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IN RE ASSURANT, INC.  
2015-MISC-Assurant-0001

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**DECISION AND ORDER ON PETITION BY ASSURANT, INC.  
TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

Assurant, Inc., the recipient of a civil investigative demand (CID) from the Consumer Financial Protection Bureau's Office of Enforcement, has petitioned for an order to set aside or modify the CID. For the reasons set forth below, the petition is denied.

**FACTUAL BACKGROUND**

On September 22, 2015 the Bureau issued Assurant a CID which stated, in its "Notification of Purpose," that it had been issued "to determine whether mortgage servicers or other unnamed persons have engaged, or are engaging, in unlawful acts or practices in connection with the procurement, offering, and use of lender-placed insurance involving residential mortgage loans in violation of Sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [CFPA], 12 U.S.C. §§ 5531, 5536, the Real Estate Settlement Procedures Act [RESPA], 12 U.S.C. § 2601 et seq., its implementing regulation [Regulation X], or any other Federal consumer financial law" and to determine "whether Bureau action to obtain legal or equitable relief would be in the public interest." The CID posed five document requests, three requests for written reports, and five interrogatories regarding Assurant and the provision of lender-placed insurance (LPI) by it or its subsidiaries. The CID required Assurant to schedule a meeting (meet-and-confer) within ten days of receipt, and to produce requested documents, responses to interrogatories, and written reports by October 22, 2015.

Enforcement staff (Staff) held two meet-and-confer conference calls with Assurant, the first of which occurred on October 2. During this call, Assurant's counsel expressed objections to the CID and requested certain modifications. Assurant's counsel submitted a letter formally requesting modifications on October 5. Staff held another meet and confer with Assurant on October 7 and indicated that it would recommend some of the modifications requested by Assurant. Assurant filed its Petition to Modify or Set Aside the CID (Petition) on October 12.

**LEGAL DETERMINATION**

Assurant raises nine objections in support of its Petition: two objections to the Bureau's enforcement authority, four objections to the Bureau's investigation, and three objections to individual requests. None of these objections warrants setting aside or modifying the CID.

**A. Assurant's Objections to the Bureau's Enforcement Authority**

Assurant raises two objections to the Bureau's enforcement authority. Neither has merit.

*First*, Assurant argues that the Bureau lacks enforcement authority over Assurant and its subsidiaries. Relying on certain exclusions to the Bureau's authority under 12 U.S.C. § 5517, Assurant claims that the Bureau lacks enforcement authority over the business of insurance and entities "regulated by a State insurance regulator." Petition at 12 (quoting 12 U.S.C. § 5517(f)(1)). Assurant's argument is misplaced. Rather than challenge the Bureau's authority to issue the CID, Assurant instead raises substantive defenses to charges the Bureau has not asserted. The Bureau has previously rejected similar arguments raising substantive defenses to its CID authority. *See, e.g., In re Next Generation Debt Settlement, Inc.*, 2012-MISC-Next Generation Debt Settlement-0001 (CFPB Oct. 5, 2012), at 2.<sup>1</sup> Moreover, the Bureau has broad authority to issue CIDs to "any person" who may have information relevant to an investigation. 12 U.S.C. § 5562(c)(1). *See also In re PHH Corp.*, 2012-MISC-PHH Corp-0001 (Sept. 20, 2012), at 4 (citing cases).<sup>2</sup> Here, the CID seeks information about LPI-related services that Assurant and its subsidiaries may have provided to mortgage servicers. Such information may be relevant in evaluating servicers' compliance with RESPA and Regulation X. The Bureau therefore has authority to request such information pursuant to its CID authority. *See* 12 U.S.C. § 5562(c)(1).

Assurant's argument is also contradicted by § 5517 itself. Section 5517(n) provides that, notwithstanding other provisions – including the provision under § 5517(f)(1) regarding persons "regulated by a State insurance regulator" – persons subject to or described in such provisions "may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 5512, 5562, or 5563." Therefore, these entities over whom the Bureau may lack enforcement or other authority under § 5517 nevertheless remain subject to its CID authority. Assurant's objection therefore lacks merit.

