are kept in the ordinary course of the Company’s business, without identification of what requests or interrogatories they respond to. Such production is permissive under the Federal Rules of Civil Procedure. Since the non-privileged documents will not contain an identification as to which request or an interrogatory they respond to, the privileged documents will not be so identified either. In fact, identifying the privileged documents in this fashion might result in an inadvertent disclosure of a privileged nature of the document. Furthermore, the requirement of a privilege log should be excused for all outside counsel communications, work product, drafts of pleadings and memos relating to private actions and government investigations concerning captive mortgage reinsurance arrangements, including this investigation.

Instruction E: This instruction requires the Company to suspend any routine or non-routine procedures that may result in the destruction of documentary material that is in any way potentially relevant to the investigation. The Company respectfully requests a modification to the CID to delete this Instruction as it creates an undue burden for the Company to effectively

suspend its regular document destruction policy with respect to an unidentified set of materials for an unidentified period of time. In January of 2012, the Company implemented a document hold on any documents relating to the captive mortgage reinsurance arrangements as well as any other arrangements where the Company ceded mortgage insurance premiums to third parties. This “hold” is still in place, and, the Company believes it sufficiently addresses the need to preserve the documents responsive to the CID, as modified.

Instruction I: This instruction requires the Company to search for materials not only in the Company’s actual possession, custody, or control, but also for materials in the Company’s “constructive custody.” The term “constructive custody” is not defined, and the Company requests that it not be interpreted to force the Company to obtain documents from its former employees, agents, or consultants with whom the Company currently does not do business and over whom the Company does not exercise any actual control.

Instruction M: This instruction requires the identification of the requests to which the documents produced are responsive. Since the documents will be produced in the way they are kept in the ordinary course of business, as permitted by the Federal Rules of Civil Procedure, the Company respectfully requests a modification to the CID to delete this instruction.

C. OBJECTIONS TO THE CID DOCUMENT SUBMISSION STANDARDS

During the meet and confer session held on December 6, 2012, a member of CFPB’s IT Staff stated that the CID did not include the most recent version of the Document Submission Standards. The CFPB’s Staff emailed the updated version to the undersigned counsel a few hours after the conclusion of the meet and confer session. The Company and its counsel have not had a sufficient amount of time to review the updated Document Submission Standards and reserve the right to make additional objections to the CID on account of the

updated Document Submission Standards. Subject to the foregoing, the Company objects to the production of certain emails in their native form, as such production might not be feasible. The Company also objects to solely producing the electronic documents in native form as such production would hinder the control over the documents. Where appropriate, the Company will produce both native and TIFF versions of the documents. The Company further objects to the organization of the productions by request number and second by custodian; as stated above, the Company will be producing documents in the way they are kept in the ordinary course of the Company's business, as permitted by the Federal Rules of Civil Procedure. The Company is willing to identify the custodians for the documents, however. The Company also objects to the purported requirement for the documents to contain certain specified fields of metadata in a particular order, as this may not be feasible for certain electronic documents which were created and maintained on the systems by former employees. The Company further objects to the purported requirement to encrypt the produced media with Microsoft Bitlocker. The Company does not use this software, and is willing to encrypt the documents with the winrar encryption software. The Company further objects to the particular Parent Bates // Child Bates and de-duplication specifications set forth in the CID. The Company will perform those functions for the production, and expect to reach a compromise with the CFPB's IT Staff on these issues.

SPECIFIC OBJECTIONS TO THE INTERROGATORIES AND REQUESTS FOR PRODUCTION

A. INTERROGATORIES

- 1. Identify all persons who participated in responding to this CID and the specific tasks performed by each person.***

The Company objects to this Interrogatory on the grounds that it seeks information protected from discovery by attorney-client privilege and the work product doctrine.

Subject to its defenses, General and Specific Objections, the Company will identify the individuals who participated in responding to this CID.

- 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.***

The Company objects to this Interrogatory on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. Given the broad definition of “Company,” as stated above, literal compliance with this Interrogatory would require the Company not only to provide information about its affiliates, officers, directors, and principal stockholders going back to 2001 but also from the Company’s agents, consultants, and other entities. The Bureau could not possibly articulate a basis how this information would make it more likely or less likely (*i.e.* relevant) that the captive mortgage reinsurance arrangements violated RESPA within the applicable statute of limitations period or that the Company has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that this interrogatory be modified to allow the Company to provide the following information with respect to itself, its holding company, MGIC Investment Corporation, and MGIC Reinsurance Corporation of Vermont:

- a. legal name;
 - b. principal place of business;
 - c. date and state of incorporation;
 - d. names and titles of all current officers and directors; and
 - e. names of shareholders owning 10 or more percent of the entity’s stock.
- 3. *List each state in which the Company has done business and the period during which the Company has done business in each state.***

The Company objects to this Interrogatory on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. Given the broad definition of “Company,” as stated above, literal compliance with this interrogatory would require the Company to ascertain information about the states where its agents, consultants, and other un-controlled entities have done business, going back to 2001. The Bureau could not possibly articulate a basis how this information would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that this Interrogatory be modified to allow the Company to provide the following information with respect to itself, its holding company, MGIC Investment Corporation, and MGIC Reinsurance Corporation of Vermont:

- a. each state in which such company has done business since 2001.
- 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.***

The Company objects to this Interrogatory on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. Given the broad definition of “Company,” as stated above, literal compliance with this interrogatory would require the Company to ascertain a management structure of any component of the businesses of its agents, consultants, and other

un-controlled entities that had something to do with mortgage insurance, going back to 2001.

For example, this interrogatory would require the Company to ascertain a complete management structure of hundreds of entities with which MGIC has done business since 2001 that were involved in loss evaluation, loss mitigation, or sales of foreclosed properties, since these activities arguably qualify as “monitoring private mortgage insurance.” Gathering the information on such companies’ officers and directors since 2001 is simply not practicable. The Bureau could not possibly articulate a basis how this information would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that this Interrogatory be modified to allow the Company to provide the following information with respect to itself, its holding company, MGIC Investment Corporation, and MGIC Reinsurance Corporation of Vermont for the period 2009-2012:

- a. an organization chart reflecting all departments within such company that are involved in providing either private mortgage insurance or obtaining mortgage insurance reinsurance; and
 - b. the names and titles of all current officers, managers and supervisory employees within each such department.
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.***

The Company objects to this Interrogatory on the same basis that the Company objected to Interrogatory No. 4. The Company respectfully request that this Interrogatory be

modified to allow the Company to provide the following information with respect to itself, its holding company, MGIC Investment Corporation, and MGIC Reinsurance Corporation of Vermont for the period 2009 through the present:

