

1 JOYCE CHEN (NY Reg. #4717245)
E-mail: Joyce.Chen@cfpb.gov
2 Phone: (202) 702-4226
1700 G Street, NW
3 Washington, D.C. 20552

4 *Attorney for Petitioner*
Consumer Financial Protection Bureau

5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**
7 **SAN FRANCISCO DIVISION**

8 CONSUMER FINANCIAL PROTECTION
9 BUREAU,

10 Petitioner,

11 v.

12 BLOCK, INC.,

13 Respondent.
14

Case No. 3:22-mc-80214

15 **PETITION TO ENFORCE CIVIL**
16 **INVESTIGATIVE DEMANDS**

17 1. On August 4, 2020, the Consumer Financial Protection Bureau (Bureau)
18 issued a civil investigative demand (2020 CID) to Square, Inc., now known as Block, Inc.
19 (Block). Over a year later, on August 6, 2021, Bureau issued a second CID to Block (2021
20 CID). Both of these CIDs were issued as part of an ongoing investigation to determine
21 whether:

22 financial technology companies or associated persons, in
23 connection with deposit-taking activities, transmitting or
24 exchanging funds, or otherwise acting as a custodian of funds,
25 or selling, providing, or issuing stored value or payment
26 instruments, or providing payments or other financial data
27 processing products or services, have: (1) deprived consumers
28 of access to their funds or failed to adequately address customer
concerns regarding fraud and errors in a manner that is unfair in
violation of Sections 1031 and 1036 of the Consumer Financial
Protection Act, 12 U.S.C. §§ 5531, 5536; or (2) failed to follow
the requirements applicable to resolving errors and liability of

1 consumers for unauthorized transfers in a manner that violates
2 Regulation E, 12 C.F.R. Part 1005, Subpart A, implementing the
3 Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq.,
principally 12 C.F.R. §§ 1005.11 and 1005.6, or 12 C.F.R. §§
1005.18 (d) and 1005.18(e).

4 2. The 2020 CID, after modification, required the full production of answers to
5 interrogatories, written reports, and documents (Requests), by October 14, 2020. The 2021
6 CID, after three modifications, required the production of all answers to interrogatories,
7 written reports, and documents by February 14, 2021.

8 3. Despite the Bureau's continued communications with Block's counsel to
9 address claimed issues of burden over the past two years, as well as continued assurances
10 from Block's counsel that production would be forthcoming, Block has produced less than
11 900 documents in response to both of these CIDs. In contrast, each third party who has
12 received a CID in this investigation has produced thousands or even tens of thousands of
13 documents without undue delay.

14 4. The Bureau cannot sit back while its investigation is stymied by Block's slow-
15 walking. To date, over one year since the CIDs were served, Block is unable to provide a
16 definitive date by which it expects to respond to the Requests for which it has so far failed to
17 respond entirely and to other Requests for which its responses are deficient.

18 5. Thus the Bureau seeks to enforce the 2020 CID relating to Document Request
19 Nos. 5 and 6, and the 2021 CID relating to Requests to which, after more than a year, Block
20 has yet to respond: Interrogatory Nos. 24, 25, 27, and 29, and Document Request Nos. 13,
21 14, 15, and 18.¹

22
23
24
25
26 ¹ Although the Bureau is only seeking to enforce the CIDs with respect to certain Requests at this time, the
27 Bureau reserves its rights to enforce the CIDs with respect to other Requests to which Block has provided
28 deficient responses. At this time, the Bureau continues to work with Block to obtain complete responses to
those Requests.

1 revenue in 2021, \$12.3 billion of which was generated by Cash App. Block also operates
2 what it calls the “Square ecosystem,” which is a retail payments platform used by businesses.
3 In connection with both of these “ecosystems,” Block moves an enormous amount of money
4 through the consumer economy using technology.

5 **The CIDs**

6 12. Section 1052(c) of the CFPB empowers the Bureau to issue a CID seeking
7 “any information, relevant to a violation” of “Federal consumer financial law.” 12 U.S.C.
8 § 5562(c)(1). A CID issued by the Bureau may, among other things, require the recipient to
9 respond to interrogatories, provide written reports, produce documents, and submit tangible
10 things. *Id.*

11 13. In the Ninth Circuit, “[t]he scope of the judicial inquiry in an ... agency
12 subpoena enforcement proceeding is quite narrow. The critical questions are: (1) whether
13 Congress has granted the authority to investigate; (2) whether procedural requirements have
14 been followed; and (3) whether the evidence is relevant and material to the investigation.”
15 *EEOC v. Fed. Exp. Corp.*, 558 F.3d 842, 848 (9th Cir. 2009) (citations omitted). *See also*
16 *United States v. Morton Salt*, 338 U.S. 632, 652 (1950).

17 14. As to authority to investigate, the CFPB broadly authorizes the Bureau to
18 investigate violations of federal consumer-financial laws and to issue a CID to “any person”
19 the Bureau “has reason to believe ... may be in possession, custody, or control of ... any
20 information, relevant to a violation.” 12 U.S.C. § 5562(c).

21 15. The Bureau has authority to investigate Block. The Notification of Purpose on
22 both CIDs to Block set forth the basis of the Bureau’s investigation, which seeks to learn if
23 financial technology companies, in the course of deposit-taking or transmitting or exchanging
24 funds, or otherwise acting as a custodian of funds, or selling, providing, or issuing stored
25 funds, or otherwise acting as a custodian of funds, or selling, providing, or issuing stored
26 funds, or otherwise acting as a custodian of funds, or selling, providing, or issuing stored
27 funds, or otherwise acting as a custodian of funds, or selling, providing, or issuing stored
28 funds, or otherwise acting as a custodian of funds, or selling, providing, or issuing stored

1 value or payment instruments, or providing payments or other financial data processing
2 products or services, have violated the CFPA, the Electronic Fund Transfer Act (EFTA), or
3 its implementing rule, Regulation E.

4 16. The Bureau has authority to enforce the CFPA, EFTA, and Regulation E. 12
5 U.S.C. § 5564(a); 12 U.S.C. §§ 5481(12)(C), (14). Block's activities, as described in the
6 CIDs' Notification of Purpose, are also within the Bureau's scope of authority as consumer
7 financial products or services. 12 U.S.C. § 5531(a), 12 U.S.C. §§ 5481(5), (15)(a)(iv), (vii).
8

9 17. Because Block is engaged in offering or providing consumer financial
10 products or services, Block is a covered person under the CFPA, and thus subject to the
11 Bureau's authority. 12 U.S.C. § 5481(6)(a); 12 U.S.C. § 5536(a). But even if Block were not
12 a covered person, it would be bound to respond to the CIDs; the Bureau's authority to issue
13 CIDs is broader than its enforcement authority. 12 U.S.C. § 5562(c)(1).
14

15 18. The Bureau also followed the required procedural steps to issue both CIDs. 12
16 U.S.C. § 5562(c), 12 C.F.R. pt. 1080. On August 4, 2020, a Deputy Assistant Director of the
17 Office of Enforcement issued the 2020 CID. It was served on Block by certified mail. On
18 August 6, 2021, a Deputy Assistant Director of the Office of Enforcement issued the 2021
19 CID. It was served on Block by email to Block's counsel, who was authorized to accept
20 service on behalf of the Company.

21 19. As required by the CFPA, 12 U.S.C. § 5562(c)(2), the 2020 CID and the 2021
22 CID both contained a Notification of Purpose apprising Block of the nature of the conduct
23 under investigation and applicable provisions of law.
24

25 20. The 2020 CID and the 2021 CID sought from Block materials relevant to the
26 Bureau's investigation, including responses to interrogatories, written reports, and
27 documents.
28

1 30. Following its receipt of Block’s September 2, 2021 letter, Bureau counsel
2 embarked on a series of meetings and exchanges of correspondence with Block’s counsel
3 over the course of months. Even though the Bureau continued to work with Block when it
4 raised issues of burden well after the ten-day meet and confer period, Block continued to
5 miss deadlines that it itself proposed as the dates for which it would “endeavor” or “hope” to
6 produce responses to certain Requests. To date, numerous dates that Block “endeavored” or
7 “hoped” to meet have come and gone, with no explanation from Block as to the reasons for
8 its failures to produce.
9

10 31. The Bureau modified the CID three times in response to Block’s claims of
11 burden by letter on September 16, 2021, October 22, 2021, and December 16, 2021, through
12 which the Bureau provided extensions of time to produce materials in response to the 2021
13 CID and limited the Requests. As to the Requests relevant here:

- 14 a. The response to Interrogatory No. 27 addressing the period from January 1,
15 2020 until August 6, 2021 was due on September 30, 2021;
16 b. Responses to Interrogatory Nos. 24, 25, 29, and Document Request Nos. 15
17 and 18 (except for communications) were due on October 22, 2021;
18 c. Responses to Interrogatory No. 27 addressing the period from 2016 through
19 2019 and to Document Request Nos. 13, 14, and 18 (including
20 communications) were due on November 5, 2021.
21

22 32. Block was supposed to make full production in response to the 2021 CID by
23 December 5, 2021, with the exception of certain data-related Requests, not at issue here,
24 which were extended until February 14, 2022, based on the December 16, 2021 modification.
25
26
27
28

1 33. Even one year after the 2021 CID was issued, Block has yet to produce any
2 information in response to Interrogatory Nos. 24, 25, 27, and 29, and Document Request
3 Nos. 13, 14, 15, and 18. Block has failed to fully comply with the 2021 CID duly issued to it.

4 34. As demonstrated by the Declaration of Joyce Chen, the Requests at issue in
5 this matter -- Interrogatory Nos. 24, 25, 27, and 29, and Document Request Nos. 5, 6, 13, 14,
6 15, and 18⁴ -- are relevant and material to the Bureau's investigation.

7 35. Because the Bureau has the authority to investigate Block and the matters at
8 issue in the 2020 and 2021 CID, the Bureau followed the prescribed procedural requirements
9 for both CIDs, and the evidence sought is relevant and material to the investigation, the Court
10 should enforce the CIDs.
11

12 36. Accordingly, the Bureau requests the relief set forth below.

