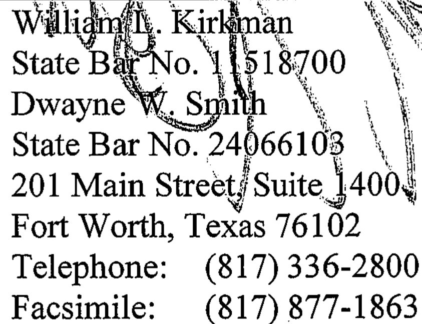
UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

	§
IN THE MATTER OF	§
OLD REPUBLIC INTERNATIONAL CORPORATION	§
	§

OLD REPUBLIC INTERNATIONAL CORPORATION'S (AND REPUBLIC MORTGAGE INSURANCE COMPANY'S) PETITION TO MODIFY OR SET ASIDE THE CIVIL INVESTIGATIVE DEMAND

Respectfully submitted,

BOURLAND & KIRKMAN, L.L.P.

By:

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OLD REPUBLIC INTERNATIONAL CORPORATION'S (AND REPUBLIC MORTGAGE INSURANCE COMPANY'S) PETITION TO MODIFY OR SET ASIDE THE CIVIL INVESTIGATIVE DEMAND

NOW COME Old Republic International Corporation ("ORI"), joined by its wholly owned subsidiary, Republic Mortgage Insurance Company ("RMIC"), and respectfully submit this Petition to Modify or Set Aside the Civil Investigative Demand (the "CID") issued to ORI by the Consumer Financial Protection Bureau (the "CFPB" or the "Bureau") on June 20, 2012, and would respectfully show as follows:

I. INTRODUCTION AND SUMMARY OF ARGUMENTS

On January 3, 2012, the Bureau informed ORI that it had opened an investigation into whether mortgage insurers, and the mortgage lenders they insure, violated Section 1036 of the CFPA, 12 U.S.C. § 5536, and Section 8 of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607, by entering into so-called captive reinsurance arrangements. In these captive arrangements, an affiliate of a lender (a "captive reinsurer") reinsured a portion of risk under mortgage guaranty insurance policies issued by a mortgage insurer to the lender. ORI is an insurance holding company. As such, it did not engage in any captive reinsurance business. Until August 31, 2011, ORI's wholly owned subsidiary, RMIC,

engaged in the business of insuring lenders on first lien mortgage loans. And, in connection therewith, RMIC had entered into certain captive reinsurance arrangements, which practice essentially ceased in December 31, 2008. Hence, the Bureau's investigation concerned the business of RMIC, not that of ORI.

In its January 3, 2012 letter, the Bureau informally requested that ORI provide it certain information and data relative to RMIC's historical involvement with captive reinsurance business. In response to this request, ORI facilitated RMIC's voluntary production during March and April of 2012, of information and data related to certain historical captive reinsurance arrangements of RMIC.

After receiving RMIC's information and data on its captive reinsurance business, the CFPB issued the aforementioned CID to ORI on June 20, 2012. Thereafter, extensive negotiations to settle potential disputes with the CFPB were conducted between the CFPB on the one hand and RMIC and various other mortgage insurers on the other hand.[1] During these negotiations, the Bureau granted various extensions of time for the mortgage insurers (including ORI/RMIC) to file petitions to modify or set aside the CIDs and to provide the information sought by the CIDs in order to allow settlement discussions to proceed. In that regard, ORI (and hence RMIC) received an extension until today, December 10, 2012, to file a petition and to December 18, 2012, to respond to the CID and provide responsive information and documents. Settlement negotiations eventually stalled and the extended time

[1]In June 2012, the CFPB also issued similar CIDs to the other mortgage insurers that also engaged in the business of captive reinsurance.

to file a petition has fallen upon ORI (and RMIC) and fell upon the other mortgage insurers on Friday. Hence, this petition is being presented to the Bureau by ORI and RMIC. ORI and RMIC are informed that all of the other mortgage insurers have also recently filed petitions to modify or set aside the CIDs issued to them.

Although the CID was addressed to ORI, it was RMIC that was an active writer of first lien residential mortgage insurance. Hence, it was RMIC that entered into risk and premium ceding arrangements with lender-affiliated reinsurers. Accordingly, this petition is filed on behalf of ORI and RMIC and is framed such that it is RMIC that would be responding to the CID.

As described more fully below, the CID should be set aside because:

(A) the CID does not meet the requirements for a civil investigative demand set forth in Section 1052(c)(2) of the Dodd-Frank Act;

(B) ORI did not engage in the private mortgage insurance business, nor did it enter into any captive reinsurance arrangements, and, therefore, could not have committed any of the complained-of acts or omissions;

(C) ORI is neither a "covered person" nor a "service provider" under the Consumer Financial Protection Act ("CFPA") Section 1002(6), 12 U.S.C. § 5481(6); and

(D) the CID cannot be enforced as to RESPA.

Alternatively, the CID should be modified because it is, in many ways, overly broad, places an unfair and undue burden on RMIC, and seeks irrelevant information. Subject to its request that the CID be set aside or modified, RMIC intends to comply, as is reasonably

possible, with certain portions of the CID on or before the due date – December 18, 2012. See below.

II. PROCEDURAL BACKGROUND RELATIVE TO ISSUANCE OF THE CID

As set out above, the CFPB issued the CID to ORI on June 20, 2012, after RMIC had voluntarily produced information and data related to its captive reinsurance arrangements in response to an informal January 2012 request from the Bureau. The CID purportedly concerns "whether mortgage lenders and private mortgage insurance providers" engaged in "unlawful acts and practices in connection with residential mortgage loans in violation of Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act, 12 U.S.C. §§ 5531 and 5536, and of the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq." The CID contains 20 interrogatories and 25 document requests (many of which contain multiple subparts).

As set out above, the CFPB also issued similar CIDs to the other private mortgage insurers. Therefore, on July 17, 2012, Erika Brown Lee, Esq., (Counsel for Radian Guaranty Inc.) sent a letter to the CFPB's Donald R. Gordon, Esq., on behalf of RMIC and the other mortgage insurers to whom CIDs had also been issued in advance of a group meet-and-confer session with the CFPB concerning the scope of the CIDs sent to the mortgage insurers. The letter identified several common issues that the mortgage insurers had with the CFPB's civil investigative demands, including that:

(a) the majority of requested categories of documents are overly burdensome and not reasonably calculated to lead to the discovery of admissible evidence given the applicable limitations periods;

(b) the CFPB's procedures on confidentiality do not preclude the CFPB from sharing confidential investigative information with private plaintiffs;

(c) many of the CID's definitions are over inclusive;

(d) the required production format is unduly burdensome;

(e) there is a substantial burden with retrieving and producing all of the requested electronically stored information;

(f) the creation of a production log by the time specified in the CID is unduly burdensome; and

(g) the stated deadline for production is all but impossible given the scope of the requested documents and information.

On July 19, 2012, CFPB hosted a group meet-and-confer session with RMIC and the other mortgage insurers in Washington, D.C. RMIC and the other mortgage insurers were prepared to meaningfully discuss appropriate modifications of the CID at this meet and confer. The CFPB, however, initially raised the possibility of settling its investigation and potential claims against the mortgage insurers. In that regard, the CFPB offered to toll the time to petition for modification of the CID during settlement negotiations and to respond to the CIDs. RMIC and the other insurers opted to explore a potential settlement with the CFPB. As a result, RMIC and the CFPB did not discuss the scope of the CID in detail at that time and settlement discussions followed between the CFPB on the one hand and RMIC and the other mortgage insurers on the other hand throughout the rest of the summer and into the fall of 2012.

On November 19, 2012, the CFPB met with a group of mortgage insurers to engage in further settlement discussions. RMIC did not attend this meeting, as it counsel was in trial

in another matter. On information and belief, the parties made progress at the meeting to resolve this matter. Given this progress, the mortgage insurers requested a short further extension of time to file a petition to modify or set aside the CID, then due November 26, 2012.[2] The CFPB granted the mortgage insurers (except ORI/RMIC) a brief extension to December 3, 2012, which was later extended to December 7, 2012. On November 27, 2012, the CFPB formally granted ORI (and hence RMIC) an extension until December 10, 2012, to file this Petition and until December 18, 2012, to provide responses and objections, if any, to the individual interrogatories and production requests contained in the CID. See attached letter from the CFPB dated November 27, 2012, which is attached hereto and marked as Exhibit A.

During the afternoon of December 7, 2012, RMIC, through the undersigned attorney, and the CFPB, through Kim Ravener, Navid Vazire, and Crystal Summer, conferred very briefly telephonically to address the issues in this petition. No resolution was reached. The undersigned then wrote the CFPB on December 10, 2012, to set out various areas of potential discussion concerning the CFPB's scope. The parties have been unable to reach an agreement on the terms of a proposed settlement. To avoid waiving its substantial objections to the CID and because of the impending deadlines, ORI and RMIC have filed this petition to modify or set aside the CID under 12 U.S.C. § 5562(f) on December 10, 2012. As stated earlier herein, however, and notwithstanding this Petition, ORI and RMIC will be providing certain

[2]RMIC and the other mortgage insurers had entered into a series of tolling agreements and received several extensions to file petitions while settlement discussions continued.

information and certain documents responsive to the CID by December 18, 2012, subject to their objections.

III. PRELIMINARY STATEMENTS AS TO ORI, RMIC, AND THE CAPTIVE REINSURANCE BUSINESS

A. ORI

ORI is a publicly held insurance holding company. It simply owns the stock in various companies, including the stock of the parent of RMIC. See attached Exhibit B. ORI has never engaged in the mortgage insurance business, nor has it ever entered into any captive reinsurance arrangements.

ORI owns, among other companies, the parent of RMIC. RMIC provided first lien mortgage insurance for numerous loans over an extended period of time prior to its financial impairment. In connection therewith, RMIC entered into captive reinsurance agreements. Hence, it is ORI's downline subsidiary, RMIC, that is in reality the focus of the CID and the CFPB's investigation.

B. BACKGROUND OF RMIC AND MORTGAGE INSURANCE

RMIC is a North Carolina-domiciled mortgage guaranty insurer. Mortgage insurance is typically purchased by a lender when the amount of a borrower's loan exceeds 80% of the value of the property. This insurance protects the lender from loss in the event a borrower defaults on his or her loan and the lender is unable to recover the full amount owed following a foreclosure sale. The borrower typically pays the cost of the mortgage insurance, though the lender is the beneficiary of the policy. By purchasing mortgage insurance, lenders are

able to extend loans to otherwise-unqualified borrowers. Unlike many other types of insurance, such as property and casualty insurance or title insurance, which typically have a stable and predictable loss experience from year to year, the mortgage insurance industry is much more volatile, experiencing years of relatively low losses followed by sudden, even catastrophic spikes in claims. For example, after experiencing low loss levels in the 1970s, mortgage insurers experienced dramatic losses in the late 1980s and early 1990s. Mortgage insurers experienced even more dramatic losses during and following the financial crisis that began in 2008.

RMIC purchased reinsurance coverage from reinsurance providers affiliated with certain mortgage lenders through 2008. Because the reinsurance was intended to provide protection against catastrophic losses, the captive reinsurer provided "excess of loss" coverage, meaning that coverage would be triggered only when RMIC'S losses on loans covered by the agreement reached a certain level. The reinsurer would then be responsible for 100% of the losses until an agreed upon limit or "exit percentage" was reached, at which point the reinsurance coverage would cease and RMIC would be responsible for any remaining losses. In addition to providing direct monetary protection against catastrophic losses, the existence of the reinsurance agreements with captive reinsurance companies served to better align the interests of the lender with which the captive reinsurance company was affiliated, thereby hopefully reducing RMIC's risk of loss. While RMIC ceded a portion of its premiums to captive reinsurers to pay for the reinsurance coverage, the captive reinsurers did not receive the ceded premiums for their own use. Instead, under many laws

and regulations governing reinsurance, ceded premiums were deposited into trust accounts solely for the benefit of RMIC, as security for the payment of reinsurance claims. All of RMIC's captive reinsurance "excess-of-loss" arrangements were terminated effective December 31, 2008, in the wake of the financial crisis, either by commutation or by being put into run-off. RMIC has not placed any loan in an excess-of-loss captive reinsurance arrangement since December 31, 2008.

RMIC also historically obtained "quota share" captive reinsurance. Under such quota-share contracts, insurance captives dedicated to assumptions of RMIC-underwritten business received an agreed-upon pro-rata percentage of the mortgage guaranty premiums produced by the lender, were responsible for an equivalent percentage of paid claims and related claim and contingency reserves, and paid appropriate underwriting expenses. The dedicated captives' capital at risk was to be aligned with RMIC's own risk and the capital requirements of state insurance regulations. Existing and new quota-share reinsurance placements assure necessary commonality of interests among insurer and reinsurer and thus provide greater transparency of capital commitments for mortgage guaranty insurance buyers, regulators, rating agencies, and investors. All of RMIC's quota-share arrangements were also terminated as of December 31, 2008, except for one. The only quota-share captive agreement that placed loans in a captive arrangement after December 31, 2008, was a Regions Mortgage quota-share captive, which was a very insignificant portion of RMIC's captive reinsurance business.

