

CONSUMER FINANCIAL PROTECTION BUREAU

In the matter of:

Synchrony Financial

COMBINED PETITION TO SET ASIDE AND PETITION TO MODIFY MAY 9, 2017
CIVIL INVESTIGATIVE DEMAND ISSUED TO SYNCHRONY FINANCIAL

INTRODUCTION

On May 9, 2017, the Consumer Financial Protection Bureau (“CFPB”) served a Civil Investigative Demand (“CID”) on Synchrony Financial (“Synchrony”). Pursuant to 12 U.S.C. § 5562(f)(1) and 12 C.F.R. § 1080.6(c), Synchrony files this Combined Petition to Set Aside and Petition to Modify the CID because the CID is the sort of regulatory overreach that recently has been rejected by the D.C. Circuit.

Synchrony is one of the leading private label credit card issuers in the United States. On some of these cards, Synchrony’s partners, many of whom are small-to-mid-size merchants and healthcare providers, offer their consumers deferred-interest promotions—that is, promotional credit offers that allow consumers to charge an item and avoid paying interest for a number of months as long as they pay off the charge before the end of the promotional period. Deferred-interest promotions have been offered for decades because they are popular with consumers—who save money by avoiding interest—and merchants—who use the promotions to drive sales and compete against big box retailers. Deferred-interest promotions are also unquestionably and completely legal. Both the federal Truth in Lending Act and the CFPB’s implementing regulations—*i.e.*, Regulation Z, 12 C.F.R. § 1026—specifically contemplate deferred-interest promotions. Indeed, the CFPB’s own September 3, 2014 Bulletin, entitled “Marketing of Credit Card Promotional APR Offers,” contemplates that such promotions are legal—it states that the CFPB’s “expectations” are that providers “comply with the requirements in Regulation Z” and accurately describe the promotions in their marketing materials.¹ Further, as recently as April 28, 2017, the CFPB posted information on its website helping consumers “understand how deferred interest works”²—and giving no indication that such promotions might be illegal.

To ensure that deferred-interest promotions are not misleading to consumers, the CFPB has regulated such promotions in numerous respects. In addition, the CFPB and Synchrony entered into an agreement in 2013 related to Synchrony’s CareCredit platform, which imposed additional requirements about how to offer deferred interest promotions in a health care setting. Synchrony complies with the CFPB’s regulations on deferred-interest promotions and the additional requirements in the CareCredit agreement. The CFPB has confirmed Synchrony’s compliance in its examinations of Synchrony in 2014, 2015, and 2016. These examinations focused both on Synchrony’s compliance with the specific deferred-interest requirements in Regulation Z and the CareCredit agreement, and the general prohibitions on unfair, deceptive, and abusive acts or practices in Dodd-Frank. 12 U.S.C. §§ 5531, 5536.

Separately from these examinations, Synchrony has provided large volumes of information to the CFPB related to deferred-interest promotions, including templates of the periodic billing statements, advertisements and consumer disclosures sought in the CID and approximately five terabytes of transactional data covering 125 million deferred interest

¹ CONSUMER FIN. PROT. BUREAU, CFPB BULL. NO. 2014-02, MARKETING OF CREDIT CARD PROMOTIONAL APR OFFERS (2014), http://files.consumerfinance.gov/f/201409_cfpb_bulletin_marketing-credit-card-promotional-apr-offers.pdf.

² See *I got a credit card promising no interest for a purchase if I pay in full within 12 months. How does this work?*, CFPB, (Apr. 28, 2017), <https://www.consumerfinance.gov/askcfpb/40/I-got-a-credit-card-promising-no-interest-for-a-purchase-if-I-pay-in-full-within-12-months-How-does-this-work.html>.

promotions over a six-year period. The CFPB has studied this information, and it has not identified any wrongdoing. Nor has it taken any other action to further regulate how deferred interest promotions operate, either at Synchrony or at any of the other creditors who service such promotions.

If the CFPB believes that the rules governing deferred interest promotions are ineffective, it is entitled to adjust those rules. But the way to change the rules is to prospectively enact new, industry-wide rules in a manner consistent with the Administrative Procedure Act and due process.

Synchrony has consistently indicated to the CFPB that Synchrony is willing to engage in a dialogue regarding potential adjustments to the existing rules. Instead of engaging in that dialogue, however, the CFPB issued the CID. With its 36 interrogatories, requests for written reports, and interrogatories, and 98 subparts, the CID seeks vast amounts of data and documents on every aspect of deferred-interest promotions. To be clear, the CID does *not* suggest that Synchrony has violated any particular regulation currently governing deferred-interest promotions. The Notification of Purpose does not reference any particular regulation, nor are the CFPB's requests tailored to investigating the violation of any particular regulation or any particular conduct. Rather, it appears the CFPB has embarked on a search for evidence of a legal violation on a theory that the CFPB either has not figured out, or refuses to disclose.

The CID must be set aside for numerous reasons. First and most obviously, the CID's Notification of Purpose does not comply with the Consumer Financial Protection Act's mandate that "[e]ach [CID] shall 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). Rather than specifically state the "nature of the conduct constituting the alleged violation," the CID vaguely makes reference to "marketing and servicing of deferred-interest credit cards." And rather than specifically state "the provision of law applicable to such violation," the CID gestures at every federal consumer protection law. Less than three weeks before it issued the CID, the D.C. Circuit held that a virtually identically-worded CID did not comply with 12 U.S.C. § 5562(c)(2). *See CFPB v. Accrediting Council for Independent Colleges and Schools* ("ACICS"), 854 F.3d 683, 685 (D.C. Cir. 2017). On that ground alone, the CID must be set aside.

The flaws in the CID, however, run deeper than the defective Notification of Purpose. In *ACICS*, the D.C. Circuit stated that a CID must not only specifically identify the factual and legal predicate for the CFPB's investigation, but also must seek documents that are "reasonably relevant" to that investigation. 854 F.3d at 688 (citing *F.T.C. v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir.)). The CID may not "cast about for potential wrongdoing." *Id.* at 689 (citing *In re Sealed Case (Admin. Subpoena)*, 42 F.3d 1412, 1418 (D.C. Cir. 1994)). The CID does not specify whether the CFPB is investigating the violation of a particular, existing regulation, or investigating the violation of previously-unknown rules based on a novel interpretation of the general prohibitions on unfair, deceptive, and abusive acts or practices. Either way, however, the CID fails the relevance requirement.

If the CFPB is investigating a particular violation of law, the CID's sweeping and untailored requests are plainly not "reasonably relevant." To the extent the CFPB's purpose for requesting vast volumes of information is its speculative hope that some violation of a regulation will turn up somewhere, the CFPB is abusing the CID process.

If, on the other hand, the CFPB intends to use this information to support a new theory that deferred-interest promotions are illegal in some heretofore unannounced way—in an effort to prohibit a product that its regulations plainly permit—then the CID fails the relevance requirement for a different reason. The CFPB must show that the information it seeks is "reasonably relevant" to an investigation that has some chance of withstanding judicial scrutiny; it cannot extract documents to support an enforcement action that is not "within the authority of the agency." *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). And an enforcement proceeding against a provider who complies with all existing regulations is not "within the authority of" the CFPB. That is the same scenario that the D.C. Circuit blasted in *PHH Corp. v. CFPB*, deriding the CFPB for failing "Rule of Law 101." 839 F.3d 1, 48 (D.C. Cir. 2016), *vacated pending rehearing en banc*.

At a minimum, the CFPB's requests for documents dating prior to the limitations period, and documents related to CareCredit, are not relevant to any good-faith investigative purpose. In addition, the CID's demand for written reports containing vast amounts of data about every consumer transaction involving a deferred interest promotion for years—none of which would identify any violation of law—is not reasonably relevant to any claim the CFPB might develop.

Finally, several requests in the CID are overbroad and excessively burdensome—and the fact that Synchrony is even making this argument at this stage is an illustration of how the CFPB's CID process has broken down. After Synchrony received the CID, it immediately began investigating the burden of complying with the CID's dozens of parts and sub-parts. Synchrony requested an extension until July 7, 2017 to file this petition, so that Synchrony could file a modification letter and negotiate in good faith over reasonable modifications to the CID, as well as engage in discussions about the CFPB's interest in deferred interest promotions. Synchrony also proposed that it would begin producing documents and thus ensure that the extension would not be used as a stalling tactic. Such an approach would have allowed those negotiations to run their course before forcing Synchrony to resort to the adversarial petition process.

The CFPB, however, granted Synchrony only a one-week extension to file its petition, thus ensuring that the petition would be due before Enforcement even had a chance to consider Synchrony's objections in the modification letter and propose alternatives. As it stands, the CID is remarkably burdensome and overbroad. Compliance with the CID, as drafted, would require multiple man-years of labor consisting of tedious manual review of documents and complex computer programming. Synchrony continues to engage in the meet-and-confer process and is submitting a modification letter. Notwithstanding these efforts to work with the CFPB, Synchrony believes that the CID is invalid on its face and so vastly overbroad that it should be set aside.³

³ In previous decisions denying petitions to set aside, the CFPB has taken the position that constitutional challenges to the CFPB's structure may not be raised in petitions to set aside. *See, e.g., In re Seila Law, LLC*, 2017-MISC-SEILA LAW, LLC-0001 (Apr. 10, 2017), at 2 ("Seila Law's constitutional challenge is not properly raised in this

ARGUMENT

I. The CID's Notification of Purpose Does Not Comply With 12 U.S.C. § 5562(c)(2) and 12 C.F.R. § 1080.5.

The Consumer Financial Protection Act mandates that “[e]ach [CID] shall 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). Similarly, the CFPB’s regulations state: “Any person compelled to furnish documentary material, tangible things, written reports or answers to questions, oral testimony, or any combination of such material, answers, or testimony to the Bureau shall be advised of the nature of the conduct constituting the alleged violation that is under investigation and the provisions of law applicable to such violation.” 12 C.F.R. § 1080.5.

The CID’s Notification of Purpose does not comply with those requirements. It does not adequately state “the nature of the conduct constituting the alleged violation which is under investigation.” Nor does it adequately state “the provision of law applicable to such violation.”

The D.C. Circuit’s recent decision in *CFPB v. Accrediting Council for Independent Colleges and Schools* (“*ACICS*”), 854 F.3d 683 (D.C. Cir. 2017), establishes that the CID’s Notification of Purpose is deficient. In *ACICS*, the D.C. Circuit held that a Notification of Purpose in a CID did not satisfy the requirements of 12 U.S.C. § 5562(c)(2). 854 F.3d at 685. The Notification of Purpose at issue in *ACICS*, and the Notification of Purpose at issue here, are closely similar:

Notification of Purpose held deficient in <i>ACICS</i>	Notification of Purpose in Synchrony CID
The purpose of this investigation is to determine whether any entity or person has engaged or is engaging in unlawful acts and practices in connection with accrediting for-profit colleges, in violation of sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, or any other Federal consumer financial protection law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.	The purpose of this investigation is to determine whether banks or other persons have engaged or are engaging in unlawful acts and practices in connection with the marketing and servicing of deferred-interest credit cards in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; The Truth in Lending Act, 15 U.S.C. §1601 et seq., and its implementing Regulation Z; any prior orders issued by the Bureau; or any other Federal consumer financial law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

administrative proceeding.”). Therefore, in compliance with the CFPB’s previously-stated position, Synchrony will not advance a constitutional challenge to the CFPB’s structure in this petition. Synchrony expressly preserves such a constitutional challenge, however, in any future judicial proceeding.

Id. at 686. The D.C. Circuit’s reasoning for holding the *ACICS* CID invalid establishes that the Synchrony CID is invalid as well.

First, as in *ACICS*, the Notification of Purpose does not adequately describe “the nature of the conduct constituting the alleged violation which is under investigation.” 12 U.S.C. § 5562(c)(2). In *ACICS*, the D.C. Circuit held that the description of the unlawful acts and practices in the CID at issue there—“unlawful acts and practices in connection with accrediting for-profit colleges”—did not adequately “inform *ACICS* of the investigation’s purpose.” 854 F.3d at 690. It noted that the CID “never explains what the broad and non-specific term ‘unlawful acts and practices’ means in this investigation.” *Id.*

The same is true here. The CID states that the CFPB is investigating “unlawful acts and practices in connection with the marketing and servicing of deferred-interest credit cards.”⁴ But it does not identify *what* unlawful acts and practices “in connection with the marketing and servicing of deferred-interest credit cards” the CFPB is investigating. As *ACICS* makes clear, merely stating that the CFPB is investigating unspecified illegal activity in a company’s general line of business—here, “marketing and servicing of deferred-interest credit cards”—does not satisfy § 5562(c)(2). Rather, the CID must specifically identify the illegal practices that it is investigating. Because the CID does not do so, it violates 12 U.S.C. § 5562(c)(2).

Second, as in *ACICS*, the Notification of Purpose does not adequately describe “the provision of law applicable to such violation.” In *ACICS*, the Notification of Purpose identified 12 U.S.C. §§ 5531 and 5536, which “set forth the CFPB’s general prohibition of unfair, deceptive, or abusive acts and practices in connection with transactions involving consumer financial products and services.” 854 F.3d at 691. The D.C. Circuit held that reciting these statutes “tell *ACICS* nothing about the statutory basis for the Bureau’s investigation.” *Id.* It similarly observed that “[t]he inclusion of the uninformative catch-all phrase ‘any other Federal consumer financial protection law’ does nothing to cure the CID’s defects.” *Id.* at 691-92. Indeed, such a catch-all makes it impossible for a party such as Synchrony to understand the purpose behind the CID.

Here, too, the CID identifies 12 U.S.C. §§ 5531 and 5536, as well as “any other Federal consumer financial law.” As stated in *ACICS*, those disclosures are inadequate. The CID also identifies “The Truth in Lending Act, 15 U.S.C. §1601 et seq., and its implementing Regulation Z,” but this does not cure the CID’s defects. The Truth in Lending Act and Regulation Z are lengthy provisions that contain numerous distinct prohibitions. As in *ACICS*, “framing the applicable law in such a broad manner does not satisfy Congress’s clear directive.” *Id.* at 692. The CID’s reference to “any prior orders issued by the Bureau” is equally unilluminating. Under § 5562(c)(2), as interpreted in *ACICS*, the CFPB must specifically identify the provisions of law applicable to the alleged violations under investigation. It did not do so here. Synchrony does not know why it is being investigated or why the CFPB requires vast amounts of data that touches on huge numbers of consumer transactions over the last four years.

⁴ Moreover, Synchrony does not market “deferred-interest credit cards” as stated in the Notification of Purpose. Rather, Synchrony markets credit cards with deferred-interest promotions.

II. The CID Seeks Information and Documents that Are Irrelevant.

The CID should be set aside in its entirety because it does not seek any information that is “reasonably relevant” to an enforcement action.⁵ The CFPB is “cast[ing] about for potential wrongdoing,” *ACICS*, 854 F.3d at 689, without any basis for believing that Synchrony violated any statute or regulation governing deferred-interest promotions. To the extent the CFPB’s purpose is to apply new legal standards governing deferred-interest promotions retroactively, such an enforcement action would be illegal and cannot serve as the basis for a CID. Further, even if some components of the CID should survive, the CFPB should, at a minimum be narrowed; multiple categories of documents are irrelevant to any conceivable enforcement action the CFPB could bring.

A. As the broad Notification of Purpose, and the equally broad requests, make clear, the CID impermissibly “cast[s] about for potential wrongdoing.”

The CID does not identify any particular “conduct constituting the alleged violation which is under investigation.” 12 U.S.C. § 5562(c)(2). As such, none of the documents sought by the CFPB are “reasonably relevant.”

First, the CFPB has no basis for concluding that any documents or information it seeks will be relevant to the investigation of a violation of any of the many regulations governing deferred-interest promotions, or of the provisions of the CareCredit agreement. As part of Regulation Z, the CFPB has promulgated a multitude of regulations related to deferred-interest promotions, including regulations governing advertising, 12 C.F.R. § 1026.16(h); periodic statements, 12 C.F.R. § 1026.7(b)(14); and allocation of payments, 12 C.F.R. § 1026.53(b)(1). Further, the CFPB and Synchrony entered into an agreement in 2013 related to Synchrony’s CareCredit platform. As previously noted, the CFPB has confirmed Synchrony’s compliance in its examinations of Synchrony in 2014, 2015, and 2016. These examinations focused both on Synchrony’s compliance with the specific deferred-interest requirements in Regulation Z and the CareCredit agreement, and the general prohibitions on unfair, deceptive, and abusive acts or practices in Dodd-Frank. 12 U.S.C. §§ 5531, 5536. Thus, the CFPB has no basis for investigating violations of such regulations—and in any event, the sweeping requests stretch far beyond the investigation of any particular existing regulation.

Second, to the extent the CFPB intends to pursue an enforcement action notwithstanding Synchrony’s *compliance* with the federal regulations governing deferred interest promotions, such an enforcement action would be *ultra vires*. The CFPB cannot, through an enforcement action, seek to alter these regulations (or how they are interpreted). Nor can the CFPB take the position that notwithstanding compliance with the regulations, deferred-interest promotions are

⁵ Synchrony’s ability to make relevance arguments is constrained by the CID’s violation of 12 U.S.C. § 5562(c)(2) and 12 C.F.R. § 1080.5: as the D.C. Circuit pointed out in *ACICS*, “where, as in this case, the Notification of Purpose gives no description whatsoever of the conduct the CFPB is interested in investigating, [the court] ... probably cannot accurately determine whether the inquiry is within the authority of the agency and whether the information sought is reasonably relevant.” 854 F.3d at 691. Nonetheless, even under the legally defective Notification of Purpose in the CID, the CID’s flaws are manifest.

inherently unfair, deceptive or abusive in violation of Dodd-Frank. Subjecting Synchrony to unexpected liability in this manner would be blatantly unfair and violate bedrock principles of administrative law, as well as Synchrony's due process rights. *See Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2168 (2012) ("It is one thing to expect regulated parties to conform their conduct to an agency's interpretations once the agency announces them; it is quite another to require regulated parties to divine the agency's interpretations in advance or else be held liable when the agency announces its interpretations for the first time in an enforcement proceeding and demands deference."); *PHH Corp. v. CFPB*, 839 F.3d 1, 48 (D.C. Cir. 2016), *vacated pending rehearing en banc* (retroactive application of changed interpretation to past conduct in enforcement action violates "Rule of Law 101"). If the CFPB desires to bring about change in the market for deferred interest promotions, it must do so by regulation.

The CFPB cannot defeat Synchrony's relevance argument merely by expressing its oft-stated view that "fact-based arguments about whether an entity is subject to the Bureau's enforcement authority are not valid defenses to the enforcement of a CID." *See, e.g., In re Seila Law, LLC*, 2017-MISC-SEILA LAW, LLC-0001 (Apr. 10, 2017), at 2. Even if that were true, it would not give the CFPB *carte blanche* to cast about for documents in the hope that it will uncover a violation. Rather, the CFPB must have some articulable basis for concluding that the sought-after information and documents are relevant to an enforcement action it could actually pursue. *See In re Sealed Case (Admin. Subpoena)*, 42 F.3d 1412, 1419 (D.C. Cir. 1994) (agency may not serve an administrative subpoena in order to conduct "an expedition ... into 'other wrongdoing, as yet unknown'"). No such basis exists here.

B. The CFPB seeks three categories of irrelevant documents.

The CFPB seeks documents and information dating back to 2012 and early 2013, well outside of the limitations period. It also seeks documents and information related to CareCredit despite Synchrony's compliance with the CareCredit agreement. These documents and information are not reasonably relevant to the CFPB's investigation.

Documents and information outside the limitations period. The CID states that the "applicable period for the request is from January 1, 2013 until the date of this CID." Thus, the CID seeks documents outside the three-year limitations period in 12 U.S.C. § 5564(g)(1).

The CFPB has previously stated that it may obtain information dating outside the limitations period regardless of whether "such information is itself actionable," so long as "such information is relevant to conduct for which liability can be lawfully imposed." *See, e.g., In Re National Asset Advisors, LLC and National Asset Mortgage LLC*, 2016-MISC-National Asset Advisors and National Asset Mortgage-0001 (Nov. 1, 2016), at 4. Yet even if that is so, the CFPB may not seek this information unless it has some concrete reason for believing that it may be relevant to its investigation: "Agencies are ... not afforded unfettered authority to cast about for potential wrongdoing." *ACICS*, 854 F.3d at 689 (quotation marks omitted).

The CFPB has no grounds for imposing a *blanket* definition that the applicable period for *all* requests dates back to January 1, 2013. If the CFPB plausibly believes that a particular category of documents dated outside the limitation period might be relevant to claims that are not

statutorily barred, it may seek those documents. But the CFPB has no reasonable basis for believing that as to every single written request, interrogatory, and document request, stale documents or information may be relevant to its investigation.

CareCredit information. The CID seeks massive amounts of data and information with respect to CareCredit, including Interrogatories 3(a), 9, 10, 11, Written Reports 6 and 7, and Document Requests 1-7, 11 and 13. The CFPB has no reasonable grounds for concluding that this information will be relevant to any investigation.

CareCredit is a Synchrony sales platform and the market name of a Synchrony-branded credit card offered primarily at health care providers and veterinarians. As noted, CareCredit was the subject of an agreement with the CFPB regarding deferred interest promotions in December 2013. Since then, in 2014 and again in 2015, the CFPB examined Synchrony's compliance with the agreement. In both cases, it identified no issues with respect to CareCredit's compliance.

Synchrony is prepared to produce to CFPB Enforcement the CFPB exam reports, and other materials that Synchrony previously provided to both CFPB Enforcement and Supervision to establish its compliance with the agreement. It should not be required to produce more. CFPB Enforcement has no reasonable basis for concluding that the additional information sought might be relevant to any future enforcement action.

Further, even if some CareCredit-related documents and information were relevant, any CareCredit-related documents and information dating prior to the December 10, 2013 agreement are plainly not. The CareCredit agreement includes a release of liability for Synchrony's CareCredit-related activities prior to that date. The CFPB has no reasonable basis for believing that CareCredit-related documents prior to that date could be relevant to Synchrony's liability, given that the CFPB has already released Synchrony from liability for its activities prior to that date.

Written reports 2, 3, 5, and 6, which seek large volumes of information about consumer financial transactions. If CFPB had reason to believe that a retailer, merchant or health care provider working with Synchrony had lied to a consumer about a deferred interest product, it would have the basis to seek the marketing materials used by that retailer and for information about that retailer's financial transactions. It would, of course, have to make that basis clear in the Notification of Purpose in the CID.