13 WHEREFORE, the Bureau requests:

- 14 1. An order directing Block to show cause why it should not be required to
15 comply with 2020 CID relating to Document Request Nos. 5 and 6, and the
16 2021 CID relating to Interrogatory Nos. 24, 25, 27, and 29, and Document
17 Request Nos. 13, 14, 15, and 18;
18
19 2. An order directing Block to fully respond to Interrogatory Nos. 24, 25, 27,
20 and 29, and Document Request Nos. 5, 6, 13, 14, 15, and 18 in the 2020 and
21 2021 CIDs; and
22
23 3. Such other relief as this Court deems just and proper.
24
25
26

27 ⁴ The Requests in both the CIDs are sequentially numbered so that, for example, the first Document Request in
28 the 2021 CID is Document Request No. 9.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 18, 2022

Respectfully submitted,

ERIC HALPERIN
Enforcement Director

DAVID RUBENSTEIN
Deputy Enforcement Director

CYNTHIA LESSER
Assistant Deputy Enforcement Director

/s/ Joyce Chen
JOYCE CHEN (NY Reg. #4717245)
(Appearing per Local Rule 11-2)
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Phone: (202) 702-4226
Email: joyce.chen@cfpb.gov

*Attorneys for Petitioner
Consumer Financial Protection Bureau*

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2022, I caused a true and correct copy of the document entitled Petition to Enforce Civil Investigative Demands to be served by e-mail on counsel for Respondent Block, Inc., as follows:

Allyson Baker, Esq.
Paul Hastings LLP
2050 M Street NW
Washington, D.C. 20036
allysonbaker@paulhastings.com

/s/ Joyce Chen
JOYCE CHEN (NY Reg. #4717245)
(Appearing per Local Rule 11-2)
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Phone: (202) 702-4226
Email: joyce.chen@cfpb.gov

*Attorneys for Petitioner
Consumer Financial Protection Bureau*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Consumer Financial Protection Bureau

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joyce Chen, 1700 G Street NW, Washington, DC 20552, (202) 702-4226

DEFENDANTS

Block, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) San Francisco

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Allyson Baker, Paul Hastings LLP, 2050 M Street NW, Washington, DC 20036, (202) 551-1830

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 12 U.S.C. s. 5562(e)(1), (h)

Brief description of cause:

Petition to enforce civil investigative demands issued by Consumer Financial Protection Bureau

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

X SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 08/18/2022

SIGNATURE OF ATTORNEY OF RECORD

Joyce Chen

Digitally signed by Joyce Chen Date: 2022.08.18 14:31:37 -04'00'

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

1 JOYCE CHEN (NY Reg. #4717245)

E-mail: Joyce.Chen@cfpb.gov

2 Phone: (202) 702-4226

1700 G Street, NW

3 Washington, D.C. 20552

Attorney for Petitioner

4 *Consumer Financial Protection Bureau*

5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**
7 **SAN FRANCISCO DIVISION**

8 CONSUMER FINANCIAL PROTECTION
9 BUREAU,

10 Petitioner,

11 v.

12 BLOCK, INC.,

13 Respondent.
14

Case No. 3:22-mc-80214

**MEMORANDUM IN SUPPORT
OF PETITION TO ENFORCE
CIVIL INVESTIGATIVE
DEMANDS**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES iii

I. Statement of Facts..... 1

II. The Court Should Enforce the CIDs..... 5

 A. The Bureau’s CIDs Should Be Enforced Because It Has the Appropriate Authority,
 Followed the Required Procedures, and Seeks Relevant and Material Evidence..... 7

 B. Block Cannot Rebut the Bureau’s Prima Facie Case for Enforcement..... 12

III. Conclusion..... 14

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases

CFPB v. Great Plains Lending, LLC,
846 F.3d 1049 (9th Cir. 2017) 6

CFPB v. Great Plains Lending, LLC,
No. CV142090MWFPLAX, 2014 WL 12685941 (C.D. Cal. May 27, 2014)..... 6, 13

EEOC v. Aaron Bros. Inc.,
620 F. Supp. 2d 1102 (C.D. Cal. 2009) 13

EEOC v. Fed. Exp. Corp.,
558 F.3d 842 (9th Cir. 2009) 6, 7, 9

EEOC v. Karuk Tribe Housing Authority,
260 F.3d 1071 (9th Cir. 2001) 5

EEOC v. McCormick & Schmick’s,
No. C07-80065 WHA, 2007 WL 1430004 (N.D. Cal. May 15, 2007)..... 13, 14

EEOC v. McLane Co.,
581 U.S. 72 (2017)..... 6

EEOC v. McLane Co.,
804 F.3d 1051 (9th Cir. 2015) 6, 12

EEOC v. Z Foods, Inc.,
No. 109CV02127OWWSMS, 2011 WL 13254378 (E.D. Cal. Feb. 23, 2011)..... 13

FTC v. XCast Labs, Inc.,
No. MISC211026MWFMRWX, 2021 WL 6297885 (C.D. Cal. Dec. 9, 2021)..... 12

FTC v. XCast Labs, Inc.,
No. MISC211026MWFMRWX, 2022 WL 60527 (C.D. Cal. Jan. 6, 2022)..... 13

1 *United States v. California,*

2 No. 18CV2868-L-MDD, 2019 WL 2498316 (S.D. Cal. Mar. 5, 2019) 9

3 *United States v. California,*

4 No. 18CV2868-L-MDD, 2019 WL 2498318 (S.D. Cal. Mar. 26, 2019) 9

5 *United States v. Exxon Mobil Corp.,*

6 943 F.3d 1283 (9th Cir. 2019) 9

7 *United States v. Morton Salt Co.,*

8 338 U.S. 632 (1950)..... 6, 7

9
10 **Statutes**

11 12 U.S.C. § 5481 8

12 12 U.S.C. § 5531 2, 3, 7, 8

13 12 U.S.C. § 5536 2, 3, 7, 8

14 12 U.S.C. § 5562 1, 3, 7, 8

15 12 U.S.C. § 5564 8

16 15 U.S.C. § 1693 2, 3, 7

17
18 **Regulations**

19 12 C.F.R. § 1005.11 2, 3, 7

20 12 C.F.R. § 1005.18 2, 3, 7

21 12 C.F.R. § 1005.6 2, 3, 7

22 12 C.F.R. § 1080 8

23 12 C.F.R. § 1080.10 1

24 12 C.F.R. § 1080.5 8

25 12 C.F.R. § 1080.6 2, 3, 8, 12

12 C.F.R. Part 1005..... 3, 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 The Consumer Financial Protection Bureau (Bureau) petitions this Court for an order
2 requiring Block, Inc. (Block) to respond fully to Document Request Nos. 5 and 6 of the civil
3 investigative demand (CID) the Bureau issued to it on August 4, 2020 (2020 CID), (See
4 Declaration of Joyce Chen (Chen Decl.), Exh. A), and Interrogatory Nos. 24, 25, 27, and 29,
5 and Document Request Nos. 13, 14, 15, and 18 of the CID the Bureau issued to it on August
6 6, 2021 (2021 CID). Chen Decl., Exh. C.

7 The Consumer Financial Protection Act of 2010 (CFPA) gives the Bureau authority
8 to issue CIDs and to enforce them in federal district court. 12 U.S.C. §§ 5562(c)(1), (e)(1).
9 CIDs are a type of investigative, administrative subpoena. The Bureau may initiate a
10 proceeding to enforce a CID by filing a petition in the federal district court where the CID
11 recipient “resides, is found, or transacts business” for an order to enforce the CID. 12 U.S.C.
12 § 5562(e)(1); 12 C.F.R. § 1080.10(b)(1). Because the Bureau has authority to issue the 2020
13 CID and the 2021 CID, and this Court has authority to enforce them, the Bureau respectfully
14 requests that this Court order Block to show cause as to why it should not be required to
15 comply with the CIDs and, thereafter, enter an order requiring it to fully respond to
16 Interrogatory Nos. 24, 25, 27, and 29, and Document Request Nos. 5, 6, 13, 14, 15, and 18¹
17 of the 2020 CID and the 2021 CID.

18
19
20 **I. Statement of Facts**

21 Block is a multi-billion dollar global corporation that self-identifies primarily as a
22 technology company. It has two primary “ecosystems,” Cash App, which was established as
23 a mobile payment app for consumers, and Square, which is a payments platform for sellers.
24

25
26
27 ¹ The Requests in both the CIDs are sequentially numbered so that, for example, the first Document Request in
28 the 2021 CID is Document Request No. 9.

1 In 2020, the Bureau initiated an investigation into Cash App, focusing on potential
2 violations of the CFPA's prohibition on unfair, deceptive, or abusive conduct, 12 U.S.C.
3 §§ 5531, 5536, and the Electronic Fund Transfer Act (EFTA), 15 U.S.C. § 1693 et seq., and
4 its implementing rule, Regulation E, 15 U.S.C. § 1693 et seq., principally 12 C.F.R. §§
5 1005.11 and 1005.6, or 12 C.F.R. §§ 1005.18(d) and 1005.18(e). Chen Decl. ¶5. Pursuant to
6 that investigation, the Bureau issued the 2020 CID to Block, requesting interrogatories,
7 written reports, tangible things, and documents, which was duly served by certified mail. *Id.*
8 ¶4. In response to Block's claims of burden, the Bureau modified that CID, including by
9 providing extended deadlines, with Block's complete compliance due by October 14, 2020.
10 *Id.* ¶¶7-9. Block has still not fully responded to that CID, in particular with respect to
11 Document Request Nos. 5 and 6, and has not provided a certificate of compliance in
12 connection with it. *Id.* ¶¶11, 13, 25. Such certificates are required by the Bureau's rules on
13 investigations. 12 C.F.R. §§ 1080.6(a)(1)(ii), (2)(ii), (3)(ii).

14
15
16 On August 6, 2021, the Bureau served the 2021 CID by email on Block's counsel,
17 who was authorized to accept service of it on Block's behalf, as part of the same
18 investigation. Chen Decl. ¶14. After three modifications to account for Block's claimed
19 burden, the 2021 CID required Block to complete its production in response to
20 interrogatories and requests for written reports and documents by February 14, 2021. *Id.* ¶19.

21 Both the 2020 and the 2021 CIDs contained the following Notification of Purpose:

22
23 The purpose of this investigation is to determine whether
24 financial technology companies or associated persons, in
25 connection with deposit-taking activities, transmitting or
26 exchanging funds, or otherwise acting as a custodian of funds,
27 or selling, providing, or issuing stored value or payment
28 instruments, or providing payments or other financial data
processing products or services, have: (1) deprived consumers
of access to their funds or failed to adequately address customer
concerns regarding fraud and errors in a manner that is unfair in
violation of Sections 1031 and 1036 of the Consumer Financial

1 Protection Act, 12 U.S.C. §§ 5531, 5536; or (2) failed to follow
2 the requirements applicable to resolving errors and liability of
3 consumers for unauthorized transfers in a manner that violates
4 Regulation E, 12 C.F.R. Part 1005, Subpart A, implementing the
5 Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq.,
6 principally 12 C.F.R. §§ 1005.11 and 1005.6, or 12 C.F.R. §§
7 1005.18(d) and 1005.18(e).