As set out above, RMIC's use of captive reinsurance largely ended in 2008. Thus, more than three years have passed since the closing dates of the last loans that were placed into these arrangements. This is a fact that ORI and RMIC believe will be outcome-determinative of any litigation over these captive reinsurance arrangements, given the applicable three-year limitations period which governs the CFPB for purported RESPA or CFPA violations. RMIC has concerns over retroactively applying the CFPA to penalize contracts and conduct that have been fully disclosed to all appropriate insurance regulators for more than a decade. RMIC submits that the burden in producing voluminous data and information must be viewed in light of this significant statute of limitations and retroactivity problems that the CFPB would encounter in attempting to pursue litigation for any purported violation. See below.

C. PRIOR HISTORY OF INVESTIGATION AND LITIGATION RELATIVE TO CAPTIVE REINSURANCE

Prior Regulatory Investigations

The CFPB's investigation into whether the use of captive reinsurance arrangements violates the anti-kickback provisions of RESPA is duplicative of other previous historical investigations which have yielded nothing. Since 2005, a number of insurance regulators (including the New York and Colorado Departments of Insurance and the Minnesota Department of Commerce) have investigated captive arrangements. Indeed, the CFPB inherited this investigation from a long-running investigation commenced by the U.S. Department of Housing and Urban Development Office of the Inspector General ("HUD-

OIG"). RMIC has expended considerable time and resources in cooperating with these investigations through the years. None of these investigations resulted in administrative actions being filed against RMIC.

Prior Class-Action Litigation and Pending Class Actions

In or around 2000, RMIC and the other national mortgage insurers were sued in separate class-action lawsuits concerning captive arrangements. In 2003, RMIC settled a class action entitled *Barnes v. Republic Mortgage Insurance Co.*, Civil Action No. CV-199-240 (S.D.Ga. Augusta Division). The *Barnes* settlement included a future injunction which provided that captive arrangements would not violate RESPA if certain criteria were satisfied. RMIC continues to voluntarily comply with the *Barnes* injunction's limitations to this very day. See Exhibit C, which is incorporated herein for all purposes.

Also, in recent years, private plaintiffs have filed more than a dozen new class-action suits claiming captive reinsurance arrangements violate RESPA. *See, e.g.*, *McCarn v. HSBC USA, Inc.*, 1:12-cv-00375 (E.D. Ca.) (dismissed on standing and statute of limitations grounds); *Samp v. JPMorgan Chase Bank NA*, 5:11-cv-01950 (C.D. Ca.); *Riddle v. Bank of America Corp.*, 2:12-cv-017040 (E.D. Pa.). As explained below, RMIC seeks appropriate confidentiality treatment for documents and information provided to the CFPB in response to the CID given the existence of these pending class actions and investigations.

D. RMIC'S FINANCIAL DIFFICULTIES AND STATE-ORDERED SUPERVISION

Due to the severe financial crisis and many other business and financial concerns, RMIC ceased to write new mortgage insurance business effective August 31, 2011, and is currently in "run-off" status. The term "run-off" means that RMIC is continuing to service existing mortgage insurance policies but it is not writing any new policies.

Mortgage insurance is a heavily regulated industry. Although mortgage insurance involves a transaction between private parties, the price of mortgage insurance is typically regulated and set by a state's department of insurance. RMIC is currently under the supervision of the North Carolina Department of Insurance (the "NCDOI") due to its severe financial impairment. The NCDOI is RMIC's primary regulator. The North Carolina Insurance Code grants broad powers to the NCDOI to enforce rules or exercise discretion over almost all significant aspects of RMIC's insurance business.

On January 20, 2012, RMIC was officially ordered into supervision by the NCDOI due to its financial condition, and an order was entered on that date by the NCDOI formally dictating the future operations of RMIC by virtue of its impaired financial condition. On October 16, 2012, a hearing was held before the NCDOI to consider a proposed corrective plan submitted by RMIC to the NCDOI as required by the order of January 20, 2012, and to determine whether such corrective plan should be approved and incorporated into the January 20, 2012 summary order. Thereafter, on November 28, 2012, the NCDOI entered its Final Order Approving Corrective Plan which held that RMIC was to remain under administrative

supervision of the Commission of the NCDOI. The November 28, 2012 order instituted further financial corrective measures and placed further restrictions upon RMIC. True and correct copies of such orders of January 20, 2012, and November 28, 2012, are attached hereto and incorporated as Exhibits D and E. As can be seen in the aforementioned orders, RMIC will continue to attempt to service existing mortgage insurance policies, is still not insuring new loans, and is to preserve its capital by only paying portions of submitted claims. The orders, among other things, allow RMIC's management to continue to operate RMIC under close supervision by the NCDOI. However, the orders impose numerous restrictions on RMIC's ability to conduct business, including restrictions on substantially all operating matters and expenditures and restrictions on RMIC's ability to enter into any transactions with unaffiliated parties. Under the November 28, 2012 order, valid policy claims submitted to RMIC under in-force policies are settled by paying up to only a portion thereof (60%). Failure to comply with the provisions of these orders could result in the imposition of fines or further legal proceedings, including receivership proceedings for the conservation, rehabilitation or liquidation of RMIC.

RMIC is therefore in what can generously be described as a poor financial condition. Its long-term viability is in jeopardy, which has caused the NCDOI to enter the aforementioned orders in an attempt to protect RMIC's long-term financial viability. RMIC's new state of affairs has required that RMIC reconfigure and further simplify its operations to secure necessary economies and preserve capital. RMIC must now operate in a most austere, cost-effective fashion with a clear focus on the nuts-and-bolts of a simpler, run-off

book of business. Since receiving the NCDOI's orders and entering run-off, RMIC has significantly reduced its staff. At one time employing approximately 350-400 people, RMIC currently operates with a skeleton crew of approximately 120 employees, which is only sufficient to meet the requirements of the orders. The roster of RMIC employees continues to dwindle with each passing month. RMIC is essentially down to a skeleton crew whose focus is to orderly and appropriately run-off RMIC's business in accordance with the orders of the NCDOI. In reality, there are only four to five employees at RMIC who are capable of assisting the undersigned counsel in responding to the CID and producing documents.

The adverse implications of this significant staff reduction on RMIC's ability to comply with the CID should be obvious to the CFPB. Stated imply, RMIC does not have the "person power" to comply with the onerous requests of the CID. See below.

IV. <u>LEGAL OBJECTIONS</u>

The CID should be set aside as is more fully explained below. The sole authority relied on by the Bureau for issuing the CID is Section 1052 of the CFPA.[3] The Bureau explicitly framed the CID as part of an investigation concerning whether "lenders and mortgage insurance providers" had engaged in "unlawful acts and practices . . . in violation of Section 1036" of the CFPA, 12 U.S.C. §§ 5531 and 5536. CID at 1, "Notification of Purpose Pursuant to 12 C.F.R. § 1080.5." Section 1036 states that "[i]t shall be unlawful for . . . any *covered person* or *service provider*," as defined in the CFPA, to "commit any act or omission in violation of a Federal consumer financial law" or "to engage in any unfair,

[3]Although RESPA gives the Bureau authority to conduct investigations and issue subpoenas, 12 U.S.C. § 2617, the Bureau did not issue the CID pursuant to that authority.

deceptive, or abusive act or practice." CFPA § 1036(a)(1)(A) & (B), 12 U.S.C. § 5536(a)(1)(A) & (B). As explained below, neither ORI nor RMIC is a "covered person" nor a "service provider" under the CFPA. By definition, the Bureau cannot have authority to investigate whether ORI or RMIC has allegedly violated a provision that does not even apply to it. Therefore, the CID, as it is currently framed, exceeds the Bureau's authority and should be set aside. While Section 1052 would authorize the Bureau to issue a CID to ORI or RMIC as a third party it believed had information relevant to an alleged violation committed by someone who *is* subject to Section 1036, the CID here is explicitly *not* framed as a demand for information directed to a third party.[4] Instead, the express purpose of the CID is, in part, to determine whether "mortgage insurance providers," of which RMIC is one, have violated Section 1036 of the CFPA. The CID therefore explicitly purports to make RMIC and other mortgage insurers the target of an investigation under Section 1036, and thus exceeds the Bureau's authority. The CID should also be set aside as to ORI because ORI has not engaged in the private mortgage insurance business. Nor is ORI or RMIC a "covered person" or a "service provider" under the appropriate regulatory act. Finally, the CID simply cannot be enforced with respect to RESPA.

Alternatively, the CID should be modified as more particularly described below because it is indefinite, overbroad, and unduly burdensome in the following ways:

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[4] Section 1052 of the CFPA says that the Bureau may issue a CID whenever it has "reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation" of a Federal consumer financial law. CFPA § 1052(c)(1), 12 U.S.C. § 5561(c)(1).

***Time Period*:** The statute of limitations for a claim by the Bureau under Section 8 of RESPA is 3 years. 12 U.S.C. § 2614. The CID states that "[u]nless otherwise directed," the time period of the requests dates back almost twelve years, to January 1, 2001. CID Instructions ¶ C. A twelve-year time period, in relation to a three-year limitations period, is plainly unreasonable. But, in reality, the time period is even broader than this, because the CID seeks information dating back to the "inception" of every captive reinsurance arrangement which, in some instances, is fifteen or more years ago. Indeed, some requests in the CID date back almost eighteen years, to January 1, 1995. If not set aside, the CID should be modified so that it is limited to information after June 20, 2009, three years prior to the service date of the CID. RMIC would be willing to negotiate a production of documents outside that time frame to the extent they have continuing relevance within the limitations period, such as the captive reinsurance agreements and associated trust account agreements.

***The definition of "mortgage insurance"*:** The CID does not define "mortgage insurance." ORI and RMIC propose that "mortgage insurance" be defined as primary "flow" coverage on first-liens under ORI's Master Policy. This is the type of coverage most relevant to the arrangements the Bureau seeks to investigate.

***The definition of "the Company"*:** The CID defines "the Company" as "ORI, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names and affiliates . . . ." This is far too broad and would require ORI to search for and produce information relating to entities that have nothing whatsoever to do

with mortgage insurance. ORI and RMIC propose that "the Company" should be defined as "RMIC."

***Number of reinsurance agreements*:** The CID unreasonably seeks information regarding all of the captive reinsurance agreements to which RMIC ever was a party. In responding to the requests for information in the Bureau's January 3, 2012 letter, RMIC and the Bureau agreed to limit the requests to eighteen reinsurance arrangements. The CID should be similarly narrowed, although given the far greater burdens of responding to the CID, RMIC proposes that the CID be limited to a manageable number of reinsurance arrangements agreed upon by RMIC and the Bureau.

***Creating documents*:** Several of the requests would require RMIC to provide date-by-date and transaction-by-transaction histories with respect to certain captive agreements. These documents do not exist, and could only be created by combing through thousands of pages of paper files, covering fifteen or more years, to identify each and every transaction relating to these captive agreements and the associated trust accounts. In the current challenging economic environment, RMIC is very under-staffed and would suffer a serious disruption of its important capital-preservation business operations if it had to devote employees to such a time-intensive task. The CID should be modified so that it does not require RMIC to create or compile such new documents.

***"Actual" versus "potential" captives*:** Numerous requests seek information relating to "potential" arrangements. It is difficult if not impossible to interpret what "potential" means. In all such cases the request should be restricted to *actual* arrangements.

***Production format*:** The document submission standards are extremely onerous, and it appears that it is impossible for RMIC to comply with same. The standards mandate that the production (1) be organized by request and by custodian, (2) be encrypted using Microsoft Bitblocker, (3) be bates-labeled in a particular format, (4) maintain the original native source of *each* document and preserve *all* metadata, (5) contain certain specified fields of metadata in a particular order, (6) be searchable, and numerous other conditions and requirements. RMIC requests that the Bureau agree that document productions can be made in PDF or TIF format, or in their native format (*i.e.* Excel files). In addition, RMIC proposes to eliminate the requirement that it identify, for each document produced, the document request to which that document is responsive.

***Electronically stored information* (*"ESI"*):** RMIC has severe limitations on its ability to provide ESI. RMIC simply cannot provide such information going back to the inception of the mortgage reinsurance arrangements, which in most cases date from the mid-to-late 1990s. Prior to the mid-2000s, ESI either does not exist, or, if it does exist, would be extremely expensive and difficult to recover. RMIC proposes that the Bureau agree to withdraw its request for ESI at this time, subject to re-visiting the issue after an initial document production.

***Attorney-client privilege*:** The CID requires RMIC to produce information and documents subject to attorney-client privilege. RMIC will not produce any such privileged materials. Moreover, the CID's requirements for a privilege log are unduly burdensome. RMIC proposes that the privilege log requirements be modified to exclude the requirement

of a log for communications with outside counsel and work product drafts, pleadings and memos relating to private actions and government investigations (including this investigation). RMIC also has issues with other defined terms within the CID, confidentiality, custodians, creation of documents, and as to other matters set out below.