Here, however, CFPB has sought not targeted information about particular representations to particular consumers or information about specific transactions. Rather, Written Requests 2, 3, 5, and 6 seek a vast amount of data about *all* of Synchrony's transactions for the last several years. In Part III, Synchrony explains why those Written Requests pose an excessive burden. But even if gathering this information was not burdensome, the CFPB has no basis for its view that *all* of it is "reasonably relevant" to an enforcement action that could be brought in good faith. To the extent the CFPB intends to use this information for purposes of a broadside attack on deferred interest promotions, such a broadside attack would be illegal in an enforcement action. To the extent the CFPB intends to investigate particular complaints brought

by particular consumers, there is no possible reason that all of this information could be relevant—especially given that the CFPB already possesses five terabytes of data covering more than 125 million promotional transactions over a five-year period.

III. The CID Would Impose an Excessive Burden.

The CID should be modified because it is “unduly burdensome or unreasonably broad.” *ACICS*, 854 F.3d at 689 (quotation marks omitted).

Synchrony has met and conferred with the CFPB, raised objections as to vagueness, relevance, and burden, proposed clarifications and narrowing modifications, and will send a modification request. Because, however, the CFPB has denied Synchrony’s request to extend the time to file this petition, Synchrony has no choice but to challenge the CID requests that are extraordinarily broad and encompass massive amounts of information. Compliance would “unduly disrupt” and “seriously hinder” the “normal operations of [Synchrony’s] business.” *In the Matter of Westgate Resorts, Ltd.*, 2015-MISC-WESTGATE RESORTS, LTD-0001, at 4 (Mar. 11, 2016) (quotation marks omitted).

To understand why the CFPB’s CID poses an excessive and unlawful burden, it is essential to explain both the scope of Synchrony’s business, and the scope of CFPB’s previous demands for information from Synchrony.

Synchrony operates through three sales platforms: Retail Card, Payment Solutions and CareCredit. The Retail Card platform primarily consists of credit programs with regional and national retailers, such as Walmart. Payment Solutions also provides credit programs to national and regional retailers, but the majority of its partners are small to mid-sized merchants. From 2013 to 2016, Payment Solutions had had more than 60,000 participating merchants. CareCredit is a Synchrony-branded credit program that primarily provides financing for customers of health care providers and veterinarians. As of the end of the first quarter 2017, Synchrony had approximately 70 million active account holders across the three platforms. In 2016, it handled approximately 260,000,000 calls and had approximately 2 billion consumer touch points in total.

In view of the size and scope of Synchrony’s services, any request for granular information from Synchrony will necessarily involve a substantial compliance burden. In May 2014, for example, the CFPB requested data on promotions originating between 2008 and 2013. Complying with this request required several data analysts to conduct detailed analytics over four man-months, yielding approximately five terabytes of uncompressed data. Declaration of Joseph Lyons, ¶¶ 3-4. Synchrony also has produced voluminous data in connection with two Supervisory examinations that included reviews related to deferred interest promotions. One exam related to Synchrony’s compliance with the CareCredit agreement. For that exam, Synchrony provided documents and written responses evidencing its compliance with each provision of the agreement. The second examination related more generally to credit card account management. For that exam, Synchrony provided information about advertising and marketing, periodic billing statements, training, complaints, disclosures, payment allocation and a data file regarding promotional financing for a subset of Synchrony clients. Finally, Synchrony also has voluntarily provided the CFPB with information related to deferred interest promotions.

In 2015 and 2016, Synchrony met with the CFPB and provided, among other things, documents showing consumers' wing-to-wing experience related to deferred interest transactions. Yet, despite Synchrony's production of this information, the CID asks Synchrony to reproduce the exact same information and calls for more information regarding all aspects of Synchrony's deferred interest programs.

Synchrony's prior productions are pertinent for two reasons. First, the CID—and the burden imposed—should not be analyzed in a vacuum. The CFPB has no sound justification for seeking yet more categories of data than previously provided, broken down in more ways, rather than analyzing the terabytes of data already in its possession. *See In re Civil Investigative Demand*, No. 5:16-mc-3, 2016 WL 4275853, at *8 (W.D. Va. Aug. 12, 2016) (“Given the scope of the government’s investigation, the vast amount of information already in the government’s possession ..., and the breadth of the pending CID, it may well be that it would be unduly burdensome for Beam to comply chapter and verse with the myriad specifications of the CID.”). Second, Synchrony's prior experience shows that its arguments about burden are not speculative.

Synchrony highlights and objects in particular to the following requests as both overbroad and excessively burdensome:

Written Reports 2, 3, 5, and 6. In these requests, the CFPB seeks a massive amount of information, divided up in numerous ways:

- **Written Report 2** seeks aggregate financial information for each “Financial Product that offers Deferred Interest Promotions through the Company’s Retail Card and Payment Solutions Sales Platforms.” “Financial Product” is defined broadly to include “any credit product that the Company offers consumers, including but not limited to private label credit cards, general purpose co-branded credit cards, ... ‘Dual Cards,’ and installment loans.”
- **Written Report 3** seeks some 25 columns of information on a retailer-by-retailer basis—that is, “broken down within each Financial Product by each Retailer that accepted payment through the Financial Product pursuant to a Deferred Interest Promotion.” “Retailer,” in turn, is defined to include any entity “that accepts payment from consumers through a Financial Product that is available through the Retail Card Sales Platform or the Payment Solutions Sales Platform,” as those terms are used in Synchrony’s 10-K.
- **Written Reports 5 and 6** seek similar information as Written Reports 2 and 3, broken down by each Deferred Interest Promotion offered through CareCredit.

Preparing this information will be technically difficult, and in some cases, technically impossible. As explained in detail in the Declaration of Joseph Lyons, Synchrony does not maintain aggregate data of the type requested in the ordinary course of business. Declaration of Joseph Lyons, ¶ 5. For roughly 28% of the information that the CFPB seeks in Written Reports 2, 3, 5, and 6, Synchrony will have to write specialized code to retrieve and test the data. *Id.* ¶ 9. And for an additional 37% of the information that the CFPB seeks in those Written Reports, it is

technically impossible for Synchrony to assemble the information sought. *Id.* ¶ 10. Synchrony will be forced to make assumptions to produce approximations of the aggregate data requested—which will inevitably be imprecise. *Id.*

Preparing Written Reports 2, 3, 5, 6 will require the manipulation of over 2 terabytes of data, comprising 110 million transactions. *Id.* ¶ 14. Synchrony would use two analysts for this project, which will take up a substantial amount of their time and prevent them from performing many of their routine business functions. *Id.* ¶ 17. Synchrony’s team has already spent approximately 75-100 man hours scoping the requirements of the written reports, and anticipates that completion of this project, including coding, data pulls, report development, and review, would require 400-650 man hours and would take six month or more to complete. *Id.* ¶¶ 18, 19.⁶

The result of all this work will be unwieldy data that will be unhelpful to the CFPB. For example, Written Report 3 requests four years of data broken down by promotion and by retailer. As noted, the Payment Solutions platform had more than 60,000 different retailers participating in the program from 2013 to 2016, and many of them offered several types of deferred interest promotions. *Id.* ¶ 16. Thus, the final output of Written Report 3 will be more than one million lines of data. *Id.* This enormous volume of data will not assist the CFPB’s investigation, whatever it may be.

Information on Consumer Complaints (Written Report 4). Written Report 4 seeks “the number of written or oral complaints or disputes received [annually] about each Financial Product that offers Deferred Interest Promotions,” broken down into several categories, such as (a) imposition of deferred interest, (b) late fees, and so on. As previously noted, “Financial Product” is defined broadly to include “any credit product that the Company offers consumers, including but not limited to private label credit cards, general purpose co-branded credit cards, ... ‘Dual Cards,’ and installment loans.”

As explained in the Declaration of Steven Pollack, breaking complaints down into these CFPB-created categories, as opposed to the categories that Synchrony utilizes in the normal course of its business, will pose an extraordinary burden. Synchrony separately tracks “escalated” complaints—such as complaints from regulators and the media—and “non-escalated complaints,” which include all other “expressions of dissatisfaction.” Declaration of Steven Pollack, ¶ 4. Synchrony maintains a database of “escalated complaints” sorted into reason codes, but those reason codes do not correspond to the categories of information requested in Written Report 4, and also do not distinguish between deferred interest promotions and other types of promotional financing or even other non-credit promotions. *Id.* ¶ 7. Thus, in order to properly segregate complaints into the categories identified in the CID and to ensure that the numbers are accurate, Synchrony would need to manually review approximately 2,000 escalated complaints. *Id.* ¶ 8.

With respect to non-escalated complaints, gathering the requested information and documents would be even more difficult. Before July 2015, Synchrony kept records of customer

⁶ The project would also require substantial out-of-pocket expenditures. In order to conduct the data analysis and review necessary to produce these Written Reports, Synchrony has already secured approximately \$10,000 in additional storage space. Declaration of Joseph Lyons, ¶ 15.

calls sorted by the reason for customers' inquiries; it did not separately identify customer calls reflecting customer dissatisfaction. Thus, Synchrony would be forced to conduct a manual review of any actions taken as a result of any customer call in an effort to reverse-engineer whether the customer was making a complaint corresponding to one of the CID's categories. *Id.* ¶¶ 13, 14. This would be virtually impossible, given that Synchrony handled 260,000,000 customer calls in 2016 alone. *Id.* ¶¶ 5, 13. After July 2015, non-escalated complaints were tracked using the same reason codes as those for escalated complaints, and thus a similar manual review process as the process described for escalated complaints would be required—which would require review of over 100,000 complaints. *Id.* ¶ 15.

Even setting aside the burden of manually reviewing pre-July 2015 non-escalated complaints and inquiries, the burden of complying with the CID would be excessive. Synchrony estimates it would take at least 333 hours to review the 2,000 escalated complaints, and over 10,000 hours to review the 100,000 non-escalated complaints, at a cost of at least \$400,000. *Id.* ¶¶ 8, 16.

Marketing Information (Document Requests 3, 5, 11). These document requests, collectively, seek a substantial amount of information related to marketing and training. Document Request 5, for example, literally asks for every advertisement and marketing piece provided to consumers – regardless of whether they relate to deferred interest promotions – for the entirety of Synchrony's business for over four years.⁷

Synchrony currently uses a system called Marketing Resource Management (MRM) to manage marketing campaigns including storing most marketing materials. Declaration of Maryann Lally, ¶ 3. But MRM does not catalogue marketing by promotion type, was not used robustly prior to late 2013, and even today does not contain every piece of marketing. *Id.* ¶¶ 3, 5, 9, 11. Accordingly, cataloguing the information requested by the CID, from both within and outside of MRM, would be exceedingly burdensome. Synchrony estimates that it will take more than one thousand man-hours to complete these requests if its searches were limited to MRM, and a much greater effort if the requests were not limited to documents within MRM. *Id.* ¶¶ 10-17.

Synchrony will continue to attempt to work with the CFPB on narrowing requests, but the CID, on its face, is overbroad and must be set aside or modified.

⁷ Document Request 5 seeks "Advertisements and other marketing that the Company provides directly to consumers for CareCredit and the 10 Financial Products in the Retail Card Sales Platform and the 10 Financial Products in the Payment Solutions Platform with the largest number of consumers between 2012 and 2016." Because Synchrony does not have more than ten Financial Products (as that term is defined in the CID), the request calls for all Advertisements and marketing.

CONCLUSION

The CID should be set aside or modified as set forth above.

Dated: June 6, 2017

JENNER & BLOCK LLP

By: /s/ Thomas J. Perrelli
Thomas J. Perrelli
Jenner & Block LLP
1099 New York Avenue, N.W., Suite 900
Washington, DC 20001-4412
Tel: 202-639-6004
TPerrelli@jenner.com

Attorney for Petitioner Synchrony Financial

MEET AND CONFER STATEMENT

Pursuant to 12 C.F.R. § 1080.6(c), Synchrony Financial (“Synchrony”) has conferred with counsel for the Consumer Financial Protection Bureau (“CFPB”) in a good faith effort to resolve the issues raised by this petition, but was unable to reach an agreement thereon.

On May 23, 2017 at approximately 1:00 p.m. Eastern Time, counsel for Synchrony, Jenner & Block LLP, along with representatives from Synchrony, conferred in person for several hours with counsel for the CFPB, Joanna Shalleck-Klein, Ben Clark, and Patrick Gushue, concerning the civil investigative demand (“CID”) dated May 9, 2017.

At that conference, counsel for Synchrony requested that the CID be set aside because the requests were overly broad and unduly burdensome and because Synchrony had already provided much of this data to the CFPB through other means.

Synchrony and the CFPB also discussed individual objections with regard to specific interrogatories, document requests and written reports. Synchrony stated that it would petition for an order to set aside the CID, if necessary.

Because no agreement has been reached with respect to Synchrony’s objections to the CID, Synchrony now submits the instant Petition.

Dated: June 6, 2017

JENNER & BLOCK LLP

By: /s/ Thomas J. Perrelli

Thomas J. Perrelli

JENNER & BLOCK LLP

1099 New York Avenue, N.W., Suite 900

Washington, DC 20001-4412

Tel: 202-639-6004

TPerrelli@jenner.com

Attorney for Petitioner Synchrony Financial

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing *Combined Petition To Set Aside and Petition To Modify May 9, 2017 Civil Investigative Demand Issued To Synchrony Financial* and its attachments and exhibits was filed and served via electronic mail this 6th day of June, 2017, on the following:

CFPB Executive Secretary
ExecSec@cfpb.gov

Enforcement Director
Enforcement@cfpb.gov

Joanna Shalleck-Klein
Joanna.Shalleck-Klein@cfpb.gov

By: /s/ Thomas J. Perrelli
Thomas J. Perrelli

Exhibit A

CONSUMER FINANCIAL PROTECTION BUREAU

In the matter of:

Synchrony Financial

**DECLARATION OF JOSEPH LYONS IN SUPPORT OF
COMBINED PETITION TO SET ASIDE AND PETITION TO MODIFY MAY 9, 2017
CIVIL INVESTIGATIVE DEMAND ISSUED TO SYNCHRONY FINANCIAL**

I, Joseph Lyons, Senior Vice President, Pricing and BD – Pricing, pursuant to 28 U.S.C. § 1746, declare that:

1. The subject matter of Written Reports 2, 3, 5 and 6 requested in the Civil Investigative Demand issued to Synchrony Financial on May 9, 2017 (the “CID”) is within the scope of my responsibilities at Synchrony Financial (“Synchrony”).
2. In my responsibilities as Senior Vice President, Pricing and BD – Pricing, I have worked on prior data requests made by the Consumer Financial Protection Bureau, including the data requested in May 2014 detailing promotions originated between 2008 – 2013.
3. As part of the 2014 data request, I managed a team of several data analysts at Synchrony. Synchrony collaborated for several months with the CFPB to target the request and gather the appropriate data. Still, that project involved significant data work, including over 4 man months of dedicated analytics at the individual customer/promotion level.
4. When the final files were ultimately provided to CFPB in June 2015, it totaled approximately 5 terabytes of uncompressed data, and included information regarding approximately 125 million promotional transactions.

5. Although the CID's requests for Written Reports do not ask for individual customer level data, Synchrony does not maintain aggregate data of the type requested in Written Reports 2, 3, 5 and 6. Thus, Synchrony has to develop requirements and code to create these reports from scratch.

6. Compared to the prior data requested by the CFPB in May 2014, this data pull would be similar in complexity.

7. Depending on the requirements of each Written Report, Synchrony's response will require one of three levels of effort.

8. First, some requests require a data pull from at least one of Synchrony's three data warehouses. Although my team must spend time writing code to pull this data, this process is relatively straightforward. I estimate that 35% of the variables called for by the Written Reports fall into this first category, including Written Report 2 lines 2.a., 2.b., 2.c., 2.d., 2.f., 2.h., 2.k., Written Report 3 lines 3.a., 3.b., 3.g., 3.i., 3.j., 3.k., 3.l., Written Report 5 lines 5.a., 5.c., and Written Report 6 lines 6.a., 6.b., 6.g., 6.i., 6.j., 6.k., and 6.l.

9. Second, some of the Written Report fields require Synchrony to pull data from multiple sources and/or manipulate the data. This multi-step process includes writing code, applying it to the data, and then sampling the results to make sure that the code performed as intended. This process can be complicated and time consuming. If the samples show anomalous results, additional sampling may be required. In many cases, the code has to be modified after the sampling. I estimate that 28% of the variables called for by the Written Reports fall into this category, including Written Report 2 lines 2.e., 2.g., 2.i., 2.j., Written Report 3 lines 3.d., 3.e., 3.h., 3.o., 3.p.i., Written Report 5 lines 5.b., 5.d., 5.e., 5.f., and Written Report 6 lines 6.d., 6.e., 6.h., 6.o., and 6.p.i..

10. Third, even with this customized coding, Synchrony does not have available some of the fields requested by the CFPB, and thus will be making assumptions with the data that does exist to produce the aggregate numbers requested. I estimate that 37% of the variables called for by the Written Reports fall into this category, including Written Report 3 lines 3.m., 3.n., 3.p.ii, 3.p.iii, 3.p.iv, 3.p.v, 3.p.vi, 3.q., 3.q.i, 3.q.ii, 3.q.iii, 3.q.iv. and Written Report 6 lines 6.m., 6.n., 6.p.ii, 6.p.iii, 6.p.iv, 6.p.v, 6.p.vi, 6.q., 6.q.i, 6.q.ii, 6.q.iii, and 6.q.iv..

11. For example, Synchrony does not have a flag or other indicator showing the amount of deferred interest it has waived after it was assessed. Thus, Synchrony will look for promotions that expired with deferred interest posted and then analyze that account for the following 90 days to identify an interest waiver of equal to or greater than the deferred interest. This may have the effect of not capturing all deferred interest waived by Synchrony with respect to some accounts.

12. For each of the line items in Written Reports 2, 3, 5, and 6, Synchrony will take approximately 500-1000 random samples of data and manually review the accounts on First Data (the system of record for non-charged-off accounts) to ensure accuracy of the output. Account level information on First Data is available for approximately the prior six to twelve months. Therefore, for all Written Reports, Synchrony will need to pull individual customer account statements to complete the verification. This phase of the project will require 2-3 analysts from Synchrony's Surveillance and Compliance teams. The manual review will add 30% to their normal workload.

13. In order to complete Written Reports 2, 3, 5 and 6, Synchrony would need to conduct an analysis of customer level data. Additionally, for Lost or Stolen accounts, Synchrony must trace back every account to make sure we captured the data accurately at the customer level. For instance, a customer who reports his or her card lost or stolen multiple times between 2013 –

2016 will have multiple account numbers over the period. Synchrony will have to trace the multiple account numbers to a single consumer.

14. At this time, I expect that the total volume of data to be manipulated for Written Reports 2, 3, 5, and 6 may be more than 2 terabytes. The account records over the requested time frame include approximately 110 million transactions.

15. In order to conduct the data analysis and review necessary to produce Written Reports 2, 3, 5 and 6, Synchrony has already purchased an additional 2 terabytes of storage space and has made available another 2 terabytes of storage space that can be borrowed from another analytics team. The cost of securing this additional storage space is approximately \$10,000 due to the security protections needed to store customer data.

16. Some of the data requests would require output that is too unwieldy to be useful. For example, Written Report 3 requests four years of data broken down by promotion and by retailer. The Payment Solutions Platform had more than 60,000 different participating retailers from 2013 to 2016, and many of them offered several types of deferred interest promotions. Thus, I expect that the final output of Written Report 3 to be more than one million lines of data.

17. The data requested must be sourced from three different data warehouses at Synchrony. Because of the specialized nature of this request, there are only a handful of data analysts who can perform this work. The requisite data analysts are experts in pulling and understanding promotional data. Adding outside analysts or even data analysts from within Synchrony would not make the process more efficient as they would lack the base level of knowledge needed to accomplish this project. I plan on utilizing two of these analysts for this project, which will take up a substantial amount of their time and prevent them from performing many of their routine business functions.

18. My team has already spent approximately 75-100 man hours scoping the requirements of the Written Reports.

19. I expect that completion of this project, including coding, data pulls, report development, and review, would require 400 – 650 man hours in addition to those of scoping the requirements. Because of the complexity of this project and the demands on existing specialized personnel, I expect that it would take six months or more to complete.

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

June 6, 2017.

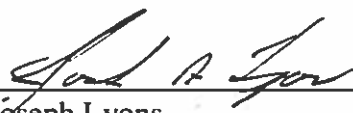

Joseph Lyons

Exhibit B

CONSUMER FINANCIAL PROTECTION BUREAU

In the matter of:

Synchrony Financial

**DECLARATION OF STEVEN POLLACK IN SUPPORT OF
COMBINED PETITION TO SET ASIDE AND PETITION TO MODIFY MAY 9, 2017
CIVIL INVESTIGATIVE DEMAND ISSUED TO SYNCHRONY FINANCIAL**

I, Steven Pollack, Senior Vice President – Customer Experience Leader, pursuant to 28 U.S.C. § 1746, declare that:

1. The subject matter of Written Report 4 in the Civil Investigative Demand issued to Synchrony Financial on May 9, 2017 (the “CID”) is within the scope of my responsibilities at Synchrony Financial (“Synchrony”).

2. Written Report 4 seeks aggregated information on the number of complaints received from 2013 to 2016 for six specified complaint categories, grouped by Financial Product and Retailer or Program name.¹

3. As part of my responsibilities as Senior Vice President – Customer Experience Leader at Synchrony, I oversee the customer complaints process and Complaints Program Team.

4. Synchrony tracks complaints separately depending on whether it is an “escalated” or “non-escalated” complaint. Escalated complaints are those complaints that are made through the following channels: regulators such as the CFPB, OCC, and FDIC; any federal government representative; Synchrony officers and directors, or the CEOs of Synchrony clients (i.e.,

¹ As used herein, Financial Product, Retailer, Provider, and Program are defined in the CID.

Retailers with whom Synchrony issues private label credit cards); the U.S. or State Attorneys General or other U.S. or state governmental bodies; the Better Business Bureaus; Synchrony Ombudspersons; and media such as newspapers, magazines, and television reports. Non-escalated complaints are all other “expressions of dissatisfaction” that are received regardless of channel, including those received via phone by customer service representatives, mail or email.

5. Synchrony has over 2 billion touch points with consumers each year from the various channels in which Synchrony interacts with customers.

Escalated Complaints

6. Generally speaking, Synchrony has escalated complaint information covering the entire timeframe requested by Written Report 4. Information from 2013 to the end of 2015 was tracked in a system called External Affairs Management Tool (EAMT). Beginning in late 2015, Synchrony began using a system called Advanced Case Manager (ACM).