- a. the names and titles of all officers, managers and supervisory employees employed by such company who have responsibilities relating to any “captive mortgage reinsurance arrangement,” as modified.
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.***

The Company objects to this Interrogatory on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. For example, the term “deceptive act or practices” used in the Interrogatory is not defined. Literal compliance with this Interrogatory would require the Company to review every complaint, demand, subpoena, or any other charging document issued in a civil or an administrative proceeding going back to 2001 to determine if an “unfair” or a “deceptive” practice is alleged. Given the broad definition of “Company,” literal compliance with this Interrogatory would require the Company to search not only its records for such information but also those of its agents, consultants, joint venturers and other uncontrolled third parties. Furthermore, because the definition of “captive mortgage reinsurance arrangement,” as appears in the CID, is not limited to reinsurance by a “Reinsurance Entity,” the scope of the Company’s search would have to encompass any charging document that arguably relate to reinsurance of the Company’s business. The Bureau could not possibly articulate a basis how this information would make it more likely or less likely (*i.e.* relevant) that the captive

reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that this interrogatory be modified to allow the Company to provide the following information with respect to itself, its holding company, MGIC Investment Corporation, and MGIC Reinsurance Corporation of Vermont:

- a. listing of actions asserting RESPA claims relating to reinsurance arrangements between MGIC and reinsurer affiliated with the lenders;
 - b. the names of the parties to such actions;
 - c. the jurisdictions involved;
 - d. case number, as appropriate; and
 - e. the current status of such actions.
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.***

The Company objects to this Interrogatory on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. The Bureau could not possibly articulate a basis how this information would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1). As the Company explained during the meet and confer session with the CFPB's Staff, the Company has had several "litigation holds" relating to captive reinsurance arrangements. The Company is willing to provide documents sufficient to demonstrate the content of the litigation hold and similar notices

to the extent relevant to the captive mortgage reinsurance arrangement subject of the CID investigation.

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.***

Subject to its general objections and defenses set forth above, and further subject to an objection to the use of the word “partnered” in subsection (a), the Company is prepared to provide this information to the Bureau.

9. ***Identify each entity that was not a Reinsurance Entity, including but not limited to HCC, 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.***

Subject to its general objections and defenses, the Company respectfully seeks to modify this Interrogatory to provide the requested information only with respect to each non-captive reinsurance provider that provided reinsurance on primary flow MI coverage and was not either (i) an affiliate of MGIC, (ii) a competitor of MGIC, or (iii) an affiliate of a competitor of

MGIC. Information with respect to entities (i)-(iii) is neither relevant to the subject investigation nor likely to lead to the discovery of admissible evidence because such transactions were not for primary flow insurance (as in the case with a competitor) and because such transactions were for statutory purposes where MGIC was obligated to cede a portion of the risk (as in the case with affiliates).

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.***

In addition to its general objections and defenses, the Company further objects to this Interrogatory on the basis that it is overly broad. The Company does not maintain the specific information requested in the Interrogatory. A per transaction history of deposits into, or withdrawals from, a trust account would have to be reconstructed manually from paper files. The Company estimates it would take hundreds of man hours to reconstruct such individuals' payments, to the extent such reconstruction is even possible. The Company respectfully requests to modify the CID to allow the Company, as a measure of compliance with this Interrogatory, to provide copies of the Company's internal trust account summaries for each of the Enumerated Captive Trusts on an aggregate basis. These summaries include the following information, either on a monthly or quarterly basis (depending on the trust):

- a. Beginning trust balance;**

- b. Ending trust balance;
- c. Deposits by the captive;
- d. Reinsurance premiums deposited by MGIC;
- e. Investment income;
- f. Payments made to the captive from the trust for operating expenses and/or taxes;
- g. Payments made to the captive when a “disbursement excess” exists in the trust;
- h. Ceding commissions paid to MGIC from the trust;
- i. Payments made to MGIC from the trust for reinsured losses; and
- j. Balance adjustment attributable to changes in market value of assets in the trust.

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.*

The Company objects to this Interrogatory on the same basis that the Company objected to Interrogatory No. 10. The information the Company will provide in response to Interrogatory No. 10, will also be responsive to Interrogatory No. 11.

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.

The Company objects to this Interrogatory on the same basis that the Company objected to Interrogatory No. 10. The information the Company will provide in response to Interrogatory No. 10, will also be responsive to Interrogatory No. 12.

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.

The Company objects to the term “reclassification.” Subject to its objections and defenses, the Company will provide information responsive to Interrogatory No. 13.

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.

Subject to its objections and defenses, the Company states that it is not aware of any such transfers.

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.

In addition to its objections and defenses, the Company further objects to this Interrogatory on the grounds that it is vague as to the term “any thing of value,” which is not defined, and is overly broad and unduly burdensome. The Company does not maintain the specific information requested in the Interrogatory. The Company respectfully requests to modify the CID to allow the Company, as a measure of compliance with this Interrogatory, to provide a schedule reflecting all reinsurance premium payments made by the Company directly to an Enumerated Reinsurance Entity rather than through the applicable reinsurance trust account. The schedule would include the following information:

- a. the reporting date;
- b. the payment month and year;
- c. the amount of premium deposited into the trust;
- d. the remaining premium paid directly to the captive reinsurer; and
- e. the total premiums paid by MGIC for that period.

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.*

In addition to its objections and defenses, the Company further objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome, in that the response to this Interrogatory would require the Company to create spreadsheets containing the answers to the requested information for over 90 entities going back to 1995. In addition, the Company objects to subsection (e) of this Interrogatory on the grounds that the Company does not project “the total amount projected to be paid from the Captive Trust on future reinsurance claims,” instead the Company establishes loss reserves.

Subject to its defenses and general objections set forth above, MGIC is willing to further discuss this Interrogatory with the CFPB's Staff how to narrow this Interrogatory for MGIC to provide information for a limited number of captive mortgage reinsurance arrangements for the time period relevant to the investigation, provided further that the Company's response to subsection (e) of this Interrogatory would reflect loss reserves rather than projections.

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.

Subject to its objections and defenses, the Company will provide responsive information.

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.*

The Company objects to this Interrogatory on the grounds that it is vague, in that terms “management,” “accounting,” and “financial services” are not defined. Interpreted literally, the Interrogatory would require the Company to identify numerous third parties that might have provided any accounting or financial services to the Company since 2001, since provision of such services likely “related” to reinsurance the Company purchased. Given the broad definition of “Company,” the Company would have to obtain such information for similar providers to the Company’s agents, consultants, joint venturers or uncontrolled third parties.