In addition to these global modifications to the CID as a whole, individual requests require additional, more specific modifications as will be explained when RMIC presents its specific responses and objections to the specific CID requests and interrogatories on or before December 18, 2012.

A. The CID should be set aside because it improperly fails to identify the nature of the conduct under investigation.

Section 1052(c)(2) of the Dodd-Frank Act requires a CID to "state the nature of the conduct constituting the violation which is under investigation," as well as cite the applicable provision of law. *See also* 12 C.F.R. § 1080.5. This explicit statutory requirement is crucial to ORI's ability to understand and respond to the CID, as well as to formulate appropriate objections and to challenge the overly broad aspects of the CID.

Despite this clear statutory directive, however, the CID fails to "state the nature of the conduct" at issue. Rather, the CID merely states that the "purpose of the 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 or practices in connection with residential mortgage loans in violation of Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Financial [sic] Protection Act, 12 U.S.C. §§ 5531 and

5536, and the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq." This statement completely fails to fulfill the statutory requirement and, additionally, is insufficient to provide notice to ORI regarding the nature of the investigation, as the statement covers every aspect of mortgage lending.

The CFPB's authority to issue CIDs is conditioned on "the administrative steps required by the [statute] hav[ing] been followed." *See United States v. Powell*, 379 U.S. 48, 58 (1964). Since the CID fails to comply with the Dodd-Frank Act's requirement to "state the nature of the conduct constituting the violation which is under investigation," the CID is void and must be withdrawn.

The CFPB's failure to properly apprise ORI and RMIC of the precise nature of the CFPB's investigation prejudices ORI's ability to formulate appropriate objections and to challenge the overbroad aspects of the CID. If the CFPB does not set aside the CID, it should, at the very least, modify the CID to clearly "state the nature of the conduct constituting the violation which is under investigation." Absent such modification, the CID is void and must be set aside. *See* Dodd-Frank Act § 1052(f)(3) (petition for order modifying or setting aside CID "may be based upon any failure of the demand to comply with the provisions of this section.").

B. The CID should be set aside as to ORI because ORI did not engage in the private mortgage insurance business.

ORI is a publicly traded holding company that has never participated in the private mortgage insurance or private mortgage insurance reinsurance business. ORI is, therefore, not a proper target of the CFPB's investigation nor the proper recipient of the CID.

ORI's subsidiary, RMIC, did engage in the private mortgage insurance business. Though RMIC is a wholly owned subsidiary of ORI, the two companies operate independently of one another, and they do not share common employees, computer systems, or financial accounts. The CID imposes an unreasonable burden upon ORI by requiring it to expend a large amount of its resources to provide the requested information or retrieve the documents that are responsive to the CID, if any, because all such information is known by and in the possession of RMIC. Therefore, ORI respectfully requests that the CID be set aside as to it and redirected, if at all, to RMIC.

This request notwithstanding, ORI is causing RMIC to provide a substantial number of reasonably available information and documents in response to the CID by the due date–December 18, 2012. Such responses will be forthcoming by such date on a "rolling production" basis.

C. The CID should be set aside because neither ORI nor RMIC is a "covered person" nor a "service provider" under the CFPA.

The CFPA provides that a "person that engages in offering or providing a consumer financial product or service" is a "covered person." CFPA § 1002(6), 12 U.S.C. § 5481(6). First, ORI does not satisfy this definition because it does not provide any kind of financial

product or service to consumers. ORI is simply a holding company–it does not conduct any business directly with consumers. Second, and to the extent that the CID may be redirected to RMIC as requested above, RMIC similarly does not satisfy the definition of a "covered person" because "[t]he term 'financial product or service' does not include...*the business of insurance*..." CFPA § 1002(15)(C), 12 U.S.C. § 5481(15)(C) (emphasis added); *see also* CFPA § 1027(m), 12 U.S.C. § 5517(m) ("The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance."). Prior to entering into run-off, RMIC wrote and issued mortgage insurance and was, therefore, engaged in the "business of insurance."

The Dodd-Frank Act defines a "service provider" as any person or entity that provides a material service to a "covered person in connection with the offering or provision...of a consumer financial product or service." 12 U.S.C. § 5481(26). ORI has never provided any kind of service to a "covered person" in this way. Again, ORI is simply a holding company. To the extent that the CID may be redirected to RMIC, it similarly does not fall within the definition of a "service provider" because the "business of insurance"–including mortgage insurance–is excluded from the definition of a "financial product or service."

D. The CID should be set aside because it cannot be enforced with respect to RESPA.

The CFPB's authority to enforce RESPA is limited to seeking injunctive relief. The investigation of RMIC for any purported violation of RESPA is futile. RMIC is in run-off and is no longer issuing new mortgage insurance policies nor entering into new captive

reinsurance agreements. Accordingly, there is no conduct to enjoin. Moreover, any claim that the CFPB might elect to bring would be barred by the statute of limitations, the filed-rate doctrine, and the McCarran-Ferguson Act. Bringing an action against RMIC would be pointless, and therefore forcing RMIC to devote its extremely limited resources to producing information to the CFPB in an investigation of claims that are barred as a matter of law (and lacking in merit in the first place) is not appropriate.

1. RESPA limits the CFPB to injunctive relief and there is nothing to enjoin.

RMIC does not dispute that the CFPB has the authority to enforce RESPA. However, under RESPA, the CFPB may bring an action only to "enjoin violations." 12 U.S.C. § 2607(d)(4). The CFPB is prohibited from seeking monetary relief or imposing a monetary fine for a RESPA violation. Here, to the extent the CFPB seeks monetary relief or to impose a monetary fine against RMIC for any alleged past violation of RESPA, such relief is expressly barred by RESPA. To the extent the CFPB seeks to enjoin RMIC's participation in any future captive reinsurance agreement, there is nothing for the CFPB to enjoin. RMIC ceased writing new mortgage insurance in August 2011 and is currently in run-off; it has not entered into a captive reinsurance agreement in over four years. No new loans have been placed in a captive arrangement in almost four years, and RMIC is prohibited from issuing any new policies by the Corrective Orders. Because there is no possibility of a future RESPA violation, there is no need to "enjoin" RMIC.

2. Any RESPA claim the CFPB could assert against RMIC would be barred by RESPA's statute of limitations.

Any potential RESPA claim that the CFPB could assert against RMIC as a result of its investigation would be barred by the three-year statute of limitation. RMIC ceased issuing new commitments for mortgage insurance coverage in August 2011. RMIC has also not placed any loan into a captive reinsurance agreement in almost four years.

Under RESPA, the CFPB must bring an action within three years "from the date of the occurrence of the violation." 12 U.S.C. § 2614. Because Congress explicitly stated that the limitations period for RESPA violations should begin within three years "from the date of the occurrence," rather than "when the action accrues," the federal discovery rule is inapplicable to RESPA claims. *Mullinax v. Radian Guaranty, Inc.*, 199 F. Supp 2d 311, 324 (M.D.N.C. 2002); *Perkins v. Johnson*, 551 F. Supp. 2d 1246, 1254 (D. Colo. 2008). Consequently, courts universally hold that RESPA violations involving alleged kickbacks occur on the date of the closing of the mortgage loan. *See e.g., Snow v. First Am. Title Ins. Co.*, 332 F.3d 356, 359 (5th Cir. 2003) ("The phrase 'the date of the occurrence of the violation' refers to the closing, i.e., when the plaintiffs paid for the insurance"); *In re Community Bank of N. Va.*, 622 F.3d 275 (D.D.C. 2010) (same). Given RESPA's focus on the overcharging for settlement services, and the fact that the overcharge occurs at the time of the settlement, a RESPA violation occurs, if at all, on the date of the closing of the loan.

Because a RESPA violation occurs, and the limitations period begins, once a borrower overpays for a settlement service at the time of closing, any RESPA claim that the CFPB

could possibly assert against RMIC would be barred by the three-year state of limitations. RMIC ceased issuing new mortgage insurance policies in August 2011. Thus, a mortgage loan closing involving insurance written by RMIC has not occurred in over a year. Moreover, all but one of the captive reinsurance arrangements involving RMIC that are referenced in the CID were terminated before 2009, either by commutation or by being put into run-off[5]. No allegedly illegal referrals could have occurred *after* RMIC ceased issuing new policies or *after* the agreements were terminated.[6]

Accordingly, because any RESPA claim that the CFPB may assert against RMIC is barred by the three-year statute of limitations period, the CID should be set aside.

3. The reinsurers "actually performed...services" under the captive reinsurance agreements.

Any RESPA claim against RMIC based on a captive reinsurance agreement would be barred under RESPA's safe-harbor provision, which provides: "Nothing in this section shall be construed as prohibiting...the payment to any person of a bona fide salary or compensation or other payment for goods of facilities actually furnished or for services actually performed..." 12 U.S.C. § 2607(c). Here, there is no dispute that the captive reinsurers

[5]As of today, only a small portion of in-force mortgage insurance policies issued by RMIC are subject to captive reinsurance arrangements.

[6]Although RMIC continues to service its remaining in-force insurance policies, including collecting premiums and paying claims resulting from loans in default, these transactions do not restart the statute of limitations period. Indeed, several courts have rejected the argument that a RESPA violation occurs upon each monthly payment for mortgage insurance premiums that takes place after the closing. *See Mullinax*, 199 F. Supp. 2d at 325 (rejecting interpretation of RESPA's limitations period that created disparate results among borrowers who have the option to pay for mortgage insurance in one lump sum or through monthly payments); *Snow*, 332 F.3d at 360-61 (rejecting interpretation of RESPA's limitation period that would allow double recovery or cause like plaintiffs to face unalike limitations period).

"actually performed" "services" for RMIC in exchange for ceded premium. Under a typical captive reinsurance agreement, a reinsurer agrees to assume a portion of the mortgage insurers's risk with respect to a given pool of loans in exchange for the ceded premium payments. In addition to this assumption of risk, the reinsurers generally establish trust accounts for the benefit of mortgage insurers, which are funded with reinsurance premium payments made by the mortgage insurer and capital contributions by the reinsurers. These accounts hold the funds that are to be used under the reinsurance agreement to pay claims.

All of RMIC's captive reinsurance agreements include minimum capital requirements and require a trust to be established to support the reinsurer's obligations under the agreements. To date, reinsurers have paid millions of dollars in reinsurance claims under the captive reinsurance agreements. RMIC received significant consideration pursuant to the captive reinsurance agreements in exchange for ceded premium.

4. Consumers have not been harmed by captive reinsurance agreements.

The captive reinsurance agreements at issue in the CFPB's CID had (and have) no impact on the price, availability, quality or other characteristics of the mortgage insurance purchased by consumers. In short, captive mortgage insurance agreements had no impact on consumers.

As explained in the following sub-section, the rates consumers pay for mortgage insurance are governed by RMIC's rate filings with state departments of insurance. RMIC is not permitted to–and does not–charge more or less than the filed rates in each state. Any premium ceded to a captive reinsurer pursuant to a captive reinsurance agreement only

reduces the amount of premium retained by RMIC–it does not increase the amount of premium paid by the consumer. The consumer pays the same rate regardless of whether a captive reinsurance agreement exists or what its terms may be. Moreover, the quality of the mortgage insurance is unaffected by a captive reinsurance agreement. Any claim made on the policy is paid regardless of the existence of a captive reinsurance agreement.

Mortgage insurance is a product for the benefit of the lender, not the consumer. The lender may require mortgage insurance as a condition of making a mortgage loan and may charge the consumer for the insurance, but the cost of the insurance, and the existence of captive mortgage reinsurance arrangements, are all disclosed, and the ultimate provision and cost of mortgage insurance is simply not affected by captive mortgage reinsurance arrangements.

5. The CFPB would be barred from filing a RESPA claim against RMIC under the "filed rate" doctrine.

The price of the mortgage insurance issued by RMIC is filed with, and approved by, a state's department of insurance and is thus *per se* reasonable. Accordingly, any RESPA claim against RMIC tied to mortgage insurance purchased by consumers (for the benefit of their lenders) would be barred by the filed-rate doctrine. The filed-rate doctrine bars all claims where, as here, the injury is alleged to be the result of paying an illegal rate, but the rate paid was filed with a regulatory agency (state department of insurance) and the regulated entity (RMIC) is forbidden from charging rates for its services other than those filed with the regulatory agency. *AT&T v. Cent. Office Te. Inc.*, 524 U.S. 214, 222 (1998). Under the filed-

rate doctrine, "any 'filed rate'–that is, one approved by the governing regulatory agency–is per se reasonable and unassailable in judicial proceedings brought by ratepayers." *Wegoland Ltd. v. NYNEX Corp.*, 27 F.3d 17, 18 (2nd Cir. 1994).

Here, the filed-rate doctrine would bar any claim by the CFPB that RMIC violated RESPA through an alleged kickback or fee-splitting scheme through a captive reinsurance arrangement. The rate consumers paid for mortgage insurance issued by RMIC was submitted to, and approved by, the department of insurance in the several states in which RMIC issued policies. Because consumers purchased mortgage insurance at a "filed-rate," that rate is *per se* reasonable.