8 *Id.*, Exhs. A and C.

9 With respect to the 2020 CID, on August 21, 2020, counsel for the Bureau and Block
10 met and conferred about that CID in accordance with 12 C.F.R. § 1080.6(c). *Id.* ¶7. On
11 August 25, 2021, Block submitted a letter to the Bureau seeking modifications to the 2020
12 CID. *Id.* ¶8. On August 31, 2020, the Bureau issued a letter modifying the CID to address the
13 concerns raised in Block’s August 25, 2020 letter, including an extension of time in
14 responding to Document Request Nos. 5 and 6 until September 23, 2020, and requiring full
15 compliance with the CID by October 14, 2020. *Id.* ¶9, Exh. B. Block never filed a petition to
16 modify or set aside the 2020 CID pursuant to 12 U.S.C. § 5562(f); 12 C.F.R. § 1080.6(e). *Id.*
17 ¶10. But Block failed to produce what appears to be a significant number of documents
18 responsive to Document Request Nos. 5 and 6, including documents that were specifically
19 referenced in documents Block did produce; thus, Block has not fully complied with those
20 requests. *Id.* ¶13. Indeed, Block produced only 372 documents in response to the 2020 CID.
21 *Id.* ¶11.

22 Counsel for the Bureau and Block met and conferred about the 2021 CID, in
23 accordance with 12 C.F.R. § 1080.6(c), over the course of three meetings, on August 12, 19,
24 and 20, 2021. *Id.* ¶15. On September 2, 2021, Block submitted a letter to Bureau counsel
25 seeking modification of the 2021 CID, but the letter proposed only certain modifications.
26 Block sought extensions of time for all but one of the requests, which it sought to hold in
27 abeyance. For 35 of the requests, it simply said proposals were “to be determined,” or

1 “TBD.” *Id.* ¶16. Block never filed a petition with the Bureau to modify or set aside the 2021
2 CID. *Id.* ¶17. Following receipt of Block’s September 2, 2021 letter, Bureau counsel
3 embarked on a series of meetings and exchanges of correspondence with Block’s counsel
4 over the course of months to address claimed issues of burden, among other things. *Id.* ¶18.
5 The Bureau modified the CID three times in response to Block’s claims of burden by letter
6 on September 16, 2021, October 22, 2021, and December 16, 2021, providing extensions of
7 time to produce materials in response to the CID and limiting the requests. *Id.* ¶19, Exhs. D,
8 E, and F. Pursuant to those modifications, Block was supposed to make full production in
9 response to the 2021 CID by December 5, 2021, with the exception of certain data-related
10 requests, not at issue here, which were extended until February 14, 2022. *Id.* ¶19.

12 One year after the 2021 CID was issued, Block has yet to produce any information in
13 response to Interrogatory Nos. 24, 25, 27, and 29, and Document Request Nos. 13, 14, 15,
14 and 18. *Id.* ¶24. The information Block *has* produced in response to the CIDs has repeatedly
15 been produced late and is often non-responsive, incomplete, or otherwise deficient, impairing
16 the Bureau’s ability to conduct a meaningful investigation of Block’s practices. *Id.* ¶25. From
17 the last time the Bureau modified the CID until now, Bureau staff has met with and
18 exchanged multiple letters and communication with Block in an attempt to resolve
19 production issues, including working with Block to identify relevant custodians and search
20 terms. *Id.* ¶21. Nevertheless, hiding behind repeated excuses and deflections, and making
21 repeated assurances that it “hopes” or “expects” or will “endeavor” to produce required
22 responses at a time “in the near future,” Block’s productions remain outstanding. *Id.* ¶¶23,
23 26-27.

26 Even though the Bureau continued to work with Block when it raised issues of burden
27 well after the ten-day meet and confer period, and even though the Bureau is committed to

1 continuing to work with Block, Block’s repeated pattern of delay must stop. Most recently,
2 Block has indicated that it will “endeavor” to begin a rolling production by August 31, 2022.
3 *Id.* ¶26. But after waiting over a year for the production of *any* information in response to
4 eight different Requests, the Bureau cannot rely on Block’s tepid assurances about “hoping”
5 or “endeavoring” to respond to outstanding Bureau Requests any longer.

6 In fact, after more than two years, this multi-billion dollar public company,
7 responsible for maintaining and moving billions of consumer dollars through the economy,
8 has managed to produce a total of only 894 documents in response to the Bureau’s two CIDs.
9 *Id.* ¶25.

10 Although Block has failed to fully respond to many of the requests in the 2021 CID,
11 and has not provided the required certificates of compliance for either CID, at this time, the
12 Bureau is seeking enforcement solely with respect to Interrogatory Nos. 24, 25, 27, and 29,
13 and Document Request Nos. 5, 6, 13, 14, 15, and 18 of the 2020 CID and the 2021 CID, in
14 an effort to simplify this matter for the Court and to conserve judicial resources.²

17 II. The Court Should Enforce the CIDs

18 In the Ninth Circuit, “[c]ourts must enforce administrative subpoenas unless the
19 evidence sought by the subpoena is plainly incompetent or irrelevant to any lawful purpose
20 of the agency.” *EEOC v. Karuk Tribe Housing Authority*, 260 F.3d 1071, 1076 (9th Cir.
21 2001). A Bureau CID is an administrative subpoena. See, e.g., *CFPB v. Great Plains*
22 *Lending, LLC*, No. CV142090MWFPLAX, 2014 WL 12685941, at *18 (C.D. Cal. May 27,

25
26 ² Although the Bureau is only seeking to enforce the CIDs with respect to certain Requests at this time, the
27 Bureau reserves its rights to enforce the CIDs with respect to other Requests to which Block has provided
28 deficient responses. At this time, the Bureau continues to work with Block to obtain complete responses to
those Requests.

1 2014), (granting the Bureau’s petition to enforce a CID, and referring to it throughout as an
2 administrative subpoena), *aff’d*, 846 F.3d 1049 (9th Cir. 2017).

3 “The scope of the judicial inquiry in an ... agency subpoena enforcement proceeding
4 is quite narrow. The critical questions are: (1) whether Congress has granted the authority to
5 investigate; (2) whether procedural requirements have been followed; and (3) whether the
6 evidence is relevant and material to the investigation.” *EEOC v. Fed. Exp. Corp.*, 558 F.3d
7 842, 848 (9th Cir. 2009) (citations omitted). *See also United States v. Morton Salt Co.*, 338
8 U.S. 632, 652 (1950).
9

10 After the agency make its prima facie case, “the court must enforce the subpoena
11 unless the objecting party shows that the subpoena is overbroad or that compliance would be
12 unduly burdensome.” *EEOC v. McLane Co.*, 804 F.3d 1051, 1056 (9th Cir. 2015), *vacated on*
13 *other grounds*, 581 U.S. 72 (2017). “District courts in this Circuit have adopted the rule of
14 the Fourth and D.C. Circuits, which define ‘unduly burdensome’ as a demand that threatens
15 to unduly disrupt or seriously hinder normal operations of a business.” *Great Plains Lending,*
16 *LLC*, 2014 WL 12685941, at *17. Under this adopted standard, “the burden of proving that
17 an administrative subpoena is unduly burdensome is not easily met.” *Id.* (citations omitted).
18

19 As shown below, the Bureau has the appropriate authority, it followed the required
20 procedures, and the evidence sought by the CIDs is relevant and material to the investigation.
21 Block cannot show that the CIDs were unduly burdensome. The Court should therefore
22 enforce the CIDs.
23
24
25
26
27
28

1 **A. The Bureau’s CIDs Should Be Enforced Because It Has the Appropriate**
2 **Authority, Followed the Required Procedures, and Seeks Relevant and Material**
3 **Evidence**

4 The Bureau easily meets the criteria for a prima facie case of CID enforcement. First,
5 “it is well-established that an administrative subpoena is to be enforced unless agency
6 authority is plainly lacking,” *Fed. Exp. Corp.*, 558 F.3d at 851, which is most definitely not
7 the case here. Congress granted the Bureau the authority to investigate in this instance. The
8 CFPA broadly authorizes the Bureau to investigate violations of federal consumer-financial
9 laws and to issue a CID to “any person” the Bureau “has reason to believe ... may be in
10 possession, custody, or control of ... any information, relevant to a violation.” 12 U.S.C. §
11 5562(c). And an agency such as the Bureau “has a power of inquisition ... [and] can
12 investigate merely on suspicion that the law is being violated, or even just because it wants
13 assurance that it is not.” *Morton Salt Co.*, 338 U.S. at 642-43.

14 The violations potentially at issue are within the scope of the Bureau’s authority. As
15 set forth in the Notification of Purpose in the 2021 CID, the Bureau issued it to determine
16 whether:

17 financial technology companies or associated persons, in
18 connection with deposit-taking activities, transmitting or
19 exchanging funds, or otherwise acting as a custodian of funds,
20 or selling, providing, or issuing stored value or payment
21 instruments, or providing payments or other financial data
22 processing products or services, have: (1) deprived consumers
23 of access to their funds or failed to adequately address customer
24 concerns regarding fraud and errors in a manner that is unfair in
25 violation of Sections 1031 and 1036 of the Consumer Financial
26 Protection Act, 12 U.S.C. §§ 5531, 5536; or (2) failed to follow
27 the requirements applicable to resolving errors and liability of
28 consumers for unauthorized transfers in a manner that violates
 Regulation E, 12 C.F.R. Part 1005, Subpart A, implementing the
 Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq.,
 principally 12 C.F.R. §§ 1005.11 and 1005.6, or 12 C.F.R. §§
 1005.18(d) and 1005.18(e).

Chen Decl., Exhs. A and C at 1 (CID Notification of Purpose).