Subject to its defenses and general objections set forth above, MGIC is willing to further discuss this Interrogatory with the CFPB's Staff how to narrow this Interrogatory for MGIC to provide information for a limited number of captive mortgage reinsurance arrangements for the time period relevant to the investigation.

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.*

The Company objects to this Interrogatory on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. Literal compliance with this Interrogatory would require the Company to list every state regulatory agency (e.g., from the Department of Insurance to the State Environmental Protection Agency), to which the Company has been reporting since 2001, even though the reporting might not have anything to do with the subject matter of the investigation. Given the broad definition of “Company,” as stated above, literal

compliance with this Interrogatory would also require the Company to ascertain every reporting agency to which the Company's agents, consultants, and other uncontrolled entities have been reporting to since 2001. Gathering such information for an 11 year period is simply not practicable. The Bureau could not possibly articulate a basis how this information would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that the CID be modified to permit the Company, as a measure of compliance with this Interrogatory, to provide the following information with respect to itself, its holding company, MGIC Investment Corporation, and MGIC Reinsurance Corporation of Vermont:

- a. the state in which such company is domiciled; and
- b. with respect to MGIC and MGIC Reinsurance Corporation of Vermont, the insurance regulator in its domiciliary state to which it 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.*

The Company objects to this Interrogatory as vague and unduly burdensome and incapable of being answered absent a determination of what records are deemed responsive in the first instance. As the Company stated during the December 6, 2012 meet and confer session, the Company did not back up the emails prior to December, 1999, for example. In addition, since the back up of the systems was done during night hours, the Company did not save or back up any emails that were deleted during any given day during the period December 1999 to

August 2006. Thus if an email was received on 3/1/2001 at 10 a.m. and was deleted at 11 a.m. that same day, it would not have been saved. If it was not deleted until 3/2/2001, on the other hand, it would likely be on one of the back up tapes for 3/1/2001.

B. REQUESTS FOR DOCUMENTS

1. All documents relied upon to complete any of the Interrogatories set forth above.

The Company objects to this Request on the grounds that it is overly broad and unduly burdensome and potentially requires the Company to produce all of its accounting and other databases from which the information responsive to the Interrogatories was assembled.

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.

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. Given the broad definition of "Company," literal compliance with this Request would force the Company to seek organizational charts from its agents, consultants, joint venturers and uncontrolled affiliates to the extent they were involved in reinsurance of mortgage insurance policies. Identifying direct or indirect ownership of the Company's agents, consultants, joint venturers and uncontrolled affiliates to the extent they were involved in reinsurance of mortgage insurance policies is even more impracticable for the Company. Furthermore, this Request for Documents is not proper as it directs the Company to

“describe” the role of each entity in the Captive Mortgage Reinsurance Arrangements. The Company is not obligated to create responsive documents.

As the Company described during the meet and confer session, only MGIC and MGIC Reinsurance Corporation of Vermont, each wholly owned by MGIC Investment Corporation, were involved in Captive Mortgage Reinsurance Arrangements. A chart of this organizational structure will be provided.

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.***

The Company objects to this Request on the same basis that the Company objected to Interrogatory No. 4. The information the Company is proposing to produce in Response to Interrogatory No. 4, will be equally responsive to this Request.

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.*

The Company objects to this Request on the grounds that it is overly broad, vague, and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. MGIC insured millions of loans going back to 2001. Since the risk of insuring many of such loans was reinsured, the files for such loans might potentially contain documents relating to reinsurance, and given that the definition of “captive mortgage reinsurance arrangement” is not limited to reinsurance provided by

reinsurers affiliated with the lenders, all documents relating to reinsurance would be potentially responsive. The Bureau could not possibly articulate a basis how this information would make it more likely or less likely (*i.e.* relevant) that the captive mortgage reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1). This Request is vague in that it does not define what a “potential captive mortgage reinsurance arrangement” is. The Company can not search for documents, not knowing what records might arguably fall into this definition. Furthermore, as explained above, Interrogatory No. 18 is vague, making it difficult to respond to this Request by reference to Interrogatory No. 18. Lastly, given the broad definition of “Company,” as stated above, literal compliance with this Request, as written, would require MGIC to collect the vast amounts of documents potentially responsive to this overly broad request from MGIC’s agents, consultants, and other uncontrolled entities, all going back to 2001. In short, literal compliance with this Request would be tantamount to a proverbial “fishing expedition.”

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. As to clauses (a) and (b), and subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive records for a limited number of captive mortgage reinsurance arrangements for the time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms. As to clause (c) of the Request, the Company is prepared to re-produce the documents the Company had previously produced to HUD and the Minnesota Department of Commerce.

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).*

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. The Company insured millions of loans going back to 1995 (the Inception of Reinsurance Entity, as defined in the CID). Since the risk of insuring many of such loans was reinsured, the files for such loans might potentially contain documents relating to reinsurance, and given that the definition of “captive mortgage reinsurance arrangement” is not limited to reinsurance provided by reinsurers affiliated with the lenders, all documents relating to reinsurance would be potentially responsive. The Bureau could not possibly articulate a basis how “all” such “reports, summaries or presentations” would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive records for a limited number of captive mortgage reinsurance arrangements for the time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms.

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.*

The Company objects to this Request on the grounds that it is overly broad, vague, and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. MGIC insured millions of loans going back to 1995 (the Inception of Reinsurance Entity, as defined in the CID). Since the risk of insuring many of such loans was reinsured, the files for such loans might potentially contain documents relating to “negotiations,” “presentations,” “responses,” or “proposals” concerning reinsurance, and given that the definition of “captive mortgage reinsurance arrangement” is not limited to reinsurance provided by reinsurers affiliated with the lenders, all documents relating to reinsurance would be potentially responsive. The Bureau could not possibly articulate a basis how this information would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1). This Request is vague in that it does not define what a “potential captive mortgage reinsurance arrangement” is. The Company can not search for documents not knowing what records might arguably fall into this definition. Furthermore, this Request is duplicative of Request No. 4, which seeks all communications relating to “captive mortgage reinsurance arrangements,” which will encompass “presentations, requests for proposals, negotiations and responses.”

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive records for a limited number of captive mortgage reinsurance arrangements for the

time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms.

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.*

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. MGIC insured millions of loans going back to 1995 (the Inception of Reinsurance Entity, as defined in the CID). Since the risk of insuring many of such loans was reinsured, the files for such loans might potentially contain documents relating to “legality,” “profitability,” “costs,” “risks,” “finances,” “conditions,” or “structure” concerning reinsurance, and given that the definition of “captive mortgage reinsurance arrangement” is not limited to reinsurance provided by reinsurers affiliated with the lenders, all documents relating to reinsurance would be potentially responsive. The Bureau could not possibly articulate a basis how this information would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1). In addition, the Company objects to this Request on the grounds that it seeks documents protected by attorney-client privilege or the work product doctrine.