7. Both EAMT and ACM contain a list of complaint reason codes. The individuals responding to the complaint are responsible for selecting the appropriate reason code. Some of these reasons are similar to the information requested in Written Report 4. However, they do not precisely match up. As one example, the reason code, “Fees/Charges – Promo Related Interest or Fees,” is intended to capture complaints about interest or fees on promotions. However, this could match either Written Report 4 subsection (a) – which seeks complaints about the imposition of deferred interest – *or* (b) – which seeks complaints about late fees related to deferred interest. Moreover, this and several other reason codes do not distinguish between deferred interest promotions and other types of promotional financing (such as equal pay promotions) or even non-credit promotions. Accordingly, a complaint coded with a reason code

of “Fees/Charges – Promo Related Interest or Fees” may not be responsive to any subsection of Written Report 4.

8. The Complaints Program Team has identified seven total reason codes from our current list of codes that could include complaints called for in Written Report 4. Over the four year time period called for by the CID, there are approximately 2,000 escalated complaints that are coded with one of these seven reason codes. In order to definitively determine if these complaints relate to a deferred interest promotion (as opposed to another promotion) and to properly segregate complaints into the categories identified in the CID, Synchrony would need to manually review each complaint tagged with any one of those seven reasons. This manual review would include a review of the complaint on ACM. In cases where the complaint or our response was not clear, my team would have to review customer account records, which are maintained on a separate system. The burden for conducting this analysis would be substantial. I estimate that it would take at least 10 minutes to review each complaint, or a minimum of 333 hours. My team does not currently have the resources to dedicate to this kind of review. Synchrony would be required to hire additional temporary personnel to review these complaints, the cost of which I discuss more thoroughly below.

9. In addition, Synchrony’s complaints databases do not track some of the information requested by Written Report 4. Exhibit C to the CID is an example of a spreadsheet showing how the CFPB would like to receive the data requested in Report 4. The spreadsheet indicates that the CFPB would like the number of complaints broken down by “Financial Product that Offers Deferred Interest Promotion.” It then includes sample rows that include the Financial Product (e.g., private label credit card and dual branded credit card) but also lists a Retailer or Program name (e.g., Lowe’s, “CarCreditONE”). We do not routinely store information based on

Financial Product. Where we do have Financial Product, it may be entered in by a Synchrony agent as opposed to driven by an account number. The Financial Product may not be completely accurate where agent input was relied upon to indicate which product was involved.

10. We may be able to use account number, if available, to determine the Financial Product information. However, we do not have a current process to accomplish this and it will take additional resources to determine an approach. We would expect an exercise such as this to take several weeks to complete.

11. It also will be difficult to link every complaint to a specific Retailer, Provider or Program. Synchrony's complaint databases did not historically track complaints by merchant number. Beginning in late 2015 and early 2016, merchant number began to be tracked more consistently by the Complaints Program, but this data may not be available for all escalated complaints. For those complaints that do not identify the particular Retailer or Provider, my team may be able to use account records to identify this information but we currently do not have an automated process to do so.

12. It should also be noted that in January 2015, the reasons used to track complaints were altered as part of a complaints enhancement project. Thus, any analysis of escalated complaints would require a separate workflow for pre- and post-January 2015 complaints.

Non-Escalated Complaints

13. Synchrony started capturing and tracking all "non-escalated" complaints, meaning any "expression of dissatisfaction" received from a consumer through any channel, in July 2015. Prior to July 2015, there was no systemic effort to capture and track all expressions of dissatisfaction. Rather, for customer calls, Synchrony tracked the nature of the call type or reason for the call. This data is maintained in a database called the Quality Data Warehouse.

This database stores, among other things, Workstation Call Inquiry (WSOI) information, which is coded through a combination of system captured and agent selected fields. Importantly, the coding does not distinguish between a simple inquiry and a complaint. In other words, the call may be coded as “Charges and Fees” but that could reflect a question about whether deferred interest charges will be assessed in the future or a complaint regarding deferred interest that has already been assessed. There are WSOI category and reason codes that could be used to find potentially relevant calls, but the volume would be very large. For example, in the “Promotions” category just for month of June 2015, we had 195,927 inquiries. In 2016, Synchrony handled approximately 260,000,000 customer calls.

14. Even after identifying this set of millions of potentially relevant calls over the four year time period requested by the CID, Synchrony would not be able to determine whether the customer was expressing dissatisfaction due to the limitations in the data Synchrony keeps. For example, call recordings typically are deleted from the system after 60 – 90 days and we would not otherwise have a record of a customer’s specific complaint or inquiry verbatim and may only know what actions were taken on an account. Without looking at specific call center notes stored in the systems of record, we would not be able to determine whether a customer was expressing dissatisfaction or was merely calling to ask a question. Even then, the call center notes will not always be conclusive. A project of this magnitude has never been attempted by the Complaints Program Team, and I do not believe it would be possible to complete without significant additional resources. I expect that it would require the work of hundreds of full time temporary workers more than six months to review the account records for millions of inquiries.

15. After July 2015, complaint reasons are available for non-escalated complaints. These reasons are the same ones used for escalated complaints (as discussed above). Like the analysis

of the escalated complaints, *see supra* at ¶¶ 6-12, to determine if the complaint relates to a deferred interest promotion (as opposed to another promotion) and to properly segregate complaints into the categories identified in the CID, Synchrony would need to manually review each potentially responsive complaint. Based on our preliminary analysis, we believe that such an exercise might involve more than 100,000 complaints.

16. Assuming it would take about ten minutes to review each complaint, this exercise would take at least 16,667 hours. This would require hiring additional resources. Including the training time required for a project of this nature, the review of 100,000 non-escalated complaints would take a team of 100 temporary works approximately two months to complete. The cost of that review would be a minimum of \$400,000.

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

6/6, 2017.


Steven Pollack

Exhibit C

CONSUMER FINANCIAL PROTECTION BUREAU

In the matter of:

Synchrony Financial

**DECLARATION OF MARYANN LALLY IN SUPPORT OF
COMBINED PETITION TO SET ASIDE AND PETITION TO MODIFY MAY 9, 2017
CIVIL INVESTIGATIVE DEMAND ISSUED TO SYNCHRONY FINANCIAL**

I, Maryann Lally, Senior Vice President – Senior Counsel, Marketing and Cardholder

Documentation, pursuant to 28 U.S.C. § 1746, declare that:

1. In my responsibilities at Synchrony Financial (“Synchrony”), I oversee the legal review of many of the marketing materials used by Synchrony’s three sales platforms: Retail Card, Payment Solutions and CareCredit. In addition to me, there are nine other employees that work under my supervision on this review process (collectively, the “Legal Marketing Review Team”).

2. I have reviewed the Civil Investigative Demand issued to Synchrony on May 9, 2017 (the “CID”). In particular, I reviewed Document Requests 3, 5 and 11 (collectively, the “Document Requests”), most of which relate generally to the marketing of deferred interest promotions. As the Document Requests are currently written, collecting these documents would require a significant level of effort. I believe the effort would total more than 1,000 man hours.

Background

3. In June 2012, Synchrony began using a system called Marketing Resource Management (MRM) to manage marketing campaigns, including the storage of most marketing materials. It became more robustly and consistently used by the end of 2013. MRM is a central repository used most commonly for advertisements, but it may also be used for marketing or advertising related scripts, manuals and training materials. MRM is used by the client teams supporting every Retail Card client, and some, but not all, of the teams supporting Payment Solutions clients and CareCredit providers.

4. From January 2013 through the date of the CID (May 9, 2017), the Legal Marketing Review Team reviewed approximately 42,000 requests submitted through MRM. Each individual request may have contained from one piece of collateral to as many as 70 separate pieces. The collateral mostly consisted of advertisements, but may also have included client guides, manuals, templates, scripts, and other documents.

5. The Document Requests are mostly limited to marketing materials related to deferred interest promotions. The materials stored in MRM, however, cover all marketing materials and are not organized by type of promotion offered (e.g., there is no separate categorization for marketing related to deferred interest promotions). Identifying the materials related to deferred interest promotions would require significant manual effort and review.

6. Before MRM was the primary system for the storage of marketing collateral, to the best of my knowledge such material was not retained centrally and instead may have been stored in individual custodians' emails or other sources.

7. In addition to reviewing marketing materials submitted through MRM, the Legal Marketing Review Team reviews marketing templates, or guides, with examples of how

Synchrony's clients and partners could advertise credit card products. Separate marketing templates are maintained for each Retail Card client and the largest Payment Solutions clients. The current versions of these documents are stored in a central repository, but historic versions may be stored in individual custodians' emails or other sources.

The Document Requests

8. Document Request 3 seeks four years of manuals, training materials, scripts and advertisements related to deferred interest promotions provided by Synchrony to 30 different clients or providers.

9. As noted above, since the end of 2013, many of these advertisements are stored in MRM and some, but not all, of the marketing related manuals, training materials and scripts may also be stored in MRM. But even then, identifying the cumulative documents related to deferred interest promotions, would require significant manual effort and review.

10. I believe that locating the documents in MRM called for in Document Request 3 for just one client would require approximately 40 man hours. Multiplied by the thirty clients or providers requested, this request would likely require over 1,000 man hours.

11. I will also note that my estimate is limited to those documents stored in MRM, a repository which contains many of the advertising documents but only a subset of the universe of the other documents requested and created since January 2013. As mentioned above, MRM was not used robustly until the end of 2013 and it does not house every type of document called for by Document Request 3. For example, with respect to the marketing templates referenced above (*see supra* paragraph 7), only the current versions are maintained in a central repository. Accordingly, locating each historic version of those documents over the four-year period would require an extensive effort. In addition, some manuals and training materials are not submitted

for review and tracked through MRM. Gathering those materials would require a separate effort led by different teams of people.

12. If Document Request 3 is not limited to documents located in MRM and we must conduct email and electronic file review, the amount of time this project could take could easily double.

13. Document Request 5 seeks marketing materials that Synchrony provides directly to consumers for CareCredit, and the 10 “Financial Products” with the largest number of consumers for Retail Card and Payment Solutions. Because Synchrony offers less than ten Financial Products, the way this request is written, it is asking for *all* consumer-directed marketing materials for any client, without limitation. This request is also not limited to deferred interest promotions, and therefore calls for *all* advertisements of any kind over the four-year period.

14. I believe that many of the materials potentially responsive to Document Request 5 are in the MRM repository. As a practical matter, we would search for these documents at the same time we search for documents responsive to Document Request 3. As noted above, the search for these materials, even assuming our search were limited to MRM, is estimated to exceed 1,000 man hours.

15. If Document Request 5 is not limited to documents located in MRM and we must conduct email and electronic file review, the amount of time this project could take could easily double.

16. Document Request 11 seeks documents sufficient to show all versions of all documents provided to consumers related to deferred interest promotions for the 30 largest clients or providers. The types of documents requested by Document Request 11 are broader than those requested by Document Request 5. As a practical matter, we would search for these documents

at the same time we search for documents responsive to Document Request 3. Thus, even if this request was limited to those documents already stored in MRM, this request would require additional effort consisting of hundreds, if not thousands, of additional man hours and would follow a similar process for the documents described above.

17. In all, complying with the Document Requests of which I am familiar could require thousands of man hours as currently written. This would seriously disrupt the normal business functions of the Legal Marketing Review Team, the MRM team (the team that administers the MRM tool), and the teams of others we would need to engage, such as the Compliance Team and certain client teams. Complying with these Document Requests would be almost impossible in the abridged timeframe requested by the CID and even with a delay would place a strain on each team's resources.

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

June 16, 2017.


Maryann Lally

Exhibit D



Consumer Financial
Protection Bureau

1700 G Street NW, Washington, DC 20552

May 9, 2017

Via USPS Certified Mail

Eric S. Berkowitz
Chief Litigation Counsel
Synchrony Financial
777 Long Ridge Road
Stamford, CT 06902

Re: Civil Investigative Demand served on Synchrony Financial on May 9, 2017

Dear Mr. Berkowitz:

Attached is a civil investigative demand (CID) issued to Synchrony Financial by the Consumer Financial Protection Bureau (Bureau) under 12 C.F.R. § 1080.6 and section 1052(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5562.

Rule 1080.6(c) of the Bureau's Rules Relating to Investigations requires that you contact me as soon as possible to schedule a meeting (by telephone or in person) to be held within ten (10) calendar days of receipt of this CID in order to discuss and attempt to resolve all issues regarding timely compliance with this demand. 12 C.F.R. §1080.6(c); see also Instruction IV.B. The rule requires that you make available at this meeting personnel with the knowledge necessary to resolve any such issues. Please be prepared to discuss your planned compliance schedule, and whether it is possible to tier your production by providing portions of the response prior to the due date.

Please contact me immediately to schedule a meeting, which must be held within ten (10) days of the date of issue of this CID. My telephone number is 202-435-9095. I look forward to your call.

Sincerely,

A handwritten signature in blue ink that reads 'Joanna Shalleck-Klein'.

Joanna Shalleck-Klein
Enforcement Attorney

Attachment



Consumer Financial
Protection Bureau

United States of America
Consumer Financial Protection Bureau

Civil Investigative Demand

To **Eric S. Berkowitz**
Chief Litigation Counsel
Synchrony Financial
777 Long Ridge Road
Stamford, CT 06902

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

Action Required (choose all that apply)

☒ **Appear and Provide Oral Testimony**

Location of Investigational Hearing	Date and Time of Investigational Hearing
U.S. Attorney's Office Bridgeport Office 1000 Lafayette Blvd. 10th Floor Bridgeport, CT 06604	July 24, 2017 at 9:00 am EST and July 25, 2017 at 9:00 am EST
	Bureau Investigators
	Joanna Shalleck-Klein and Benjamin Clark

☒ **Produce Documents and/or Tangible Things, as set forth in the attached document, by the following date** 06/21/2017

☒ **Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date** 06/21/2017

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

The purpose of this investigation is to determine whether banks or other persons have engaged or are engaging in unlawful acts and practices in connection with the marketing and servicing of deferred-interest credit cards in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; The Truth in Lending Act, 15 U.S.C. § 1601 et seq., and its implementing Regulation Z; any prior orders issued by the Bureau; or any other Federal consumer financial law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

Custodian / Deputy Custodian

Deborah Morris / Chelsea Peter
Consumer Financial Protection Bureau
1625 I Street, NW
ATTN: Office of Enforcement
Washington, DC 20006

Bureau Counsel

Joanna Shalleck-Klein / Benjamin Clark
Consumer Financial Protection Bureau
1625 I Street, NW
ATTN: Office of Enforcement
Washington, DC 20006

Date Issued

05/09/2017

Signature

Deborah Morris

Digitally signed by Deborah Morris
Date: 2017.05.09 08:08:41 -04'00'

Name / Title

Deborah Morris, Deputy Enforcement Director

Service

The delivery of this demand to you by any method prescribed by the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5562, is legal service. If you fail to comply with this demand, the Bureau may seek a court order requiring your compliance.

Travel Expenses

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

Right to Regulatory Enforcement Fairness

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

Paperwork Reduction Act

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

**CIVIL INVESTIGATIVE DEMAND FOR
PRODUCTION OF DOCUMENTS, WRITTEN REPORTS, ANSWERS TO
INTERROGATORIES, AND ORAL TESTIMONY**

I. Requests.

Interrogatories

1. Identify¹ all Persons who participated in responding to this Civil Investigative Demand and describe the specific tasks performed by each Person.
2. Identify each Program that is or has been part of the Retail Card Sales Platform or the Payment Solutions Sales Platform, and for each Program state the Retailers who have been a part of the Program and the dates each Retailer has been a part of the Program.
3. Identify each Financial Product through which Deferred Interest Promotions have been available.
 - a. For each Financial Product, state each Deferred Interest Promotion that has been available, and for each Deferred Interest Promotion:
 - i. Describe the terms of the Promotion;
 - ii. Describe the circumstances under which the Promotion has been offered to consumers; and
 - iii. State the dates that the Promotion was offered;
 - b. For each Financial Product, Identify each Retailer that has accepted consumer payment through a Deferred Interest Promotion listed in response to Interrogatory 3(a).
4. Identify all of the Company's written policies and procedures relating to the following, and for each policy or procedure also state the operative dates:
 - a. Deciding when to offer a Deferred Interest Promotion;
 - b. The marketing and advertising to Partners of Deferred Interest Promotions;
 - c. The marketing and advertising to consumers of Deferred Interest Promotions;
 - d. Enrolling Retailers in Programs that allow for Deferred Interest Promotions;
 - e. Enrolling Enrolled Providers in the CareCredit Sales Platform;
 - f. Enrolling consumers in Deferred Interest Promotions or Financial Products that allow for Deferred Interest Promotions;
 - g. Training and supervising of the Company's personnel regarding the marketing and sale of Deferred Interest Promotions;
 - h. Training and supervising of Partners' personnel regarding the marketing and sale of Deferred Interest Promotions;

¹ "Identify" is a term that is defined in Part III.U of this Civil Investigative Demand. Please consult Part III to see all terms that are specifically defined for purposes of this document.

- i. Monitoring Partners' marketing and sale of Deferred Interest Promotions;
 - j. Compensating the Company's personnel responsible for enrolling Partners that offer Deferred Interest Promotions;
 - k. Suspending or terminating Partners;
 - l. Ensuring that consumers understand the terms of Deferred Interest Promotions;
 - m. Informing consumers about how payments are allocated among Promotion and Non-Promotion Balances and how consumers can alter that allocation;
 - n. Allocating payments from consumers who have more than one Promotion or Non-Promotion Balance;
 - o. Tracking and responding to consumers who claim they did not understand the terms of a Deferred Interest Promotion;
 - p. Tracking and responding to complaints and feedback from Partners regarding consumer understanding of the terms of a Deferred Interest Promotion; and
 - q. Waiving Deferred Interest when a consumer fails to pay off a Deferred Interest Promotion Balance by the end of a Deferred Interest Promotion Period.
5. Describe any non-written practices, policies, or procedures related to each subject identified in Interrogatory 4.
 6. For each policy or procedure Identified in response to Interrogatory 4 or described in response to Interrogatory 5, Identify the current and former managerial-level employees responsible for developing, implementing, or approving each of the policies and procedures, and for each employee, list the dates of employment with the Company and describe his or her role in the development, implementation, or approval of the policy or procedure in question.
 7. Describe all incentives, including but not limited to compensation, bonuses, discounts, and reimbursements, that the Company has provided to any Partners related to:
 - a. The number of consumers a Partner enrolls in a Deferred Interest Promotion or a Financial Product that allows for a Deferred Interest Promotion;
 - b. The amount of credit extended under a Deferred Interest Promotion;
 - c. The amount of credit extended under a Promotion other than a Deferred Interest Promotion; or
 - d. The amount of credit extended generally.
 8. Describe the Company's mystery shopping practices with respect to Partners that offer Deferred Interest Promotions, including but not limited to the ways in which the Company determines where and when to mystery shop and how the Company conducts mystery shopping. For each practice, list the operative dates and Identify each third-party, if any, with whom the Company has contracted for services related to mystery shopping.

9. Identify all Partners that the Company has suspended. For each such Partner, provide the start and end dates of suspension and an explanation for why the Company suspended the Partner.
10. Identify all Partners with which the Company has terminated its contractual relationship. For each termination, provide the date of termination and an explanation for why the Company decided to terminate the relationship.
11. Identify each document produced in response to Document Request No. 3, and also state the operative dates for each document.
12. Identify each document produced in response to Document Request No. 4, and also state the operative dates for each document.
13. Identify each document produced in response to Document Request No. 5, and also state the operative dates for each document.
14. Identify each document produced in response to Document Request No. 6, and also state the operative dates for each document.
15. Describe all circumstances, if any, in which any Person other than a Partner can accept payment through one of the Company's Financial Products for a Purchase made pursuant to a Deferred Interest Promotion.
16. Describe in detail how the Company instructed the Partners specified in Document Request No. 11 to provide consumers with the documents produced in response to Document Request No. 11, including but not limited to:
 - a. Whether the documents were supposed to be provided electronically and, if so, what actions a consumers had to take in order to view disclosures;
 - b. The order in which the documents were to be provided to consumers; and
 - c. What statements were to be made about each document.
17. If, for any request, there are documents that would have been responsive but that are now unavailable, Identify each document and its last known location or custodian, and explain why the document cannot be produced.