Furthermore, because filed rates are deemed to be *per se* reasonable, any RESPA claim asserted by the CFPB would be barred by the safe harbor of Section 8(c)(2) of RESPA. 12 U.S.C. § 2607(c). According to that safe harbor, nothing in RESPA prohibits a charge for a settlement service that is reasonably related to the value of the good or services provided. *Id.*; 24 C.F.R. § 3500.14(g)(2). The Department of Housing and Urban Development's two-prong test for determining if a payment qualifies for RESPA's safe harbor provision requires an evaluation of (1) "whether goods for facilities were actually furnished or services were actually performed for the compensation paid" and (2) "whether the payments were reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed." RESPA Statement of Policy 2001-1; Clarification of Statement of Policy 1999-1 Regarding Lender Payment to Mortgage Brokers, and Guidance Concerning Unearned Fees, 66 Fed. Reg. 53,052, 52,054 (Oct. 18, 2001); RESPA Statement

of Policy 1999-1 Regarding Lender Payment to Mortgage Brokers, 64 Fed. Reg. 10,080, 10,084 (Mar. 1, 1999). Here, as detailed above, the first prong is clearly met. The second prong is also satisfied because a filed rate is *per se* reasonable. Accordingly, the relationship between the premium charged and the service provided satisfied Section 8's safe harbor as a matter of law.

6. The McCarran-Ferguson Act prohibits the CFPB from asserting a RESPA claim against RMIC.

RMIC denies that it engaged in any conduct that violates RESPA. But even if it did, the McCarran-Ferguson Act's reverse preemption rule would bar the CFPB from asserting a RESPA claim against RMIC. Section 1012 of the McCarran-Ferguson Act provides:

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance...

15 U.S.C. § 1012(a)-(b).

Congress enacted the McCarran-Ferguson Act to "restore the supremacy of the States in the realm of insurance regulation." *U.S. Dep't of Treasury v. Fabe*, 508 U.S. 491, 500 (1993). The McCarran-Ferguson Act leaves insurance regulation to the states, and "ensure[s] that federal statutes not identified in the Act or not yet enacted would not automatically override state insurance regulation." *Humana Inc. v. Forsyth*, 525 U.S. 299, 306 (1999). Congress, "[b]elieving that the business of insurance is 'a local matter,'...explicitly intended the McCarran-Ferguson Act to restore state taxing and regulatory powers over the insurance

business..." *W. & S. Life Ins. Co. v. State Bd. Of Equalization of Cal.*, 451 U.S. 648, 654 (1981) (citing H.R. Rep. No. 143, 79th Congress, 1st Sess., 2 (1945)). Indeed, "the Act does not seek to insulate state insurance regulation from the reach of all federal law," but rather, "it seeks to protect state regulation primarily against *inadvertent* federal intrusion–say, through enactment of a federal statute that describes an affected activity in broad, general terms, of which the insurance business happens to constitute one part." *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 39 (1996) (emphasis in original).

The McCarran-Ferguson Act precludes the application of a federal statute if (a) the federal statute does not "specifically relat[e] to the business of insurance," (b) state law exists that affect "the business of insurance,"[7] and (c) the federal statute would "invalidate, impair, or supersede" state insurance law. *Humana*, 525 U.S. at 307. The McCarran-Ferguson Act bars the application of RESPA to RMIC's conduct because (a) RESPA does not "specifically relat[e] to the business of insurance," (b) state insurance law governing and administering mortgage insurance affects "the business of insurance," and (c) enforcing RESPA would interfere with state insurance commissioner's exclusive right to enforce and administer state insurance law.

RESPA is not a law that "specifically relates to the business of insurance." The McCarran-Ferguson Act imposes upon Congress a "clear-statement" rule when it wishes to exercise its Commerce Clause powers to regulate the business of insurance. One of the

[7]The "business of insurance" has been defined, generally, as "the relationship between the insurance company and the policyholder, the type of policy which could be issued, its reliability, interpretation, and enforcement." *SEC v. Nat'l Sec., Inc.*, 393 U.S. 453, 460 (1969).

principal goals of McCarran-Ferguson was to protect state insurance law against "inadvertent" federal preemption by enactment of a federal statute that "describes an affected activity in broad, general terms, of which the insurance business happens to constitute one part." *Barnett Bank*, 517 U.S. at 39. RESPA is a clear example of a federal statute that describes an activity in "broad, general terms, of which the insurance happens to constitute one part." In a real estate settlement, the provision of mortgage insurance is but one component of a transaction involving multiple-parties and multiple-regulatory regimes. Under such circumstances, the McCarran-Ferguson Act imposes upon Congress an obligation to evince a clear intent to regulate mortgage insurance within RESPA if it desired that result. In the absence of such a clear statement, RESPA cannot be deemed to "specifically relate to the business of insurance," under the McCarran-Ferguson Act. *See e.g. Blackfeet Nat'l Bank v. Nelson*, 171 F.3d 1237, 1248-49 (11th Cir. 1999) (holding Section 24 of the Bank Act did not "specifically relate to the business of insurance" because it contained no specific reference to insurance or premiums, or policies, or any phrases generally associated with the business of insurance). Similar to the interpretation of Section 24 of the Bank Act in *Nelson*, RESPA contains no specific reference to insurance, insurance premiums or policies, or any phrases generally associated with the business of insurance. Because RESPA contains no "clear statement" of Congress' intent to regulate insurance (let alone mortgage insurance), it does not specifically relate to the business of insurance.

The CFPB is barred from enforcing RESPA against RMIC because RESPA would impair stat insurance law, which establishes an administrative scheme to regulate mortgage

insurance. Take, for example, North Carolina insurance law–one of the several states in which RMIC issued mortgage insurance. The North Carolina statutory scheme establishes a detailed regime whereby the Insurance Commissioner may investigate violations of the state insurance laws, file charges, issue orders, impose fines, and obtain injunctive relief. N.C. Ge. Stat. Chapter 58. Specifically, North Carolina law, like RESPA, prohibits all "unfair methods of competition or unfair and deceptive acts," which include undisclosed arrangements in which an insurer gives or offers "as an inducement to insurance," "any rebate, discount, abatement, credit" or "any valuable consideration or inducement." N.C. Gen. Stat. § 58-63-10 & 58-63-15. But unlike RESPA, North Carolina law vests the Insurance Commissioner with the authority to examine, investigate, and enforce its insurance laws.

North Carolina's statutory scheme prohibiting "unfair and deceptive acts" clearly regulates "the business of insurance." *Mullinax v. Radian Guaranty Inc.*, 199 F. Supp. 2d 311, 319-20 (M.D.N.C. 2002). RESPA, and the CFPB's efforts to enforce RESPA, would impair North Carolina's regulation of the business of insurance because it would interfere with the Insurance Commissioner's authority to examine, investigate and enforce Sections 58-61-10 and 58-61-15. *See Humana*, 525 U.S. at 307, 311 (a federal statute "impairs" a state statute if federal law "directly conflicts" with the state law, interferes with the state's administrative regime, or "frustrate[s]" the state law's declared policy). North Carolina has determined that its insurance market is best regulated by its Insurance Commissioner. The McCarran-Ferguson Act requires that RESPA not be construed as to divest the state

Insurance Commissioner of his/her authority, and bestow that authority on the CFPB. Accordingly, the McCarran-Ferguson Act bars the CFPB from enforcing RESPA against RMIC.

E. In the alternative to setting aside the CID, it should be modified to request documents and information dated within the relevant statute of limitations.

The CID impermissibly seeks to compel ORI to produce documents that date back to January 1, 2001 "[u]nless otherwise directed." In some instances, this time frame is extended all the way back to January 1, 1995.

As set out above, the statute of limitations for RESPA actions brought by the CFPB is three years. 12 U.S.C. § 2614. ORI has never entered into any captive mortgage reinsurance agreements, and all but one that RMIC entered into were terminated prior to the statute of limitations cut-off date.

The CFPB can enforce any violation of a consumer financial law or regulation as a violation of Title X of the Dodd-Frank Act. The statute of limitations for such actions is three years. Dodd-Frank Act § 1054(g)(1). Moreover, there being no indication in Title X that Congress intended Section 1036 to have retroactive effect, any enforcement action under Title X cannot be predicated on acts occurring prior to 2009. Accordingly, the CFPB cannot take enforcement action regarding any purported RESPA violations that are more than three years old.

The CFPB's power to issue a CID is an enforcement power (not a supervisory power) contained in Title X, Subtitle E (Enforcement Powers), and is limited to "documentary

material or...information[] *relevant to a violation*." Dodd-Frank Act § 1052(c)(1) (emphasis added). Documents dated years before any potential violation that the CFPB could enforce are *ipso facto* not "relevant to a violation."

Where, as here, the CFPB has no legitimate interest in the documents requested–such as for documents whose age is much more than the relevant statute of limitations cut-off date–imposing any substantial burden on RMIC would be undue. Put very simply, because the CFPB does not have the authority to bring an enforcement action or action under RESPA for acts or omissions evidenced by documents that were created prior to the statute of limitations cut-off date, the CFPB does not have a legitimate interest in compelling ORI (or RMIC) to produce such documents.

Accordingly, since documents from before 2009 cannot possibly be "relevant to a violation" within the CFPB's jurisdiction, the CID should be modified to the extent that it requests only documents dated on or since June 20, 2012.

F. In the alternative to setting aside the CID, it should be modified because certain of the requests are overly broad and unduly burdensome and seek information that is irrelevant to the CFPB's investigation.

1. The applicable relevancy and reasonableness legal standard for the CID has been firmly established.

The recognized standard in determining whether a CID should be set aside, or modified in scope or breadth, was adopted by the Supreme Court in *U.S. v. Morton Salt Co.*, 338 U.S. 632 (1950). Although the Court enforced the decree in *Morton Salt Co.*, it recognized that "a governmental investigation into corporate matters may be of *such a*

sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power." *Id.* at 652 (emphasis added). Accordingly, the Court instructed that agency subpoenas or CIDs should not be enforced if it is determined that they demand information that is: (a) not "within the authority of the agency," (b) "too indefinite," or (c) not "reasonably relevant to the inquiry." *Id.* The agency subpoena enforcement standard enunciated in *Morton Salt Co.* has been consistently applied by the courts. As the D.C. Circuit Court of Appeals recognized in *SEC v. Arthur Young & Co.*, 584 F.2d at 1030 "[t]he gist of the protection is in the requirement...that the disclosure sought shall not be unreasonable. Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness." 584 F.2d at 1030. The court explained further that "the requirement of reasonableness...comes down to specification of the documents to be produced adequate, but not excessive, for the purposes of the relevant inquiry." 584 F.2d at 1030 (quoting *Oklahoma Press*, 327 U.S. at 209). The subpoena request must "not [be] so overbroad as to reach into areas that are irrelevant or immaterial," the court added: "the test is relevance to the specific purpose." *Id.*, 584 F.2d at 1028, 1031. *See also EEOC v. ABM Janitorial-Midwest, Inc.*, 671 F.Supp. 2d 999, 1004 (N.D. Ill. 2009) (It is clear "that district courts are not authorized to enforce administrative subpoenas based on a construction of the statutory relevance so broad as to render the requirement a 'nullity.'").

Following *Morton Salt Co.*, the court in *SEC v. Blackfoot Bituminous, Inc.*, 622 F.2d 512, 514 (10th Cir. 1980), confirmed that "[t]o obtain judicial enforcement of an administrative subpoena, an agency must show that the inquiry is not too indefinite, is

reasonably relevant to an investigation which the agency has authority to conduct, and all administrative prerequisites have been met." *Id.* (quoting *U.S. v. Powell*, 379 U.S. at 57-58); *accord SEC v. Wall St. Transcript Corp.*, 422 F.2d 1371, 1375 (2d Cir. 1970). Other courts following the *Morton Salt Co.* standard have recognized that the disclosure sought by an agency through compulsory process must be both relevant to the inquiry and reasonable. *See U.S. v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir. 1996) ("the disclosure sought must always be reasonable"); *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (CID enforced only "if the information sought is 'reasonably relevant'"); *FTC v. Texaco, Inc.*, 555 F.2d 862, 881 (D.C. Cir. 1977) ("the disclosure sought shall not be unreasonable").

An administrative subpoena may be deemed unduly burdensome if "compliance threatens to unduly disrupt or seriously hinder normal operations of a business." *FTC v. Invention Submission Corp.*, 965 F.2d at 1090 (citing *FTC v. Texaco, Inc.*, 555 F.2d at 882). The breadth of the requests, on their face, would require ORI to search and review every document relating to private mortgage insurance and private mortgage insurance reinsurance since 2001, and earlier for some of the requests, in order to determine whether a specific document is responsive.