MGIC respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive records for a limited number of captive mortgage reinsurance arrangements for the

time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms.

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.*

The Company objects to this Request on the grounds that it is vague and ambiguous. The term “purpose” as used in the Request is not defined. MGIC has always understood that the purpose of any reinsurance, including captive mortgage reinsurance arrangements, is risk management: a reinsurer agrees to indemnify the reinsured company against all or part of the loss that the company may sustain under the policy or policies that it has issued. MGIC can not respond to this Request not knowing if the Bureau has a different understanding of “purpose of reinsurance.” This Request simply seeks all documents about “captive mortgage reinsurance arrangements,” and in this regard is duplicative of Requests Nos. 4-7. The Bureau could not possibly articulate a basis how the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive records for a limited number of captive mortgage reinsurance arrangements for the time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms.

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.***

The Company objects to this Request on the grounds that it is vague, overly broad, unduly burdensome, and seeks information that is neither relevant to the stated purpose of the investigation, nor likely to lead to the discovery of admissible evidence. Because MGIC's business is insurance of Mortgage Lenders, this Request appears to ask MGIC to produce every single document in the Company's possession, custody or control, because, arguably, every single document relates to "proposed," "contemplated," or "actual" contract or agreement between MGIC and any Mortgage Lender. The scope of this Request is truly remarkable. This Request is more than a "fishing expedition," it is a requirement for MGIC to turn over all of its non-privileged records to the Bureau. The Bureau could not possibly articulate a basis how all of the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive records for a limited number of captive mortgage reinsurance arrangements for the time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms.

10. *All documents identified in response to Interrogatory 9.b., and all documents relating to such documents.*

As the Company stated in Response to Interrogatory No. 9, in addition to its defenses and other objections, the Company respectfully seeks to modify the CID to permit the Company to produce, as a measure of compliance with this Request, the requested information with respect to each non-captive reinsurance provider that provided reinsurance on the primary MI coverage and was not either (i) an affiliate of MGIC, (ii) a competitor of MGIC, or (iii) an affiliate of a competitor of MGIC. Information with respect to entities (i)-(iii) is neither relevant to the subject investigation nor likely to lead to the discovery of admissible evidence for the reasons explained in response to Interrogatory No. 9. Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive records for a limited number of captive mortgage reinsurance arrangements for the time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms.

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.*

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. "All documents relating to any accounting" of MGIC's reinsurance arrangements with [REDACTED] would require MGIC to potentially produce hundreds of thousands of records from MGIC's Finance and Accounting Departments, as undoubtedly accounting of these arrangements were incorporated into the

Company's consolidated financial statements and reports. The Bureau could not possibly articulate a basis how all of the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The documents the Company suggests producing in response to Interrogatories Nos. 10-12 should be sufficient to identify the information sought in this Request for Production. The Company therefore respectfully requests that the CID be modified accordingly.

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.

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. MGIC reinsured numerous policies with the affiliates of [REDACTED]. Providing all documents relating to these reinsurance transactions, as the Request seeks, will force MGIC to produce all accounting, financial, risk, and pricing data for these transactions as well as for the underlying policies. In essence, this Request is just a sub-set of Request No. 7 and should fail for the same reasons. The Bureau could not possibly articulate a basis how all of the sought information would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1). The documents the Company suggests producing in

response to Interrogatories Nos. 10-12 should be sufficient to identify the information sought in this Request. The Company therefore respectfully requests that the CID be modified accordingly.

- 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.***

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. It would be extremely burdensome for the Company to locate and produce “all bills, receipts, and records of payments.” If the Bureau wishes to test the accuracy of the underlying data provided in response to Interrogatories Nos. 8, 10-14, the Company would be willing to produce additional documents (similar to an audit testing). The Bureau could not possibly articulate a basis how all of the sought information would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoy as being in violation of 12 U.S.C. § 5536(a)(1).

The documents the Company suggests producing in response to Interrogatories Nos. 8, 10-14 should be sufficient to identify the information sought in this Request. The Company therefore respectfully requests that the CID be modified accordingly.

- 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.***

The Company objects to this Request on the grounds that it is vague as to a term “mortgage insurance agreement,” which is not defined in the CID. Subject to its objections, MGIC is prepared to produce a specimen master policy and specimen commitment certificate.

15. *All documents relating to the 1997 HUD Restinas Letter.*

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. Since the 1997 HUD Restinas Letter addressed the topic of reinsurance of mortgage insurance policies with the affiliates of lenders in a broader context of RESPA, every document within the Company’s possession, custody, or control relating to RESPA generally or captive mortgage reinsurance specifically would be potentially responsive to this Request. The Bureau could not possibly articulate a basis how all of the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1). In addition, the Company objects to this Request on the grounds that it seeks documents protected by attorney-client privilege or the work product doctrine.

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive non-privileged records from the paper files of agreed upon custodians.

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).

The Company objects to this Request on the grounds that it is overly broad in that it seeks “all” documents and the definition of “Company” includes third parties over whom the Company does not exercise control. The Company further objects to this Request on the grounds that the Company had previously provided to HUD the actuarial opinions relating to the captive mortgage reinsurance arrangements. The Company respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its defenses and general objections set forth above, MGIC is willing to reproduce the documents previously produced to HUD. MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive records for a limited number of captive mortgage reinsurance arrangements for the time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms.

- 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.***

The Company objects to this Request on the grounds that it is vague in that it refers to Requests 14 and 15, and the Company believes the intent was to refer to Requests Nos. 15 and 16. Subject to its objections, the Company objects and responds to this Request on the same grounds stated in Response to Request Nos. 15 and 16.

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

The Company respectfully requests to modify the CID to permit the Company's production to conform to Response to Interrogatory No. 18, which is incorporated herein.

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.*

The Company objects to this Request on the grounds that it is overly broad, vague, unduly burdensome, and seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. Read broadly, the Request again seeks all documents relating to captive mortgage reinsurance arrangements, as it specifically refers to "all documents relating to any financial ... assessment or analysis" of such arrangements. The Bureau could not possibly articulate a basis how all of the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. The Company is prepared to produce rating agency and analyst reports regarding Captive Mortgage Reinsurance Arrangements in the Company's possession, custody, or control.

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.*

MGIC has no responsive documents in its possession, custody, or control.