Requests for Written Reports

1. Identify all databases through which the Company has tracked information related to Deferred Interest Promotions, and for each provide the following:
 - a. The database system name, commercial software name (if different from the system name) and version, technology platform, and computing model (client/server, multi-tier, etc.);
 - b. The dates during which each database is or was in use;
 - c. The names and descriptions of the data fields contained in the database (the “data dictionary”);
 - d. The data type (e.g., date/time, integer, text) in each data field;
 - e. The purposes for which the database is used;
 - f. A description of each category of persons who has access to any part(s) of the database, the identity of the part(s) to which each category of persons had access and for what purposes;
 - g. The timeframe for which information in each data field is stored or maintained;
 - h. A description of how the database is populated with data and information and by whom;
 - i. A description of how the database interacts with other systems the Company uses, such as file systems or other databases;
 - j. A description of any processes used to assure the accuracy of data included in each database, including any internal controls, internal audits, or quality assurance programs performed on the database;
 - k. Whether the database holds attachments, such as image, audio, or PDF files, and a description of those attachments;
 - l. A description of the reporting capabilities of the database;
 - m. A description of any regular or standard reports generated from the database and the frequency with which such reports are generated;
 - n. Whether the data stored in the database can be exported to Microsoft Excel or other readily-available spreadsheet or database programs; and
 - o. A description of the frequency with which the database is archived and/or backed up and the method by which it is archived and/or backed up.
2. For each year from 2013 through 2016, provide an Excel spreadsheet, similar to the format and example attached as Exhibit A, that includes the following information for each Financial Product that offers Deferred Interest Promotions through the Company’s Retail Card and Payment Solutions Sales Platforms:
 - a. Financial Product’s name;
 - b. Sales Platform;
 - c. Retailers who accepted payment through the Financial Product that year;
 - d. Financial Product’s loan receivables as of December 31 in the given year;
 - e. Financial Product’s loan receivables as of December 31 in the given year as a percentage of the Sales Platform’s loan receivables as of that same date;
 - f. Total dollar volume of interest assessed through the Financial Product in the given year;

- g. Total dollar volume of interest assessed through the Financial Product in the given year as a percentage of the total dollar volume of interest assessed through the Sales Platform in the year;
 - h. Total dollar volume of Deferred Interest assessed through the Financial Product in the given year;
 - i. Total dollar volume of Deferred Interest assessed through the Financial Product in the given year as a percentage of the total dollar volume of Deferred Interest assessed through the Sales Platform in the year;
 - j. Number of consumers who made Purchases using the Financial Product in the given year; and
 - k. Number of Purchases made using the Financial Product in the given year.
3. For each year from 2013 through 2016, provide an Excel spreadsheet, similar to the format and example attached as Exhibit B, that includes the following information for each Deferred Interest Promotion offered by each Financial Product made available through the Company's Retail Card and Payment Solutions Sales Platforms, broken down within each Financial Product by each Retailer that accepted payment through the Financial Product pursuant to a Deferred Interest Promotion:
- a. Name of Deferred Interest Promotion;
 - b. Length of the Deferred Interest Promotion Period;
 - c. Interest rate of the Deferred Interest;
 - d. First date the Deferred Interest Promotion was offered;
 - e. Last date (if applicable) the Deferred Interest Promotion was offered;
 - f. Number of consumers who made Purchases in the given year using the Deferred Interest Promotion;
 - g. Number of Purchases made in the given year using the Deferred Interest Promotion;
 - h. Number of consumers who made Purchases using the Deferred Interest Promotion and whose Deferred Interest Promotion Period came to an end in the given year;
 - i. Number of Purchases made using the Deferred Interest Promotion whose Deferred Interest Promotion Period came to an end in the given year;
 - j. Total dollar volume of Purchases made in the given year using the Deferred Interest Promotion;
 - k. Total dollar volume of Purchases made using the Deferred Interest Promotion whose Deferred Interest Promotion Period came to an end in the given year;
 - l. Total dollar volume of Deferred Interest assessed in the given year for Purchases made using the Deferred Interest Promotion;
 - m. Total dollar volume of Deferred Interest that would have been assessed in the given year for Purchases made using the Deferred Interest Promotion but for a consumer requested reversal;
 - n. Total dollar volume of Deferred Interest that would have been assessed in the given year for Purchases made using the Deferred Interest Promotion but for an automatic waiver policy;

- o. At the year's end, total amount of outstanding debt for all Purchases through the Deferred Interest Promotion;
 - p. Number of consumers, in each of the following categories, who made a Purchase using the Deferred Interest Promotion and whose Deferred Interest Promotion Period came to an end in the given year:
 - i. Consumers who paid off the Deferred Interest Promotion Balance within the Deferred Interest Promotion Period,
 - ii. Consumers who failed to pay off the Deferred Interest Promotion Balance within the Deferred Interest Promotion Period for whom the Company automatically waived the Deferred Interest charge,
 - iii. Consumers who failed to pay off the Deferred Interest Promotion Balance within the Deferred Interest Promotion Period for whom the Company waived the Deferred Interest charge following a consumer's complaint or request,
 - iv. Consumers who failed to pay off the Deferred Interest Promotion Balance within the Deferred Interest Promotion Period but paid off the Deferred Interest Promotion Balance within the first Billing Cycle after the expiration of the Deferred Interest Promotion Period,
 - v. Consumers who failed to pay off the Deferred Interest Promotion Balance within the Deferred Interest Promotion Period but paid off the Deferred Interest Promotion Balance within the second Billing Cycle after the expiration of the Deferred Interest Promotion Period, and
 - vi. Consumers who failed to pay off the Deferred Interest Promotion Balance within the Deferred Interest Promotion Period but paid off the Deferred Interest Promotion Balance within the third Billing Cycle after the expiration of the Deferred Interest Promotion Period; and
 - q. For the consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by end of the Deferred Interest Promotion Period:
 - i. Minimum, maximum, mean, median, and standard deviation from the mean of their Deferred Interest Promotion Balances at the time of the Purchases,
 - ii. Minimum, maximum, mean, median, and standard deviation from the mean of their Deferred Interest Promotion Balances at the end of the Deferred Interest Promotion Period but before assessment of Deferred Interest charge,
 - iii. Minimum, maximum, mean, median, and standard deviation from the mean of their Deferred Interest Promotion Balances immediately after assessment of Deferred Interest charges, and at the end of the first, second, and third Billing Cycles after assessment of Deferred Interest charges, and
 - iv. Minimum, maximum, mean, median, and standard deviation from the mean of waived Deferred Interest.
4. For each year from 2013 through 2016, provide an Excel spreadsheet, similar to the format and example attached as Exhibit C, that includes, for the following categories,

- the number of written or oral complaints or disputes received in that year about each Financial Product that offers Deferred Interest Promotions:
- a. Imposition of Deferred Interest;
 - b. Late fees that have resulted from the Company's billing of consumers for Deferred Interest;
 - c. Allocation or non-allocation of payments to Deferred Interest Promotion Balances;
 - d. Terms of a Deferred Interest Promotion;
 - e. Disclosures provided regarding the terms of a Deferred Interest Promotion;
 - f. Retailer's statements regarding the terms of a Deferred Interest Promotion; and
 - g. Total number of separate complaints received that relate to one or more topics in categories (a) through (f).
5. For each year from 2013 through 2016, provide an Excel spreadsheet, similar to the format and example attached as Exhibit D, that includes the following for each Deferred Interest Promotion offered through the Company's CareCredit Sales Platform:
- a. Deferred Interest Promotion's loan receivables as of December 31 in the given year;
 - b. Deferred Interest Promotion's loan receivables as of December 31 in the given year as a percentage of the Sales Platform's loan receivables as of December 31;
 - c. Total dollar volume of interest assessed through the Deferred Interest Promotion in the given year;
 - d. Total dollar volume of interest assessed through the Deferred Interest Promotion in the given year as a percentage of the total dollar volume of interest assessed through the Sales Platform;
 - e. Number of consumers who made Purchases through the Deferred Interest Promotion in the given year; and
 - f. Number of Purchases made through the Deferred Interest Promotion in the given year.
6. For each year from 2013 through 2016, provide an Excel spreadsheet, similar to the format and example attached as Exhibit E, that includes all information requested in Written Report 3 for each Deferred Interest Promotion offered through the CareCredit Sales Platform (but not broken down by each Enrolled Provider).

Requests for Documents

Submit the following:

1. Organizational charts or other documents sufficient to demonstrate how the Company is structured, including but not limited to organizational charts or other documents that detail the management structure of the Retail Card, Payment Solutions, and CareCredit Sales Platforms.

2. Documents sufficient to show the Company's policies and procedures concerning all topics Identified in response to Interrogatory No. 4.
3. Documents sufficient to show the manuals, training materials, scripts, and Advertisements regarding the marketing, offering, or sale of Deferred Interest Promotions that the Company has provided to the 10 Retailers in the Retail Card Sales Platform, the 10 Retailers in the Payment Solutions Sales Platform, and the 10 Enrolled Providers in the CareCredit Sales Platform with the largest number of consumers between 2012 and 2016.
4. Documents sufficient to show the manuals, training materials, and scripts used by the Company internally regarding the marketing, offering, or sale of Deferred Interest Promotions.
5. Documents sufficient to show Advertisements and other marketing that the Company provides directly to consumers for CareCredit and the 10 Financial Products in the Retail Card Sales Platform and the 10 Financial Products in the Payment Solutions Sales Platform with the largest number of consumers between 2012 and 2016.
6. Documents sufficient to show the manuals, training materials, and scripts that the Company has used when servicing consumers, billing or making adjustments to bills, or taking or resolving complaints from consumers or Partners regarding Deferred Interest Promotions.
7. All audits, internal compliance reports, whistleblower complaints, and summaries of or reports from investigations of consumers' or Partners' complaints related to the marketing, offering, sale, servicing, costs of, or the profits from Deferred Interest Promotions.
8. All materials provided to the Company's Board of Directors regarding the marketing, offering, sale, servicing, costs of, revenues from, or the profits from Deferred Interest Promotions.
9. All minutes from any meetings involving the Company's Board of Directors regarding the marketing, offering, sale, servicing, costs of, revenues from, or the profits from Deferred Interest Promotions.
10. All written agreements with Retailers who have marketed, sold, or accepted payment through a Deferred Interest Promotion related to their (a) participation in any Program; (b) marketing or sale of Deferred Interest Promotions; or (c) marketing or sale of Financial Products through which consumers could make Purchases using Deferred Interest Promotions for:

- a. The 10 Programs in the Retail Card Sales Platform and the 10 Programs in the Payment Solutions Sales Platform with the largest number of consumers between 2012 and 2016; and
 - b. The 10 Programs in the Retail Card Sales Platform and the 10 Programs in the Payment Solutions Sales Platform with the largest number of Purchases between 2012 and 2016.
11. Documents sufficient to show all versions of all documents provided to consumers, including documents shown to consumers but not given to them to keep, related to Deferred Interest Promotions for:
 - a. The 10 Retailers in the Retail Card Sales Platform, the 10 Retailers in the Payment Solutions Sales Platform, and the 10 Enrolled Providers in the CareCredit Sales Platform with the largest number of consumers between 2012 and 2016; and
 - b. The 10 Retailers in the Retail Card Sales Platform, the 10 Retailers in the Payment Solutions Sales Platform, and the 10 Enrolled Providers in the CareCredit Sales Platform with the largest number of Purchases between 2012 and 2016.

Responsive documents include, but are not limited to, account agreements, applications, disclosures, and consumer guides.

12. All reports from surveys or studies, whether conducted by the Company or by a third-party, concerning the Company's Deferred Interest Promotions, including but not limited to customer understanding of Deferred Interest Promotions, customer satisfaction with Deferred Interest Promotions, analyses of the profitability of Deferred Interest Promotions, and strategic plans for expanding offerings of Deferred Interest Promotions.
13. Documents sufficient to show the Company's compliance or lack of compliance with the Consent Order entered in *In re: GE Capital Retail Bank, CareCredit LLC*, Case No. 2013-CFPB-009 (Dec. 10, 2013).

II. Topics for Hearing.

1. The Company's management structure for each Sales Platform, each Program that allows for Deferred Interest Promotions, and each Financial Product that allows for Deferred Interest Promotions.
2. The Company's enrollment of new Partners in the Retail Card, Payment Solutions, and CareCredit Sales Platforms, including how the Company markets and advertises to potential Partners, how the Company establishes the terms of its agreements with its Partners, and any standard terms that the Company includes in its agreements with its Partners.

3. The Company's marketing and advertising to consumers of Deferred Interest Promotions.
4. The Company's training, supervision, and monitoring of its Partners regarding how Partners market, sell, and enroll consumers in Deferred Interest Promotions.
5. The manner in which the Company tracks and responds to consumer complaints about Deferred Interest Promotions.
6. The Company's policies or practices for waiving Deferred Interest charges incurred by consumers.
7. The Company's policies and practices for allocating consumer payments between Promotion and Non-Promotion Balances and for disclosing these policies and practices to consumers.
8. How the Company uses information about consumer purchases through Deferred Interest Promotions, consumer payoff rates for purchases through Deferred Interest Promotions, and the profit the Company makes through Deferred Interest Promotions in developing its sales and marketing strategies.
9. The Company's compliance with the Consent Order entered in *In re: GE Capital Retail Bank, CareCredit LLC*, File No. 2013-CFPB-009 (Dec. 10, 2013).
10. The Company's computer systems, including but not limited to systems for storing customer data, systems for storing information about Programs, Retailers, and Enrolled Providers, systems for interacting with Retailers and Enrolled Providers, and information retention policies for these systems.

III. Definitions.

- A. "**Account Balance**" means the total outstanding amount of money owed by a consumer for all purchases made using the same Financial Product, including all Promotion Balances and Non-Promotion Balances.
- B. "**Advertisement**" means any statement, illustration, depiction, or promotional material, whether in English or another language, that is designed to effect a sale or create interest in goods or services, regardless of where it appears.
- C. "**And**" and "**or**" must be construed both conjunctively and disjunctively.
- D. "**Any**" includes "**all**," and "**all**" includes "**any**."
- E. "**Billing Cycle**" means "the interval between the days or dates of regular periodic statements." 12 CFR § 1026.2(a)(4).

F. **“CareCredit Sales Platform”** means what the Company refers to in its Form 10-K for the fiscal year that ended December 31, 2016 as the “CareCredit” “sales platform.”

G. **“CID”** means the Civil Investigative Demand, including the Requests, Topics for Hearing, Definitions, and Instructions.

H. **“CFPB”** or **“Bureau”** means the Bureau of Consumer Financial Protection.

I. **“Company”** or **“you”** or **“your”** means Synchrony Financial, formerly known as GE Capital Retail Finance, Inc.; Synchrony Bank, formerly known as GE Capital Retail Bank; and any parent companies, wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, agents, any predecessors, and any successors in interest.

J. **“Deferred Interest”** means “finance charges, accrued on balances or transactions, that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or transactions are paid in full by a specified date.” 12 C.F.R. § 1026.16(h)(2).

K. **“Deferred Interest Promotion”** means any financing option offered to consumers that allows for Deferred Interest.

L. **“Deferred Interest Promotion Balance”** means the amount of money due and owing by a consumer for a Purchase made using a Deferred Interest Promotion.

M. **“Deferred Interest Promotion Period”** means the “maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date by which the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance charges.” 12 C.F.R. § 1026.16(h)(2).

N. **“Deputy Enforcement Director”** refers to a Deputy Assistant Director of the Office of Enforcement.

O. **“Document”** means any written matter of every type and description, including electronically stored information. “Document” includes any non-identical copy (such as a draft or annotated copy) of another document.

P. **“Each”** includes **“every,”** and **“every”** includes **“each.”**

Q. **“Electronically Stored Information,”** or **“ESI,”** means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise) of any electronically created or stored information,

including but not limited to e-mail, instant messaging, videoconferencing, SMS, MMS, or other text messaging, and other electronic correspondence (whether active, archived, unsent, or in a sent or deleted-items folder), word-processing files, spreadsheets, databases, unorganized data, document metadata, presentation files, and sound recordings, regardless of how or where the information is stored, including if it is on a mobile device.

R. **“Enforcement Director”** refers to the Assistant Director of the Office of Enforcement.

S. **“Enrolled Provider”** means any Person that accepts payment through a Financial Product that is available through the Company’s CareCredit Sales Platform.

T. **“Financial Product”** means any credit product that the Company offers consumers, including but not limited to private label credit cards, general purpose co-branded credit cards, the credit product that the Company calls “Dual Cards,” and installment loans.

U. **“Identify”** means to provide: (a) for natural persons, their name, title or position, present business affiliation, present business address, e-mail address, and telephone number, or if a present business affiliation or present business address is not known, the last known business address, home address, e-mail address, and telephone number; (b) for businesses or other organizations, the name, address, identities of officers, directors, or managers of the business or organization, and contact persons with e-mail addresses and telephone numbers, where applicable; and (c) for documents, the title, date, authors, recipients, Bates numbers, if applicable, type of document or some other means of identifying the document, and the present or last known location or custodian.

V. **“Non-Promotion Balance”** means the outstanding amount of money due and owing by a consumer for purchase(s) using a Financial Product that is/are not financed through a Promotion.

W. **“Partner”** means a Retailer or Enrolled Provider.

X. **“Payment Solutions Sales Platform”** means what the Company refers to in its Form 10-K for the fiscal year that ended December 31, 2016 as the “Payment Solutions” “sales platform.”

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

Z. **“Program”** means any arrangement between the Company and one or more Retailers through which the Company provides common Financial Product(s) that allow for Deferred Interest Promotions (*e.g.*, the Company’s Car Care Program).

AA. **“Promotion”** means financing offered pursuant to a “promotional financing offer,” as referred to in the Company’s Form 10-K for the fiscal year that ended December 31, 2016, including deferred interest financing, no interest financing, or reduced interest financing.

BB. **Promotion Balance**” means the outstanding amount of money due and owing by a consumer for a purchase made using a Promotion.

CC. **“Purchase”** means all purchases, whether for thing or service, made at the same time using a Financial Product.

DD. **“Retail Card Sales Platform”** means what the Company refers to in its Form 10-K for the fiscal year that ended December 31, 2016 as the “Retail Card” “sales platform.”

EE. **“Retailer”** means any Person that accepts payment from consumers through a Financial Product that is available through the Retail Card Sales Platform or the Payment Solutions Sales Platform and from whom purchases have been made using a Promotion offered by the Company.

IV. Instructions.

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

B. **Meet and Confer:** As stated in 12 C.F.R. § 1080.6(c), you must contact Enforcement Attorney Joanna Shalleck-Klein at (202) 435-9095 as soon as possible to schedule a meeting (telephonic or in person) to discuss your response to the CID. The meeting must be held within **10** calendar days after you receive this CID or before the deadline for filing a petition to modify or set aside the CID, whichever is earlier.

C. **Applicable Period for Responsive Materials:** Unless otherwise directed, the applicable period for the request is from January 1, 2013 until the date of this CID.

D. **Privilege Claims:** If any material responsive to this CID is withheld on the grounds of privilege, you must make the privilege claim no later than the date set for the

production of the material. As stated in 12 C.F.R. § 1080.8(a), any such claim must include a schedule of the documents, information, or tangible things withheld that states, for each:

1. its type, specific subject matter, and date;
2. the names, addresses, positions, and organizations of all authors and direct or indirect recipients;
3. the specific grounds for claiming the privilege;
4. the request to which the privileged document, information, or thing is responsive; and
5. its Bates number or range.

In addition, the person who submits the schedule and the attorney stating the grounds for the privilege must sign it. A person withholding material solely based on a claim of privilege must comply with the requirements of 12 C.F. R. § 1080.8 rather than file a petition for an order modifying or setting aside a demand under 12 C.F.R. § 1080.6(e). Please follow the enclosed Document Submission Standards for further instructions about producing redacted privileged documents.

E. Document Retention: Until you are notified otherwise, you are required to retain all documents and other tangible things that you used or relied on in responding to this CID. In addition, you must retain, and suspend any procedures that may result in the destruction of, documents, information, or tangible things that are in any way relevant to the investigation, as described in the CID's Notification of Purpose. You are required to prevent the destruction of relevant material irrespective of whether you believe such material is protected from future disclosure or discovery by privilege or otherwise. *See* 18 U.S.C. §§ 1505, 1519.

F. Modification Requests: If you believe that the scope of the search or response required by this CID can be narrowed consistent with the Bureau's need for documents or information, you are encouraged to discuss such possible modifications, including modifications of the requirements of these instructions, with Enforcement Attorney Joanna Shalleck-Klein at (202) 435-9095. Modifications must be agreed to in writing by the Enforcement Director or a Deputy Enforcement Director. 12 C.F.R. § 1080.6(d).

G. Petition for Order Modifying or Setting Aside Demand: Under 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), you may petition the Bureau for an order modifying or setting aside this CID. To file a petition, you must send it by e-mail to the Bureau's Executive Secretary at ExecSec@cfpb.gov, copying the Enforcement Director at Enforcement@cfpb.gov, within 20 calendar days of service of the CID or, if the return date is less than 20 calendar days after service, before the return date. The subject line

of the e-mail must say "Petition to Modify or Set Aside Civil Investigative Demand." If a request for confidential treatment is filed, you must file a redacted public petition in addition to the unredacted petition. All requests for confidential treatment must be supported by a showing of good cause in light of applicable statutes, rules, Bureau orders, court orders, or other relevant authority.

H. **Certification:** The person to whom the CID is directed or, if it is directed to an entity, any person having knowledge of the facts and circumstances relating to the production, must certify that the response to this CID is true and complete. This certification must be made on the form declaration included with this CID.

I. **Scope of Search and Investigational Hearing:** This CID covers materials and information in your possession, custody, or control, including but not limited to documents in the possession, custody, or control of your attorneys, accountants, other agents or consultants, directors, officers, and employees.

J. **Procedures Governing Hearing:** This CID is issued under section 1052 of the Consumer Financial Protection Act, 12 U.S.C. § 5562. The taking of oral testimony pursuant to this CID will be conducted in conformity with that section and 12 C.F.R. §§ 1080.6(a)(4), 1080.7, and 1080.9.

K. **Designation of a Witness:** This CID requires oral testimony from an entity. Under 12 C.F.R. § 1080.6(a)(4)(ii), you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf. The individuals designated must testify about information known or reasonably available to you, and their testimony is binding on you. Your failure to designate a witness competent to testify about the topics described will be considered a failure to comply with this CID.

L. **Document Production:** The Bureau encourages the electronic production of all material responsive to this CID; please follow the enclosed Document Submission Standards.

All productions sent by U.S. Postal Service should be addressed to:

Consumer Financial Protection Bureau
1700 G Street, NW
ATTN: Chelsea Peter, SEFL, Office of Enforcement, Room 4059
Washington, DC 20552

All productions sent by FedEx, UPS, or other courier should be addressed to:

Consumer Financial Protection Bureau
1625 Eye Street NW
ATTN: Chelsea Peter, SEFL, Office of Enforcement, Room 4059

Washington, DC 20006

Please provide your intended method of production and any tracking numbers by e-mail or telephone to Enforcement Attorney Joanna Shalleck-Klein at Joanna.Shalleck-Klein@cfpb.gov and (202) 435-9095.

M. Document Identification: Documents that may be responsive to more than one request of this CID need not be submitted more than once. All documents responsive to this CID must be accompanied by an index that identifies: (i) the name of each custodian of each responsive document; (ii) the corresponding Bates number or range used to identify that person's documents; and (iii) the request or requests to which each document responds.

N. Sensitive Personally Identifiable Information: If any material called for by these requests contains sensitive personally identifiable information, sensitive health information of any individual, or Suspicious Activities Reports, please contact Enforcement Attorney Joanna Shalleck-Klein at (202) 435-9095 before sending those materials to discuss ways to protect the information during production. You must encrypt electronic copies of such materials with encryption software acceptable to the Bureau. When submitting encrypted material, you must provide the encryption key, certificate, or passcode in a separate communication.

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

O. Information Identification: Each request for a written report or interrogatory in this CID must be answered separately and fully in writing under oath. All information submitted must clearly and precisely identify the request or requests to which it is responsive.

P. Declaration Certifying Records of Regularly Conducted Business Activity: Attached is a Declaration Certifying Records of Regularly Conducted Business Activity, which may limit the need to subpoena you to testify at future proceedings to establish the admissibility of documents produced in response to this CID. Please execute this Declaration and provide it with your response.

Q. All references to “**year**” or “**annual**” refer to the calendar year. Where information is requested “for each year,” provide it separately for each year; where yearly data is not available, provide responsive information for the calendar year to date, unless otherwise instructed.