2. Certain requests in the CID seek irrelevant documents and/or are unreasonable and oppressive to RMIC.

The CID does not state any specific actions or business practices it believes ORI or RMIC may have pursued in violation of the Dodd-Frank Act, 12 U.S.C. §§ 5531 and 5536,

or RESPA, 12 U.S.C. § 2601 *et seq*. Accordingly, the requests that ask for "all documents" *relating* to the various requests mean just that–all documents. This is equivalent to an open-records search of all business conducted by ORI, RMIC, and all of their affiliated companies over the last eleven years or more. The CFPB may be given latitude in its investigations, but the inquiry cannot be "too indefinite..." *See Morton Salt Co.*, 338 U.S. at 652; *Blackfoot Bituminous*, 622 F.2d at 514. By failing to limit the scope of the CID in any meaningful way, the CFPB seeks to compel ORI/RMIC to produce every document that is in its possession (and, using the definition of "Company," in the possession of its subsidiaries and other affiliates) that could potentially relate to the broadly described conduct.

The CFPB should limit the requests to a reasonable inquiry of RMIC based upon the specific conduct it seeks to prevent–which is unclear from the face of the CID–not based on a hope that an open-records search of RMIC's and all of its affiliates' business records over nearly twelve years or more may result in a violation. *See U.S. v. Constr. Prods. Research, Inc.*, 73 F.3d at 471 ("the disclosure sought must always be reasonable"); *FTC v. Invention Submission Corp.*, 965 F.2d at 1089 (CID enforced only "if the information sought is 'reasonably relevant'"); *FTC v. Texaco, Inc.*, 555 F.2d at 881 ("the disclosure sought shall not be unreasonable").

3. The technical requirements of the CID's instructions make it unduly burdensome, oppressive, and functionally impossible to comply with the requests.

The definition of "Electronically Stored Information" ("ESI") found at section L. of the Definitions (page 2) imposes a significant, undue, and practically impossible burden on

RMIC. That definition encompasses nearly every conceivable method of electronically storing information, including by storing it on "computer or other drives, cell phones, [and] Blackberr[ies]..." of, arguably, each and every employee of RMIC. This is, on its face, unreasonable, but that is especially so when the definition of ESI is read in conjunction with Interrogatory Number 20. That Interrogatory requires RMIC to identify each document would have been responsive to any Request that has been "destroyed, misplaced, transferred, deleted, altered, over-written." Therefore, Interrogatory Number 20 and the definition of ESI requires RMIC, for example, to search each computer and cellular telephone that it has owned since at least 2001 (regardless of whether such device is still in use by RMIC or its employees), attempt to recover any documents that may have been destroyed, misplaced, transferred, deleted, altered, or over-written, sift through millions upon millions of such files and documents, and identify those long-lost documents in response to Interrogatory Number 20. Aside from the enormous expense involved in hiring numerous third-party computer specialists to accomplish this monumental task, RMIC's business would be substantially disrupted even further than the NCDOI's orders require because each employee would lack access to their computer and cellular telephone while a computer specialist searched for and copied any deleted documents. After these deleted files were recovered, if, in fact, that is even possible, RMIC would then have to spend an unreasonable amount of money and manpower to parse through the documents and determine which, if any, of them would have been responsive to the CID.

4. The CID Document Submission Standards impose an undue and oppressive burden on ORI.

It is unreasonable to compel RMIC to comply with the "CID Document Submission Standards" (the "Submission Standards"). Again, ORI does not maintain any documents that are responsive to the CID; any responsive documents are in RMIC's possession. RMIC is currently under the supervision of the North Carolina Department of Insurance, is no longer writing new policies, is in run-off, and has, in recent years, downsized its workforce substantially. Part of that downsizing included the elimination of nearly all of RMIC's information technology personnel. Without such persons, RMIC is unable to interpret the Submission Standards, and RMIC believes, in good faith, that it cannot comply with the Submission Standards without undue expense.

As previously stated, ORI, through RMIC, will be providing the CFPB with volumes of documents that are responsive to the CID by December 18, 2012. Those documents will be provided in the format in which they are or were stored on RMIC's servers or computers. However, mandating that these documents be produced in accordance with nine pages of technical instructions would require RMIC to hire numerous employees that are able to interpret the Submission Standards and comply with them, if that is even technically possible. Neither ORI nor RMIC have the current capacity to comply with such Submission Standards, and compelling compliance would place an unreasonable burden on both companies by unduly disrupting or seriously hindering the normal operations of their business.

5. The definition of "Company" is far too broad.

As previously discussed herein, ORI is a holding company that has not directly participated in the mortgage insurance business. RMIC is but one of ORI's many "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 [ORI], 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." The overwhelming majority of entities and persons that fall within that definition of "Company," as provided in the CID, have had absolutely no involvement in the mortgage insurance industry. To the extent that the CID is directed at ORI, this definition is improper because ORI did not participate in the mortgage insurance industry; and, to the extent that the CID may be redirected to RMIC, this definition should be modified to include only RMIC.

6. The CID should be modified because it seeks to compel ORI (and RMIC) to create documents that do not currently exist.

Several of the CID's requests seek to require ORI (and hence RMIC) to impermissibly require RMIC to create documents that do not currently exist. Because ORI has never engaged in the business of mortgage reinsurance, compliance with the CID would require ORI to retrieve documents from RMIC and then employee third-party vendors (from RMIC or otherwise) to interpret such documents and create the requested date-by-date and transaction-by-transaction histories relating to certain reinsurance agreements. Because ORI

did not engage in any of the complained-of acts or omissions, it should not be required to disrupt its business to create the requested documents or compile the requested information.

7. The CID does not afford RMIC adequate assurances of confidentiality.

RMIC has requested that the CFPB enter into a confidentiality agreement to protect confidential and commercially sensitive documents and information–including consumer information–that may be responsive to the CID. RMIC is concerned about information produced in response to the CFPB's CID finding its way into the hands of plaintiffs' lawyers. In addition, RMIC contemplates producing documents that contain confidential consumer information that must be adequately protected from possible loss, mishandling or disclosure, whether intentional or otherwise, RMIC offered to prepare and propose a confidentiality agreement. The CFPB has taken the position that any proposed agreement is "very highly unlikely to be accepted," and may not even be considered, in light of the current CFPB rules governing the treatment of confidential documents and information. RMIC, however, finds the current rules do not provide adequate protection for confidential documents and information, and petitions the CFPB to modify the CID in a way that provides an enhanced degree of protection for confidential materials.

The CFPB's confidentiality rules are inadequate to address RMIC's concerns for the following reasons:

CFPB May Disclose Materials "Derived From" Our Confidential Documents

In section 1070.41(c), the CFPB is authorized to disclose "materials that it derives from or creates using confidential information to the extent that such materials do not identify, either directly or indirectly, any particular person to whom the confidential information pertains." Thus, absent further agreement with the CFPB, nothing would prevent it from sharing "pooled" information about the relationships between RMIC and the lenders and their captives to plaintiffs' counsel in class action cases or other third parties. RMIC has significant concerns about how information may fall into the hands of plaintiffs' class action attorneys. The CID should be modified to prohibit the CFPB from disclosing such "pooled" or common information compiled from the confidential information produced by RMIC.

CFPB May Disclose Confidential Information to Congressional Committees and Subcommittees

In section 1070.45(a)(2), the CFPB is explicitly granted authority to disclose confidential information to "either House fo the Congress or to an appropriate committee or subcommitte3e of the Congress." There are no further restrictions on how such a subcommittee of Congress would then treat the information. If the CFPB decides that any subcommittee of Congress needs RMIC's confidential information, it is free to disclose it and at that point that subcommittee can do whatever it wants with it. This rule fails to provide adequate protection to RMIC's confidential material.

CFPB May Disclose Confidential Information to "Witnesses" During "Interviews"

Section 1070.45(a)(3) allows the CFPB to disclose confidential information during the course of "witness interviews, as is reasonably necessary, at the discretion of the CFPB." This rule leaves open the possibility that the CFPB might designate plaintiffs (or their attorneys) in class action cases as "witnesses" and then show RMIC's confidential information to these people using this exception. The CFPB may have no intention of doing that; however, all RMIC has asked for is a confirmatory and enforceable writing.

CFPB May Disclose Confidential Information to Anyone, As Long as it Gives RMIC an Unspecified Amount of Notice

Section 1070.46 provides: "To the extent permitted by law and as authorized by the Director in writing, the CFPB may disclose confidential information other than as set forth in this subpart." In other words, as long as the Director signs a document, the CFPB can do whatever it wants with RMIC's confidential information "to the extent permitted by law." That's a gaping hole that must be closed by an appropriate confidentiality agreement in order to assure RMIC that its confidential information will, in fact, be maintained in confidence.

RMIC's Confidential Information Becomes the Property of the CFPB & Need Not Be Returned or Destroyed at Conclusion of Investigation

Section 1070.47 states that once RMIC produces confidential information to the CFPB, it becomes the property of the CFPB. This is directly contrary to the provisions of most confidentiality agreements, which typically provide that the information remains the property of the disclosing party and must be either returned to the disclosing party at the completion of the matter or the receiving party must certify that it has deleted or destroyed

the confidential information. RMIC requests such a provision–standard in almost every confidentiality order entered as a matter of course in federal courts throughout the country–in a confidentiality agreement with the CFPB.

CFPB's Rules Do Not Address Privilege Nor Confidential Customer Information

Finally, the CFPB's rules simply do no address issues that are important to RMIC, including the handling of privileged information and avoiding any potential waiver of privilege, and, importantly, how to handle confidential customer information and ensure that we remain in compliance with such privacy acts as the Right to Financial Privacy Act, Gramm-Leach-Bliley, state consumer privacy laws, etc. RMIC seeks a modification order or agreement to at least address those issues and provide RMIC with some protection against consumer claims asserting that RMIC unlawfully disclosed their information to the CFPB. RMIC also requires assurance that the CFPB will ensure that confidential consumer information will be secure and properly safeguarded.

8. In summary, the CID's requests are unduly burdensome and oppressive and impose an undue burden on ORI and RMIC.

The unreasonableness of the CID's requests is perhaps most evident in those document requests (such as numbers 6, 7, 8, and 9) that require ORI to produce all documents that "*relate*" to various topics, and which thereby require ORI to determine–from millions upon millions of documents–which documents *relate* to those various topics (if that is even possible), and then produce that enormous number of documents. Complying with these and similar requests would require a significant number of man hours by RMIC and/or

its attorneys and any third-party vendors it may need to employ, all at a very significant cost. This is one of the reasons why the CFPB's failure to identify in the CID the "nature of the conduct it is investigating" is so prejudicial to ORI and RMIC.

By simply identifying "unlawful acts or practices in connection with residential mortgage loans," the CFPB is depriving ORI and RMIC of any context in which to formulate objections or responses. *See, e.g., EEOC v. Knoica Minolta Bus. Solutions U.S.A., Inc.*, 639 F.3d 366, 369 (7th Cir. 2011) (relevance standard for administrative subpoenas is analogous to the standard in civil discovery, and thus must "appear[] reasonably calculated to lead to the discovery of admissible evidence."). Thus, on its face, the requests require ORI, RMIC, and/or their attorneys to engage in an internal investigation that could take years of continuous work to complete.

ORI and RMIC reserve the right to supplement this Petition with further information regarding the time, expense, and work associated with the cost of compliance. In order to provide such information, ORI and RMIC must be able to identify with specificity the materials being sought and then ascertain what is, or is not, readily available for production. ORI and RMIC believe, in good faith, that only at that point will it be able to provide a more precise estimate of the time and expense associated with the cost of compliance. In any event, ORI and RMIC are confident that the cost of production–in light of RMIC's normal operating costs, and especially in light of RMIC's normal operating costs–would seriously disrupt RMIC's "normal" business operations as adjusted to comply with the orders of the NCDOI.

In short, compliance with the challenged CID Requests would result in an unreasonable and undue burden upon RMIC in terms of time, cost, and resources that would "unduly disrupt or seriously hinder normal operations of [its] business." *U.S. Commodity Futures Trading Comm'n v. The McGraw-Hill Companies, Inc.*, 390 F.Supp. 2d 27, 35-36 (D.C. 2005) (citing *FTC v. Texaco, Inc.*, 555 F.2d at 882) (corporation responding to agency subpoena should not have "to cull its files for data" that would "impose an undue burden" and finding subpoena requiring production of "all documents that in any way reference" the issue in question "would be unduly burdensome"). This is particularly true in light of the orders of the NCDOI and is significantly exacerbated thereby. Accordingly, the CID should be modified to limit the Requests that are "excessively broad on their face and technically call for a larger volume of data than may have been intended" by the CFPB so as to "not impose an impermissible burden" on ORI. *Id.*, 390 F.Supp. 2d at 35. The CFPB should modify the excessive CID Requests in this matter to limit the impermissible burdens imposed upon ORI that threaten to seriously disrupt its normal business operations.

IV. CONCLUSION

For the foregoing reasons, ORI and RMIC respectfully request that the CID be set aside or, in the alternative, modified to resolve the foregoing issues.