1 The Bureau’s investigation falls squarely within its authority under the CFPA to
2 investigate violations of the CFPA and other federal consumer financial laws, including
3 EFTA, and Regulation E. 12 U.S.C. § 5564(a); 12 U.S.C. §§ 5481(12)(C), (14). Further, the
4 activities described in the Notification of Purpose -- deposit-taking activities, transmitting or
5 exchanging funds, or otherwise acting as a custodian of funds, or selling, providing, or
6 issuing stored value or payment instruments, or providing payments or other financial data
7 processing products or services -- are consumer financial products or services within the
8 Bureau’s scope of authority. 12 U.S.C. § 5531(a), 12 U.S.C. §§ 5481(15)(a)(iv), (vii).
9 Because Block is engaged in offering or providing consumer financial products or services,
10 Block is a covered person under the CFPA, and thus subject to the Bureau’s authority. 12
11 U.S.C. § 5481(6)(a); 12 U.S.C. § 5536(a).³

12
13
14 Second, the Bureau followed all applicable procedural requirements required by the
15 CFPA and its implementing regulation related to the issuance of a CID. 12 U.S.C. § 5562(c),
16 12 C.F.R. § 1080. Both the 2020 CID and the 2021 CID were issued by a Deputy Assistant
17 Director of the Office of Enforcement, and included a Notification of Purpose advising Block
18 of the nature of the conduct being investigated. Chen Decl., Exhs. A and C at 1; *see* 12
19 U.S.C. § 5562(c)(2); 12 C.F.R. §§ 1080.5, 1080.6(a). The CIDs were duly served. The 2020
20 CID was served, as required by the CFPA, by certified mail. 12 U.S.C. § 5562(b)(8)(C). The
21
22
23

24
25 ³ Even if Block were not a covered person, it would still be bound to respond to the Bureau’s CIDs; the
26 Bureau’s authority to issue CIDs is broader than its enforcement authority. *See* 12 U.S.C. § 5562(c)(1)
27 (“Whenever the Bureau has reason to believe that *any person* may be in possession, custody, or control of
28 any documentary material or tangible things, or may have any information, relevant to
a violation, 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...”)(emphasis
added).

1 2021 CID was served by sending it by email to Block’s counsel, who was authorized to
2 accept service of the CID and acknowledged receipt.

3 Third, the information sought is relevant and material to the investigation. Indeed, in
4 the context of administrative subpoena enforcement actions, “[r]elevancy is determined in
5 terms of the investigation rather than in terms of evidentiary relevance.” *Fed. Exp. Corp.*,
6 558 F.3d at 854. Indeed, the Ninth Circuit has been clear that “[t]he relevance requirement is
7 not especially constraining, but is instead generously construed to afford the agency access to
8 virtually any material that might cast light on the matter under investigation.” *United States*
9 *v. Exxon Mobil Corp.*, 943 F.3d 1283, 1287 (9th Cir. 2019) (citations and quotations
10 omitted). Courts in the Ninth Circuit have generally deferred to a declaration from an agency
11 official “sufficient to demonstrate that the requested records are relevant and material to an
12 ongoing investigation.” *United States v. California*, No. 18CV2868-L-MDD, 2019 WL
13 2498316, at *2 (S.D. Cal. Mar. 5, 2019), (citations omitted), *petition granted on*
14 *reconsideration*, No. 18CV2868-L-MDD, 2019 WL 2498318 (S.D. Cal. Mar. 26, 2019).

15
16
17 The CFPA authorizes the Bureau to issue a CID to obtain “any information, relevant
18 to a violation” of the federal consumer financial laws. 12 U.S.C. § 5562(c). The requests at
19 issue, and their relevancy and materiality to the Bureau’s investigation, are each generally
20 described below, as attested to by Joyce Chen, senior litigation counsel with the Bureau’s
21 Office of Enforcement:

- 22
- 23 • Interrogatory No. 24 requests information regarding rate, number, and amount of
24 chargebacks and Automated Clearing House (ACH) returns for Cash App
25 transactions, and is relevant and material to the investigation because it seeks
26 information about, among other things, scope of harm and liability in connection
27 with potential EFTA, Regulation E, and CFPA violations. Chen Decl. ¶29.

- 1 • Interrogatory No. 25 requests information regarding the communications Block
2 has had with financial institutions or card networks regarding the handling,
3 investigating, or monitoring of the Block’s chargebacks, ACH return rates, or
4 related metrics, including whether Block was told it was approaching or
5 exceeding any thresholds. It is relevant and material to the investigation because it
6 seeks information about, among other things, Block’s conduct and knowledge
7 associated with potential CFPA violations, at least. *Id.* ¶30.
- 8 • Interrogatory No. 27 requests the data points, triggers, and other analyses that
9 Block has used to determine that activity in a Cash App account warrants
10 freezing, suspending, locking, or blocking a transaction. This information is
11 relevant and material to the investigation because it seeks information about,
12 among other things, Block’s processes associated with one area that is a focus of
13 the investigation. *Id.* ¶31.
- 14 • Interrogatory No. 29 requests that Block identify all individuals who participated
15 in responding to this CID, the current position of each individual, and the specific
16 tasks performed by each individual. This information is relevant and material to
17 the investigation because, among other things, it may assist in the identification of
18 salient witnesses. *Id.* ¶32.
- 19 • Document Request Nos. 5 and 6 seek policies, procedures, and training materials
20 relating to how Block has received, handled, and addressed issues, consumer
21 complaints, or disputes regarding errors, unauthorized transfers, blocked or frozen
22 access to consumer accounts, fraud and identity theft, delayed payment
23 transactions, closing or cancellation of accounts, lost or stolen devices, and
24 limitation of consumer liability. This information is relevant and material to the
25
26
27
28

1 investigation because, among other things, it seeks information about Block's
2 own stated rules and instructions for addressing a number of the areas of focus of
3 the investigation. *Id.* ¶33.

- 4 • Document Request No. 13 requests Block's internal and external communications
5 regarding customer service activities, account takeovers, the exceeding of
6 chargeback thresholds set by banks or card networks, and audits or other analyses.

7 This information is relevant and material to the investigation because, among
8 other things, it seeks information about Block's conduct and knowledge regarding
9 issues of focus in the investigation. *Id.* ¶34.

- 10 • Document Request No. 14 requests certain communications of Brian Grassadonia,
11 the CEO of Cash App, relating to specified issues of concern in the investigation,
12 and is relevant and material to the investigation because it provides information
13 about the CEO's involvement and understanding of these issues. *Id.* ¶35.

- 14 • Document Request No. 15 requests Slack Channel communications regarding
15 definitions of data fields relating to customer service and disputes, areas of focus
16 of the investigation. This is relevant and material to the investigation because
17 Block has not provided a data dictionary for its data fields, and a Block official
18 testified that the source for such definitions were Slack Channel communications.
19 *Id.* ¶36.

- 20 • Document Request No. 18 requests audits, analyses, policies, procedures, and
21 communications regarding chargebacks, customer service activities, and reports
22 generated from spreadsheets used by Block in conducting or tracking customer
23 service activities. This is relevant and material to the investigation because it
24 seeks information about one issue of focus in the investigation. *Id.* ¶37.

1 Because the Bureau has shown, with respect to the 2020 CID and the 2021 CID, that
2 it has authority to investigate, the procedural requirements have been followed, and the
3 evidence sought is relevant and material to the investigation, the Bureau has made a prima
4 facie showing that enforcement of the 2020 CID and the 2021 CID is appropriate, at least
5 with respect to Interrogatory Nos. 24, 25, 27, and 29, and Document Request Nos. 5, 6, 13,
6 14, 15, and 18 of the 2020 CID and the 2021 CID.

7
8 **B. Block Cannot Rebut the Bureau’s Prima Facie Case for Enforcement**

9 Following this prima facie showing, the burden would shift to Block to demonstrate
10 that the CIDs are overbroad or that compliance would be unduly burdensome. *McLane Co.*,
11 804 F.3d at 1056. Block will not prevail on this point however, because 1) it failed to file a
12 petition to modify or set aside either of the CIDs, and thus has waived its ability to make this
13 showing; and 2) in any event, it could not show that either CID, particularly focusing on the
14 requests at issue here, are “unduly burdensome.”

15
16 While Block has stated, both in meetings and in letters to the Bureau, that it finds the
17 CIDs burdensome, it never availed itself of its right to petition the Director to modify or set
18 aside either CID, on that or any other basis. Under 12 U.S.C. § 5562(f) and 12 C.F.R. §
19 1080.6(e), a respondent may file a petition to modify or set aside the CID within 20 days of
20 service or, if the return date is less than 20 calendar days after service, prior to the return
21 date. Where a respondent has received notice of an administrative procedure to challenge a
22 CID, and does not do so, it has waived its ability to raise those arguments in a proceeding to
23 enforce the CID in federal court. *See FTC v. XCast Labs, Inc.*, No.
24 MISC211026MWFMRWX, 2021 WL 6297885, at *3 (C.D. Cal. Dec. 9, 2021) (holding that
25 the defendant had “forfeited its ability to oppose enforcement of the CID in federal court”
26 because it had “received notice of the administrative procedure to challenge the scope and
27

1 contents of the CID before the FTC... [but] it chose not to avail itself of that remedy”),
2 *report and recommendation adopted*, No. MISC211026MWFMRWX, 2022 WL 60527 (C.D.
3 Cal. Jan. 6, 2022). Here, the administrative procedure to challenge the CIDs existed and
4 Block received notice of it in the CIDs, as part of both the instructions and the Rules on
5 Investigations attached to the CIDs. Chen Decl., Exhs. A and C. Block failed to file such
6 petitions, and therefore cannot complain of overbreadth or burden now.

7
8 But even if the Court entertains any such objections in this case, “unduly
9 burdensome” is a high standard. Block will have to show that responding to the requests
10 would “unduly disrupt or seriously hinder normal operations of [its] business.” *Great Plains*
11 *Lending, LLC*, 2014 WL 12685941, at *17. *See also EEOC v. Z Foods, Inc.*, No.
12 109CV02127OWWSMS, 2011 WL 13254378, at *5 (E.D. Cal. Feb. 23, 2011) (holding that
13 this burden is “difficult to meet,” and enforcing the administrative subpoena); *EEOC v.*
14 *Aaron Bros. Inc.*, 620 F. Supp. 2d 1102, 1106 (C.D. Cal. 2009) (same). Block is not only an
15 extremely large company with revenues of over \$17 billion in 2021. It is also a technology
16 company, and therefore should be quite up to the task of searching for and producing
17 documents or collecting and providing information about its operations as it relates to the
18 investigation. With such resources and capabilities, Block should have been able to comply
19 with the CIDs long ago, and should not be able to avoid complying now. This is not like the
20 case, *EEOC v. McCormick & Schmick’s*, No. C07-80065 WHA, 2007 WL 1430004, at *7
21 (N.D. Cal. May 15, 2007), where a court took into consideration the fact that restaurants
22 typically “leanly” staff their management positions in enforcing a more limited request than
23 that in the original administrative subpoena. Block is not a medium-sized restaurant chain; it
24 is a highly sophisticated multi-billion dollar data-driven technology corporation. And even if
25
26
27
28

1 it has to go out of its way to comply with the CID, as the court in *McCormick & Schmick's*
2 stated, a “respondent cannot expect compliance to be painless.” *Id.*

3 Because the Bureau has demonstrated the criteria to enforce its CIDs, and Block
4 cannot rebut the Bureau’s prima facie case, both because it has waived its right to do so and
5 because it cannot show that it is unduly burdened by complying with the CIDs, the Court
6 should enforce them.