R. **Duty to Estimate:** If you are unable to answer any interrogatory fully, supply such information as is available. Explain why such answer is incomplete, the efforts you made to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation “est.” If there is no reasonable way to make an estimate, provide an explanation.

Exhibit A: Written Report 2 Example

	A	B	C	D	E	F	G	H	I	J	K	L
	Year	Financial Product	Sales Platform	Retailer(s) in Program That Year	Loan Receivables in Year	Loan Receivables in Year as a Percentage of the Sales Platform's Loan Receivables in Year	Interest Assessed through the Financial Product in Year	Interest Assessed through the Financial Product in Year as a Percentage of the Total Interest Assessed through the Sales Platform in Year	Deferred Interest Assessed through Financial Product in Year	Deferred Interest Assessed through Financial Product in Year as a Percentage of Deferred Interest Assessed through Sales Platform in Year	Number of Consumers who Made Purchases using the Financial Product in Year	Number of Purchases Made Using Financial Product in Year
1												
2	2016	Lowe's Private Label Credit Card	Retail Card	Lowe's	\$	%	\$	%	\$	%	#	#
3	2015	Lowe's Private Label Credit Card	Retail Card	Lowe's	\$	%	\$	%	\$	%	#	#
4	2014	Lowe's Private Label Credit Card	Retail Card	Lowe's	\$	%	\$	%	\$	%	#	#
5	2013	Lowe's Private Label Credit Card	Retail Card	Lowe's	\$	%	\$	%	\$	%	#	#
6	2016	CarCreditONE Dual Branded Credit Card	Payment Solutions	Midas, Michelin Tires, Pep Boys, etc.	\$	%	\$	%	\$	%	#	#
7	2015	CarCreditONE Dual Branded Credit Card	Payment Solutions	Midas, Michelin Tires, Pep Boys, etc.	\$	%	\$	%	\$	%	#	#
8	2014	CarCreditONE Dual Branded Credit Card	Payment Solutions	Midas, Michelin Tires, Pep Boys, etc.	\$	%	\$	%	\$	%	#	#
9	2013	CarCreditONE Dual Branded Credit Card	Payment Solutions	Midas, Michelin Tires, Pep Boys, etc.	\$	%	\$	%	\$	%	#	#
10	2016	Furniture Store Private Label Credit Card	Payment Solutions	Furniture Store	\$	%	\$	%	\$	%	#	#
11	2015	Furniture Store Private Label Credit Card	Payment Solutions	Furniture Store	\$	%	\$	%	\$	%	#	#
12	2014	Furniture Store Private Label Credit Card	Payment Solutions	Furniture Store	\$	%	\$	%	\$	%	#	#
13	2013	Furniture Store Private Label Credit Card	Payment Solutions	Furniture Store	\$	%	\$	%	\$	%	#	#

Exhibit B: Written Report 3 Example

	A	B	C	D	E	F	G	H	I	J
1										
2	Year	Financial Product	Retailer	Deferred Interest Promotion name	Deferred Interest Promotion Period length	Deferred Interest Promotion interest rate	First date Deferred Interest Promotion was offered	Last date Deferred Interest Promotion was offered	Consumers who made a Purchase using the Deferred Interest Promotion in the given year	Purchases made through the Deferred Interest Promotion in the given year
3	2013	Lowe's Private Label Credit Card	Lowe's	No interest if Paid in Full within 6 months	6 months	26.99%	Date	Date	#	#
4	2015	Lowe's Private Label Credit Card	Lowe's	No Interest if Paid in Full within 12 months	12 months	26.99%	Date	Date	#	#
5	2016	Lowe's Private Label Credit Card	Lowe's	No Interest if Paid in Full within 18 months	18 months	26.99%	Date	Date	#	#
6	2014	CarCreditONE Dual Branded Credit Card	Midas	No Interest if Paid in Full within 6 months	6 months	26.99%	Date	Date	#	#
7	2015	CarCreditONE Dual Branded Credit Card	Midas	No Interest if Paid in Full within 12 months	12 months	26.99%	Date	Date	#	#
8	2014	CarCreditONE Dual Branded Credit Card	Michelin	No Interest if Paid in Full within 6 months	6 months	26.99%	Date	Date	#	#
9	2014	CarCreditONE Dual Branded Credit Card	Michelin	No Interest if Paid in Full within 12 months	12 months	26.99%	Date	Date	#	#
10	2013	Furniture Store Private Label Credit Card	Furniture Store	No Interest if Paid in Full within 18 months	18 months	26.99%	Date	Date	#	#
11	2013	Furniture Store Private Label Credit Card	Furniture Store	No Interest if Paid in Full within 24 months	24 months	26.99%	Date	Date	#	#
12	2013	Furniture Store Private Label Credit Card	Furniture Store	No Interest if Paid in Full within 12 months	12 months	26.99%	Date	Date	#	#
13	2011/4	Furniture Store Private Label Credit Card	Furniture Store	No Interest if Paid in Full within 12 months	12 months	26.99%	Date	Date	#	#

Exhibit B: Written Report 3 Example

	K	L	M	N	O	P	Q	R
1								
2	Consumers who made a Purchase using the Deferred Interest Promotion and whose Deferred Interest Promotion Period ended in the given year	Purchases made through the Deferred Interest Promotion with a Deferred Interest Promotion Period that ended in the given year	Purchases made in the given year using the Deferred Interest Promotion	Purchases made using the Deferred Interest Promotion with a Deferred Interest Promotion Period that ended in the given year	Total dollar volume of Deferred Interest assessed in the given year for Purchases made using the Deferred Interest Promotion	Deferred Interest that would have been assessed in the given year for Purchases made using the Deferred Interest Promotion, but for a consumer requested reversal	Deferred Interest that would have been assessed in the given year for Purchases made using the Deferred Interest Promotion, but for an automatic waiver policy	Outstanding debt for all Purchases made through the Deferred Interest Promotion at the end of the given year
3	#	#	\$	\$	\$	\$	\$	\$
4	#	#	\$	\$	\$	\$	\$	\$
5	#	#	\$	\$	\$	\$	\$	\$
6	#	#	\$	\$	\$	\$	\$	\$
7	#	#	\$	\$	\$	\$	\$	\$
8	#	#	\$	\$	\$	\$	\$	\$
9	#	#	\$	\$	\$	\$	\$	\$
10	#	#	\$	\$	\$	\$	\$	\$
11	#	#	\$	\$	\$	\$	\$	\$
12	#	#	\$	\$	\$	\$	\$	\$
13	#	#	\$	\$	\$	\$	\$	\$

Exhibit B: Written Report 3 Example

	S	T	U	V	W	X
1	Of those consumers who made a Purchase using the Deferred Interest Promotion and whose Deferred Interest Promotion Period came to an end in the given year, the number who:					
	Paid off their Deferred Interest Promotion Balance within the Deferred Interest Promotion Period	Failed to pay off the Deferred Interest Balance within the Deferred Interest Promotion Period, but for whom the Company automatically waived the Deferred Interest charge	Failed to pay off the Deferred Interest Balance, but for whom the company waived the Deferred Interest charge following a complaint or request	Failed to pay off the Deferred Interest Balance during the Deferred Interest Promotion Period, but paid off the Deferred Interest Balance within the first Billing Cycle after the expiration of the Deferred Interest Promotion Period	Failed to pay off the Deferred Interest Balance during the Deferred Interest Promotion Period, but paid off the Deferred Interest Balance within the second Billing Cycle after the expiration of the Deferred Interest Promotion Period	Failed to pay off the Deferred Interest Balance during the Deferred Interest Promotion Period, but paid off the Deferred Interest Balance within the third Billing Cycle after the expiration of the Deferred Interest Promotion Period
2	#	#	#	#	#	#
3	#	#	#	#	#	#
4	#	#	#	#	#	#
5	#	#	#	#	#	#
6	#	#	#	#	#	#
7	#	#	#	#	#	#
8	#	#	#	#	#	#
9	#	#	#	#	#	#
10	#	#	#	#	#	#
11	#	#	#	#	#	#
12	#	#	#	#	#	#
13	#	#	#	#	#	#

Exhibit B: Written Report 3 Example

	Y	Z	AA	AB	AC	AD	AE	AF	AG	AH
	<p>For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:</p>									
1										
2										
3	\$	\$	\$	\$	#	\$	\$	\$	\$	#
4	\$	\$	\$	\$	#	\$	\$	\$	\$	#
5	\$	\$	\$	\$	#	\$	\$	\$	\$	#
6	\$	\$	\$	\$	#	\$	\$	\$	\$	#
7	\$	\$	\$	\$	#	\$	\$	\$	\$	#
8	\$	\$	\$	\$	#	\$	\$	\$	\$	#
9	\$	\$	\$	\$	#	\$	\$	\$	\$	#
10	\$	\$	\$	\$	#	\$	\$	\$	\$	#
11	\$	\$	\$	\$	#	\$	\$	\$	\$	#
12	\$	\$	\$	\$	#	\$	\$	\$	\$	#
13	\$	\$	\$	\$	#	\$	\$	\$	\$	#

Exhibit B: Written Report 3 Example

	AI	AJ	AK	AL	AM	AN	AO	AP	AQ	AR
	For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:									
1	For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:									
2	Minimum Deferred Interest Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Maximum Deferred Interest Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Mean Deferred Interest Promotion Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Median Deferred Interest Promotion Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Standard Deviation from the mean of the Deferred Interest Promotion Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Minimum Deferred Interest Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges	Maximum Deferred Interest Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges	Mean Deferred Interest Promotion Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges	Median Deferred Interest Promotion Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges	Standard Deviation from the mean of the Deferred Interest Promotion Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges
3	\$	\$	\$	\$	#	\$	\$	\$	\$	#
4	\$	\$	\$	\$	#	\$	\$	\$	\$	#
5	\$	\$	\$	\$	#	\$	\$	\$	\$	#
6	\$	\$	\$	\$	#	\$	\$	\$	\$	#
7	\$	\$	\$	\$	#	\$	\$	\$	\$	#
8	\$	\$	\$	\$	#	\$	\$	\$	\$	#
9	\$	\$	\$	\$	#	\$	\$	\$	\$	#
10	\$	\$	\$	\$	#	\$	\$	\$	\$	#
11	\$	\$	\$	\$	#	\$	\$	\$	\$	#
12	\$	\$	\$	\$	#	\$	\$	\$	\$	#
13	\$	\$	\$	\$	#	\$	\$	\$	\$	#

Exhibit B: Written Report 3 Example

	AS	AT	AU	AV	AW	AX	AY	AZ	BA	BB
	For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:									
1	For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:									
	Minimum Deferred Interest Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Maximum Deferred Interest Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Mean Deferred Interest Promotion Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Median Deferred Interest Promotion Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Standard Deviation from the mean of the Deferred Interest Promotion Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Minimum Deferred Interest Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges	Maximum Deferred Interest Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges	Mean Deferred Interest Promotion Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges	Median Deferred Interest Promotion Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges	Standard Deviation from the mean of the Deferred Interest Promotion Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges
2										
3	\$	\$	\$	\$	#	\$	\$	\$	\$	#
4	\$	\$	\$	\$	#	\$	\$	\$	\$	#
5	\$	\$	\$	\$	#	\$	\$	\$	\$	#
6	\$	\$	\$	\$	#	\$	\$	\$	\$	#
7	\$	\$	\$	\$	#	\$	\$	\$	\$	#
8	\$	\$	\$	\$	#	\$	\$	\$	\$	#
9	\$	\$	\$	\$	#	\$	\$	\$	\$	#
10	\$	\$	\$	\$	#	\$	\$	\$	\$	#
11	\$	\$	\$	\$	#	\$	\$	\$	\$	#
12	\$	\$	\$	\$	#	\$	\$	\$	\$	#
13	\$	\$	\$	\$	#	\$	\$	\$	\$	#

Exhibit C: Written Report 4 Example

A	B	C	D	E	F	G	H	I
Year	Financial Product that Offers Deferred Interest Promotion	Number of Complaints Regarding _____					Retailer's Statements Regarding Terms of a Deferred Interest Promotion	Total Number of Separate Complaints Concerning One or More Identified Topics
		Imposition of Deferred Interest	Late Fees Resulting from Company's Billing for Deferred Interest	Allocation or Non-Allocation of Payments to Deferred Interest Promotion Balances	Terms of a Deferred Interest Promotion	Disclosures Regarding Terms of a Deferred Interest Promotion		
1								
2								
3	2016	Lowe's Private Label Credit Card	#	#	#	#	#	#
4	2015	Lowe's Private Label Credit Card	#	#	#	#	#	#
5	2014	Lowe's Private Label Credit Card	#	#	#	#	#	#
6	2013	Lowe's Private Label Credit Card	#	#	#	#	#	#
7	2016	CarCreditONE Dual Branded Credit Card	#	#	#	#	#	#
8	2015	CarCreditONE Dual Branded Credit Card	#	#	#	#	#	#
9	2014	CarCreditONE Dual Branded Credit Card	#	#	#	#	#	#
10	2013	CarCreditONE Dual Branded Credit Card	#	#	#	#	#	#
11	2016	Furniture Store Private Label Credit Card	#	#	#	#	#	#
12	2015	Furniture Store Private Label Credit Card	#	#	#	#	#	#
13	2014	Furniture Store Private Label Credit Card	#	#	#	#	#	#
14	2013	Furniture Store Private Label Credit Card	#	#	#	#	#	#

Exhibit D: Written Report 5 Example

A	B	C	D	E	F	G	H
Year	CareCredit Deferred Interest Promotion	Promotion's Loan Receivables in Year	Promotion's Loan Receivables in Year as a Percentage of the CareCredit's Loan Receivables in Year	Interest Assessed through Promotion in Year	Interest Assessed through the Promotion in Year as a Percentage of the Total Interest Assessed through CareCredit in Year	Number of Consumers who Made Purchases through Promotion in Year	Number of Purchases Made through Promotion Product in Year
1							
2	CareCredit Promotion 1	\$	%	\$	%	#	#
3	CareCredit Promotion 1	\$	%	\$	%	#	#
4	CareCredit Promotion 1	\$	%	\$	%	#	#
5	CareCredit Promotion 1	\$	%	\$	%	#	#
6	CareCredit Promotion 2	\$	%	\$	%	#	#
7	CareCredit Promotion 2	\$	%	\$	%	#	#
8	CareCredit Promotion 2	\$	%	\$	%	#	#
9	CareCredit Promotion 2	\$	%	\$	%	#	#
10	CareCredit Promotion 3	\$	%	\$	%	#	#
11	CareCredit Promotion 3	\$	%	\$	%	#	#
12	CareCredit Promotion 3	\$	%	\$	%	#	#
13	CareCredit Promotion 3	\$	%	\$	%	#	#

Exhibit E: Written Report 6 Example

	A	B	C	D	E	F	G	H	I	J
1										
2	Year	Financial Product	Deferred Interest Promotion name	Deferred Interest Promotion Period length	Deferred Interest Promotion interest rate	First date Deferred Interest Promotion was offered	Last date Deferred Interest Promotion was offered	Consumers who made a Purchase using the Deferred Interest Promotion in the given year	Purchases made through the Deferred Interest Promotion in the given year	Consumers who made a Purchase using the Deferred Interest Promotion and whose Deferred Interest Promotion Period ended in the given year
3	2013	CareCredit	No interest if Paid in Full within 6 months	6 months	26.99%	Date	Date	#	#	#
4	2013	CareCredit	No Interest if Paid in Full within 12 months	12 months	26.99%	Date	Date	#	#	#
5	2014	CareCredit	No Interest if Paid in Full within 6 months	6 months	26.99%	Date	Date	#	#	#
6	2014	CareCredit	No Interest if Paid in Full within 12 months	12 months	26.99%	Date	Date	#	#	#
7	2015	CareCredit	No Interest if Paid in Full within 6 months	6 months	26.99%	Date	Date	#	#	#
8	2015	CareCredit	No Interest if Paid in Full within 12 months	12 months	26.99%	Date	Date	#	#	#
9	2016	CareCredit	No Interest if Paid in Full within 6 months	6 months	26.99%	Date	Date	#	#	#
10	2016	CareCredit	No Interest if Paid in Full within 12 months	12 months	26.99%	Date	Date	#	#	#

Exhibit E: Written Report 6 Example

	K	L	M	N	O	P	Q
1							
2	Purchases made through the Deferred Interest Promotion with a Deferred Interest Promotion Period that ended in the given year	Purchases made in the given year using the Deferred Interest Promotion	Purchases made using the Deferred Interest Promotion with a Deferred Interest Promotion Period that ended in the given year	Total dollar volume of Deferred Interest assessed in the given year for Purchases made using the Deferred Interest Promotion	Deferred Interest that would have been assessed in the given year for Purchases made using the Deferred Interest Promotion, but for a consumer requested reversal	Deferred Interest that would have been assessed in the given year for Purchases made using the Deferred Interest Promotion, but for an automatic waiver policy	Outstanding debt for all Purchases made through the Deferred Interest Promotion at the end of the given year
3	#	\$	\$	\$	\$	\$	\$
4	#	\$	\$	\$	\$	\$	\$
5	#	\$	\$	\$	\$	\$	\$
6	#	\$	\$	\$	\$	\$	\$
7	#	\$	\$	\$	\$	\$	\$
8	#	\$	\$	\$	\$	\$	\$
9	#	\$	\$	\$	\$	\$	\$
10	#	\$	\$	\$	\$	\$	\$

Exhibit E: Written Report 6 Example

	R	S	T	U	V	W
1	Of those consumers who made a Purchase using the Deferred Interest Promotion and whose Deferred Interest Promotion Period came to an end in the given year, the number who:					
2	Paid off their Deferred Interest Promotion Balance within the Deferred Interest Promotion Period	Failed to pay off the Deferred Interest Balance within the Deferred Interest Promotion Period, but for whom the Company automatically waived the Deferred Interest charge	Failed to pay off the Deferred Interest Balance, but for whom the company waived the Deferred Interest charge following a complaint or request	Failed to pay off the Deferred Interest Balance during the Deferred Interest Promotion Period, but paid off the Deferred Interest Balance within the first Billing Cycle after the expiration of the Deferred Interest Promotion Period	Failed to pay off the Deferred Interest Balance during the Deferred Interest Promotion Period, but paid off the Deferred Interest Balance within the second Billing Cycle after the expiration of the Deferred Interest Promotion Period	Failed to pay off the Deferred Interest Balance during the Deferred Interest Promotion Period, but paid off the Deferred Interest Balance within the third Billing Cycle after the expiration of the Deferred Interest Promotion Period
3	#	#	#	#	#	#
4	#	#	#	#	#	#
5	#	#	#	#	#	#
6	#	#	#	#	#	#
7	#	#	#	#	#	#
8	#	#	#	#	#	#
9	#	#	#	#	#	#
10	#	#	#	#	#	#

Exhibit E: Written Report 6 Example

	X	Y	Z	AA	AB	AC	AD	AE	AF	AG
	<p>For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:</p>									
1	<p>For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:</p>									
2	The Minimum Deferred Interest Balance at the time of Purchase	The Maximum Deferred Interest Balance at the time of Purchase	The Mean Deferred Interest Promotion Balance at the time of Purchase	The Median Deferred Interest Promotion Balance at the time of Purchase	The Standard Deviation from the mean of the Deferred Interest Promotion Balance at the time of Purchase	Minimum Deferred Interest Balance at end of the Deferred Interest Promotion Period (before assessment of Deferred Interest Charge)	Maximum Deferred Interest Balance at end of the Deferred Interest Promotion Period (before assessment of Deferred Interest Charge)	Mean Deferred Interest Promotion Balance at end of the Deferred Interest Promotion Period (before assessment of Deferred Interest Charge)	Median Deferred Interest Promotion Balance at end of the Deferred Interest Promotion Period (before assessment of Deferred Interest Charge)	Standard Deviation from the mean of the Deferred Interest Promotion Balance at end of the Deferred Interest Promotion Period (before assessment of Deferred Interest Charge)
3	\$	\$	\$	\$	#	\$	\$	\$	\$	#
4	\$	\$	\$	\$	#	\$	\$	\$	\$	#
5	\$	\$	\$	\$	#	\$	\$	\$	\$	#
6	\$	\$	\$	\$	#	\$	\$	\$	\$	#
7	\$	\$	\$	\$	#	\$	\$	\$	\$	#
8	\$	\$	\$	\$	#	\$	\$	\$	\$	#
9	\$	\$	\$	\$	#	\$	\$	\$	\$	#
10	\$	\$	\$	\$	#	\$	\$	\$	\$	#

Exhibit E: Written Report 6 Example

	AH	AI	AJ	AK	AL	AM	AN	AO	AP	AQ
	For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:									
1	For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:									
2	Minimum Deferred Interest Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Maximum Deferred Interest Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Mean Deferred Interest Promotion Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Median Deferred Interest Promotion Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Standard Deviation from the mean of the Deferred Interest Promotion Balance at the end of the Deferred Interest Promotion Period (after assessment of Deferred Interest Charge)	Minimum Deferred Interest Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges	Maximum Deferred Interest Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges	Mean Deferred Interest Promotion Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges	Median Deferred Interest Promotion Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges	Standard Deviation from the mean of the Deferred Interest Promotion Balance at the end of the first Billing Cycle after assessment of Deferred Interest charges
3	\$	\$	\$	\$	#	\$	\$	\$	\$	#
4	\$	\$	\$	\$	#	\$	\$	\$	\$	#
5	\$	\$	\$	\$	#	\$	\$	\$	\$	#
6	\$	\$	\$	\$	#	\$	\$	\$	\$	#
7	\$	\$	\$	\$	#	\$	\$	\$	\$	#
8	\$	\$	\$	\$	#	\$	\$	\$	\$	#
9	\$	\$	\$	\$	#	\$	\$	\$	\$	#
10	\$	\$	\$	\$	#	\$	\$	\$	\$	#

Exhibit E: Written Report 6 Example

	AR	AS	AT	AU	AV	AW	AX	AY	AZ	BA
	For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:									
1	For consumers who made a Purchase using the Deferred Interest Promotion, whose Deferred Interest Promotion Period came to an end in the given year, and who did not pay off the Deferred Interest Promotion Balance by the end of the Deferred Interest Promotion Period:									
	Minimum Deferred Interest Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Maximum Deferred Interest Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Mean Deferred Interest Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Median Deferred Interest Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Standard Deviation from the mean of the Deferred Interest Promotion Balance at the end of the second Billing Cycle after assessment of Deferred Interest charges	Minimum Deferred Interest Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges	Maximum Deferred Interest Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges	Mean Deferred Interest Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges	Median Deferred Interest Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges	Standard Deviation from the mean of the Deferred Interest Promotion Balance at the end of the third Billing Cycle after assessment of Deferred Interest charges
2										
3	\$	\$	\$	\$	#	\$	\$	\$	\$	#
4	\$	\$	\$	\$	#	\$	\$	\$	\$	#
5	\$	\$	\$	\$	#	\$	\$	\$	\$	#
6	\$	\$	\$	\$	#	\$	\$	\$	\$	#
7	\$	\$	\$	\$	#	\$	\$	\$	\$	#
8	\$	\$	\$	\$	#	\$	\$	\$	\$	#
9	\$	\$	\$	\$	#	\$	\$	\$	\$	#
10	\$	\$	\$	\$	#	\$	\$	\$	\$	#

CERTIFICATE OF COMPLIANCE WITH RFPA

The Right to Financial Privacy Act of 1978 (RFPA) does not apply to the disclosure of financial records or information to the Consumer Financial Protection Bureau (CFPB) “in the exercise of its authority with respect to a financial institution.” 12 U.S.C. § 3413(r). This civil investigative demand is also issued in connection with an investigation within the meaning of section 3413(h)(1)(A) of the RFPA. Therefore, in accordance with section 3403(b) of the RFPA, the undersigned certifies that, to the extent applicable, the provisions of the RFPA have been complied with as to the Civil Investigative Demand issued to Synchrony Financial, to which this Certificate is attached.