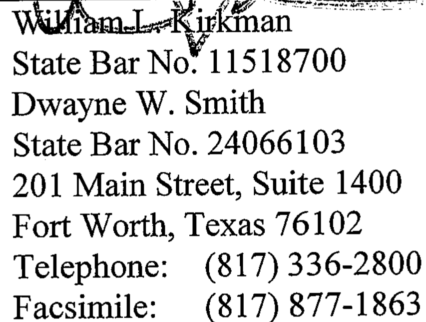
UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

	§
IN THE MATTER OF	§
OLD REPUBLIC INTERNATIONAL CORPORATION	§
	§

STATEMENT OF GOOD FAITH

Old Republic International Corporation and Republic Mortgage Insurance Company, by and through their undersigned counsel, hereby states that its counsel conferred with counsel for the Consumer Financial Protection Bureau and made a good-faith effort to resolve the issues raised by this *Petition*, but was unable to reach a resolution as set forth in the *Petition*.

BOURLAND & KIRKMAN, L.L.P.

By: 

William L. Kirkman
State Bar No. 11518700
Dwayne W. Smith
State Bar No. 24066103
201 Main Street, Suite 1400
Fort Worth, Texas 76102
Telephone: (817) 336-2800
Facsimile: (817) 877-1863

ATTORNEYS FOR OLD REPUBLIC INTERNATIONAL CORPORATION AND REPUBLIC MORTGAGE INSURANCE COMPANY

EXHIBIT "A"

2012-MISC-Old Republic International Corporation - 0001

Consumer Financial
Protection Bureau

1700 G Street NW, Washington, DC 20552

November 27, 2012

Via Electronic Mail

William L. Kirkman, Esq.
Bourland & Kirkman, L.L.P.
201 Main Street, Suite 1400
Fort Worth, Texas 76102
Billk@BourlandKirkman.com

Re: Civil Investigative Demand issued to Old Republic Financial, Inc.

Dear Mr. Kirkman,

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

As you know, my October 17, 2012 letter to you (the "October 17 letter") continued the suspension of deadlines associated with the CID for another five weeks beyond the prior suspensions granted in my several previous letters to you. That period of suspension expired on November 14, 2012, without any agreement on settlement.

I am informed that you have been occupied with extenuating circumstances, namely a trial in another matter and ongoing proceedings before the North Carolina Department of Insurance that may substantially affect your client's position. You have requested an extension of two weeks to the pending CID deadlines to accommodate those matters. In addition, I understand that, with a further two 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 October 18, 2012, to extend the tolling period by an additional two 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, as a professional courtesy, I am authorizing another extension of the deadline to file a petition to modify or set aside the CID tolled in the October 17 letter and previous letters, retroactive to

November 14, 2012, in the manner and subject to the conditions described below.

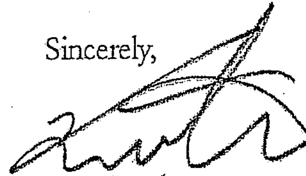
I have attached a tolling agreement embodying the extension described above. Once we have received your executed copy of that agreement, staff will promptly acknowledge receipt, at which time all deadlines in the CID, including the deadline for filing any petition to modify or set aside the CID, shall be extended until 5:00 p.m. Eastern Time on Wednesday, December 5, 2012 (the "settlement deadline"). If, by the settlement deadline, Bureau staff and Old Republic have tentatively agreed to a settlement of the present matter, and Old Republic 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 Old Republic as described above has occurred, the deadline for full compliance with the CID shall be December 18, 2012, and the deadline for filing of any petition to modify or set aside the CID shall be December 10, 2012.

This letter supersedes in full the October 17, 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,



Kent Markus
Enforcement Director

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

TOLLING AGREEMENT

This Agreement supplements and supersedes the Agreement entered into effective February 2, 2012 (the "Effective Date") and amended on or about October 18, 2012, by the Consumer Financial Protection Bureau ("the Bureau") and Old Republic International Corporation, including 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)) (referred to hereinafter as "Old Republic International Corporation").

On January 3, 2012, the Bureau notified Old Republic International Corporation that the Bureau was conducting an investigation of Old Republic International 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 Bureau and Old Republic International Corporation (jointly referred to hereinafter as "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 Old Republic International Corporation 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*. This suspension shall remain in effect during the period beginning on the Effective Date and ending on the earlier of (1) the date the Bureau notifies Old Republic International Corporation that no further action will be taken in this matter, or (2) May 13, 2013.

2. This Agreement is not intended to and shall not be construed as an admission of liability or as consent to any legal interpretation of the statute of limitations by any party. This agreement shall not operate to revive any claim barred as of the Effective Date. 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: ____________________

OLD REPUBLIC INTERNATIONAL CORPORATION

By: ______________________ Date: ______________________

TOLLING AGREEMENT

This Agreement supplements and supersedes the Agreement entered into effective February 2, 2012 (the "Effective Date") and amended on or about September 19, 2012, by the Consumer Financial Protection Bureau ("the Bureau") and Old Republic International Corporation, including 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)) (referred to hereinafter as "Old Republic International Corporation").

On January 3, 2012, the Bureau notified Old Republic International Corporation that the Bureau was conducting an investigation of Old Republic International 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 Bureau and Old Republic International Corporation (jointly referred to hereinafter as "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 Old Republic International Corporation 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.* This suspension shall remain in effect during the period beginning on the Effective Date and ending on the earlier of (1) the date the Bureau notifies Old Republic International Corporation that no further action will be taken in this matter, or (2) April 29, 2013.

2. This Agreement is not intended to and shall not be construed as an admission of liability or as consent to any legal interpretation of the statute of limitations by any party. This agreement shall not operate to revive any claim barred as of the Effective Date. 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: Kim Ravener Date: 10-19-12

OLD REPUBLIC INTERNATIONAL CORPORATION

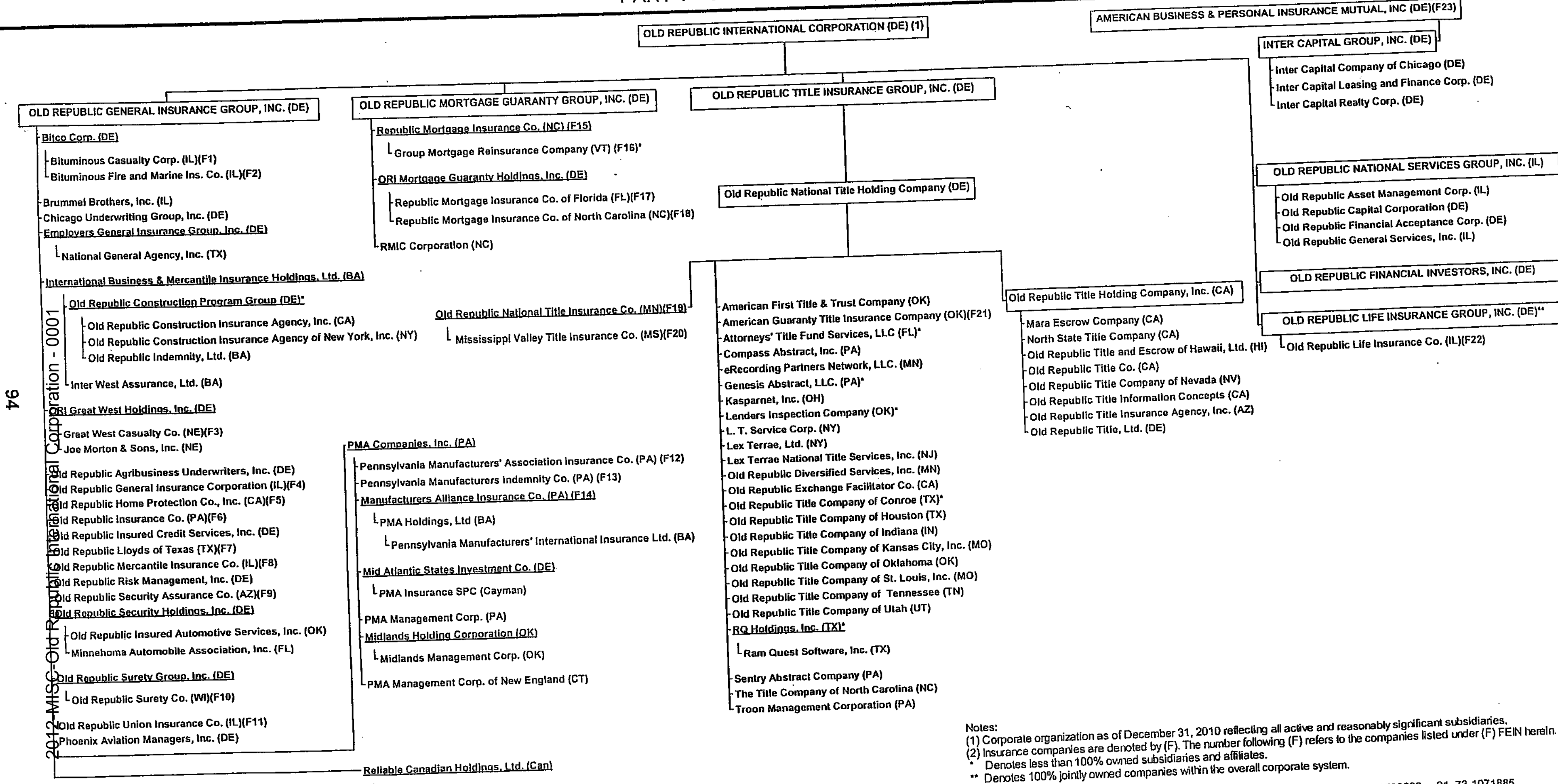
By: Spencer LeRoy III Sr VP Date: 10-18-12

EXHIBIT "B"

Annual Statement for the year 2010 of the **Republic Mortgage Insurance Company**

SCHEDULE Y -- INFORMATION CONCERNING ACTIVITIES OF INSURER MEMBERS OF A HOLDING COMPANY GROUP

PART 1 - ORGANIZATIONAL CHART



Notes:
(1) Corporate organization as of December 31, 2010 reflecting all active and reasonably significant subsidiaries.
(2) Insurance companies are denoted by (F). The number following (F) refers to the companies listed under (F) FEIN herein.
* Denotes less than 100% owned subsidiaries and affiliates.
** Denotes 100% jointly owned companies within the overall corporate system.

1. 36-0810360	5. 94-2250534	9. 73-1024416	13. 23-2217934	17. 59-1583209	21. 73-1071885
2. 36-6054328	6. 25-0410420	10. 39-1395491	14. 23-2086596	18. 52-0990482	22. 36-1577440
3. 47-6024508	7. 75-6057779	11. 36-3765116	15. 56-1031043	19. 41-0579050	23. 36-3135871
4. 36-6067575	8. 36-3414905	12. 23-1642962	16. 03-0357483	20. 64-0207223	

2012-MISC-Old Republic International Corporation - 0001

EXHIBIT "C"

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION
CV199-240

DAVID BARNES and AMY S. SCHERM on behalf of themselves and all other persons similarly situated,
Plaintiffs,

v.

REPUBLIC MORTGAGE INSURANCE COMPANY,
Defendant.

U.S. DISTRICT COURT
Southern District of Georgia
Filed in Open Court
9:30 A. M.
Oct. 24 2003
B. [illegible]
Deputy Clerk

INJUNCTION

Upon review and consideration of the Settlement Agreement filed June 3, 2003, (the "Agreement"), relating the above-captioned case, the Settlement Hearing held on October 24, 2003, the memoranda and arguments of counsel, and the objections to the Settlement,

IT IS HEREBY ORDERED, pursuant to Fed. R. Civ. P. 65 and the Court's authority to enter equitable relief, that Republic Mortgage Insurance Company (hereinafter "RMIC") is hereby enjoined and restrained according to the terms set forth below:

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

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

1.02 "Affiliate" means a person (natural or legal) that directly or indirectly controls, is controlled by, or is under common control with RMIC; where "control" of a person or entity means the ownership of more than fifty percent (50%) of such person's or entity's equity securities having the power to elect directors or other members of such person's or entity's

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governing body, or the ability (through other ownership, contractual rights or otherwise) to elect a majority of the members of such person's or entity's board of directors or other governing body or to cast a majority of the votes on such board.

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

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

1.05 "Agreement" means this Settlement Agreement.

1.06 "Benefit Amount" shall mean the amount derived by dividing $7.87 million by the total number of members of Subclass A who submit valid claim forms, or $35.47, whichever is greater.

1.07 "Bulk/Seasoned Loans" mean loans where the commitment from RMIC to place primary mortgage insurance on the loan was first issued (i) twelve (12) months or more after the loan was closed, or (ii) after the loan was closed and in connection with the placement of primary mortgage insurance on a group of loans held or owned by a non-Agency investor. The fact that securities issued by a non-Agency investor are exchanged for securities guaranteed by an Agency (a so-called "Agency wrap") shall be disregarded in determining whether the group of loans is held or owned by a non-Agency investor.

1.08 "Certificate" means a writing, including in an electronic format, which evidences the fact that primary mortgage insurance coverage is being issued by RMIC where such coverage forms the basis of a person's inclusion as a Class Member.

1.09 "Challenged Practice" means (i) Agency Pool Insurance; (ii) RMIC's entry into contracts of reinsurance with a Lender; (iii) Performance Notes; (iv) the provision by RMIC of contract underwriting services to a Lender; (v) Uncaptive Transactions; and (vi) Restructuring Transactions.