7 **III. Conclusion**

8 For the reasons discussed above, the Bureau respectfully requests that the Court order
9 Block to show cause as to why it should not be compelled to comply with the 2020 CID and
10 the 2021 CID, and, after hearing from the parties, order Block to fully respond to
11 Interrogatory Nos. 24, 25, 27, and 29, and Document Request Nos. 5, 6, 13, 14, 15, and 18 of
12 the 2020 CID and the 2021 CID, and grant other relief as the Court deems just and proper.
13
14

15 Dated: August 18, 2022

16 Respectfully submitted,

17 ERIC HALPERIN
18 Enforcement Director

19 DAVID RUBENSTEIN
20 Deputy Enforcement Director

21 CYNTHIA LESSER
22 Assistant Deputy Enforcement Director

23 /s/ Joyce Chen
24 JOYCE CHEN (NY Reg. #4717245)
25 (Appearing per Local Rule 11-2)
26 Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Phone: 202-702-4226
Email: joyce.chen@cfpb.gov

27 *Attorneys for Petitioner*
28 *Consumer Financial Protection Bureau*

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2022, I caused a true and correct copy of the document entitled Memorandum in Support of Petition to Enforce Civil Investigative Demands to be served by U.S. mail and e-mail on counsel for Respondent Block, Inc., as follows:

Allyson Baker, Esq.
Paul Hastings LLP
2050 M Street NW
Washington, D.C. 20036
allysonbaker@paulhastings.com

/s/ Joyce Chen
JOYCE CHEN (NY Reg. #4717245)
(Appearing per Local Rule 11-2)
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Phone: 202-702-4226
Email: joyce.chen@cfpb.gov

*Attorneys for Petitioner
Consumer Financial Protection Bureau*

1 JOYCE CHEN (NY Reg. #4717245)
E-mail: Joyce.Chen@cfpb.gov
2 Phone: (202) 702-4226
1700 G Street, NW
3 Washington, D.C. 20552

4 *Attorney for Petitioner*
Consumer Financial Protection Bureau

5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**
7 **SAN FRANCISCO DIVISION**

8 CONSUMER FINANCIAL PROTECTION
9 BUREAU,

10 Petitioner,

11 v.

12 BLOCK, INC.,

13 Respondent.
14

Case No. 3:22-mc-80214

**DECLARATION OF JOYCE
CHEN IN SUPPORT OF
PETITION TO ENFORCE CIVIL
INVESTIGATIVE DEMANDS**

15 Pursuant to 28 U.S.C. §1746, I, Joyce Chen, declare as follows:
16

17 1. I am a Senior Litigation Counsel in the Office of Enforcement at the
18 Consumer Financial Protection Bureau (Bureau).
19

20 2. I am lead counsel on a nonpublic Bureau investigation concerning
21 possible violations of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C.
22 §§ 5531, 5536, the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq., and
23 Regulation E, principally 12 C.F.R. §§ 1005.11 and 1005.6, or 12 C.F.R. §§ 1005.18(d)
24 and 1005.18(e).
25

26 3. I am authorized to execute this declaration and verify the facts that
27 are set forth in the Bureau’s Petition to Enforce Civil Investigative Demands. The facts
28

1 set forth in this declaration are based on my personal knowledge or information made
2 known to me in the course of my official duties.

3 **Procedural History of the CIDs**

4 4. On August 4, 2020, the Bureau, through David Rubenstein, a Deputy
5 Assistant Director of the Office of Enforcement, issued a Civil Investigative Demand
6 (2020 CID) to Block, Inc. (Block), formerly known as Square, Inc., and served it on
7 Block via certified mail. See Exhibit A, attached.

8
9 5. The CID was issued to obtain information relating to an investigation
10 into Cash App, an operating arm of Block, into potential violations of law, including
11 violations of the CFPA's prohibition on unfair, deceptive, or abusive conduct and the
12 Electronic Fund Transfer Act (EFTA), or its implementing rule, Regulation E, as
13 described in the Notification of Purpose on the first page of the 2020 CID. See Exhibit A
14 at 1.

15 6. The initial return date of the 2020 CID was August 26, 2020.

16
17 7. On August 21, 2020, Bureau staff met and conferred with Block's
18 counsel about the 2020 CID in accordance with 12 C.F.R. § 1080.6(c) to discuss and
19 attempt to resolve all issues regarding compliance with the CID.

20 8. On August 25, 2021, Block submitted a letter to the Bureau seeking
21 to modify the 2020 CID.

22
23 9. On August 31, 2020, the Bureau issued a letter, attached as Exhibit
24 B, modifying the 2020 CID to address the concerns raised in the August 21, 2020 meet
25 and confer and Block's August 25, 2020 letter, including an extension of time in
26 responding to Document Request Nos. 5 and 6 until September 23, 2020, and requiring
27 full compliance with the CID by October 14, 2020.

1 10. Block never filed a petition to modify or set aside the 2020 CID
2 pursuant to 12 U.S.C. § 5562(f); 12 C.F.R. § 1080.6(e).

3 11. Block produced 161 documents by the modified return date. After
4 several months of anemic additional production and prodding by the Bureau – including a
5 Bureau letter pointing out just some of the deficiencies –Block produced only a total of
6 372 documents by April 30, 2021, nearly nine months after the CID was served, and six
7 and a half months after the modified return date.

8 12. Indeed, while Block has claimed in correspondence with the Bureau
9 that it produced a great deal of information, in fact the information it produced in
10 response to the 2020 CID was deficient. Block did not adequately answer the written
11 reports; and though it offered a meeting to provide additional information, the meeting
12 was not helpful because Block staff present at the meeting could not answer many
13 questions regarding data fields. To get the information it needed about Block’s relevant
14 data structure and systems, the Bureau was required to take testimony of Block’s data
15 scientist, who could only provide limited information based on his own knowledge.

16 13. In the end, Block failed to produce what appear to be key documents
17 responsive to Document Request Nos. 5 and 6, including documents that were
18 specifically referenced in the about 104 documents Block did produce in response to
19 these requests. Document Request Nos. 5 and 6 generally requested the production of
20 policies, procedures, and training materials related to Cash App’s handling of various
21 issues under investigation by the Bureau, including but not limited to errors, unauthorized
22 transfers, lost or stolen devices, and the suspension of consumers’ access to their
23 accounts. Documents produced by Block make reference to or incorporate documents
24 with titles that reflect that they are responsive -- such as “Cash Card- Report Cash Card
25
26
27
28

1 Missing/Stolen” -- but those apparently responsive documents have not been produced.

2 14. On August 6, 2021, the Bureau, through David Rubenstein, a Deputy
3 Assistant Director of the Office of Enforcement, issued a second CID to Block, and
4 served it via email to Block’s outside counsel (2021 CID), who was authorized to accept
5 service. See Exhibit C, attached. Block’s outside counsel confirmed receipt of the 2021
6 CID on behalf of Block. Its return date was August 27, 2021.

7 15. Counsel for the Bureau and Block met and conferred about the 2021
8 CID, in accordance with 12 C.F.R. § 1080.6(c), over the course of three meetings, on
9 August 12, 19, and 20, 2021.

10 16. On September 2, 2021, Block submitted a letter to the Bureau
11 indicating that it wanted to modify the 2021 CID, but the letter proposed only certain
12 modifications. Block sought extensions of time for all but one of the requests, which it
13 sought to hold in abeyance. For 35 of the requests it simply said proposals were “to be
14 determined,” or “TBD.”

15 17. Block never filed a petition with the Bureau to modify or set aside
16 the 2021 CID pursuant to 12 U.S.C. § 5562(f); 12 C.F.R. § 1080.6(e).

17 18. Following its receipt of Block’s September 2, 2021 letter, Bureau
18 counsel embarked on a series of meetings and exchanges of correspondence with Block’s
19 counsel over the course of months to discuss Block’s multiple claims of burden. The
20 Bureau accommodated Block even when its requests for modification were made late in
21 the process, months after the meet and confer period.

22 19. The Bureau modified the CID three times in response to Block’s
23 claims of burden by letter on September 16, 2021 (attached as Exhibit D), October 22,
24 2021 (attached as Exhibit E), and December 16, 2021 (attached as Exhibit F). The Bureau

1 provided extensions of time to produce materials in response to the CID and limited the
2 requests. The vast majority of the requests had a production deadline of no later than
3 December 5, 2021, with the exception of certain data-related requests, not at issue here,
4 which were extended until February 14, 2022.

5 20. The modified deadlines as to the Requests relevant here were:

- 6
- 7 • The response to Interrogatory No. 27 addressing the period
8 from January 1, 2020 until August 6, 2021 was due on
9 September 30, 2021;
 - 10 • Responses to Interrogatory Nos. 24, 25, 29, and Document
11 Request Nos. 15 and 18 (except for communications) were
12 due on October 22, 2021;
 - 13 • Responses to Interrogatory No. 27 addressing the period from
14 2016 through 2019 and to Document Request Nos. 13, 14,
15 and 18 (including communications) were due on November 5,
16 2021.
- 17

18 21. And from the last time the Bureau modified the CID until the filing
19 date of this Petition, Bureau staff has met with and exchanged multiple letters and
20 communication with Block in an attempt to resolve production issues, including working
21 with Block to identify relevant custodians and search terms. For example, the Bureau
22 spent months trying to work with Block in connection with the requests for
23 communications in Document Request Nos. 13 and 18. The Bureau devised lists of
24 custodians and modified both Document Requests to hold in abeyance communications
25 that were not in the custody of those custodians.
26

27 22. By early February of 2022, the Bureau learned that Block would be
28

1 using technology assisted review (TAR), which would greatly reduce burden associated
2 with reviewing communications for responsiveness, because the technology will reduce
3 the total number of documents that need to be reviewed. Once a TAR model is trained,
4 rolling production can begin shortly thereafter.