The information obtained will be used to determine whether the persons named or referred to in the attached Civil Investigative Demand are in compliance with laws administered by the Consumer Financial Protection Bureau. The information may be transferred to another department or agency consistent with the RFPA.

Under the RFPA, good faith reliance on this certificate relieves the recipient and its employees and agents of any liability to customers in connection with the requested disclosures of financial records of these customers. *See* 12 U.S.C. § 3417(c).

Deborah Morris

Digitally signed by Deborah
Morris
Date: 2017.05.09 08:09:15 -04'00'

Deborah Morris
Consumer Financial Protection Bureau
Deputy Director, Office of Enforcement

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

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

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

I certify under penalty of perjury that the foregoing is true and correct. Executed on _____, 2017.

Signature

CERTIFICATE OF COMPLIANCE – DOCUMENTS

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

1. I have confirmed that a diligent inquiry has been made of all persons who likely have possession of responsive documents and information, and I have confirmed that a diligent search has been made of all of the locations and files that likely contained responsive documents and information in the possession, custody, or control of Synchrony Financial.
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated May 9, 2017 that are within the possession, custody, or control of Synchrony Financial have been submitted to the Bureau custodian or deputy custodian identified in this Civil Investigative Demand.
3. If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.

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

_____.

Signature

**CERTIFICATE OF COMPLIANCE – INTERROGATORY ANSWERS AND
REPORTS**

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

1. I have confirmed that, in preparation of all answers and reports in response to the enclosed Civil Investigative Demand, a diligent inquiry has been made of all persons who likely have possession of responsive documents and information, and I have confirmed that a diligent search has been made of all of the locations and files that likely contained responsive documents and information within the possession, custody, control, or knowledge of Synchrony Financial.
2. Based on the information identified through the search described in paragraph 1 above, all answers and reports prepared in response to the enclosed required by the Civil Investigative Demand dated May 9, 2017 are true, correct, and complete.
3. If an interrogatory or a portion of an interrogatory has not been fully answered or a report or a portion of a report has not been completed, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.

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

_____.

Signature

§ 1081.405 Decision of the Director.

(a) Upon appeal from or upon further review of a recommended decision, the Director will consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition, will, to the extent necessary or desirable, exercise all powers which he or she could have exercised if he or she had made the recommended decision. In proceedings before the Director, the record shall consist of all items part of the record below in accordance with § 1081.306; any notices of appeal or order directing review; all briefs, motions, submissions, and other papers filed on appeal or review; and the transcript of any oral argument held. Review by the Director of a recommended decision may be limited to the issues specified in the notice(s) of appeal or the issues, if any, specified in the order directing further briefing. On notice to all parties, however, the Director may, at any time prior to issuance of his or her decision, raise and determine any other matters that he or she deems material, with opportunity for oral or written argument thereon by the parties.

(b) Decisional employees may advise and assist the Director in the consideration and disposition of the case.

(c) In rendering his or her decision, the Director will affirm, adopt, reverse, modify, set aside, or remand for further proceedings the recommended decision and will include in the decision a statement of the reasons or basis for his or her actions and the findings of fact upon which the decision is predicated.

(d) At the expiration of the time permitted for the filing of reply briefs with the Director, the Office of Administrative Adjudication will notify the parties that the case has been submitted for final Bureau decision. The Director will issue and the Office of Administrative Adjudication will serve the Director's final decision and order within 90 days after such notice, unless within that time the Director orders that the adjudication proceeding or any aspect thereof be remanded to the hearing officer for further proceedings.

(e) Copies of the final decision and order of the Director shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Director or required by statute, upon any appropriate State or Federal supervisory authority. The final decision and order will also be published on the Bureau's Web site or as otherwise deemed appropriate by the Bureau.

§ 1081.406 Reconsideration.

Within 14 days after service of the Director's final decision and order, any party may file with the Director a petition for reconsideration, briefly and specifically setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the final decision or final order and upon which the petitioner had no opportunity to argue, in writing or orally, before the Director. No response to a petition for reconsideration shall be filed unless requested by the Director, who will request such response before granting any petition for reconsideration. The filing of a petition for reconsideration shall not operate to stay the effective date of the final decision or order or to toll the running of any statutory period affecting such decision or order unless specifically so ordered by the Director.

§ 1081.407 Effective date; stays pending judicial review.

(a) Other than consent orders, which shall become effective at the time specified therein, an order to cease and desist or for other affirmative action under section 1053(b) of the Dodd-Frank Act becomes effective at the expiration of 30 days after the date of service pursuant to § 1081.113(d)(2), unless the Director agrees to stay the effectiveness of the order pursuant to this section.

(b) Any party subject to a final decision and order, other than a consent order, may apply to the Director for a stay of all or part of that order pending judicial review.

(c) A motion for stay shall state the reasons a stay is warranted and the facts relied upon, and shall include supporting affidavits or other sworn statements, and a copy of the relevant portions of the record. The motion shall address the likelihood of the movant's success on appeal, whether the movant will suffer irreparable harm if a stay is not granted, the degree of injury to other parties if a stay is granted, and why the stay is in the public interest.

(d) A motion for stay shall be filed within 30 days of service of the order on the party. Any party opposing the motion may file a response within five days after receipt of the motion. The movant may file a reply brief, limited to new matters raised by the response, within three days after receipt of the response.

(e) The commencement of proceedings for judicial review of a final decision and order of the Director does not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the

Director. The Director may, in his or her discretion, and on such terms as he or she finds just, stay the effectiveness of all or any part of an order pending a final decision on a petition for judicial review of that order.

Dated: June 4, 2012.

Richard Cordray,
Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012-14061 Filed 6-28-12; 8:45 am]

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1080

[Docket No.: CFPB-2011-0007]

RIN 3170-AA03

Rules Relating to Investigations

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: After considering the public comments on its interim final rule for the Rules Relating to Investigations, the Bureau of Consumer Financial Protection (Bureau), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), is making revisions to its procedures for investigations under section 1052 of the Dodd-Frank Act.

DATES: The final rule is effective June 29, 2012.

FOR FURTHER INFORMATION CONTACT: Peter G. Wilson, Office of the General Counsel, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435-7585.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) was signed into law on July 21, 2010. Title X of the Dodd-Frank Act established the Bureau of Consumer Financial Protection (Bureau) to regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Dodd-Frank Act transferred to the Bureau the consumer financial protection functions formerly carried out by the Federal banking agencies, as well as certain authorities formerly carried out by the Department of Housing and Urban Development (HUD) and the Federal Trade Commission (FTC). As required by section 1062 of the Dodd-Frank Act, 12 U.S.C. 5582, the Secretary of the Treasury selected a

designated transfer date and the Federal banking agencies' functions and authorities transferred to the Bureau on July 21, 2011.

The Dodd-Frank Act authorizes the Bureau to conduct investigations to ascertain whether any person is or has been engaged in conduct that, if proved, would constitute a violation of any provision of Federal consumer financial law. Section 1052 of the Dodd-Frank Act sets forth the parameters that govern these investigations. 12 U.S.C. 5562. Section 1052 became effective immediately upon transfer on July 21, 2011 and did not require rules to implement its provisions. On July 28, 2011, the Bureau issued the interim final rule for the Rules Relating to Investigations (Interim Final Rule) to provide parties involved in Bureau investigations with clarification on how to comply with the statutory requirements relating to Bureau investigations.

II. Summary of the Final Rule

Consistent with section 1052 of the Dodd-Frank Act, the final rule for the Rules Relating to Investigations (Final Rule) describes a number of Bureau policies and procedures that apply in an investigational, nonadjudicative setting. Among other things, the Final Rule sets forth (1) the Bureau's authority to conduct investigations, and (2) the rights of persons from whom the Bureau seeks to compel information in investigations.

Like the Interim Final Rule, the Final Rule is modeled on investigative procedures of other law enforcement agencies. For guidance, the Bureau reviewed the procedures currently used by the FTC, the Securities and Exchange Commission (SEC), and the prudential regulators, as well as the FTC's recently proposed amendments to its nonadjudicative procedures. In light of the similarities between section 1052 of the Dodd-Frank Act and section 20 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 41 *et seq.*, the Bureau drew most heavily from the FTC's nonadjudicative procedures in constructing the rules.

The Final Rule lays out the Bureau's authority to conduct investigations before instituting judicial or administrative adjudicatory proceedings under Federal consumer financial law. The Final Rule authorizes the Director, the Assistant Director of the Office of Enforcement, and the Deputy Assistant Directors of the Office of Enforcement to issue civil investigative demands (CIDs) for documentary material, tangible things, written reports, answers to questions, or oral testimony. The

demands may be enforced in district court by the Director, the General Counsel, or the Assistant Director of the Office of Enforcement. The Final Rule also details the authority of the Bureau's investigators to conduct investigations and hold investigational hearings pursuant to civil investigative demands for oral testimony.

Furthermore, the Final Rule sets forth the rights of persons from whom the Bureau seeks to compel information in an investigation. Specifically, the Final Rule describes how such persons should be notified of the purpose of the Bureau's investigation. It also details the procedures for filing a petition for an order modifying or setting aside a CID, which the Director is authorized to rule upon. And it describes the process by which persons may obtain copies of or access to documents or testimony they have provided in response to a civil investigative demand. In addition, the Final Rule describes a person's right to counsel at investigational hearings.

III. Legal Authority

As noted above, section 1052 of the Dodd-Frank Act outlines how the Bureau will conduct investigations and describes the rights of persons from whom the Bureau seeks information in investigations. This section became effective immediately upon the designated transfer date, July 21, 2011, without any requirement that the Bureau first issue procedural rules. Nevertheless, the Bureau believes that the legislative purpose of section 1052 will be furthered by the issuance of rules that specify the manner in which persons can comply with its provisions.

Section 1022 of the Dodd-Frank Act authorizes the Director to prescribe rules as may be necessary or appropriate for the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws and to prevent evasion of those laws. 12 U.S.C. 5512. The Bureau believes that the Final Rule will effectuate the purpose of section 1052 and facilitate compliance with Bureau investigations.

IV. Overview of Public Comments on the Interim Final Rule

After publication of the Interim Final Rule on July 28, 2011, the Bureau accepted public comments until September 26, 2011. During the comment period, the Bureau received seven comments. Two of the comments were submitted by individual consumers. Four trade associations and a mortgage company also submitted comments. The trade associations represent credit unions, banks, consumer credit companies, members of

the real estate finance industry, and other financial institutions.

The commenters generally support the Interim Final Rule. Most sections of the Interim Final Rule received no comment and are being finalized without change. The comments did, however, contain questions and recommendations for the Bureau.

Several of the commenters expressed concern that the Interim Final Rule appeared to provide staff-level Bureau employees with unchecked authority to initiate investigations and issue CIDs, or that the Interim Final Rule otherwise did not provide sufficient oversight for particular actions.

A number of commenters expressed concern about sections of the Interim Final Rule that relate to CIDs. One trade association recommended that a statement of "the purpose and scope" of a Bureau investigation—in addition to a notification of the nature of the conduct constituting the alleged violation under investigation and the applicable provisions of law—be included in CIDs. A commenter suggested that the Bureau require a conference between CID recipients and the Assistant Director of the Office of Enforcement to negotiate the terms of compliance with the demand. Three of the trade associations noted concern with the statement that extensions of time are disfavored for petitions to modify or set aside CIDs. Two commenters questioned who would rule on such petitions without a confirmed Director. One trade association commented that witnesses should be permitted to object to questions demanding information outside of the scope of the investigation during an investigational hearing pursuant to a CID for oral testimony.

A number of commenters expressed concern about maintaining the confidentiality of demand material, sharing information with other State and Federal agencies, and the duties of the custodians of those materials. For example, one trade association and the mortgage company recommended that investigations should remain confidential in all circumstances. Another trade association asserted that the Bureau is not permitted to engage in joint investigations with State attorneys general.

The Bureau reviewed all of the comments on its Interim Final Rule thoroughly and addresses the significant issues they raise herein. Although most sections of the Interim Final Rule received no comment and are being finalized without change, the Bureau has made several changes to the Interim Final Rule based on the comments it received. The comments and these

changes are discussed in more detail in parts V and VI of the **SUPPLEMENTARY INFORMATION**.

V. General Comments

Some comments on the Interim Final Rule were not directed at a specific section but rather concerned issues of general applicability. The Bureau addresses those comments in this section and addresses comments related to specific sections of the Interim Final Rule in part VI.

One commenter asked the Bureau to specify who would rule on petitions to set aside or modify CIDs while the Bureau lacked a Director. This commenter also asked who would review requests to the Attorney General under § 1080.12 for authority to immunize witnesses and to order them to testify or provide other information. The President appointed a Director of the Bureau on January 4, 2012. Therefore, both questions posed by this commenter are moot. The Director or any official to whom the Director has delegated his authority pursuant to 12 U.S.C. 5492(b) will rule on petitions to set aside or modify CIDs. Furthermore, the Bureau has revised § 1080.12 to clarify that only the Director has the authority to request approval from the Attorney General for the issuance of an order immunizing witnesses.

A commenter asserted that section 1052(c)(1) of the Dodd-Frank Act prohibits the Bureau from issuing CIDs after the institution of any proceedings under Federal consumer financial laws, including proceedings initiated by a State or a private party. The commenter argued that a CID should be accompanied by a certification that the demand will have no bearing on any ongoing proceeding. Section 1052(c)(1) provides, in relevant part, that “the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand.” The language “before the institution of any proceeding under Federal consumer financial law” refers to the institution of proceedings by the Bureau. It does not limit the Bureau’s authority to issue CIDs based upon the commencement of a proceeding by other parties.

Another commenter requested that the Bureau exempt all credit unions from Bureau investigations. The Bureau believes that granting an exemption from the Bureau’s enforcement authority through the Final Rule would be inappropriate and that there is an insufficient record to support such an exemption.

A commenter recommended that covered persons be allowed to recover attorneys’ fees and costs incurred by defending against an investigation that is shown to be without merit. The Dodd-Frank Act does not provide the right to recover fees and costs by defending against an investigation. Further, as explained below, the Bureau believes that the procedures for petitioning to modify or set aside a CID set forth in § 1080.6(d) of the Interim Final Rule (now 1080.6(e) of the Final Rule) provide sufficient protections to a recipient of a demand it believes lacks merit.

VI. Section-by-Section Summary

Section 1080.1 Scope

This section describes the scope of the Interim Final Rule. It makes clear that these rules only apply to investigations under section 1052 of the Dodd-Frank Act. The Bureau received no comment on § 1080.1 of the Interim Final Rule and is adopting it as the Final Rule without change.

Section 1080.2 Definitions

This section of the Interim Final Rule defines several terms used throughout the rules. Many of these definitions also may be found in section 1051 of the Dodd-Frank Act.

A commenter questioned the breadth of the definition of the term “Assistant Director of the Division of Enforcement.” The commenter argued that because that term was defined to include “any Bureau employee to whom the Assistant Director of the Division of Enforcement has delegated authority to act under this part,” the Interim Final Rule could give Bureau employees inappropriately broad authority to take certain actions, such as issuing CIDs.

The Bureau has revised the Final Rule in response to these comments. The Final Rule identifies those with authority to take particular actions under each section of the Final Rule. Sections 1080.4 (initiating and conducting investigations) and 1080.6 (civil investigative demands) of the Final Rule clarify that the authority to initiate investigations and issue CIDs cannot be delegated by the identified officials. The Final Rule also changes the defined term “Division of Enforcement” to “Office of Enforcement” to reflect the Bureau’s current organizational structure.

Section 1080.3 Policy as to Private Controversies

This section of the Interim Final Rule states the Bureau’s policy of pursuing investigations that are in the public

interest. Section 1080.3 is consistent with the Bureau’s mission to protect consumers by investigating potential violations of Federal consumer financial law. The Bureau received no comments on § 1080.3 of the Interim Final Rule and is adopting it as the Final Rule without change.

Section 1080.4 Initiating and Conducting Investigations

This section of the Interim Final Rule explains that Bureau investigators are authorized to conduct investigations pursuant to section 1052 of the Dodd-Frank Act.

A commenter observed that this section of the Interim Final Rule did not explicitly provide a procedure for senior agency officials to authorize the opening of an investigation. The commenter argued that only senior agency officials should decide whether to initiate investigations. The commenter questioned whether staff-level employees could open investigations and issue CIDs without sufficient supervision, and noted that the FTC’s analogous rule specifically lists the senior officials to whom the Commission has delegated, without power of redelegation, the authority to initiate investigations.

A commenter also expressed concern that the FTC’s analogous rule explicitly provides that FTC investigators must comply with the laws of the United States and FTC regulations. According to the commenter, such language is necessary to ensure that the Bureau complies with the Right to Financial Privacy Act (RFPA) to the extent that statute applies to the Bureau. The commenter also believes that this language is needed to guard against investigations undertaken for what the commenter characterized as the impermissible purpose of aiding State attorneys general or State regulators. The commenter suggested that the Bureau add a statement to this section of the Interim Final Rule similar to the FTC’s rule requiring compliance with Federal law and agency regulations.

The Final Rule clarifies that only the Assistant Director or any Deputy Assistant Director of the Office of Enforcement has the authority to initiate investigations. The Bureau has significant discretion to determine whether and when to open an investigation, and the public benefits from a process whereby the Bureau can open and close investigations efficiently. But the Bureau did not intend its rules to be interpreted so broadly as to suggest that any staff-level employee could unilaterally open an investigation or issue a CID. The Final

Rule also provides that Bureau investigators will perform their duties in accordance with Federal law and Bureau regulations.

Section 1080.5 Notification of Purpose

This section of the Interim Final Rule specifies that a person compelled to provide information to the Bureau or to testify in an investigational hearing must be advised of the nature of the conduct constituting the alleged violation under investigation and the applicable provisions of law. This section of the Interim Final Rule implements the requirements for CIDs described in section 1052(c)(2) of the Dodd-Frank Act.

Commenters noted that although the Dodd-Frank Act and the FTC Act both require CIDs to state “the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation,” the two agencies’ implementing regulations on this topic differ. Both agencies’ regulations require a statement of the nature of the conduct at issue and the relevant provisions of law, but the FTC rule also requires that the recipient of the CID be advised of “the purpose and scope” of the investigation. Commenters argued that the Bureau should add this phrase to its rule because excluding it would lead to requests for materials outside the scope of an investigation. One commenter argued that only senior agency officials should authorize investigations to ensure that CIDs are relevant to the purpose and scope of the Bureau’s investigations.

The language in § 1080.5 of the Interim Final Rule mirrors the language of the Dodd-Frank Act, which provides that “[e]ach civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.” The Bureau believes that the information covered by this statutory language provides sufficient notice to recipients of CIDs. As discussed above, § 1080.4 (initiating and conducting investigations) of the Final Rule limits the authority to open investigations to the Assistant Director or any Deputy Assistant Director of the Office of Enforcement. Similarly, § 1080.6 of the Final Rule (civil investigative demands) limits the authority to issue CIDs to the Director of the Bureau, the Assistant Director of the Office of Enforcement, and the Deputy Assistant Directors of the Office of Enforcement. Thus, one of these identified officials will review and approve the initiation of all investigations and the issuance of all

CIDs. In addition, to the extent recipients of CIDs consider the demands to be for an unauthorized purpose or outside the scope of the investigation, they will have an opportunity to negotiate the terms of compliance pursuant to § 1080.6(c) of the Interim Final Rule (now § 1080.6(d) of the Final Rule) or to petition to set aside or modify the demand pursuant to § 1080.6(d) of the Interim Final Rule (now § 1080.6(e) of the Final Rule).

The Bureau therefore adopts this section of the Interim Final Rule as the Final Rule without change.

Section 1080.6 Civil Investigative Demands

This section of the Interim Final Rule lays out the Bureau’s procedures for issuing CIDs. It authorizes the Assistant Director of the Office of Enforcement to issue CIDs for documentary material, tangible things, written reports, answers to questions, and oral testimony. This section of the Interim Final Rule details the information that must be included in CIDs and the requirement that responses be made under a sworn certificate. Section 1080.6 of the Interim Final Rule also authorizes the Assistant Director of the Office of Enforcement to negotiate and approve the terms of compliance with CIDs and grant extensions for good cause. Finally, this section of the Interim Final Rule describes the procedures for seeking an order to modify or set aside a CID, which the Director is authorized to rule upon.

One commenter argued that § 1080.6(a) permits almost any Bureau employee to issue CIDs without sufficient supervision. The commenter stated that this lack of oversight is problematic and does not reflect Congress’ intent when it enacted the Act.

Section 1080.6(a) of the Final Rule limits the authority to issue CIDs to the Director, the Assistant Director of the Office of Enforcement, and the Deputy Assistant Directors of the Office of Enforcement. This change to the Final Rule balances the efficiency of the Bureau’s investigative process with appropriate supervision and oversight.

A commenter suggested that the Bureau require a conference between the CID recipient and the Assistant Director of the Office of Enforcement within ten days of service of the CID to negotiate and approve the terms of compliance. The commenter envisioned a conference analogous to a discovery planning conference under the Federal Rules of Civil Procedure, during which the parties could discuss requests for information, appropriate limitations on

the scope of requests, issues related to electronically stored information (ESI), issues related to privilege and confidential information, and a reasonable time for compliance. The commenter stated that this type of conference would better ensure prompt and efficient production of material and information related to the investigation.