21. *All rate filings for mortgage insurance filed with any state regulatory agency.*

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. Since 2001, the Company has made hundreds of rate filings for mortgage insurance in all 50 states. The Bureau could not possibly articulate a basis how all of the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1). The Company further objects to this Request on the grounds that all of MGIC's rate filings are publicly available from the state insurance departments. Lastly, MGIC objects to this Request on the grounds that MGIC had previously provided its rate filings to HUD.

Subject to its objections, MGIC respectfully requests to modify the CID to permit MGIC, as a measure of compliance with this Request, to reproduce the rate filings previously produced to HUD.

- 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.***

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. Since the term "captive mortgage reinsurance arrangement" is not limited to reinsurance purchased from the affiliates of lenders, literal compliance with this Request would force the Company to review, locate and produce all materials prepared by or provided to the Company's Board of Directors or any committee thereof

that relates to reinsurance. The Bureau could not possibly articulate a basis how all of the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its objections, MGIC respectfully requests to modify the CID to permit MGIC, as a measure of compliance with this Request, to reproduce the Board materials previously produced to HUD as well as any responsive documents, if any, originated since the time of the Company's referenced submission to HUD.

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.*

The Company objects to this Request on the grounds that it is overly broad and seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. Since the referenced 2008 Freddie Mac announcement relates to reinsurance of mortgage insurance policies, arguably all documents on this issue “relat[e] to the announcement” and have to be produced. The Bureau could not possibly articulate a basis how all of the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce responsive records for the time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms.

- 24. *All documents relating to the stated intention of the Company 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, the Company's subsequent reversal of this stated intention.***

The Company objects to this Request on the grounds that it is overly broad in that it seeks all documents relating to the Company's stated intentions regarding the subject announcement. Since the subject announcement addressed the issue of MGIC's purchase of reinsurance from lender-affiliated reinsurers, all documents on this issue would "relat[e] to the intentions" and will have to be produced. The Bureau could not possibly articulate a basis how all of the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1). The Company further objects to this Request on the ground that it seeks documents protected by the attorney-client privilege or the work product doctrine.

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce

responsive records for the time period relevant to the investigation, from the paper and electronic files of agreed upon custodians, using agreed upon search terms.

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.*

The Company objects to this Request on the grounds that it seeks information that is neither relevant to the stated purpose of the investigation nor likely to lead to the discovery of admissible evidence. As the Company mentioned during the meet and confer session on December 6, 2012, the Company has implemented numerous limited document holds in response to numerous civil actions and other proceedings to which the Company has been a party. The Bureau could not possibly articulate a basis how all of the information sought would make it more likely or less likely (*i.e.* relevant) that the captive reinsurance arrangements violated RESPA within the applicable statute of limitations period or that MGIC has possession of the information regarding the practices of other parties that the Bureau can enjoin as being in violation of 12 U.S.C. § 5536(a)(1).

The Company respectfully requests that the CID be modified by deleting this Request, as drafted. Subject to its defenses and general objections set forth above, MGIC is willing to further discuss with the CFPB's Staff how to narrow this Request for MGIC to produce documents sufficient to show the Company's document retention and destruction policies relevant to the subject of the CID investigation.

REQUEST FOR CONFIDENTIALITY

CFPB's regulations do not offer sufficient protections against disclosure to third parties of confidential information submitted in response to the CID. *See generally* 12 C.F.R. § 1070.45-46. MGIC therefore requests that CFPB enter into a confidentiality agreement or enter

a protective order so that the confidential information that MGIC provides in response to the CID is not disclosed to third parties. Confidential information responsive to the CID includes sensitive, confidential, and proprietary business information as well as individual consumer information. MGIC's concerns regarding the non-disclosure of the confidential information submitted by MGIC in response to the CID are based on the fact that documents that mortgage insurers had previously submitted as a part of the HUD investigation appeared in an *American Banker* article. Additionally, several private purported class actions are currently pending against MGIC and other mortgage insurer-defendants, where plaintiffs make allegations similar to the subject matter of the investigation. Courts have not permitted discovery in those cases, and the plaintiffs and their counsel should not be afforded an opportunity to obtain MGIC's confidential information to which they are not necessarily entitled, especially absent a protective order.

Additionally, MGIC requests that any confidential documents produced in response to the CID, and any copies thereof be afforded confidential treatment pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Because the documents constitute an investigatory record obtained by the CFPB, they are subject to the exemption from mandatory disclosure under Exemption 7(A) of the Freedom of Information Act, 5 U.S.C. § 552(b)(7)(A) (1976). *See, e.g., National Labor Relations Board v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978); *Chilivis v. Securities & Exchange Commission*, 673 F.2d 1205 (11th Cir. 1982). In addition, we believe that Exemptions 4, 6, 7(B) and 7(C), are also applicable, as well as the protections available under the Privacy Act of 1974, 5 U.S.C. § 552a. *See, e.g., Nadler v. FDIC*, 92 F.3d 93 (2nd Cir. 1996).

Accordingly, MGIC expects that the originals and all copies of the documents produced in response to the CID will be kept in a non-public file and that access by any third party not a member of the CFPB, its Staff or counsel for the CFPB will be denied. Should the CFPB receive any request which would encompass the documents, either pursuant to the Freedom of Information Act or otherwise, MGIC expects that it will be given an opportunity to object to such disclosure. Furthermore, should the CFPB be inclined to disclose the documents to any third party, MGIC requests an advance notice of any such decision to enable MGIC to pursue any remedies that may be applicable. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281 (1979). In such event, MGIC requests that the CFPB telephone one of MGIC's undersigned counsel rather than rely upon the United States mail for such notice.

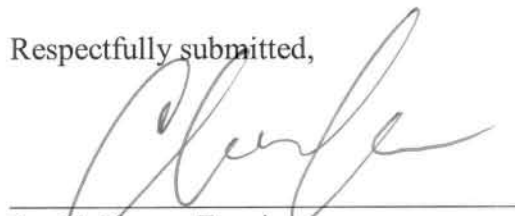
In addition, MGIC requests that the documents, and all copies thereof, produced in response to the CID, be returned to MGIC or its undersigned counsel at the conclusion of this inquiry.

CONCLUSION

For the reasons set forth above, the Company respectfully requests that the CID be set aside or modified.

December 7, 2012

Respectfully submitted,



Jay N. Varon, Esquire
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Counsel for MGIC INVESTMENT CORP.