*Second*, Assurant argues that RESPA does not confer enforcement authority over Assurant or its subsidiaries. Petition at 17. According to Assurant, the regulation of LPI under RESPA applies only to mortgage servicers, and neither Assurant nor its subsidiaries qualify as servicers under the Act. *Id.* at 18. This substantive defense to the Bureau's enforcement authority fails for the same reasons as the prior argument. Regardless of whether Assurant or its subsidiaries are subject to RESPA, the Bureau has authority to issue a CID to determine if it has information relevant to possible violations of the Act. *See* 12 U.S.C. § 5562(c)(1).

## **B. Objections to the Bureau's Investigation**

Assurant raises four objections to the Bureau's investigation. None warrants modifying or setting aside the CID.

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<sup>1</sup> Available at [http://www.consumerfinance.gov/f/201210\\_cfpb\\_2012-MISC-Next-Generation-Debt-Settlement-0001-Order.pdf](http://www.consumerfinance.gov/f/201210_cfpb_2012-MISC-Next-Generation-Debt-Settlement-0001-Order.pdf).

<sup>2</sup> Available at [http://www.consumerfinance.gov/f/201209\\_cfpb\\_setaside\\_phhcorp\\_0001.pdf](http://www.consumerfinance.gov/f/201209_cfpb_setaside_phhcorp_0001.pdf).



*First*, Assurant argues that the Bureau improperly issued the CID because Assurant is only a holding company for its subsidiaries that, as underwriters, issue LPI policies and contract with mortgage servicers. *See* Petition at 21-22. This argument is misguided. As with discovery requests governed by the federal rules, the Bureau's CID requires an entity to produce documents and information within its possession, actual or constructive custody, or control.<sup>3</sup> *See* 12 U.S.C. § 5562(c)(1); *compare* CID Instr. J with Fed. R. Civ. P. 45(a)(1)(A)(iii). "[A] litigating parent corporation has control over documents in the physical possession of its subsidiary corporation where the subsidiary is wholly owned or controlled by the parent." *Uniden Am. Corp. v. Ericsson Inc.*, 181 F.R.D. 302, 305 (M.D.N.C. 1998) (citation omitted); *see also In re Citric Acid Lit.*, 191 F.3d 1090, 1107-08 (9th Cir. 1999) (applying legal control standard in denying motion to compel). In this case, the underwriters are wholly owned subsidiaries of Assurant, and Assurant admits that it has control over its underwriters and can even bind them to consent orders. Petition at 23-24. Therefore, Assurant has control over its subsidiaries' responsive documents and information and must produce them in response to the CID.

*Second*, Assurant argues that the CID's Notification of Purpose does not meaningfully advise it of the nature of the conduct under investigation or the legal basis for the alleged violations. Petition at 24. A CID issued by the Bureau must state "the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." 12 U.S.C. § 5562(c)(2); *see also* 12 C.F.R. § 1080.5. Here, the Notification of Purpose identifies this conduct: "acts or practices in connection with the procurement, offering, and use of lender-placed insurance involving residential mortgage loans." It also identifies the legal basis for the violations under investigation: "Sections 1031 and 1036 of the [CFPA], [RESPA], its implementing regulation, or any other Federal consumer financial law." The Bureau is not required to further specify the provisions under investigation, as it is "well settled that the boundaries of an [agency] investigation may be drawn 'quite generally,' in large part because at the investigative stage of a proceeding, the [agency] need only have a 'suspicion that the law is being violated in some way.'" *F.T.C. v. O'Connell Associates, Inc.*, 828 F. Supp. 165, 171 (E.D.N.Y. 1993) (emphasis added by the court) (quoting *F.T.C. v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992)). The Bureau has repeatedly found that Notifications of Purpose similar to the one at issue here provide the notice required under the CFPA and the Bureau's regulations. *See, e.g., In re PHH Corp.*, at 5-6.