5 23. To date, Block has not produced a single document in response to
6 Document Request Nos. 13 or 18. Block represented it was in the process of training its
7 TAR model in March and April of 2022 and that it was “striving” to begin rolling
8 productions of documents in May of 2022, but to date it has produced nothing in response
9 to those Requests.
10

11 24. Block has made deficient production in response to many of the 2021
12 CID requests,¹ and more than one year after the 2021 CID was issued, has still produced
13 nothing in response to Interrogatory Nos. 24, 25, 27, and 29, and Document Request Nos.
14 13, 14, 15, and 18.
15

16 25. As of the filing date of this Petition, after more than two years, Block
17 has produced a total of only 894 documents in response to both CIDs. Less than 500
18 documents have been produced in response to the 2021 CID, and Block has not provided
19 certificates of compliance with respect to either the 2020 CID or the 2021 CID. And the
20 information Block has produced in response to the CIDs has repeatedly been produced
21 late and is often non-responsive, incomplete, or otherwise deficient, rendering the Bureau
22 unable to conduct a meaningful investigation of Block’s practices.
23

24 26. Most recently, on July 11, 2022, the Bureau sent a letter to Block’s
25

26 ¹ To conserve judicial resources and streamline this Petition, the Bureau is only seeking to enforce the CIDs
27 with respect to certain requests at this time, although the Bureau reserves its rights to enforce the CIDs with
28 respect to other requests to which Block has provided deficient responses, including Interrogatory Nos. 17,
18, 21, 26, and 28 and Written Report Nos. 1 to 3. The Bureau continues to try to work with Block to
ensure full responses to those requests are provided.

1 counsel, attached as Exhibit G, indicating that information responsive to the relevant
2 requests must be received by August 11, 2022 or the Bureau might file a petition to
3 enforce the CIDs. In response, Block once again – as it has done repeatedly over the
4 course of the last two years – indicated by letter that it would “endeavor” to produce
5 some materials by August 31, 2022.

6 27. Block has repeatedly “hoped” or “expected” to produce responses or
7 documents at a time “in the near future,” by certain deadlines of its own making, and then
8 missed those very deadlines without explanation. After waiting over a year for the
9 production of any information in response to eight different requests, the Bureau cannot
10 rely on Block’s tepid assurances any longer.

11 **The Requests at Issue Are Relevant and Material to the Investigation**

12 28. The CID requests at issue in the instant action seek information
13 relevant and material to the Bureau’s investigation. They are generally described below,
14 as follows:
15

16 29. Interrogatory No. 24 requests information regarding rate, number,
17 and amount of chargebacks and Automated Clearinghouse (ACH) returns for Cash App
18 transactions, and is relevant and material to the investigation because it seeks information
19 about, among other things, scope of harm and liability in connection with potential
20 EFTA, Regulation E, and CFPA violations.
21

22 30. Interrogatory No. 25 requests information regarding the
23 communications Block has had with financial institutions or card networks regarding the
24 handling, investigating, or monitoring of the Block’s chargebacks, ACH return rates, or
25 related metrics, including whether Block was told it was approaching or exceeding any
26 thresholds. This is relevant and material to the investigation because it seeks information
27

1 about, among other things, Block's conduct and knowledge associated with potential
2 CFPA violations, at least.

3 31. Interrogatory No. 27 requests the data points, triggers, and other
4 analyses that Block has used to determine that activity in a Cash App account warrants
5 freezing, suspending, locking, or blocking a transaction. This information is relevant and
6 material to the investigation because it seeks information about, among other things,
7 Block's processes associated with one area that is a focus of the investigation.
8

9 32. Interrogatory No. 29 requests that Block identify all individuals who
10 participated in responding to this CID, the current position of each individual, and the
11 specific tasks performed by each individual. This information is relevant and material to
12 the investigation because, among other things, it may assist in the identification of salient
13 witnesses.
14

15 33. Document Request Nos. 5 and 6 seek policies, procedures, and
16 training materials relating to how Block has received, handled, and addressed issues,
17 consumer complaints, or disputes regarding errors, unauthorized transfers, blocked or
18 frozen access to consumer accounts, fraud and identity theft, delayed payment
19 transactions, closing or cancellation of accounts, lost or stolen devices, and limitation of
20 consumer liability. This information is relevant and material to the investigation because,
21 among other things, it seeks information about Block's own stated rules and instructions
22 for addressing a number of the areas of focus of the investigation.
23

24 34. Document Request No. 13 requests Block's internal and external
25 communications regarding customer service activities, account takeovers, the exceeding
26 of chargeback thresholds set by banks or card networks, and audits or other analyses.
27 This information is relevant and material to the investigation because, among other
28

1 things, it seeks information about Block’s conduct and knowledge regarding issues of
2 focus in the investigation.

3 35. Document Request No. 14 requests certain communications of Brian
4 Grassadonia, the CEO of Cash App, relating to specified issues of concern in the
5 investigation, and is relevant and material to the investigation because it provides
6 information about the CEO’s involvement and understanding of these issues.

7 36. Document Request No. 15 requests Slack Channel communications
8 regarding definitions of data fields relating to customer service and disputes, areas of
9 focus of the investigation. This is relevant and material to the investigation because Block
10 has not provided a data dictionary for its data fields, and a Block official testified that the
11 source for such definitions were Slack Channel communications.
12

13 37. Document Request No. 18 requests audits, analyses, policies,
14 procedures, and communications regarding chargebacks, customer service activities, and
15 reports generated from spreadsheets used by Block in conducting or tracking customer
16 service activities. This is relevant and material to the investigation because it seeks
17 information about one issue of focus in the investigation.
18

19 I declare under penalty of perjury that the foregoing is true and correct.
20

21 Executed on August 18, 2022

22
23 /s/ Joyce Chen
24 JOYCE CHEN (NY Reg. #4717245)
25 (Appearing per Local Rule 11-2)
26 Consumer Financial Protection Bureau
27 1700 G Street, NW
28 Washington, DC 20552
Phone: (202) 702-4226
Email: joyce.chen@cfpb.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2022, I caused a true and correct copy of the document entitled Declaration of Joyce Chen in Support of Petition to Enforce Civil Investigative Demands to be served by e-mail on counsel for Respondent Block, Inc., as follows:

Allyson Baker, Esq.
Paul Hastings LLP
2050 M Street NW
Washington, D.C. 20036
allysonbaker@paulhastings.com

/s/ Joyce Chen
JOYCE CHEN (NY Reg. #4717245)
(Appearing per Local Rule 11-2)
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Phone: (202) 702-4226
Email: joyce.chen@cfpb.gov

*Attorneys for Petitioner
Consumer Financial Protection Bureau*

Exhibit A



Bureau of Consumer Financial Protection

Civil Investigative Demand

To **Square, Inc.**
1455 Market Street, Suite 600
San Francisco, CA 94103

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
	Bureau Investigators

Produce Documents and/or Tangible Things, as set forth in the attached document, by the following date 08/26/2020

Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date 08/26/2020

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

The purpose of this investigation is to determine whether financial technology companies or associated persons, in connection with deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds, or selling, providing, or issuing stored value or payment instruments, or providing payments or other financial data processing products or services, have: (1) deprived consumers of access to their funds or failed to adequately address customer concerns regarding fraud and errors in a manner that is unfair in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act, 12 U.S.C. §§ 5531, 5536; or (2) failed to follow the requirements applicable to resolving errors and liability of consumers for unauthorized transfers in a manner that violates Regulation E, 12 C.F.R. Part 1005, Subpart A, implementing the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq., principally 12 C.F.R. §§ 1005.11 and 1005.6, or 12 C.F.R. §§ 1005.18 (d) and 1005.18(e). 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

David Rubenstein/Elizabeth Rosario
Consumer Financial Protection Bureau
1700 G Street NW
ATTN: Office of Enforcement
Washington, DC 20552

Bureau Counsel

Tracy Hilmer/Joyce Chen
Consumer Financial Protection Bureau
1700 G Street NW
ATTN: Office of Enforcement
Washington, DC 20552

Date Issued
08/04/2020

Signature **David M Rubenstein** Digitally signed by David M Rubenstein
Date: 2020.08.03 15:31:28 -04'00'

Name / Title **David Rubenstein, 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.

Right to Regulatory Enforcement Fairness

The Bureau 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.

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.

Paperwork Reduction Act

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

**CIVIL INVESTIGATIVE DEMAND FOR
ANSWERS TO INTERROGATORIES, WRITTEN REPORTS, AND
PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS**

I. Requests.

Interrogatories

1. Identify and describe each product or service that the Company offers or provides to consumers through Cash App. For each identified product or service, list:
 - a. The name(s) of the product or service;
 - b. A description of the product or service, including all available features, and the names of the features, as applicable include the names used to refer to the features internally as well as the names used in marketing materials or to customers to describe the features;
 - c. A description of each fee the Company charges to consumers in connection with the product, service or feature, including the type, name, amount, and method for assessing each fee;
 - d. Any discounts, promotions, or benefits provided to the consumer to incentivize using the product, service or feature; and,
 - e. The dates that each product, service, feature, fee, discount, promotion, or benefit has been offered, provided, or charged to consumers.
2. Describe the Company's complete organizational structure, including all parent companies, wholly or partially owned subsidiaries, unincorporated divisions, operations under an assumed name, joint ventures, and affiliates, and specify Cash App's placement within that structure. For each entity identified in response to this Interrogatory, provide the following information:
 - a. Address of the entity's principal place of business;
 - b. Date and state of the entity's incorporation;
 - c. All trade names under which the entity has done business;
 - d. The identity of all owners, principal stockholders, officers, directors, executives, and managers; and
 - e. The type(s) of business that the entity has engaged in.
3. Describe the management structure of Cash App within the Company, including how authority and responsibilities for Cash App were distributed within the Company at any time during the applicable period.
4. With respect to the products, features, and services listed in response to Interrogatory No. 1, identify and describe any processes or systems that the Company has employed:
 - a. to monitor the marketing, offering, providing, arranging for, or sale of the products, features, or services (electronically or otherwise);

- b. to receive, assess, investigate, escalate and resolve consumer complaints and disputes involving errors, including but not limited to errors caused by unauthorized transfers and errors resulting from lost or stolen devices;
 - c. to receive, assess, investigate, escalate and resolve consumer complaints and disputes involving potential fraud or identity theft;
 - d. to identify, investigate and act upon potential fraud or identity theft and to notify affected consumers about such information and the Company's action(s) in response;
 - e. to suspend, block, or freeze a consumer's access to an account containing a positive balance, including the timing and manner in which the consumer is notified about the action, the reasons for the action and how to regain access to the funds; and
 - f. to receive, assess, investigate, escalate and resolve a consumer's request to close or cancel an account that was created without the consumer's authorization; and
 - g. to differentiate complaints from other user contact or inquiries, including the roles played in the process and where the necessary information to differentiate is stored
5. Identify the current and former Company employees, agents, contractors, and consultants principally responsible for managing and/or providing quality assurance checks for the following functions:
- a. the functions described in Interrogatory No. 4(a);
 - b. the functions described in Interrogatory No. 4(b);
 - c. the functions described in Interrogatory No. 4(c);
 - d. the functions described in Interrogatory No. 4(d);
 - e. the functions described in Interrogatory No. 4(e);
 - f. the functions described in Interrogatory No. 4(f); and
 - g. the Company's compliance with federal statutes and regulations applicable to its offering of the products, services and features identified in response to Interrogatory No. 1.