Confidential and Privileged
Attorney Work Product and/or Attorney-Client Communication

CERTIFICATION

Pursuant to 12 C.F.R. § 1080.6(d)(1), the undersigned counsel for Petitioner, MGIC Investment Corp., hereby certifies that he, along with his partners, Melinda F. Levitt and Jay N. Varon, and the representatives of MGIC, Dan Stilwell, John Schroeder and Bob Pestka, conferred with Kim Ravener, Crystal Summer and Scott Madsen of CFPB by phone on December 6, 2012 from 10:00 a.m. EDT to 12:05 PM EDT in a good faith effort to resolve by agreement the modifications sought by this Petition, but have been unable to reach an agreement.



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Counsel for MGIC INVESTMENT CORP.

EXHIBIT A



Consumer Financial
Protection Bureau

United States of America
Consumer Financial Protection Bureau

Civil Investigative Demand

To **MGIC Investment Corp.**
250 East Kilbourn Avenue
Milwaukee, Wisconsin 53202
Attention: Jeffrey H. Lane
Executive Vice President, GC & 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
Kimberly J. Ravener

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 MGIC Investment Corporation, 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 MGIC Investment Corporation, 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**.

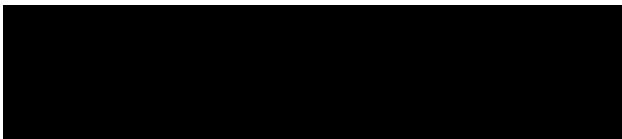
K. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**

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, including but not limited to HCC, 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 the Company 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, the Company'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 MGIC Investment Corporation, and submitted with this Declaration.
2. The documents produced and submitted with this Declaration by MGIC Investment Corporation, are true copies of records of regularly conducted activity that were:
 - a. made at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person with knowledge of those matters;
 - b. kept in the course of the regularly conducted business activity; and
 - c. made by the regularly conducted business activity as a regular practice.

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

Signature

CID Document Submission Standards

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

General Instructions

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

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

Delivery Formats

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

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

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

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

1. Native Production

a. Data File

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

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

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

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

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

	**This data must be a separate field and cannot be combined with the DATE_MOD field
DATE_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 contumacious conduct, or contemptuous language.

Section 1080.10 Noncompliance With Civil Investigative Demands

This section authorizes the Assistant Director of the Division of Enforcement, the General Counsel, or their 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,

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

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.

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



Consumer Financial
Protection Bureau

Rec'd 1/4/2012

1801 L Street NW, Washington, DC 20036

January 3, 2012

Via Overnight Delivery

Jeffrey H. Lane
Executive Vice President, General Counsel and Secretary
MGIC Investment Corp.
250 East Kilbourn Avenue
Milwaukee, Wisconsin 53202

Re: Ceding Practices between MI Carriers and Lenders

Dear Mr. Lane:

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 Mortgage Guaranty Insurance Corporation and any other entity that MGIC Investment Corp. controls (collectively referred to hereafter as "you," "your," or "the company") involved in such practices. We are writing to you as a prior recipient of a formal discovery request from HUD in connection with this matter to apprise you of the current status of the Bureau's investigation and to request additional information.

Nature of the CFPB Investigation

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

Information Sought

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

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



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

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

3. The number and total dollar amount of originations involving loans backed by the company's MI policies ("MI Loans"), stated separately for each lender by calendar 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.



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.

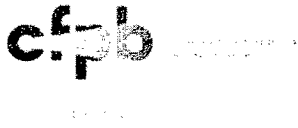
Document Preservation

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



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,

A handwritten signature in black ink, appearing to read "Reid Horwitz", is written over the typed name.

Reid B. Horwitz

Attachments

**Mortgage Guaranty
Insurance Corporation**

[illegible]

**Mortgage Guaranty
Insurance Corporation**

[illegible]

[illegible]

**Mortgage Guaranty
Insurance Corporation**

[illegible]

[illegible]

TOLLING AGREEMENT

This Agreement is entered into effective January __, 2012, by the Consumer Financial Protection Bureau ("the Bureau") and Mortgage Guaranty Insurance Corporation (jointly referred to hereinafter as "the Parties").

On January 3, 2012, the Bureau notified Mortgage Guaranty Insurance Corporation that the Bureau was conducting an investigation of Mortgage Guaranty Insurance Corporation to determine whether there were violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.*, and the Consumer Financial Protection Act, 12 U.S.C. § 5301, *et seq.*

NOW THEREFORE, the Parties, through their authorized representatives, stipulate and agree as follows:

1. The Parties agree to a suspension of the running of any applicable unexpired statute of limitations for any cause of action or related claim or remedy that could have been brought against Mortgage Guaranty Insurance Corporation, its subsidiaries, and affiliates (for the purposes of this agreement, the term "affiliate" is defined in Section 1002(1) of the Consumer Financial Protection Act, 12 U.S.C. § 5481(1)), by the Bureau arising from its investigation under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.*, and the Consumer Financial Protection Act, 12 U.S.C. § 5301, *et seq.*, until the Bureau determines whether to pursue an action against Mortgage Guaranty Insurance Corporation or the Bureau notifies Mortgage Guaranty Insurance Corporation that no further action will be taken in this matter.

2. This Agreement is not intended to and shall not be construed as an admission of liability by any party, and all parties continue to reserve all rights and defenses available to them, except as provided by this Agreement.

3. This Agreement may be modified, amended, or supplemented only by a written instrument signed by all parties. This Agreement may be executed in counterparts. Facsimile and pdf signatures are acceptable.

4. This Agreement is binding on all parties, their affiliates, and their respective successors in interest and assigns.

CONSUMER FINANCIAL PROTECTION BUREAU

By: _____ Date: _____

MORTGAGE GUARANTY INSURANCE CORPORATION

By: _____ Date: _____

EXHIBIT C

From: Donald.Gordon@cfpb.gov [mailto:Donald.Gordon@cfpb.gov]

Sent: Wednesday, June 20, 2012 1:29 PM

2012-MISC-MGIC Investment Corporation-0001

To: Varon, Jay N.; Dan_Stilwell@mgic.com

Cc: Kim.Ravener@cfpb.gov

Subject: Civil Investigative Demand to MGIC

Dear Counsel,

As I discussed with Mr. Varon earlier today, I am attaching a PDF courtesy copy of a Civil Investigative Demand, with attachments, that the Bureau issued today to MGIC. A hard copy will be coming to the attention of Mr. Lane for delivery tomorrow.

Please let me or Kim Ravener (copied) know if you have any questions or concerns about the CID. Kim's direct number is 202.435.7845, and mine is listed below.

Please note also that, under our rules, which are also in the enclosed attachment, a meet and confer session should be scheduled to occur within ten days of service. For that session, we strongly encourage you to involve information technology staff with knowledge of your client's document systems. We will ensure that members of our Technology & Innovation group are on the call as well.