*Third*, Assurant claims that the Bureau lacks enforcement authority under Regulation X to investigate violations involving LPI for flood insurance and thus is prohibited from requiring Assurant to produce information related to LPI flood insurance. *See* Petition at 28; *see generally* 12 C.F.R. § 1024.37(a) (defining force-placed insurance under Regulation X).<sup>4</sup> Assurant misreads Regulation X. Regulation X excludes from the definition of force-placed insurance only flood insurance that is "required by the Flood Disaster Protection Act of 1973 [FDPA]." 12

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<sup>3</sup> The cases Assurant cites in support of its argument are inapposite, as they concern parent-subsidiary issues for purposes of liability, not discovery. *See* Petition at 23.

<sup>4</sup> Although Regulation X uses the term "force-placed insurance," the term is used interchangeably with lender-placed insurance.



C.F.R. § 1024.37(a)(2)(i) (emphasis added). Therefore, flood insurance not required under the Act falls within the definition of force-placed insurance. The plain language of Regulation X further confirms this interpretation. Regulation X defines force-placed insurance as “*hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan.*” 12 C.F.R. § 1024.37(a)(1) (emphasis added). The definition of “hazard insurance” includes “insurance on the property securing a mortgage loan that protects the property against loss caused by . . . *flood.*” 12 C.F.R. § 1024.31 (emphasis added). Accordingly, LPI flood insurance placed on behalf of an owner or assignee of a mortgage loan, but *not* required by the FDPA, falls under Regulation X’s definition of force-placed insurance, and lies within the Bureau’s authority to investigate and enforce.

*Fourth*, Assurant seeks to limit the applicable time period of the CID to the three years before the CID was issued. According to Assurant, the statute of limitations under the CFPA precludes the Bureau from bringing an enforcement action for conduct that occurred prior to that date. Petition at 34. Even if Assurant’s limitations argument were correct – which it is not – the Bureau nevertheless can properly obtain “a considerable amount of the information sought from outside the asserted limitations” period through a CID. *In re PHH Corp.*, at 7. The CID seeks information about Assurant’s LPI coverage for mortgage servicers, including information related to the origins and evolution of that business. Accordingly, the CID seeks information about Assurant’s policies, procedures, practices, systems, and underlying business agreements beyond the three-year period prior to the issuance of the CID. Without such information, the Bureau would be hindered in its efforts to conduct an “accurate[] and complete[]” investigation. *Id.* Therefore, Assurant’s objection to the applicable time period is without merit.

### C. Objections to Individual Requests

Assurant raises three objections to individual requests, none of which has merit.

*First*, Assurant objects to Interrogatory No. 1, which instructs Assurant to “[i]dentify all Persons who participated in responding to this CID, and describe the specific tasks performed by each Person.” Petition at 41-42. Assurant claims that responding to this request would disclose attorney work product, because identifying persons “who participated in preparing its Interrogatory responses would necessarily reveal the persons who Assurant’s attorneys believe to have the most relevant information.” *Id.* at 42. This objection is meritless for at least two reasons. First, multiple courts have held that the identity of persons who participate in responding to discovery requests does not constitute attorney work product.<sup>5</sup> Second, Staff agreed to address Assurant’s concerns by narrowing the interrogatory to include only those persons who actually furnished information used in responding to the CID. Such factual

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<sup>5</sup> See, e.g., *Equal Emp’t Opportunity Comm’n v. Sterling Jewelers, Inc.*, 2010 WL 2803017, at \*4 (W.D.N.Y. July 15, 2010) (finding identity of persons who assisted in the preparation of interrogatory responses was discoverable); *Omega Eng’g, Inc. v. Omega, S.A.*, 2001 WL 173765, at \*3-4 (D. Conn. Feb. 6, 2001) (holding that a party must respond to “the most standard of discovery requests” that defendant “identify each person who participated in the preparation of the answers to any interrogatory that has been propounded on it by [plaintiff]”).



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information about the source of responsive material does not constitute attorney work-product. *See, e.g., Law v. Air Prods. & Chems., Inc.*, 1988 WL 102714, at \*3 (E.D. Pa. Sept. 28, 1988) (“The mere identification of persons who furnished information to [defendant’s] counsel in responding to the interrogatories without more does not reveal any litigation strategy and does not infringe upon the work product privilege.”). Therefore, Assurant’s objection to this request is without basis.