For any former employees identified, provide the dates of employment, current address, telephone number, and email address.

6. For any Persons engaged by the Company as contractors to perform or support any of the functions listed in Interrogatory Nos. 4(a)-(g) and 5(g):
- a. identify the Person;
 - b. provide the address, telephone number, and email address of such Person;
 - c. describe the nature and scope of the contractor's duties;
 - d. provide the dates during which the contractor performed those duties;
 - e. identify the Company employee(s) principally responsible for supervising the contractor's performance and provide the dates the employee(s) had such responsibility; and
 - f. for any entities engaged by the Company as contractors, identify the individual within each contractor entity who served as the principal point of contact for the Company and provide the dates such individual served in that capacity.

7. Describe the nature and scope of the Company's business arrangement and relationship with Lincoln Savings Bank regarding the offering of any products, services, and features listed in response to Interrogatory No. 1. Identify the Company and Lincoln Savings Bank employee(s) principally responsible for managing the arrangement and relationship and the beginning and ending date of any such arrangement and relationship.
8. Describe the nature and scope of the Company's business arrangement and relationship with Sutton Bank regarding the offering of any products, services, and features listed in response to Interrogatory No. 1. Identify the Company and Sutton Bank employee(s) principally responsible for managing the relationship and the beginning and ending date of any such arrangement and relationship.
9. For each package produced in response to Request for Tangible Things No. 1, identify the dates during which each package was distributed to consumers.
10. Provide systems diagram(s) for all systems used by the Company (whether in-house, hosted, or used by a vendor) pertaining to products and services listed in Interrogatory No. 1, including any customer relationship management (CRM), email, call log, call recordings, or social media contact systems.
 - a. Provide a diagram or diagrams including:
 - i. Data Flow Diagram;
 - ii. Systems Architecture Diagram; and
 - iii. Network Diagram
 - b. For each system, detail:
 - i. Operating system, hardware configuration;
 - ii. list of users with administrative access, and categories of users with general access;
 - iii. point of contact (i.e. the employee who is the most knowledgeable about the system);
 - iv. backup plan for full system, data;
 - v. Software resident on the system (beyond standard software), including:
 1. name, vendor, version; and
 2. if custom software, language(s) used to build; source control methodology; and
 - vi. dates during which system was in use.
11. Identify all databases, programs, platforms, services and applications (collectively, databases) used by the Company (whether in-house, hosted, or used by a vendor on the Company's behalf) pertaining to products and services listed in Interrogatory No. 1, including those contained in any customer relationship management (CRM), email, call log, call recordings, or social media contact systems For each, provide the following information:
 - i. 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.);

- ii. The dates during which each database is or was in use;
- iii. The business purposes for which the Company uses the database;
- iv. The employee most knowledgeable about the database;
- v. Timeframe for which information in each data field is stored or maintained;
- vi. Description of how the database is populated with data or information and by whom;
- vii. Description of each category of Persons who had access to any part(s) of the database, the identity of the part(s) to which each category of Persons has access; and for what purpose;
- viii. Description of any processes used to ensure the accuracy of data included in each database, including any internal controls, internal audits, or quality assurance programs performed on the database;
- ix. A description of how the database interacts with other systems the Company uses, such as file systems, other databases, etc.;
- x. A description of how the database interacts with the customer service portal on the mobile app, Cash App;
- xi. A list of all methods available, interactively or programmatically, for interacting with the database, such as APIs;
- xii. Whether the database holds attachments, such as image, audio, or PDF files, and a description of those attachments;
- xiii. A description of the reporting capabilities of the database;
- xiv. A description of any regular or standard reports generated from the database and the frequency with which such reports are generated;
- xv. Whether the data stored in the database can be exported to Microsoft Excel or other readily-available spreadsheet or database programs; and
- xvi. 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.

12. Provide a visual data schema which shows the relations between tables identified in response to Requests for Written Reports Nos. 2-5.

13. Provide a Data Dictionary for each database used by the Company (referenced in Interrogatory 11). Provide the following information for each data field:

Data Element Terms	Data Element Definitions
Field Name	Unique name
Definition	Description of the meaning of the data element
Data Type	Type of data (e.g., date, numeric, text, memo, floating point, etc.)

Data Size	Maximum field length that will be accepted
Data Format	Format of data (e.g., YYYYMMDD, MM/DD/YYYY)
Field Constraints: Data Element is a required field (Y/N)	Required fields (Y) must be populated
Enumeration (if applicable)	If a field can only take certain values or codes (e.g. A, B, or C), list those values and an explanation of their meaning
Written Report	Note the subsection of the Written Report that requests the supplied field.
Special, Dummy, Test Values	Include a narrative description (e.g. for calls to 555-555-5555, describe that number as being used for internal testing, or for dates populated as 1/1/1900, specify what that value means)
Formula	If the field is calculated, provide the formula for the calculation.

14. Describe the Company's policies and procedures related to document retention, data retention, and data backup. If documents or data are routinely deleted as part of any regular document retention or data retention protocols, describe whether such deleted documents or data are archived or stored, where they are archived or stored, the period of time they are archived or stored, and the Company's ability to access such documents or data.
15. Identify all individuals who participated in responding to this CID, the current position of each individual, and the specific tasks performed by each individual.
16. If, for any request, there are types or categories of documents that would have been responsive to this CID but that are now unavailable, identify each type or category of document and its last known location and custodian, and explain why the document cannot be produced.

Requests for Documents

Provide the following:

1. Organizational charts reflecting the Company's structure and Cash App's location within that structure, that graphically represent the management structure of the Company and Cash App within the Company and how authority and responsibilities were distributed within the Company and Cash App within the Company at any time during the applicable period.
2. Documents sufficient to show all contracts or other agreements between the Company and Sutton Bank in effect during the applicable period, including any modifications or amendments, regarding the products, services and features listed in response to Interrogatory No. 1.
3. Documents sufficient to show the contracts or agreements between the Company and Lincoln Savings Bank in effect during the applicable period, including any modifications or amendments, regarding the products, services and features listed in response to Interrogatory No. 1.
4. All contracts or other written agreements between the Company and any contractor identified in response to Interrogatory No. 6.
5. All policies and procedures, guidelines, directives, scripts, and training materials used for Cash App related to the receiving, handling, investigation, assessment, escalation, resolution and consumer notification regarding:
 - a. Errors;
 - b. Unauthorized transfers, including refunds or credits to affected consumers;
 - c. Suspension, blocking, or freezing consumers' access to their accounts;
 - d. Suspected or reported fraud and identity theft;
 - e. Delayed payment transactions;
 - f. Closing or cancellation of accounts;
 - g. Lost or stolen devices; and
 - h. Limitation of consumer liability.
6. All policies and procedures, guidelines, directives, scripts, and training materials used for Cash App related to addressing, responding to, and escalating consumer complaints and disputes involving:
 - a. Errors;
 - b. Unauthorized transfers, including requests for refunds or credits;
 - c. Suspension, blocking, or freezing consumers' access to their accounts;
 - d. Suspected or reported fraud and identity theft;
 - e. Delayed payment transactions;
 - f. Closing or cancellation of accounts;
 - g. Lost or stolen devices; and
 - h. Limitation of consumer liability.

7. All audits, reviews, quality assurance, evaluations, assessments, and reports, performed by or on behalf of the Company, relating to Cash App consumer complaints and disputes involving:
 - a. Errors;
 - b. Unauthorized transfers;
 - c. Suspension, blocking, or freezing consumers' access to their accounts;
 - d. Suspected or reported fraud and identity theft;
 - e. Delayed payment transactions;
 - f. Closing or cancellation of accounts;
 - g. Lost or stolen devices; and
 - h. Requests for refunds and limitation of consumer liability.

8. An exemplar of all disclosures, instructions, communications, and agreements, distributed to consumers in connection with the use of the products, features, or services identified in response to Interrogatory No. 1.

Request for Tangible Things

1. For each type of card distributed to consumers for use with Cash App, an exemplar of a package distributed to a consumer that includes one such card and all accompanying materials, disclosures, and agreements included in the package.

Requests for Written Reports

1. For the month of May 2020, provide the following:
 - a. The total number of consumers holding a Cash App account;
 - b. The total number of complaints or dispute received on Cash App's customer service portal;
 - c. The total number of other complaints or disputes Cash App received notice of through means outside of Cash App's customer service portal;
 - d. The total number of complaints or disputes Cash App received notice of related to COVID-19 stimulus payments;
 - e. The total number of complaints or disputes Cash App received notice of related to fraud;
 - f. The total number of complaints or disputes Cash App received notice of related to unauthorized transfers;
 - g. The total amount of money that consumers claimed constituted an unauthorized transfer;
 - h. The total amount of money Cash App refunded to consumers who complained of unauthorized transfers;
 - i. The total amount of money Cash App refunded to consumers who complained of fraud;
 - j. The total number of requests received for the closing or cancellation of a Cash App account from consumers who did not authorize account creation;
 - k. The total number of peer to peer payments that were made;
 - l. The total number of complaints related to identity theft;
 - m. The total number of complaints related to delayed payments;
 - n. The total number of complaints related to suspension, blocking, or freezing of an account.

For Requests for Written Reports Nos. 2-5, produce the data in tab-delimited text files, using double-quote-escaped text fields when necessary. Where data derives from separate tables or dimensions, use a separate text file for data elements along each separate dimension. This should comply with at least the first normal form (1NF). Include both unique identifiers, primary keys, and foreign keys (*i.e.*, all fields used to perform joins between tables) in each file expressing the relationship between these files. When data is available for some records and not others, leave the unavailable data items blank (omissions due to unavailability should be identified and discussed during the meet and confer process and described in narrative with the production). Individual records should never be of varying lengths. Where information exists at the record level requested but is not included in the individual Written Report Request, you are expected to include this information in additional columns in your response to the written report. Produce the source code for all scripts used to query data responsive to each Request for Written Report. If the data is converted from its native format to comply with the format requirements, please provide the file from which it was derived.

If the information for multiple Written Report Requests is contained within the same table or structure, please produce that information in the same report, with instruction on how to identify which records correspond to which Written Report (no need to provide duplicative data).