Sincerely,

Don Gordon

--

Donald R. Gordon

Enforcement Attorney

Consumer Financial Protection Bureau

Tel: 202 435 7357

Mob: 202 258 1847

consumerfinance.gov

Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the email and any attachments. An inadvertent disclosure is not intended to waive any privileges.

12/5/2012

EXHIBIT D



1700 G Street NW, Washington, DC 20552

July 2, 2012

Via Electronic Mail

Erika Brown Lee, Esq.
Fulbright & Jaworski, L.L.P.
801 Pennsylvania Ave., N.W.
Washington, DC 20004

Re: Civil Investigative Demands issued June 20, 2012, to Radian Group Inc. and six other entities

Dear Ms. Brown Lee:

I have received your request on behalf of your client, Radian Group Inc., and on behalf of five other entities, namely American International Group, Inc., Genworth Financial, Inc., MGIC Investment Corp., Old Republic Int'l. Corp., and Triad Guaranty, Inc. (collectively, the "mortgage insurers"), for extensions of time to meet and confer with Bureau staff concerning the Civil Investigative Demands ("CIDs") issued by the Bureau separately to each of the mortgage insurers on June 20, 2012, and for commensurate extensions of time to file a petition to modify or set aside the CIDs. I understand that the six entities are offering to meet and confer with Bureau staff as a group on or before July 19, 2012.

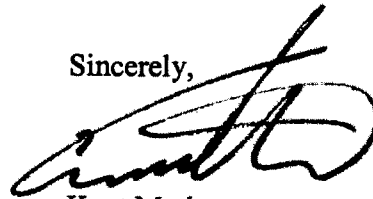
As a general matter, the Bureau is reluctant to delay the productive dialogue that tends to be spurred by the requirement to meet and confer. Here, however, it appears that a joint meeting could offer significant efficiencies to the Bureau, as well as to the mortgage insurers, and the logistical difficulties involved in setting up such a meeting among many parties may cause some delay. Accordingly, the deadline by which a meet and confer must be held will be extended until July 19, 2012, as to each of the CIDs issued to the mortgage insurers named above. Given this extension, we would appreciate the mortgage insurers' cooperation in ensuring that all parties are fully prepared to make the most of the meet and confer session when it occurs.

Letter to Erika Brown Lee, Esq.

July 2, 2012

As you know, requests to extend the deadline for filing a petition to set aside or modify a CID are disfavored. *See* 12 CFR § 1080.6(d)(2); CIDs, Instruction II.F. But in the particular circumstances presented here, given the considerable likely benefit of holding a joint meet and confer session, and the intervening holiday week, the request is granted. The deadline for filing a petition to set aside or modify the CIDs is extended until July 30, 2012, as to each of the CIDs issued to the mortgage insurers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kent Markus', written over a horizontal line.

Kent Markus
Enforcement Director

Cc: (Via email)
Sara Millard, Esq.
Art O'Connor, Esq.
Jay N. Varon, Esq.
William L. Kirkman, Esq.
Earl Wall, Esq.

EXHIBIT E



1700 G Street NW Washington, DC 20552

August 17, 2012

Via Electronic Mail

Dan Stilwell, Esq.
MGIC Investment Corp.
250 East Kilbourn Avenue
Milwaukee, WI 53202

Re: Civil Investigative Demand issued to MGIC Investment Corp.

Dear Mr. Stilwell:

I am writing concerning the ongoing settlement negotiations between your client, MGIC Investment Corp. ("MGIC"), and Bureau staff. I understand that you and Bureau staff have made progress in your dialogue to date, and that the deadline for reaching settlement is rapidly approaching.

Accordingly, in order to facilitate further progress and encourage a resolution of this matter, I am authorizing another extension of the deadlines tolled in my letter to you of July 24, 2012 (the "July 24 letter"), as described below.

All deadlines in the Civil Investigative Demand ("CID") issued by the Bureau to MGIC on June 20, 2012, including the deadline for filing any petition to modify or set aside the CID, are extended until 5:00 p.m. Eastern Time on Wednesday, September 12, 2012 (the "settlement deadline"). If, by the settlement deadline, Bureau staff and MGIC have tentatively agreed to a settlement of the present matter, and MGIC has signed the consent order embodying that agreement, the CID deadlines will continue to be suspended until the Director of the Bureau takes action upon the consent order. If the Director approves and signs the consent order, the Bureau shall withdraw the CID.

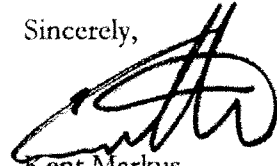
If, by the settlement deadline, no agreement and signature by MGIC as described above has occurred, the deadline for full compliance with the CID shall be October 2, 2012, and the deadline for filing of any petition to modify or set aside the CID shall be September 24, 2012.

Letter to Dan Stilwell, Esq.

August 17, 2012

This letter supersedes in full the July 24 letter. The extensions granted above are the only modifications granted to the CID.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kent Markus', written over a horizontal line.

Kent Markus
Enforcement Director

EXHIBIT F



Consumer Financial
Protection Bureau

1700 G Street NW, Washington, DC 20552

September 17, 2012

Via Electronic Mail

Jay N. Varon, Esq.
Foley & Lardner LLP
3000 K. ST. N.W.
Washington D.C. 20007
JVaron@foley.com

Re: Civil Investigative Demand issued to Mortgage Guaranty Insurance Corporation

Dear Mr. Varon,

I am writing concerning the ongoing settlement negotiations between your client, Mortgage Guaranty Insurance Corporation ("MGIC"), and Bureau staff, and the Civil Investigative Demand ("CID") issued by the Bureau to MGIC on June 20, 2012.

As you know, my August 17, 2012 letter to you (the "August 17 letter") continued the suspension of deadlines associated with the CID for another three weeks beyond the original four-week suspension granted in my letter to you of July 24, 2012 (the "July 24 letter"). That period of suspension expired on September 12, 2012, without any agreement on settlement.

At the same time, I am informed that you have worked cooperatively with Bureau staff to date and made progress toward such a settlement. In addition, I understand that, with a further four week extension to the CID deadlines, you will execute a new agreement tolling the statute of limitations in this matter, similar to the agreement executed on February 1, 2012, to extend the tolling period by an additional seven weeks.

As you know, requests for extensions of time in which to file a petition to modify or set aside a CID are disfavored. However, in order to continue to facilitate progress and encourage a resolution of this matter, I am authorizing another extension of the deadlines tolled in the July 24 and August 17 letters, retroactive to September 12, 2012, in the manner and subject to the conditions described below.