The Bureau agrees that a conference between the parties within ten calendar days of serving a CID is likely to improve the efficiency of investigations, and § 1080.6(c) of the Final Rule provides for such a conference. The Final Rule does not, however, adopt the suggestion that the Assistant Director of the Office of Enforcement preside over all such conferences.

Several commenters also noted concern with the statement in § 1080.6(d) of the Interim Final Rule disfavoring extensions of time for petitioning for an order modifying or setting aside CIDs. One commenter argued that the 20-day period to file petitions, for which extensions of time are disfavored, is inconsistent with the “reasonable” period of time for compliance with the CID set forth in § 1080.6(a). The commenter also argued that this timeframe leaves a short period for the CID recipient to decide which documents are privileged or otherwise protected and to file a petition articulating privilege and scope objections. Another commenter noted that the analogous FTC rules do not include a provision disfavoring extensions for petitions to modify or set aside a CID. These commenters recommended that the Bureau delete the sentence related to disfavoring extensions. One commenter recommended that the rules be corrected to provide an independent review if a covered person believes a CID is without merit.

Like the Interim Final Rule, the Final Rule includes a provision disfavoring extensions of time for petitions to modify or set aside a CID. The Bureau believes its policy of disfavoring extensions is appropriate in light of its significant interest in promoting an efficient process for seeking materials through CIDs. By disfavoring extensions, the Bureau means to prompt recipients to decide within 20 days whether they intend to comply with the CID. The Final Rule also clarifies that this 20-day period should be computed with calendar days.

The Bureau notes that § 1080.6(d) of the Interim Final Rule (now § 1080.6(e) of the Final Rule) only provides the due date for a petition for an order modifying or setting aside a CID. It does not require recipients to comply fully

with CIDs within 20 days. In addition, the Final Rule provides several options to recipients of CIDs that need additional time to respond. For example, the recipient may negotiate for a reasonable extension of time for compliance or a rolling document production schedule pursuant to § 1080.6(c) of the Interim Final Rule (now § 1080.6(d) of the Final Rule).

Section 1080.6(e) of the Final Rule clarifies that recipients of CIDs should not assert claims of privilege through a petition for an order modifying or setting aside a CID. Instead, when privilege is the only basis for withholding particular materials, they should utilize the procedures set forth in § 1080.8 (withholding requested material) of the Final Rule. Section 1080.6(e) of the Final Rule also lays out the authority of Bureau investigators to provide to the Director a reply to a petition seeking an order modifying or setting aside a CID. Specifically, the Final Rule states that Bureau investigators may provide the Director with a statement setting forth any factual and legal responses to a petition. The Bureau will not make these statements or any other internal deliberations part of the Bureau's public records. Section 1080.6(g) of the Final Rule clarifies that the Bureau, however, will make publicly available both the petition and the Director's order in response. Section 1080.6(g) of the Final Rule also clarifies that if a CID recipient wants to prevent the Director from making the petition public, any showing of good cause must be made no later than the time the petition is filed. The Final Rule also adds a provision clarifying how the Bureau will serve the petitioner with the Director's order.

Finally, the Bureau believes the procedures for petitions to modify or set aside a CID set forth in the Final Rule adequately protect a covered person who believes a CID is without merit, and that an additional independent review is unnecessary.

Section 1080.7 Investigational Hearings

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

transcript is provided to the designated custodian.

A commenter argued that the Bureau is not authorized to conduct joint investigations with State attorneys general under the Dodd-Frank Act and, correspondingly, State attorneys general cannot attend an investigational hearing as a representative of an agency with whom the Bureau is conducting a joint investigation. The commenter argued that Congress distinguished between State attorneys general and State regulatory agencies in section 1042 of the Dodd-Frank Act and that State attorneys general are therefore not "agencies" with whom the Bureau can partner. The commenter also asserted that the Bureau cannot share a copy of the transcript of an investigational hearing with another agency without the consent of the witness.

Another commenter argued that representatives of agencies with which the Bureau is conducting a joint investigation may be present at an investigational hearing only with the witness's consent. This commenter stated that the Bureau should recognize in the rules that a witness who does not consent to the presence of a representative of another agency at an investigational hearing should not be presumed guilty.

The Dodd-Frank Act states that the Bureau "may engage in joint investigations and requests for information, as authorized under this title." This statutory language permits the Bureau to engage in joint investigations with State or Federal law enforcement agencies, including State attorneys general, with jurisdiction that overlaps with the Bureau's. The Bureau's disclosure rules also permit the Bureau to share certain confidential information, including investigational hearing transcripts, with Federal or State agencies to the extent the disclosure is relevant to the exercise of an agency's statutory or regulatory authority. See 12 CFR 1070.43(b). In addition, neither the Dodd-Frank Act nor the rules require the consent of the witness to permit a representative of an agency with which the Bureau is conducting a joint investigation to be present at the hearing. Consent is required only when people other than those listed in the rule are included.

Thus, the Bureau adopts § 1080.7 of the Interim Final Rule as the Final Rule without change.

Section 1080.8 Withholding Requested Material

This section of the Interim Final Rule describes the procedures that apply when persons withhold material

responsive to a CID. It requires the recipient of the CID to assert a privilege by the production date and, if so directed in the CID, also to submit a detailed schedule of the items withheld. Section 1080.8 also sets forth the procedures for handling the disclosure of privileged or protected information or communications.

The Bureau received no comment on § 1080.8 of the Interim Final Rule and is adopting it as the Final Rule without substantive change.

Section 1080.9 Rights of Witnesses in Investigations

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

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

A commenter noted that under the Interim Final Rule witnesses could not object during an investigational hearing on the ground that a question was outside the scope of the investigation. The commenter argued that a covered person's inability to raise such objections might allow "a fishing expedition." The commenter recommended amending § 1080.9(b) to allow objections based on scope.

Section 1052(c)(13)(D)(iii) of the Dodd-Frank Act states, in relevant part:

[a]n objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to

refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but the person shall not otherwise object to or refuse to answer any question, and such person or attorney shall not otherwise interrupt the oral examination.

Thus, to the extent the scope objection was grounded in a witness's constitutional or other legal right, it would be a proper objection.

The Final Rule clarifies that counsel may confer with a witness while a question is pending or instruct a witness not to answer a question only if an objection based on privilege or work product may properly be made. The Final Rule also describes counsel's limited ability to make additional objections based on other constitutional or legal rights. The Final Rule provides that if an attorney has refused to comply with his or her obligations in the rules of this part, or has allegedly engaged in disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language during an investigational hearing, the Bureau may take further action, including action to suspend or disbar the attorney from further participation in the investigation or further practice before the Bureau pursuant to 12 CFR 1081.107(c). The Final Rule also includes other nonsubstantive changes, including clarifying that the 30-day period that the witness has to sign and submit his or her transcript should be computed using calendar days.

Section 1080.10 Noncompliance With Civil Investigative Demands

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

The Bureau received no comment on § 1080.10 of the Interim Final Rule and is adopting it as the Final Rule without substantive change.

Section 1080.11 Disposition

This section of the Interim Final Rule explains that an enforcement action may be instituted in Federal or State court or through administrative proceedings when warranted by the facts disclosed by an investigation. It further provides that the Bureau may refer investigations to appropriate Federal, State, or foreign government agencies as appropriate. This section of the Interim Final Rule

also authorizes the Assistant Director of the Office of Enforcement to close the investigation when the facts of an investigation indicate an enforcement action is not necessary or warranted in the public interest.

One commenter indicated that the Bureau's authority to refer investigations to other law enforcement agencies should be limited to circumstances when it is expressly authorized to do so by the Dodd-Frank Act, an enumerated consumer financial law, or other Federal law, because of potential risks to the confidentiality of the investigatory files.

The Bureau's ability to refer matters to appropriate law enforcement agencies is inherent in the Bureau's authority and is a corollary to the Bureau's statutorily recognized ability to conduct joint investigations. The documentary materials and tangible things obtained by the Bureau pursuant to a CID are subject to the requirements and procedures relating to disclosure of records and information in part 1070 of this title. These procedures for sharing information with law enforcement agencies provide significant and sufficient protections for these materials.

The Bureau has amended § 1080.11 to clarify that the Assistant Director and any Deputy Assistant Director of the Office of Enforcement are authorized to close investigations.

The Bureau adopts § 1080.11 of the Interim Final Rule with the changes discussed above.

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

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

A commenter questioned whether this section of the Interim Final Rule would permit any Bureau employee to request that the Attorney General approve the issuance of an order granting immunity

under 18 U.S.C. 6004 and requiring a witness to testify or provide information. The commenter noted that the Dodd-Frank Act authorizes the Bureau, with the Attorney General's permission, to compel a witness to testify under 18 U.S.C. 6004 if the witness invokes his or her privilege against self-incrimination. The commenter argued that this section should delegate the authority to seek permission to compel testimony to a specific individual to provide accountability and ensure that information is not disclosed to the Attorney General in a manner that violates the Right to Financial Privacy Act. The commenter noted that the FTC's analogous rule specifically lists the senior agency officials who are authorized to make such requests to the Attorney General, and identifies a liaison officer through whom such requests must be made. The commenter also suggested that § 1080.12(b) of the Interim Final Rule, which provides that the Assistant Director's exercise of this authority is subject to review by "the Bureau," specify who will conduct this review.

The Final Rule provides that only the Director of the Bureau has the authority to request approval from the Attorney General for the issuance of an order requiring a witness to testify or provide other information and granting immunity under 18 U.S.C. 6004. This change addresses the concern that requests for witness immunity would be made without oversight. Limiting this authority to the Director provides sufficient accountability.

Section 1080.13 Custodians

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

A commenter suggested that the Bureau should detail the particular duties of custodians designated under this section and that, without an enumerated list of duties, the custodian would not have any responsibilities regarding CID materials. The commenter noted that the FTC Act requires the custodian to take specific actions, while the Dodd-Frank Act does not. The commenter suggested specifying a series of custodial duties, including (1) taking and maintaining custody of all materials submitted pursuant to CIDs or subpoenas that the Bureau issues,

including transcripts of oral testimony taken by the Bureau; (2) maintaining confidentiality of those materials as required by applicable law; (3) providing the materials to either House of Congress upon request, after ten days notice to the party that owns or submitted the materials; (4) producing any materials as required by a court of competent jurisdiction; and (5) complying at all times with the Trade Secrets Act.

Section 1052 of the Dodd-Frank Act sets forth the duties of the Bureau's custodian. Sections 1052(c)(3) through (c)(6) of the Dodd-Frank Act give the custodian responsibility for receiving documentary material, tangible things, written reports, answers to questions, and transcripts of oral testimony given by any person in compliance with any CID. Section 1052(d) of the Dodd-Frank Act, as well as the Bureau's Rules for Disclosure of Records and Information in part 1070 of this title, outline the requirements for the confidential treatment of demand material. Section 1052(g) addresses custodial control and provides that a person may file, in the district court of the United States for the judicial district within which the office of the custodian is situated, a petition for an order of such court requiring the performance by the custodian of any duty imposed upon him by section 1052 of the Dodd-Frank Act or by Bureau rule. These duties and obligations do not require additional clarification by rule.

The Final Rule clarifies that the custodian has the powers and duties of both section 1052 of the Dodd-Frank Act and 12 CFR 1070.3.

The Bureau adopts § 1080.13 of the Interim Final Rule with the changes discussed above.

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

Section 1080.14 of the Interim Final Rule explains that documentary materials, written reports, answers to questions, tangible things, or transcripts of oral testimony received by the Bureau in any form or format pursuant to a CID are subject to the requirements and procedures relating to disclosure of records and information in part 1070 of this title. This section of the Interim Final Rule also states that investigations generally are non-public. A Bureau investigator may disclose the existence of an investigation to the extent necessary to advance the investigation.

A commenter recommended that the Bureau revise this section to mandate that Bureau investigations remain confidential. The commenter noted the

potential reputation risk to an entity if an investigation is disclosed to the public. In addition, the commenter argued that failing to conduct investigations confidentially will increase litigation risk. One commenter recommended that the Bureau issue a public absolution of a company if the Bureau does not maintain the confidentiality of an investigation.

Section 1080.14 of the Interim Final Rule provides that investigations generally will not be disclosed to the public, but permits Bureau investigators to disclose the existence of an investigation when necessary to advance the investigation. The Interim Final Rule does not contemplate publicizing an investigation, but rather disclosing the existence of the investigation to, for example, a potential witness or third party with potentially relevant information when doing so is necessary to advance the investigation. This limited exception sufficiently balances the concerns expressed by the commenter with the Bureau's need to obtain information efficiently.

Thus, the Bureau adopts § 1080.14 of the Interim Final Rule as the Final Rule without change.

VII. Section 1022(b)(2) Provisions

In developing the Final Rule, the Bureau has considered the potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators, HUD, the SEC, the Department of Justice, and the FTC, including with regard to consistency with any prudential, market, or systemic objectives administered by such agencies.¹

The Final Rule neither imposes any obligations on consumers nor is expected to have any appreciable impact on their access to consumer financial products or services. Rather, the Final Rule provides a clear, efficient mechanism for investigating compliance with the Federal consumer financial laws, which benefits consumers by creating a systematic process to protect them from unlawful behavior.

¹ Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) addresses consultation between the Bureau and other Federal agencies during the rulemaking process. The manner and extent to which these provisions apply to procedural rules and benefits, costs and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

The Final Rule imposes certain obligations on covered persons who receive CIDs in Bureau investigations. Specifically, as described above, the Final Rule sets forth the process for complying with or objecting to CIDs for documentary material, tangible things, written reports or answers to questions, and oral testimony. Most obligations in the Final Rule stem from express language in the Dodd-Frank Act and do not impose additional burdens on covered persons.

To the extent that the Final Rule includes provisions not expressly required by statute, these provisions benefit covered persons by providing clarity and certainty. In addition, the Final Rule vests the Bureau with discretion to modify CIDs or extend the time for compliance for good cause. This flexibility benefits covered persons by enabling the Bureau to assess the cost of compliance with a civil investigative demand in a particular circumstance and take appropriate steps to mitigate any unreasonable compliance burden.

Moreover, because the Final Rule is largely based on section 20 of the FTC Act and its corresponding regulations, it should present an existing, stable model of investigatory procedures to covered persons. This likely familiarity to covered persons should further reduce the compliance costs for covered persons.

The Final Rule provides that requests for extensions of time to file petitions to modify or set aside CIDs are disfavored. This may impose a burden on covered entities in some cases, but it may also lead to a more expeditious resolution of matters, reducing uncertainty. Furthermore, the Final Rule has no unique impact on insured depository institutions or insured credit unions with less than \$10 billion in assets as described in section 1026(a) of the Dodd-Frank Act. Nor does the Final Rule have a unique impact on rural consumers.

A commenter suggested that the Bureau conduct a nonpublic study of the impact of complying with a CID on the entities who have been subjected to them by other agencies, with specific focus on those that were found not to have violated the law. As the commenter implicitly recognizes, such data does not currently exist and thus was not reasonably available to the Bureau in finalizing the Interim Final Rule. Moreover, as explained above, most of the costs associated with complying with a CID result from the Dodd-Frank Act, which authorizes the Bureau to issue such demands.

A commenter asserted that disfavoring extensions of petitions to

modify or set aside CIDs will require the recipient to conduct a full review of the demanded material within the normal 20-day period in order to comply with the deadline for filing a petition. Under the Final Rule, recipients of a CID are not required to comply fully within twenty days; rather, they are required simply to decide whether they will comply with the demand at all. The Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement have the discretion to negotiate and approve the terms of satisfactory compliance with CIDs and, for good cause shown, may extend the time prescribed for compliance. Thus, the Final Rule provides reasonable steps to mitigate compliance burden while simultaneously protecting the Bureau's law enforcement interests.

Another commenter stated that the four interim final rules that the Bureau promulgated together on July 28, 2011 failed to satisfy the rulemaking requirements under section 1022 of the Dodd-Frank Act. Specifically, the commenter stated that "the CFPB's analysis of the costs and benefits of its rules does not recognize the significant costs the CFPB imposes on covered persons." The Bureau believes that it appropriately considered the benefits, costs, and impacts of the Interim Final Rule pursuant to section 1022. Notably, the commenter did not identify any specific costs to covered persons that are not discussed in Part C of the **SUPPLEMENTARY INFORMATION** to the Interim Final Rule.

VIII. Procedural Requirements

As noted in publishing the Interim Final Rule, under the Administrative Procedure Act, 5 U.S.C. 553(b), notice and comment is not required for rules of agency organization, procedure, or practice. As discussed in the preamble to the Interim Final Rule, the Bureau confirms its finding that this is a procedural rule for which notice and comment is not required. In addition, because the Final Rule relates solely to agency procedure and practice, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Because no notice of proposed rulemaking is required, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2) do not apply. Finally, the Bureau has determined that this Final Rule does not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of

information requiring approval under 44 U.S.C. 3501. *et seq.*

List of Subjects in 12 CFR Part 1080

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

For the reasons set forth in the preamble, the Bureau of Consumer Financial Protection revises part 1080 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1080—RULES RELATING TO INVESTIGATIONS

Sec.

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

Authority: Pub. L. 111–203, Title X, 12 U.S.C. 5481 *et seq.*

§ 1080.1 Scope.

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

§ 1080.2 Definitions.

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

Bureau means the Bureau of Consumer Financial Protection.

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

Bureau investigator means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

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

Director means the Director of the Bureau or a person authorized to

perform the functions of the Director in accordance with the law.

Documentary material means the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, log, electronic file, or other data or data compilation stored in any medium, including electronically stored information.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, as amended, Public Law 111–203 (July 21, 2010), Title X, codified at 12 U.S.C. 5481 *et seq.*

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

Office of Enforcement means the office of the Bureau responsible for enforcement of Federal consumer financial law.

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

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

§ 1080.3 Policy as to private controversies.

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

§ 1080.4 Initiating and conducting investigations.

The Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement have the nondelegable authority to initiate investigations. Bureau investigations are conducted by Bureau investigators designated and duly authorized under section 1052 of the Dodd-Frank Act, 12 U.S.C. 5562, to conduct such investigations. Bureau investigators are authorized to exercise and perform their duties in accordance with the laws of the United States and the regulations of the Bureau.

§ 1080.5 Notification of purpose.

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

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

§ 1080.6 Civil investigative demands.

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

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

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

(2) *Tangible things.* (i) Civil investigative demands for tangible things shall describe each class of tangible things to be produced with such definiteness and certainty as to permit such things to be fairly identified, prescribe a return date or

dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted, and identify the custodian to whom such things shall be submitted.

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

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

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

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

(ii) Where a civil investigative demand requires oral testimony from an entity, the civil investigative demand shall describe with reasonable particularity the matters for examination and the entity must designate one or more officers, directors, or managing

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

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

(c) *Meet and confer.* The recipient of a civil investigative demand shall meet and confer with a Bureau investigator within 10 calendar days after receipt of the demand or before the deadline for filing a petition to modify or set aside the demand, whichever is earlier, to discuss and attempt to resolve all issues regarding compliance with the civil investigative demand. The Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement may authorize the waiver of this requirement for routine third-party civil investigative demands or in other circumstances where he or she determines that a meeting is unnecessary. The meeting may be in person or by telephone.

(1) *Personnel.* The recipient must make available at the meeting personnel with the knowledge necessary to resolve any issues relevant to compliance with the demand. Such personnel could include individuals knowledgeable about the recipient's information or records management systems and/or the recipient's organizational structure.

(2) *ESI.* If the civil investigative demand seeks ESI, the recipient shall ensure that a person familiar with its ESI systems and methods of retrieval participates in the meeting.

(3) *Petitions.* The Bureau will not consider petitions to set aside or modify a civil investigative demand unless the recipient has meaningfully engaged in the meet and confer process described in this subsection and will consider only issues raised during the meet and confer process.

(d) *Compliance.* The Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement are authorized to negotiate and approve the terms of satisfactory compliance with civil investigative demands and, for good

cause shown, may extend the time prescribed for compliance.

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

(1) *Statement.* Each petition shall be accompanied by a signed statement representing that counsel for the petitioner has conferred with counsel for the Bureau pursuant to section 1080.6(c) in a good-faith effort to resolve by agreement the issues raised by the petition and has been unable to reach such an agreement. If some of the matters in controversy have been resolved by agreement, the statement shall specify the matters so resolved and the matters remaining unresolved. The statement shall recite the date, time, and place of each such meeting between counsel, and the names of all parties participating in each such meeting.

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

(3) *Bureau investigator response.* Bureau investigators may, without serving the petitioner, provide the Director with a statement setting forth any factual and legal response to a petition for an order modifying or setting aside the demand.

(4) *Disposition.* The Director has the authority to rule upon a petition for an order modifying or setting aside a civil investigative demand. The order may be served on the petitioner via email, facsimile, or any other method reasonably calculated to provide notice of the order to the petitioner.

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

(g) *Public disclosure.* All such petitions and the Director's orders in response to those petitions are part of the public records of the Bureau unless the Bureau determines otherwise for good cause shown. Any showing of good cause must be made no later than the time the petition is filed.

§ 1080.7 Investigational hearings.

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

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

(c) In investigational hearings, the Bureau investigators shall exclude from the hearing room all persons except the person being examined, his or her counsel, the officer before whom the testimony is to be taken, any investigator or representative of an agency with which the Bureau is engaged in a joint investigation, and any individual transcribing or recording such testimony. At the discretion of the Bureau investigator, and with the consent of the person being examined, persons other than those listed in this paragraph may be present in the hearing room. The Bureau investigator shall certify or direct the individual transcribing the testimony to certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness. A copy of the transcript shall be forwarded promptly by the Bureau investigator to the custodian designated in section 1080.13.

§ 1080.8 Withholding requested material.

(a) Any person withholding material responsive to a civil investigative demand or any other request for

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

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

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

(1) The disclosure of privileged or protected information or communications shall not operate as a waiver with respect to the Bureau if:

- (i) The disclosure was inadvertent;
 - (ii) The holder of the privilege or protection took reasonable steps to prevent disclosure; and
 - (iii) The holder promptly took reasonable steps to rectify the error, including notifying a Bureau investigator of the claim of privilege or protection and the basis for it.
- (2) After being notified, the Bureau investigator must promptly return, sequester, or destroy the specified information and any copies; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if he or she disclosed it before being notified; and, if appropriate, may sequester such material until such time as a hearing officer or court rules on the merits of the claim of privilege or protection. The producing party must preserve the information until the claim is resolved.

(3) The disclosure of privileged or protected information or communications shall waive the privilege or protection with respect to the Bureau as to undisclosed information or communications only if:

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

§ 1080.9 Rights of witnesses in investigations.