*Second*, Assurant objects to Interrogatory No. 2(c) and 2(g). Petition at 43. In a letter sent to Assurant’s counsel on October 21, 2015, the Bureau notified Assurant that it had modified the CID to eliminate these requests. Therefore, this objection is moot.

*Third*, Assurant objects that Document Request No. 2, which requests Assurant’s LPI-related agreements with its clients, is overbroad and burdensome. *Id.* at 44. As the Bureau has previously stated, in making such an objection a party must “*prove[]* the inquiry is unreasonable because it is overbroad or unduly burdensome.” *In re Great Plains Lending, LLC*, 2013-MISC-Great Plains Lending-0001 (Sept. 26, 2013), at 8 (citing *FDIC v. Garner*, 126 F.3d 1138, 1143 (9th Cir. 1997) (emphasis added)).<sup>6</sup> Accordingly, “the subject must undertake a good-faith effort to show ‘the exact nature and extent of the hardship’ imposed, and state specifically how compliance will harm its business.” *Id.* (quoting *In re PHH Corp.*, at 6).

Assurant has failed to make such a showing. As to overbreadth, Assurant claims that because the CID happens to identify one mortgage servicer by name any other “unidentified persons . . . are, by definition, not relevant to the focus of the inquiry.” Petition at 45. This argument misses the point. The fact that the CID identifies *one* mortgage servicer does not limit the CID’s express purpose of identifying *other* mortgage servicers who may have violated federal consumer financial laws. The request is appropriately tailored to achieve that purpose. With respect to its argument regarding undue burden, Assurant claims that the request covers “more than 80 distinct LPI relationships.” *Id.* Other than a vague claim that multiple versions of these agreements exist, Assurant offers no facts indicating that production of these agreements would impose an undue burden. Assurant provides no estimate of the cost of compliance, no estimate of the time required for compliance, and no explanation of “how compliance will harm its business.”<sup>7</sup> *In re PHH Corp.*, at 6. For these reasons, Assurant has failed to demonstrate that the request is overbroad or imposes an undue burden.

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<sup>6</sup> Available at [http://files.consumerfinance.gov/f/201309\\_cfpb\\_decision-on-petition\\_great-plains-lending-to-set-aside-civil-investigative-demands.pdf](http://files.consumerfinance.gov/f/201309_cfpb_decision-on-petition_great-plains-lending-to-set-aside-civil-investigative-demands.pdf).

<sup>7</sup> Assurant also provides insufficient detail to establish how compliance with confidentiality provisions in its client agreements would constitute an undue burden. *See* Petition at 45-46. Moreover, courts and administrative agencies have rejected attempts to use confidentiality provisions as shields against requests for production. *See, e.g., In re C.R. Bard, Inc. Pelvic Repair Sys. Products Liab. Litig.*, 287 F.R.D. 377, 384 (S.D. W. Va. 2012) (collecting cases) (“[P]rivate confidentiality agreements do not preclude the production of documents for the purpose of discovery.”); Letter from the FTC to West Asset Management (“WAM”) on WAM’s Request for Review of Denial of Petition to Limit Civil Investigative Demand, File No. 0723006

## CONCLUSION

For the foregoing reasons, Assurant's petition to modify or set aside the CID is denied. Within 21 calendar days of this Decision and Order, Assurant is directed to produce all responsive documents, items, and information within its possession, custody, or control that are covered by the CID. The company is welcome to engage in further discussions with the Bureau's enforcement team about any further suggestions for modifying the CID, which may be adopted by the Assistant Director for Enforcement or his Deputy as appropriate.



Richard Cordray, Director

April 25, 2016

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(July 2, 2008), at 4 (available at <https://www.ftc.gov/sites/default/files/documents/petitions-quash/west-asset-management-inc./080702westasset.pdf>) (CID recipient "must produce documents demanded by the Commission even if so doing would breach its confidentiality agreements with third parties").