Letter to Jay Varon, Esq.

September 17, 2012

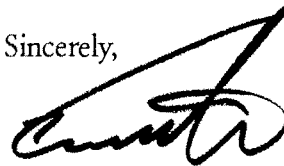
I have attached a tolling agreement embodying the extension described above. Once we have received your executed copy of that agreement, staff will promptly acknowledge receipt, at which time all deadlines in the CID, including the deadline for filing any petition to modify or set aside the CID, shall be extended until 5:00 p.m. Eastern Time on Wednesday, October 10, 2012 (the "settlement deadline"). If, by the settlement deadline, Bureau staff and MGIC have tentatively agreed to a settlement of the present matter, and MGIC has signed the consent order embodying that agreement or its attached stipulation (as appropriate), the CID deadlines will continue to be suspended until the Director of the Bureau acts upon the consent order. If the Director approves and signs the consent order, the Bureau will withdraw its CID.

If, by the settlement deadline, no agreement and signature by MGIC as described above has occurred, the deadline for full compliance with the CID shall be October 30, 2012, and the deadline for filing of any petition to modify or set aside the CID shall be October 22, 2012.

This letter supersedes in full the August 17 and July 24 letters. The terms of this letter, subject to your signing of the tolling agreement as described above, are the only modifications to the CID.

If you have any questions regarding the terms of this letter or the tolling agreement, contact Enforcement Attorney Donald Gordon at 202-435-7357.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent Markus", written over a horizontal line.

Kent Markus
Enforcement Director

Enclosures
(proposed tolling agreement; originally executed tolling agreement)

EXHIBIT G



Consumer Financial
Protection Bureau

1700 G Street NW, Washington, DC 20552

October 17, 2012

Via Electronic Mail

Jay N. Varon, Esq.
Foley & Lardner LLP
3000 K. ST. N.W.
Washington D.C. 20007
JVaron@foley.com

Re: Civil Investigative Demand issued to Mortgage Guaranty Insurance Corporation

Dear Mr. Varon,

I am writing concerning the ongoing settlement negotiations between your client, Mortgage Guaranty Insurance Corporation ("MGIC"), and Bureau staff, and the Civil Investigative Demand ("CID") issued by the Bureau to MGIC on June 20, 2012.

As you know, my September 17, 2012 letter to you (the "September 17 letter") continued the suspension of deadlines associated with the CID for another three weeks beyond the prior suspensions granted in my letters to you of July 24, 2012 (the "July 24 letter") and August 17, 2012 (the "August 17 letter"). That period of suspension expired on October 10, 2012, without any agreement on settlement.

At the same time, I am informed that you have worked cooperatively with Bureau staff to date and made progress toward such a settlement. In addition, I understand that, with a further five week extension to the CID deadlines, you will execute a new agreement tolling the statute of limitations in this matter, similar to the agreement executed on September 18, 2012, to extend the tolling period by an additional five weeks.

As you know, requests for extensions of time in which to file a petition to modify or set aside a CID are disfavored. However, in order to continue to facilitate progress and encourage a resolution of this matter, I am authorizing another extension of the deadlines tolled in the July 24, August 17, and September 17 letters, retroactive to October 10, 2012, in the manner and subject to the conditions described below.

Letter to Jay Varon, Esq.

October 17, 2012

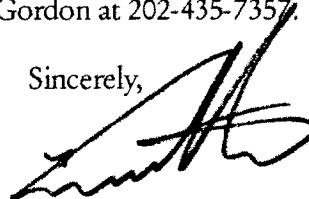
I have attached a tolling agreement embodying the extension described above. Once we have received your executed copy of that agreement, staff will promptly acknowledge receipt, at which time all deadlines in the CID, including the deadline for filing any petition to modify or set aside the CID, shall be extended until 5:00 p.m. Eastern Time on Wednesday, November 14, 2012 (the "settlement deadline"). If, by the settlement deadline, Bureau staff and MGIC have tentatively agreed to a settlement of the present matter, and MGIC has signed the consent order embodying that agreement or its attached stipulation (as appropriate), the CID deadlines will continue to be suspended until the Director of the Bureau acts upon the consent order. If the Director approves and signs the consent order, the Bureau will withdraw its CID.

If, by the settlement deadline, no agreement and signature by MGIC as described above has occurred, the deadline for full compliance with the CID shall be December 4, 2012, and the deadline for filing of any petition to modify or set aside the CID shall be November 26, 2012.

This letter supersedes in full the September 17, August 17, and July 24 letters. The terms of this letter, subject to your signing of the tolling agreement as described above, are the only modifications to the CID.

If you have any questions regarding the terms of this letter or the tolling agreement, contact Enforcement Attorney Donald Gordon at 202-435-7357.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent Markus", written over a horizontal line.

Kent Markus
Enforcement Director

Enclosures
(proposed tolling agreement; executed September 18, 2012 tolling agreement)

EXHIBIT H

Chester, Max

2012-MISC-MGIC Investment Corporation-0001

From: Donald.Gordon@cfpb.gov
Sent: Thursday, November 29, 2012 1:39 PM
To: Brown Lee, Erika
Subject: Mortgage insurance companies - settlement discussions
Importance: High

Erika,

I'm writing you in your capacity as joint counsel for the mortgage insurance companies in the present matter. As you know, we received the MIs' written submission yesterday, as well as various inquiries about meet and confer dates and times.

We were keenly disappointed by the substance of the changes that you submitted to us yesterday. We believe they did not embody significant progress toward, much less substantial agreement on, settlement. Thus, we cannot recommend a further extension to CID deadlines based on substantial agreement on the terms of settlement, as we previously indicated would be necessary.

At the same time, we have been working in good faith to obtain internal approval for certain changes to the order requested by the MIs that deviate from Bureau practice. We have not yet obtained an answer with regard to those changes, and we recognize that the delay involved here is accountable to us, and not the MIs. Accordingly, and solely on that basis, we are willing to grant short extensions to the CID deadlines, on the usual terms, to each of the six MIs as follows: the petition to modify or set aside shall be due next Friday, December 7, 2012, and compliance with the CID shall be due on Monday, December 10, 2012.

I would appreciate hearing at the earliest opportunity from each MI that they will agree to extend the tolling agreements as before in light of the extension described above. When we have those responses, letters will issue from our Enforcement Director.

We will send you a revised order and stipulation as soon as possible.

Regards,

Don

--

Donald R. Gordon
Enforcement Attorney
Consumer Financial Protection Bureau

Tel: 202 435 7357
Mob: 202 258 1847

consumerfinance.gov

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12/5/2012