1.10 "Class Member" means:

All persons who obtained or will obtain a Covered Loan insured under a Certificate where the commitment to issue the Certificate was made by RMIC on or after December 18,1996, and on or before December 31, 2003.

Any commitments to issue any mortgage insurance for Bulk/Seasoned Loans are expressly excluded from the Class. In addition, excluded from the Class are the Court, including clerks and/or officers of the Court, and their immediate families.

The Class is defined to include two subclasses:

Subclass A shall consist of those Class Members with respect to whom the commitment by RMIC to issue the Certificate was made on or after December 18, 1996, and to whom the Certificate was issued on or prior to March 31, 2003;

Subclass B shall consist of (i) all Class Members in Subclass A with respect to whom the mortgage insurance evidenced by the Certificate was still in force on March 31, 2003 and (ii) those Class Members with respect to whom the Certificate was issued on or after April 1, 2003, and on or before December 31, 2003.

1.11 "Commitment" (whether or not such term is capitalized) means a commitment (whether in writing or by electronic transmission) by RMIC to issue a Certificate, except that if a Certificate is issued without a commitment having previously been issued, for all purposes hereunder, the Certificate shall be deemed to be both a Certificate and a commitment.

1.12 "Court" means the Honorable Anthony A. Alaimo, United States District Court Judge, Southern District of Georgia.

1.13 "Covered Loan" means a mortgage loan secured by property located in the United States (including, but not limited to, any federally-related mortgage loan as that term is defined by RESPA) made to a Class Member that is insured by a Certificate.

1.14 "Defendant" means RMIC, as it is defined herein.

1.15 "Existing Class Member List" means the list defined in paragraph 2.03 of the Settlement Agreement.

1.16 "Final Approval" means the last date on which all of the following have occurred:

(a) The Court enters judgments finally approving the settlement of the Action in a manner substantially consistent with the terms and intent of the Agreement; and

(b) Either: (i) Thirty-five (35) days have passed after entry of the Court's judgment finally approving the settlement of the Action, or the order disposing of the last remaining motion as described in Fed. R. App. P. 4(a)(4)(A), and within such time, no appeal is taken or extension for such appeal is granted; or (ii) if an appeal is taken with respect to the Court's judgment finally approving the settlement of the Action, the appellate court has by final order affirmed the Court's judgment finally approving the settlement of the Action or has denied review, or the appellant otherwise has exhausted all appellate remedies.

Notwithstanding the preceding subparagraphs (a) and (b), in the event RMIC has withdrawn or purported to withdraw from the settlement, or terminated or purported to terminate the Agreement at least ten (10) days prior to Final Approval, the date for Final Approval shall be deemed not to have occurred.

1.17 "RMIC" means Republic Mortgage Insurance Company, its remaining direct and indirect subsidiaries, their predecessors, successors, assigns, their present and former officers, directors, attorneys, accountants, actuaries, agents (alleged or actual), representatives, affiliates, parent corporation and employees.

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

1.19 "Lender" means, with respect to each Class Member, (a) all persons (natural or legal) that selected or influenced the selection of RMIC to be the provider of primary mortgage

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

1.20 "Material Event" means either (a) a lawsuit, investigation, inquiry, or any type of proceeding or threatened proceeding, other than an objection to the settlement of this Action, by any state agency, including, but not limited to, a state insurance department or attorney general, any federal agency, including, but not limited to, the Department of Housing and Urban Development, the Department of Justice, or the Federal Trade Commission, or any other government agency, law enforcement agency, or subdivision thereof; or (b) an actual or threatened lawsuit, other than an objection to the settlement of this Action, by a private party; where the scope of claims or relief from such lawsuit, investigation or other proceeding poses a non-de minimis risk that RMIC will not realize the material benefits of the Agreement.

1.21 "Parties" means the Representative Plaintiffs, the Class Members, and RMIC.

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

1.23 "Plaintiffs' Counsel" means Tucker, Everitt, Long, Brewton & Lanier; Gulley & Calhoun; Patterson, Harkavy & Lawrence; Bentley Law Offices, P.A.; Milberg Weiss Bershad

Hynes & Lerach LLP; Thompson & Smith, P.C.; Lee Prather; Ben McElreath; and Dunstan & Dunstan.

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

1.25 "Preliminary Approval" of this Agreement means the order of the Court preliminarily approving the terms and conditions of this Agreement in substantially the same form as the proposed order attached to the Settlement Agreement as Exhibit A.

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

1.27 "Released Persons" means RMIC and all Lenders with respect to Class Members in the Action.

1.28 "Representative Plaintiffs" means David Barnes and Amy Scherm Sykes.

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

1.30 "Settlement Administrator" means, subject to Court approval, Tilghman & Co., P.C., P.O. Box 11250, Birmingham, Alabama 35202.

1.31 "Uncaptive Transaction" means a transaction between RMIC and a Lender which provides for the Lender to assume specified claim payment risks in return for a payment of a fee to the Lender in connection with primary mortgage insurance issued by RMIC with respect to an identified group of mortgage loans made by the Lender, but which is not a reinsurance arrangement.

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

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

4. RMIC shall not engage in the practice of issuing Performance Notes;

5. RMIC shall not engage in any Uncaptive Transactions;

6. RMIC shall not provide Agency Pool Insurance except in accordance with paragraphs 6(A), 6(B) and 6(C) herein.

(A) No later than the date on which a policy of Agency Pool Insurance becomes effective, an officer of RMIC whose primary job responsibilities include risk management, risk pricing, actuarial risk analysis or equivalent functions, or an Actuary, shall prepare an analysis in writing based upon the model referred to in paragraph 6(B) demonstrating that the sum of (i) the present value of premium revenue from the Agency Pool Insurance, plus (ii) the present value of investment earnings (the sum of the present values in clauses (i) and (ii) is herein referred to as the "Present Value Inflow"), is greater than the sum of (iii) the present value of expected losses plus (iv) the present value of the expected marginal expenses of writing and administering the Agency Pool Insurance business (the sum of the present values in clauses (iii) and (iv) is herein referred to a the "Present Value Outflow").

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

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

(ii) the expected claim frequency, considering the expected mix of loans in the Pool, including loan-to-value ratios and loan type, geographic dispersion, RMIC's experience with the performance of loans originated or purchased by the lender or lenders whose deliveries comprise the Pool and, to the extent RMIC in good faith believes that inclusion of such experience from other lenders deemed comparable to such lender or lenders is meaningful in assessing the expected claim frequency, such experience from such lenders, and such other characteristics as may be relevant in assessing expected claims frequency for the Pool;

(iii) the expected timing of claim payments;

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

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

(vi) the expected marginal administrative costs of the Agency Pool Insurance transaction, which shall be computed by taking into account only direct labor costs and out-of-pocket costs attributable to the Agency Pool Insurance transaction other than reinsurance provided by an Affiliate of RMIC that is not retroceded to an insurer that is not an Affiliate of RMIC.

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

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

7. RMIC shall not enter into any treaty of reinsurance with a reinsurer affiliated with a Lender ("CMR") except in accordance with paragraphs 7(A) and 7(B) herein.

(A) The CMR must actually provide reinsurance to RMIC by adhering to the following requirements:

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

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

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

(B) RMIC shall obtain a written opinion from an Actuary to the effect that (i) the net premium ceded, after taking into account the ceding commission, if there is a ceding commission, is commensurate with, or reasonably related to, the risk transferred, and (ii) there is a real transfer of risk, which, without limiting by implication other methods of showing that such a transfer has occurred, will occur if there is a reasonable probability that the CMR may realize a loss from the reinsurance arrangement. An opinion need not be obtained for a particular treaty

of reinsurance transaction if an opinion meeting the requirements of this subparagraph has previously been obtained for a treaty of reinsurance transaction and the matters set forth in clauses 7(A)(i)-(ii) inclusive above do not vary materially between the two transactions.

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

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

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

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

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

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

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

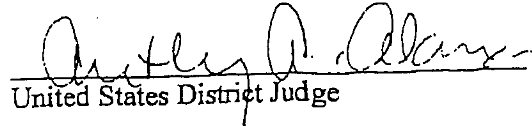
13. In the event that subsequent to the execution of this Agreement, state or federal law pertaining to any of the Challenged Practices substantively alters the obligations of RMIC from those contained in this Injunction, RMIC shall not be enjoined from conforming its practices accordingly. For purposes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

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

15. This Injunction shall be effective upon Final Approval of the Settlement Agreement and upon its entry and service on RMIC. This injunction shall dissolve by its terms,

without the need for judicial action on December 31, 2003, unless earlier dissolved in accordance with paragraph 11 or 13.

Dated: October 24, 2003.



United States District Judge

2012-MISC-Old Republic International Corporation-0001

UNITED STATES DISTRICT COURT
Southern District of Georgia

Case Number: 1:99-cv-00240
Date Served: October 24, 2003
Served By: Nita S. Rose

Attorneys Served:

John B. Long, Esq.
Thomas W. Tucker, Esq.
Larry I. Smith, Esq.
Michael Champlin Spencer, Esq.
Michael D. Calhoun, Esq.
Charles A. Bentley Jr., Esq.
Melinda Lawrence, Esq.
Patrick J. Rice, Esq.
William L. Kirkman, Esq.
Tilghman & Co., P.C.
Kathleen Clark Ford, Esq.

____ Copy placed in Minutes

____ Copy given to Judge

____ Copy given to Magistrate

EXHIBIT "D"

NORTH CAROLINA DEPARTMENT OF INSURANCE

Raleigh, North Carolina

TO: Republic Mortgage Insurance Company
101 N. Cherry Street, Suite 101
Winston-Salem, NC 27101

COMMISSIONER'S SUMMARY ORDER

It appearing to the Commissioner of Insurance for the State of North Carolina (Commissioner) that Republic Mortgage Insurance Company ("RMIC") is subject to immediate administrative supervision pursuant to the provisions of N.C. Gen. Stat. §58-30-60 *et seq.* by the Commissioner because the Commissioner has reasonable cause to believe that RMIC is in such condition as to render the continuation of its business hazardous to the public or to holders of its policies or certificates of insurance. This opinion is based on the following findings of fact:

(1) RMIC's September 30, 2011, quarterly statement reports a net loss of $286,620,435 for the nine-month period ended September 30, 2011;

(2) RMIC's September 30, 2011, quarterly statement reports that RMIC's capital and surplus has been reduced from $224,629,011 as of December 31, 2010, to $100,342,310 as of September 30, 2011, a decrease of 55%;

(3) RMIC's Mortgage Guaranty Insurer Report of Policyholder's Position filed as of September 30, 2011, reports a deficiency of $353,286,807 of the required minimum pursuant to N.C. Gen Stat. §58-10-125;

(4) RMIC's September 30, 2011, quarterly statement reports that RMIC is out of compliance with the diversification requirements of N.C. Gen. Stat. §58-7-170(a) by $61,932,934; and

It is THEREFORE ORDERED by the Commissioner that RMIC, effective January 19, 2012, be placed under the Commissioner's supervision pursuant to the provisions of N.C. Gen. Stat. §58-30-60(c) *et seq.* and that the Commissioner be vested with all authority to effect and apply the provisions of said statute.

IT IS FURTHER ORDERED that, during the period of supervision, RMIC shall not do any of the following acts without the prior written approval of the Commissioner or his appointed representative for supervision:

(1) Dispose of, convey, or encumber any of its assets or its business in force;

(2) Withdraw from any of its bank accounts (this condition shall be reevaluated once the supervisor has an opportunity to determine appropriate thresholds for the different types of withdrawals made by RMIC);

(3) Lend any of its funds;

(4) Invest any of its funds;

(5) Transfer any of its property;

(6) Incur any debt, obligation or liability;

(7) Merge or consolidate with another company;

(8) Enter into any new reinsurance contract or treaty;

(9) Terminate any policy or contract of insurance, except for

nonpayment of premiums due;

(10) Make any material change in management;

(11) Increase salaries or benefits of officers or directors or make preferential payment of bonuses or other payments considered preferential; or

(12) Pay more than fifty percent of any claim allowed under any policy of insurance issued by RMIC. (The remaining fifty percent shall be deferred and credited to a temporary surplus account on the books of RMIC for an initial period not to exceed one year); or

(13) Make any other change in its operations that the Commissioner considers to be material.

The Commissioner's requirements to abate the determination as set forth in this Order are as follows:

(1) Develop and implement a corrective plan designed to bring RMIC into compliance with all relevant and pertinent provisions of Chapter 58 of the North Carolina General Statutes;

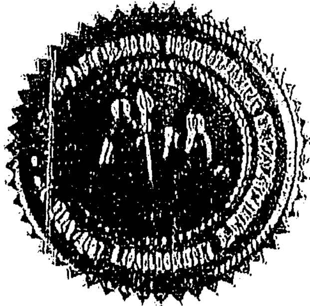
IT IS FURTHER ORDERED that Sara K. Gosnell, Chief Regulatory Specialist for the North Carolina Department of Insurance, is appointed as supervisor of RMIC to carry out the provisions of this Order and Susan B. Coble, Senior Regulatory Specialist for the North Carolina Department of Insurance, is appointed as assistant supervisor of RMIC to act in the absence of the supervisor. The supervisor or her representatives shall conduct an examination of RMIC's operations and financial condition as the supervisor deems appropriate. The

administrative supervision of RMIC shall continue until the Commissioner shall release RMIC from supervision.