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

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

(1) Counsel for a witness may advise the witness, in confidence and upon the initiative of either counsel or the witness, with respect to any question asked of the witness where it is claimed that a witness is privileged to refuse to answer the question. Counsel may not otherwise consult with the witness while a question directed to the witness is pending.

(2) Any objections made under the rules in this part shall be made only for the purpose of protecting a constitutional or other legal right or privilege, including the privilege against self-incrimination. Neither the witness nor counsel shall otherwise object or refuse to answer any question. Any objection during an investigational hearing shall be stated concisely on the record in a nonargumentative and nonsuggestive manner. Following an objection, the examination shall proceed

and the testimony shall be taken, except for testimony requiring the witness to divulge information protected by the claim of privilege or work product.

(3) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (b)(1) and (2) of this section, interrupt the examination of the witness by making any objections or statements on the record. Petitions challenging the Bureau's authority to conduct the investigation or the sufficiency or legality of the civil investigative demand shall be addressed to the Bureau in advance of the hearing in accordance with § 1080.6(e). Copies of such petitions may be filed as part of the record of the investigation with the Bureau investigator conducting the investigational hearing, but no arguments in support thereof will be allowed at the hearing.

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

(5) The Bureau investigator conducting the hearing shall take all necessary action to regulate the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language. Such Bureau investigator shall, for reasons stated on the record, immediately report to the Bureau any instances where an attorney has allegedly refused to comply with his or her obligations under the rules in this part, or has allegedly engaged in disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of the hearing. The Bureau will thereupon take such further action, if any, as the circumstances warrant, including actions consistent with those described in 12 CFR 1081.107(c) to suspend or disbar the attorney from further practice before the Bureau or exclude the attorney from further participation in the particular investigation.

§ 1080.10 Noncompliance with civil investigative demands.

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

(b) The Director, the Assistant Director of the Office of Enforcement,

and the General Counsel of the Bureau are authorized to:

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

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

§ 1080.11 Disposition.

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

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

(c) The Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement are authorized to close Bureau investigations.

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

The Director has the nondelegable authority to request approval from the Attorney General of the United States for the issuance of an order requiring a witness to testify or provide other information and granting immunity under 18 U.S.C. 6004.

§ 1080.13 Custodians.

(a) The Bureau shall designate a custodian and one or more deputy custodians for material to be delivered pursuant to a civil investigative demand in an investigation. The custodian shall have the powers and duties prescribed by 12 CFR 1070.3 and section 1052 of the Act, 12 U.S.C. 5562. Deputy custodians may perform all of the duties assigned to custodians.

(b) Material produced pursuant to a civil investigative demand, while in the custody of the custodian, shall be for the official use of the Bureau in accordance with the Act; but such material shall upon reasonable notice to the custodian

be made available for examination by the person who produced such material, or his or her duly authorized representative, during regular office hours established for the Bureau.

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

(a) Documentary materials, written reports, answers to questions, tangible things or transcripts of oral testimony the Bureau receives in any form or format pursuant to a civil investigative demand are subject to the requirements and procedures relating to the disclosure of records and information set forth in part 1070 of this title.

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

Dated: June 4, 2012.

Richard Cordray,
Director, Bureau of Consumer Financial Protection.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1082

[Docket No. CFPB-2011-0005]

RIN 3170-AA02

State Official Notification Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 (Dodd-Frank Act) requires the Bureau of Consumer Financial Protection (Bureau) to prescribe rules establishing procedures that govern the process by which State Officials notify the Bureau of actions undertaken pursuant to the authority granted to the States to enforce the Dodd-Frank Act or regulations prescribed thereunder. This final State Official Notification Rule (Final Rule) sets forth the procedures to govern this process.

DATES: The Final Rule is effective June 29, 2012.

FOR FURTHER INFORMATION CONTACT: Veronica Spicer, Office of Enforcement, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at (202) 435-7545.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 (Dodd-Frank Act) was signed into law on July 21, 2010. Title X of the Dodd-Frank Act established the Bureau to regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. Section 1042 of the Dodd-Frank Act, 12 U.S.C. 5552, governs the enforcement powers of the States under the Dodd-Frank Act. Under section 1042(a), a State attorney general or regulator (State Official) may bring an action to enforce Title X of the Dodd-Frank Act and regulations issued thereunder. Prior to initiating any such action, the State Official is required to provide notice of the action to the Bureau and the prudential regulator, if any, pursuant to section 1042(b) of the Dodd-Frank Act. Section 1042(b) further authorizes the Bureau to intervene in the State Official's action as a party, remove the action to a Federal district court, and appeal any order or judgment.

Pursuant to section 1042(c) of the Dodd-Frank Act, the Bureau is required to issue regulations implementing the requirements of section 1042. On July 28, 2011, the Bureau promulgated the State Official Notification Rule (Interim Final Rule) with a request for comment. The comment period for the Interim Final Rule ended on September 26, 2011. After reviewing and considering the issues raised by the comments, the Bureau now promulgates the Final Rule establishing a procedure for the timing and content of the notice required to be provided by State Officials pursuant to section 1042(b) of the Dodd-Frank Act, 12 U.S.C. 5552(b).

II. Summary of the Final Rule

Like the Interim Final Rule, the Final Rule implements a procedure for the timing and content of the notice required by section 1042(b), sets forth the responsibilities of the recipients of the notice, and specifies the rights of the Bureau to participate in actions brought by State Officials under section 1042(a) of the Dodd-Frank Act. In drafting the Final Rule, the Bureau endeavored to create a process that would provide both the Bureau and, where applicable, the prudential regulators with timely notice of pending actions and account for the investigation and litigation needs of State regulators and law enforcement agencies. In keeping with this approach, the Final Rule provides for a default notice period of at least ten calendar days, with exceptions for emergencies and other extenuating circumstances,

and requires substantive notice that is both straightforward and comprehensive. The Final Rule further makes clear that the Bureau can intervene as a party in an action brought by a State Official under Title X of the Dodd-Frank Act or a regulation prescribed thereunder, provides for the confidential treatment of non-public information contained in the notice if a State so requests, and provides that provision of notice shall not be deemed a waiver of any applicable privilege. In addition, the Final Rule specifies that the notice provisions do not create any procedural or substantive rights for parties in litigation against the United States or against a State that brings an action under Title X of the Dodd-Frank Act or a regulation prescribed thereunder.

III. Legal Authority

Section 1042(c) of the Dodd-Frank Act authorizes the Bureau to prescribe regulations implementing the requirements of section 1042(b). In addition, the Bureau has general rulemaking authority pursuant to section 1022(b)(1) of the Dodd-Frank Act to prescribe rules to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof.

IV. Overview of Comments Received

In response to the Interim Final Rule, the Bureau received several comments. Four letters were received from associations representing the financial industry, two letters were received from financial industry regulators and supervisors, and one letter was received from an individual consumer. The Bureau also received a comment letter from a financial industry regulator in response to its **Federal Register** notification of November 21, 2011, regarding the information collection requirements associated with the Interim Final Rule pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All of the comments are available for review on www.regulations.gov.

The financial industry associations' comments fell into several general categories. Several comments expressed concerns about the Bureau's ability to maintain confidentiality for notification materials received by the Bureau. Other commenters requested clarity as to the type of actions for which the Bureau requires notification. One commenter requested that the Bureau require uniform interpretation by States of all Federal law within the Bureau's jurisdiction.

Civil Investigative Demand Document Submission Standards

CFPB Office of Enforcement

CID Document Submission Standards

This describes the technical requirements for producing electronic document collections to the Consumer Finance Protection Bureau (“the Bureau”)’s Office of Enforcement. All documents shall be produced in complete form, in color when necessary to interpret the document, unredacted unless privileged, and shall not be edited, cut, or expunged. These standards must be followed for all documents you submit in response to the CID. Any proposed file formats other than those described below must be discussed with the legal and technical staff of the Bureau’s Office of Enforcement prior to submission.

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A. Transmittal Instructions

- 1) A cover letter should be included with each production. The following information should be included in the letter:
 - a) Name of the party making the production and the date of the CID to which the submission is responsive.
 - b) List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production (refer to the media by the unique number assigned to it, see ¶ 4)
 - c) List of custodians, identifying:
 - i) The Bates Range (and any gaps therein) for each custodian,
 - ii) Total number of images for each custodian, and
 - iii) Total number of native files for each custodian
 - d) List of fields in the order in which they are listed in the metadata load file.
 - e) Time zone in which emails were standardized during conversion (email collections only).
 - f) The specification(s) or portions thereof of the CID to which the submission is responsive.
- 2) Documents created or stored electronically **MUST** be produced in their original electronic format, not converted to another format such as PDF.
- 3) Data may be produced on CD, DVD, USB thumb drive, or hard drive; use the media requiring the least number of deliverables.
 - a) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container:
 - i) "MAGNETIC MEDIA – DO NOT USE METAL DETECTOR"
 - ii) "MAY BE OPENED FOR POSTAL INSPECTION"
 - b) CD-R CD-ROMs should be formatted to ISO 9660 specifications;
 - c) DVD-ROMs for Windows-compatible personal computers are acceptable;
 - d) USB 2.0 thumb drives for Windows-compatible personal computers are acceptable;

- e) USB 3.0 or USB 3.0/eSATA external hard disk drives, formatted in a Microsoft Windows-compatible file system (FAT32 or NTFS), uncompressed data are acceptable.
- 4) Label all media with the following:
 - a) Production date
 - b) Bates range
 - c) Disk number (1 of X), if applicable
 - d) Name of producing party
 - e) A unique production number identifying each production
- 5) All productions must be produced free of computer viruses. Infected productions may affect the timing of your compliance with the CID.
- 6) All produced media must be encrypted. Encryption format must be agreed upon prior to production.
 - a) Data deliveries should be encrypted at the disc level.
 - b) Decryption keys should be provided separately from the data delivery via email or phone.
- 7) Passwords for documents, files, and compressed archives should be provided separately either via email or in a separate cover letter from the data.

B. Delivery Formats

1) General ESI Standards

Before submitting any Electronically Stored Information (“ESI”) or any other documents submitted in electronic form that do not conform completely to the listed specifications, you must confirm with the Bureau that the proposed formats and media types that contain such ESI will be acceptable. You are encouraged to discuss your specific form of submission, and any related questions with the Bureau as soon as is practicable and not later than the Meet and Confer required pursuant to 12 C.F.R. § 1080.6(c).

All productions must follow the specifications outlined below:

De-duplication

De-duplication of documents should be applied across custodians (global); each custodian should be identified in the Custodian field in the metadata load file separated by semi-colon. The first name in the Custodian list should represent the original holder of the document.

Bates Numbering Documents

The Bates number must be a unique, sequential, consistently formatted identifier, i.e., an alpha prefix unique to each producing party along with a fixed length number, i.e., ABC0000001. This format must remain consistent across all productions. There should be no space in between the prefix and the number. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should hyphens or other separators be added or deleted.

Document Retention / Preservation of Metadata

The recipient of this CID should use reasonable measures to maintain the original native source documents in a manner so as to preserve the metadata associated with these

electronic materials as it existed at the time of the original creation.

2) Native and Image Production

In general, and subject to the specific instructions below: (1) produce electronic documents in their complete native/original format along with corresponding bates-labeled single page TIFF images; (2) scan and process all paper documents into single page TIFF images, OCR the images, and apply bates numbers to each page of the image; (3) produce fully searchable document level text for every produced document; and (4) produce metadata for every produced document in a data file that conforms to the specific instructions below.

a) Metadata File

All produced documents, regardless of their original file format, must be produced with the below-described metadata fields in a data file (.DAT).

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

TABLE 1: DAT FILE DELIMITERS

Comma	,	ASCII character (020)
Quote	"	ASCII character (254)
Newline	␣	ASCII character (174)

- iii) Date fields should be provided in the format: mm/dd/yyyy
- iv) All attachments should sequentially follow the parent document/email.
- v) All documents shall be produced in both their native/original form and as a corresponding bates-labeled single page TIFF image; provide the link to the original/native document in the NATIVELINK field.
- vi) Produce extracted metadata for each document in the form of a .DAT file, and include these fields (fields should be listed but left blank if not applicable):

TABLE 2: DAT FILE FIELDS

Field Name	Description
BATES_BEGIN	First Bates number of native file document/email
BATES_END	Last Bates number of native file document/email **The BATES_END field should be populated for single page documents/emails
ATTACH_BEGIN	First Bates number of attachment/family range
ATTACH_END	Last Bates number of attachment/family range
GROUP_ID	A unique family identifier used to link documents/emails and attachments
PRIV	Indicate "YES" if document has a Privilege claim
ROG_NUM	Indicate Interrogatory number(s) document is responsive to. (ROG ##) If multiple, separate by semi-colon
DR_NUM	Indicate Document Request document is responsive to. (DR ##) If multiple, separate by semi-colon
RECORDTYPE	Email: Populate field as "E-Mail" Attachment: Populate field as "Attachment" Email Attachment: Populate field as "Attachment (E-mail)" Loose Native: Populate field as "E-Document" Scanned Paper: Populate field as "Paper"
CUSTODIAN	Individual(s) or department(s) from which the record originated **semi-colon should be used to separate multiple entries
FROM	Email: Sender of email Non-email: (empty) **semi-colon should be used to separate multiple entries
TO	Email: Recipient(s) of email **semi-colon should be used to separate multiple entries
CC	Carbon copy recipient(s) **semi-colon should be used to separate multiple entries
BCC	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple entries
SUBJECT	Subject line of the email
DATE_SENT	Email: Date the email was sent
TIME_SENT	Email: Time the email was sent **This data must be a separate field and cannot be combined with the DATE_SENT field

DATE_RECVD	Email: Date the email was received
TIME_RECVD	Email: Time the email was received
NATIVELINK	Hyperlink to the email or native file document **The linked file must be named per the BATES_BEGIN Number
FILE_EXT	The file extension representing the email or native file document
AUTHOR	Email: (empty) Non-email: Author of the document
DATE_CREATED	The date the electronic file was created
TIME_CREATED	The time the electronic file was created
DATE_MOD	Date an electronic file was last modified
TIME_MOD	Time an electronic file was last modified
PRINT_DATE	Date the document was last printed
PRINT_TIME	Time the document was last printed
FILE_SIZE	Size of native file document/email in KB
PGCOUNT	Number of pages in document/email
SOURCE	Email: Path to email container and email container name Non-email: Original path to source archive folder or files
FOLDERPATH	Email: Folder path within email container Non-email: Folder path to file
FILENAME	Email: Filename of loose email or subject of non-loose email Non-email: original file name
MD5HASH	The 32 digit value representing each unique document
TEXTPATH	Contains path to OCR/Extracted text file that is titled after the document BATES_BEGIN

b) Document Text

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

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

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

- ii) For documents redacted on the basis of any privilege, provide the OCR text for unredacted/unprivileged portions.
- iii) The text should be delivered in the following method: As multi-page ASCII text

files with the files named the same as the Bates_Begin field. Text files can be placed in a separate folder or included with the .TIFF files.

c) Linked Native Files

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

- i) Native file documents must be named per the BATES_BEGIN number (the original file name should be preserved and produced in the FILENAME metadata field).
- ii) The full path of the native file must be provided in the .DAT file in the NATIVELINK field.

d) Images

- i) Images should be single-page, Group IV TIFF files, scanned at 300 dpi.
- ii) File names should be titled per endorsed bates number.
- iii) Color should be preserved when necessary to interpret the document.
- iv) Bates numbers should be endorsed on the lower right corner of all images.
- v) For documents partially redacted on the basis of any privilege, ensure the redaction box is clearly labeled "REDACTED".

e) Image Cross Reference File

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

TABLE 3: IMAGE CROSS REFERENCE FILE FIELDS

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

BoxBreak	Leave empty
PageCount	Optional
	<i>*This file should not contain a header row.</i>

SAMPLE:

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

3) PDF File Production

When approved, Adobe PDF files may be produced in lieu of TIFF images for scanned paper productions (metadata must also be produced in accordance with the instructions above):

- a) PDF files should be produced in separate folders named by the Custodian.
- b) All PDFs must be unitized at the document level, i.e. each PDF should represent a discrete document; a single PDF cannot contain multiple documents.
- c) All attachments should sequentially follow the parent document.
- d) All PDF files must contain embedded text that includes all discernible words within the document, not selected text only. This requires all layers of the PDF to be flattened first.
- e) If PDF files are Bates endorsed, the PDF files must be named by the Bates range
- f) The metadata load file listed in 2.a. should be included.

4) Transactional Data

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

- SQL Backup file
- MS Access
- XML
- CSV

- TSV
- Excel (with prior approval)

5) Audio/Video/Electronic Phone Records

- a) Audio files must be produced in a format that is playable using Microsoft Windows Media Player. Types of audio files that will be accepted include:
- Nice Systems audio files (.aud). AUD files offer efficient compression and would be preferred over both NMF and WAV files.
 - Nice Systems audio files (.nmf).
 - WAV Files
 - MP3, MP4
 - WMA
 - AIF

Produced audio files must be in a separate folder compared to other data in the production.

Additionally, the call information (metadata) related to each audio recording must be produced if it exists. The metadata file must be produced in delimited text format (DAT, CSV, or TXT), using a tab or pipe delimiter. Field names must be included in the first row of the metadata file. Please note that the field names are case sensitive and should be created as listed below. The metadata must include, if available, the following fields:

TABLE 4: AUDIO METADATA FIELDS

Field Name	Description
AgentName	Name of agent/employee
AgentId	Unique identifier of agent/employee
Group	Name for a collection of agents
Supervisor	Name of the Agent's supervisor
Site	Location of call facility
DNIS	Dialed Number Identification Service, identifies the number that was originally called

Extension	Extension where call was routed
CallDirection	Identifies whether the call was inbound, outbound, or internal
CallType	Purpose of the call
DURATION	Duration of call
CustomerId	Customer's identification number
CustomerCity	Customer's city of residence
CustomerState	Customer's state of residence
CallDateTime	Date and start time of call (MM/DD/YYYY HH:MM:SS)
CUSTOMERNAME	Name of person called
FileName	Filename of audio file
BATES_BEGIN	Unique number of the audio file
CALLEDPARTYNUMBER	The call center or phone number called
CALLSIZE	File size of audio file
CALLSERVICE	Call service code
MD5HASH	The 32 digit value representing each unique document
DOC_REQ	Document request number to which the file is responsive
CUSTODIAN	Individual(s) or department(s) from which the recording originated
FOLDERPATH	Folder path of the audio file in the original source
SOURCE	Original path to where the source file resided
TIMEZONE	The time zone of the original call
GROUPLD	A unique group identifier for grouping multiple calls
CODEC	Encoding/decoding of the audio digital stream
BITRATE	The number of bits that are conveyed or processed per unit of time

Supported Date Format	Example
mm/dd/yyyy hh:mm:ss am/pm	01/25/1996 10:45:15 am

The filename is used to link the metadata to the produced audio file. The file name in the metadata and the file name used to identify the corresponding audio file must match exactly.

- b) Video files must be produced in a format that is playable using Microsoft Windows

Media Player along with any available metadata. If it is known that the video files do not contain associated audio, indicate this in the accompanying transmittal letter.

Types of video files accepted include:

- MPG
- AVI
- WMV
- MOV
- FLV

C. Production of Partially Privileged Documents

If a portion of any material called for by this CID is withheld based on a claim of privilege, those portions may be redacted from the responsive material as long as the following conditions are met.

- a) If originally stored as native electronic files, the image(s) of the unredacted portions are submitted in a way that preserves the same appearance as the original without the redacted material (i.e., in a way that depicts the size and location of the redactions). The OCR text will be produced from the redacted image(s). Any redacted, privileged material should be clearly labeled to show the redactions on the tiff image(s). Any metadata not being withheld for privilege should be produced in the DAT file; any content (e.g., PowerPoint speaker notes, Word comments, Excel hidden rows, sheets or columns) contained within the native and not being withheld for privilege should be tiffed and included in the production.
- b) If originally in hard copy form, the unredacted portions are submitted in a way that depicts the size and location of the redactions; for example, if all of the content on a particular page is privileged, a blank, sequentially numbered page should be included in the production where the responsive material, had it not been privileged, would have been located.

CONSUMER FINANCIAL PROTECTION BUREAU
Washington, D.C. 20552

Notice to Persons Supplying Information

You have been asked to supply information or speak voluntarily, or directed to provide sworn testimony, documents, or answers to questions in response to a civil investigative demand (CID) from the Consumer Financial Protection Bureau (Bureau). This notice discusses certain legal rights and responsibilities. Unless stated otherwise, the information below applies whether you are providing information voluntarily or in response to a CID.

A. False Statements; Perjury

False Statements. Section 1001 of Title 18 of the United States Code provides as follows:

[W]hoever, in any matter within the jurisdiction of the executive ... branch of the Government of the United States, knowingly and willfully-- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title ...[or] imprisoned not more than 5 years ..., or both.

Perjury. Section 1621 of Title 18 of the United States Code provides as follows:

Whoever ... having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly or that any written testimony, declaration, deposition, or certificate by him subscribed, is true willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true ... is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

B. The Fifth Amendment; Your Right to Counsel

Fifth Amendment. Information you provide may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Bureau or any other agency. If you are an individual, you may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you or subject you to criminal liability, including fine, penalty or forfeiture.

Counsel. You have the right to be accompanied, represented and advised by counsel of your choice. For further information, you should consult Bureau regulations at 12 C.F.R. § 1080.9(b).

C. Effect of Not Supplying Information

Persons Directed to Supply Information Pursuant to CID. If you fail to comply with the CID, the Bureau may seek a court order requiring you to do so. If such an order is obtained and you still fail to supply the information, you may be subject to civil and criminal sanctions for contempt of court.

Persons Requested to Supply Information Voluntarily. There are no sanctions for failing to provide all or any part of the requested information. If you do not provide the requested information, the Bureau may choose to send you a CID or subpoena.

D. Privacy Act Statement

The information you provide will assist the Bureau in its determinations regarding violations of Federal consumer financial laws. The information will be used by and disclosed to Bureau personnel and contractors or other agents who need the information to assist in activities related to enforcement of Federal consumer financial laws. The information may also be disclosed for statutory or regulatory purposes, or pursuant to the Bureau's published Privacy Act system of records notice, to:

- a court, magistrate, administrative tribunal, or a party in litigation;
- another federal or state agency or regulatory authority;
- a member of Congress; and
- others as authorized by the Bureau to receive this information.

This collection of information is authorized by 12 U.S.C. §§ 5511, 5562.