IT IS FURTHER ORDERED that the Commissioner hereby finds and concludes that it is in the best interest of the insurer, its insureds or creditors, and the general public that this Order, any proceeding arising out of this Order, any hearing conducted within such a proceeding, all evidence given at any hearing, and all notices pertaining to any hearing be made public after ten days from the date of this Order, and RMIC is hereby ordered to give notice of this Order to all of its policyholders ten days after the entry of this Order.

IT IS FURTHER ORDERED that an informal conference will be held, on Wednesday, February 22, 2012 at 10 o'clock A.M. in Room #3099 of the Dobbs Building, located at 430 North Salisbury Street, Raleigh, Wake County, North Carolina to resolve any disputes which may arise as to the terms or provisions of this Order or to narrow the issues as to any dispute, and RMIC is hereby ordered to give notice to its policyholders of such informal conference which shall be open to the policyholders and to members of the public.

Issued under my hand and seal this 19th day of January, 2012.



Wayne Goodwin
Commissioner of Insurance

EXHIBIT "E"

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

NOV 2012
RECEIVED
Dept. of Insurance

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE COMMISSIONER OF INSURANCE

REPUBLIC MORTGAGE INSURANCE COMPANY,
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF INSURANCE,

Respondent

FINAL ORDER APPROVING CORRECTIVE PLAN

Docket No. 1651

THIS matter came on for hearing before the undersigned on October 16, 2012, pursuant to N.C. Gen. Stat. §§ 58-30-60, *et seq.* and the North Carolina Administrative Code §§ 11 NCAC 1.0413 through 1.0430. The undersigned has been designated by the Commissioner of Insurance ("Commissioner") pursuant to N.C.G.S. §58-2-55 to serve as the hearing officer in this matter.

Respondent, the North Carolina Department of Insurance (hereinafter the "Department"), was present and represented by the Regulatory Actions and Actuarial Service Divisions. The Department was represented by Special Deputy Attorney General David W. Boone and Assistant Attorney General M. Denise Stanford. Republic Mortgage Insurance Company ("Petitioner") was represented by William T. Barnett, Jr. and J. Mitchell Armbrüster, of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP.

Intervenor Federal Home Loan Mortgage Corporation ("Freddie Mac") was represented by David K. Liggett and James L. Conner II, of Ragsdale Liggett PLLC. Intervenor Federal National Mortgage Association ("Fannie Mae") was represented by Clay C. Wheeler, of Kilpatrick Townsend & Stockton LLP, James M. Pacious, of Fannie Mae, admitted *pro hac vice*, and Andrew R. Holland, of Sidley Austin, LLP, admitted *pro hac vice*. Intervenors Bank of America, N.A ("Bank of America") and PNC Bank, N.A. ("PNC Bank"), were represented by Johnny M. Loper, of Womble Carlyle Sandridge & Rice, LLP.

After careful consideration of the evidence presented, and based upon the record as a whole, the undersigned renders the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. A Notice of Hearing ("Notice") was issued by the undersigned on September 20, 2012. Pursuant to the Notice, Petitioner sent an email notice of the hearing to all of its master policy holders and posted notice of the hearing on its website.

2. The purpose of this hearing was to consider the proposed Corrective Plan ("Plan") dated September 14, 2012 submitted by Petitioner to the Department, as required by the Commissioner's Summary Order dated January 19, 2012 ("Summary Order"), and to determine whether the Plan should be approved and incorporated into the Summary Order.

3. The stated objectives and elements of the Plan are set forth in Exhibit 1A which was admitted into evidence and is part of the record of this proceeding.

4. Petitioner's high loss ratio forecasts showed that by December 21, 2021, it would be in a position to honor approximately eighty-eight percent (88%) of Petitioner's deferred payment obligations, for a total of ninety-five and two-tenths percent (95.2%) of all valid claims amounts, while remaining solvent on a statutory basis.

5. Susan B. Coble, Senior Regulatory Specialist for the North Carolina Department of Insurance, appointed as Assistant Supervisor of Petitioner in the Summary Order, testified that Petitioner had been transparent and cooperative with the Department and recommended that the Plan be approved.

6. Kevin Conley, Chief Actuary of the North Carolina Department of Insurance, also testified on behalf of the Department. Without objection, Mr. Conley was tendered as an expert in actuarial analysis and admitted as an expert.

7. Mr. Conley testified that he had reviewed the Corrective Plan and all supporting materials, and recommended that the Plan be approved. Mr. Conley reviewed the standard and high loss ratio financial forecasts presented by Petitioner in support of the plan, and testified that in his opinion Petitioner's forecasts were reasonable and that a sixty percent/forty percent (60%/40%) claim payment structure could be implemented without jeopardizing Petitioner's statutory solvency during the ten-year forecast period.

8. The Department retained Risk & Regulatory Consulting, LLC ("RRC") to perform an independent actuarial review of the standard and high loss ratio financial forecasts presented by Petitioner in support of its Plan. RRC concluded that the current fifty percent (50%) rate for deferred payment obligations would maximize the payment amount for all valid claims while providing adequate invested assets throughout the run-off period and, accordingly, recommended that the cash and deferred portions of all claims be continued under the current fifty percent/fifty percent (50%/50%) structure.

9. Mr. Conley testified that in his opinion the Corrective Plan was superior to the recommendation of RRC, and that he did not agree with the RRC recommendation that the

current fifty percent/fifty percent (50%/50%) structure of payments should be continued.

10. Christopher S. Nard, Petitioner's Chairman and Chief Executive Officer, testified in support of the Plan. Mr. Nard testified as to the adequacy of Petitioner's staffing, its management, and its claims handling and policy servicing structures to support an orderly and effective run-off under the proposed sixty percent/forty percent (60%/40%) claims payment structure.

11. The circumstances of Petitioner's financial condition which gave rise to the Summary Order remain substantially as they were when the Summary Order was issued.

12. Pursuant to the Plan and witness testimony offered by Petitioner and Respondent, Petitioner's financial forecasts project compliance with the capital and surplus and minimum policyholder's position requirements by December 31, 2021.

13. Intervenors Fannie Mae, Freddie Mac, Bank of America, and PNC Bank, were granted intervention rights at the outset of the hearing, per the *Order Granting Limited Intervention and Admission Pro Hac Vice* entered on October 18, 2012. Intervenors did not introduce any evidence at the hearing, but were permitted to submit written comments and questions no later than 5:00 pm on October 19, 2012.

14. Three post-hearing submissions from intervenors, one from Freddie Mac, one from Fannie Mae, and one joint submission by Bank of America and PNC Bank, were received for inclusion in the record before 5:00 pm on October 19, 2012. The submissions have been reviewed and considered, though they were not considered as evidence. The submissions of intervenors propose certain changes to the Plan and/or request that the Department consider taking certain actions during the continuing course of its administrative supervision of Petitioner. Intervenors did not offer any witnesses or evidence at the hearing in support of these proposals, or show that the recommendation of the Department and its witnesses that the Plan be adopted was not sound.

CONCLUSIONS OF LAW

1. Under Article 30 of Chapter 58 of the North Carolina General Statutes, the Commissioner has certain powers to institute administrative supervision, rehabilitation, and liquidation on insurers.

2. This matter is properly before the undersigned under the administrative supervision powers of the Commissioner, and the undersigned has subject matter jurisdiction pursuant to the provisions of N.C. Gen. Stat. §58-30-60 *et seq.* and the Summary Order.

3. The Plan is designed to bring Petitioner into compliance with all relevant and pertinent provisions of Chapter 58 of the North Carolina General Statutes.

4. The Plan should be approved pursuant to the provisions of N.C. Gen. Stat. §58-30-60 *et seq.* and the Summary Order, in the discretion of the undersigned.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Petitioner will remain under the Commissioner's administrative supervision pursuant to the provisions of N.C. Gen. Stat. § 58-30-60 *et seq.*

2. The Plan is hereby approved and the Summary Order is hereby amended to incorporate the Plan, subject to the following conditions:

(a) If at any time prior to December 21, 2021, the Commissioner has reason to believe that Petitioner's financial condition has changed in any material respect, he may order further hearings to determine whether any other aspect of the Plan should be revised.

(b) The order to defer a portion of all claims settlement payments during the term of the Plan is based upon the particular circumstances of Petitioner and the Commissioner's broad discretionary supervision authority under N.C. Gen. Stat. §§ 58-30-60 and 58-30-62, and the provisions of this Order are applicable only in this proceeding.

(c) The statutory accounting treatment for the deferred payment obligations described in the Plan is likewise permitted for the duration of the Plan, based strictly upon the particular circumstances of Petitioner and the Commissioner's broad discretionary authority under N.C. Gen. Stat. §§ 58-30-60 and 58-30-62, and such treatment is permitted in this proceeding only and does not constitute a general precedent or rule applicable in other case or proceeding.

(d) The Supervisor expressly retains the authority to amend the initial cash partial payment percentage and deferred obligation percentage in the event of a material change of circumstances that would justify an amendment or modification; notice of any such proposed modification shall be given to Petitioner and its policyholders, together with notice of an opportunity to request a hearing on any amendment or modification.

(e) The Supervisor shall retain all supervisory powers provided for in the Commissioner's Summary Order dated January 19, 2012 and all of the powers provided for in N.C. Gen. Stat. §§ 58-30-60 and 58-30-62 until further order of the Commissioner.

(f) The Corrective Plan and all of its terms shall be reviewed from time to time on an ongoing basis by the Supervisor on an internal basis and in the normal course of business, but no less than annually. The terms of the Plan may be

amended or modified should circumstances warrant such an amendment or modification, after notice and hearing. Intervenors may seek a hearing on the terms of the Plan based upon changed material circumstances pursuant to applicable statutes and regulations.

(g) The Supervisor may, in her discretion, consider allowing interest, at a to-be-determined appropriate rate, on any unpaid deferred payment obligations to be paid from surplus remaining at the conclusion of supervision and successful execution of the Plan after notice to Petitioner and its policyholders and an opportunity for a hearing.

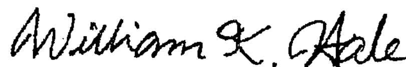
(h) The upward change in the initial cash partial payment percentage from 50% to 60% as provided for in the Plan shall be retroactive to January 19, 2012. Retroactive treatment of any future upward adjustments of the cash partial payment percentage shall be in the discretion of the Supervisor.

(i) Petitioner shall post on its website (www.rmic.com), and thereby make available to all policyholders and the general public, Petitioner's quarterly and annual financial statements as filed with the North Carolina Department of Insurance. Such postings shall be made no later than the date such statements are required to be filed with the North Carolina Department of Insurance. Petitioner shall not be required to post any filing that is confidential under applicable law.

3. Except as modified herein and by the Plan, the Summary Order remains in full force and effect. In addition, this Final Order supersedes the Order issued by the undersigned on November 14, 2012.

4. Any adversely affected party, including qualifying intervenors, may appeal this Order pursuant to N.C.G.S. §58-30-60.

This 28th day of November, 2012.



William K. Hale
Hearing Officer
N.C. State Bar Number 6182
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing FINAL ORDER APPROVING CORRECTIVE PLAN with this attached certificate of service by hand-delivery to:

Mary Faulkner
North Carolina Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing FINAL ORDER APPROVING CORRECTIVE PLAN by mailing a copy of the same via certified U.S. mail, return receipt requested, in a first class postage prepaid envelope addressed as follows:

John N. Ellison
Timothy P. Law
Reed Smith, LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7301

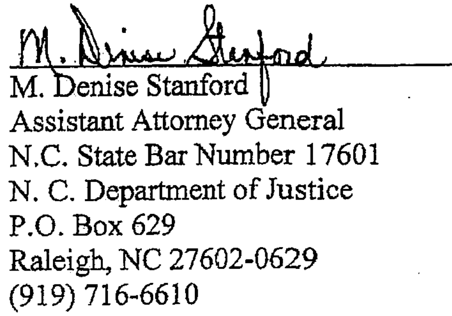
Clay C. Wheeler
Kilpatrick Townsend & Stockton, LLP
4208 Six Forks Road, Suite 1400
Raleigh, NC 27609

David Liggett
James Conner
Ragsdale Liggett, PLLC
2840 Plaza Place, Suite 400
Raleigh, NC 27612

Bill Barnett
Mitch Armbruster
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.
P.O. Box 2611
Raleigh, NC 27602-2611

Johnny M. Loper
Womble, Carlyle Sandridge & Rice, LLP
150 Fayetteville Street, Ste. 2100
P.O. Box 831
Raleigh, NC 27602

This the 29th day of November, 2012.



M. Denise Stanford
Assistant Attorney General
N.C. State Bar Number 17601
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