2. For May 2020, provide all data fields and content pertaining to all consumer complaints, errors and disputes received by Cash App, including any investigation and resolution of the matter and any credits or refunds made as a result, including all the fields in the tables that contain this information.
3. For May 2020, provide all data fields and content pertaining to all consumer reports of unauthorized transactions received by Cash App, including any investigation and resolution of the matter and any credits or refunds made as a result, including all the fields in the tables that contain this information.
4. For May 2020, provide all data fields and content pertaining to reports of fraud or identity theft in connection with a Cash App account, including any investigation or resolution of the matter and any credits or refunds made as a result, including all the fields in the tables that contain this information.
5. For May 2020, provide all data fields and content pertaining to inquiries or disputes concerning a consumer's inability to access funds held in a Cash App account, including any investigation or resolution of the matter and any credits or refunds made as a result, including all the fields in the tables that contain this information.

II. Definitions.

- A. “**Bureau**” means the Bureau of Consumer Financial Protection.
- B. “**CID**” means the Civil Investigative Demand, including the Requests, Definitions, and Instructions.
- C. “**Company**” or “**you**” or “**your**” means Square, Inc, and any successor in interest.
- D. “**Consumer**” means an individual or an agent, trustee, or representative acting on behalf of an individual. 12 U.S.C. § 5481(4).
- E. “**Deputy Enforcement Director**” refers to a Deputy Assistant Director of the Office of Enforcement.
- F. “**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.
- G. “**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.
- H. “**Enforcement Director**” refers to the Assistant Director of the Office of Enforcement.
- I. “**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.
- J. “**Lincoln Savings Bank**” means Lincoln Savings Bank, with a principal place of business located in Reinbeck, Iowa, and any successor in interest.

- K. **“Person”** means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.
- L. **“Sutton Bank”** means Sutton Bank, with a principal place of business located in Attica, Ohio, and any successor in interest.

III. Instructions.

NOTE: This CID is issued in conformance with Sections 2702 and 2703 of Title 18 of the United States Code (The Electronic Communications Privacy Act). To the extent that you are a provider of electronic communication service or remote computing service, your response to this CID should not divulge a record or information pertaining to a subscriber or customer of your service, other than that allowed pursuant to 18 U.S.C. § 2703(c)(2). If you have any questions, please contact Enforcement Attorney Tracy Hilmer at tracy.hilmer@cfpb.gov and 202-435-7459 before providing responsive information.

- 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 Tracy Hilmer at tracy.hilmer@cfpb.gov and 202-435-7459 as soon as possible to schedule a telephonic meeting 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, 2016 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 any Subject. 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 Tracy Hilmer at tracy.hilmer@cfpb.gov and 202-435-7459. Modifications must be agreed to in writing by the Enforcement Director or a Deputy Enforcement Director. *See* 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:** 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. **Document Production:** The Bureau encourages the electronic production of all material responsive to this CID; please follow the enclosed Document Submission Standards and submit the production following the enclosed Extranet Guide.

For all packages destined for Bureau offices, please contact Tracy Hilmer at tracy.hilmer@cfpb.gov and 202-435-7459 for the mailing or internet-protocol address.

Please provide any tracking numbers by e-mail or telephone to Enforcement Attorney Tracy Hilmer at tracy.hilmer@cfpb.gov and 202-435-7459.

- K. **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.
- L. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information, sensitive health information of any individual, or Suspicious Activities Reports, please contact Enforcement Attorney Tracy Hilmer at tracy.hilmer@cfpb.gov and 202-435-7459 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.

- M. **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.
- N. **Submission of Documents in lieu of Answers:** Documents in existence before your receipt of this CID that contain the information requested in any interrogatory may be submitted as part of or in lieu of an answer to the interrogatory. If you submit documents as part of or in lieu of an answer, you must clearly indicate the specific request to which the documents are responsive, and you must clearly identify the specific portion of the documents that are responsive, including page, paragraph, and line numbers, as applicable.
- O. **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.
- P. **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.

CERTIFICATE OF COMPLIANCE

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

1. I have confirmed that a diligent search has been made for all responsive documents and information in the possession, custody, or control of Square, Inc.
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated August 4, 2020 that are within the possession, custody, or control of Square, Inc. 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, 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.
4. Square, Inc. has reviewed all responsive answers, reports, other documents and tangible things (collectively “Responses”), and has designated as confidential all those Responses, and only those Responses, the disclosure of which would cause substantial harm to the competitive position of Square, Inc., as that term is used for purposes of the Freedom of Information Act.
5. All answers and reports prepared in response to the Civil Investigative Demand dated August 4, 2020 are true and complete.

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

_____.

Signature

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 Square, Inc. and submitted with this
Declaration.
2. The documents produced and submitted with this Declaration by Square, Inc.,
which are numbered _____ through _____, 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
_____.

Signature

Civil Investigative Demand Document Submission Standards

CFPB Office of Enforcement



CID Document Submission Standards

This document describes the technical requirements for producing electronic document collections to the Bureau of Consumer Financial Protection (“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.

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) The Bates Range (and any gaps therein)
 - d) 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) Transmittal Methods
 - a) Extranet

The Extranet is the Bureau's secure file transfer solution that is used to receive productions from third parties via a web-based FTPS protocol utility. Instructions on how to access the Extranet and corresponding credentials are provided upon request. When utilizing the Extranet, the following policies must be adhered to:

 - i) Directories: The system does not support uploading directories (folders). To upload a directory, please compress (or zip) and upload the zipped container.
 - ii) Size: Maximum 2 GB per file or container. Larger productions should be split across multiple 2 GB zipped containers.
 - iii) Quantity: There is no limit to how many files or containers can be uploaded simultaneously.
 - iv) File types: A list of prohibited file types is available in Appendix B.
 - b) Physical Media

The Bureau recognizes that some conditions of environment or data format may restrict production eligibility for transmittal via the Extranet. Such productions may be produced on CD, DVD, USB thumb drive, or hard drive; use the media requiring the least number of deliverables.

 - i) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container:
 - (1) "MAGNETIC MEDIA – DO NOT USE METAL DETECTOR"
 - (2) "MAY BE OPENED FOR POSTAL INSPECTION"
 - ii) CD-R CD-ROMs should be formatted to ISO 9660 specifications;
 - iii) DVD-ROMs for Windows-compatible personal computers are acceptable;

- iv) USB 2.0 thumb drives for Windows-compatible personal computers are acceptable;
- v) 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.
- vi) Physical media should be delivered via overnight delivery service or courier.
- vii) Label all media with the following:
 - (1) Production date
 - (2) Bates range
 - (3) Disk number (1 of X), if applicable
 - (4) Name of producing party
 - (5) A unique production number identifying each production
- 4) All productions must be produced free of computer viruses. Infected productions may affect the timing of your compliance with the CID.
- 5) All physical 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.
- 6) 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. 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.

Email Threading

The use of email threading for review is encouraged, but production of relevant email threads must include both inclusive and non-inclusive individual emails and attachments unless otherwise agreed to during the Meet & Confer.

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 (with the exception of large spreadsheets and/or text files, those files should be processed and a placeholder TIFF image indicating that they were produced natively provided); (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 default delimiters (see **Table 1**)
- 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 the fields in **Table 2** (fields should be listed but left blank if not applicable):
- 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 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, 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.

- ii) See **Table 3** and **Table 4** for Image Cross Reference File fields and an example file.

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:

- MS Access
- XML
- CSV
- TSV
- Excel (with prior approval)

5) Audio/Video/Electronic Phone Records

These instructions refer to the production of stand alone audio files such as those from call recording systems. Audio files that are attached to emails should be processed normally.

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 fields listed in **Table 5**.

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.

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.

APPENDIX A: TABLES

TABLE 1: DAT FILE DELIMITERS

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

TABLE 2: DAT FILE FIELDS

Field Name	Description
Required Fields	
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
ATTACH_NAME	Populates parent records with original filenames of all attached records, separated by semi-colons.
PRIV	Indicate "YES" if document has a Privilege claim
ROG_NUM	Indicate Interrogatory number(s) document is responsive to. (ROG ##) **semi-colon should be used to separate multiple entries
DR_NUM	Indicate Document Request (DR ##) or Written Report number (WR ##) document is responsive to. **semi-colon should be used to separate multiple entries
RECORDTYPE	<u>Email</u> : Populate field as "E-Mail" <u>Email Attachment</u> : Populate field as "Attachment (E-mail)" <u>Loose Native</u> : Populate field as "E-Document" <u>Other Attachment</u> : Populate field as "Attachment" <u>Scanned Paper</u> : Populate field as "Paper"
CUSTODIAN	Individual(s) or department(s) from which the record originated **semi-colon should be used to separate multiple entries
FILENAME	Email: Filename of loose email or subject of non-loose

	email Non-email: original file name
PGCOUNT	Number of pages in document/email
MD5HASH	The 32 digit value representing each unique document
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
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
FILE_EXT	The file extension representing the email or native file document
AUTHOR	Email: (empty) Non-email: Author of the document
SUBJECT	Subject metadata from electronic files (non-email)
TITLE	Title metadata from electronic files (non-email)
COMPANY	Company (organization) metadata from electronic files
NATIVELINK	Hyperlink to the email or native file document **The linked file must be named per the BATES_BEGIN Number
TEXTPATH	Contains path to OCR/Extracted text file that is titled after the document BATES_BEGIN
Additional Fields for Email Productions	
FROM	Sender of email
TO	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
EMAIL_SUBJECT	“Subject” line of the email
DATE_SENT	Date and time that the email message was sent.
DATE_RECVD	Date and time that the email message was received.
TIME_ZONE	Time Zone processed in

PARENT_ID	Populated only for email attachments, this field will display the Image Tag field value of the attachment record's parent.
-----------	--

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>

TABLE 4: IMAGE CROSS REFERENCE FILE 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\IMG0000004.TIF,Y,,,1
IMG0000005,OPTIONALVOLUMENAME,E:\001\IMG0000005.TIF,Y,,,2
IMG0000006,OPTIONALVOLUMENAME,E:\001\IMG0000006.TIF,,,,

```

TABLE 5: 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
GROUPID	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

APPENDIX B: PROHIBITED FILE TYPES FOR EXTRANET

.ade
.adp
.app
.asp
.bas
.bat
.cer
.chm
.cmd
.com
.cpl
.crt
.csh
.dll
.exe
.fxp
.gadget
.hlp
.hta
.inf
.ins
.isp
.its
.js
.jse
.ksh
.lnk
.mad
.maf
.mag
.mam
.maq

.mar
.mas
.mat
.mau
.mav
.maw
.mda
.mdb
.mde
.mdt
.mdw
.mdz
.msc
.msi
.msp
.mst
.ops
.pcd
.pif
.prf
.prg
.pst
.rar
.reg
.scf
.scr
.sct
.shb
.shs
.tmp
.url
.vb
.vbe
.vbs
.vsmacros
.vss

.vst
.vsw
.ws
.wsc
.wsf
.wsh

What is the CFPB Extranet?

The Consumer Financial Protection Bureau (CFPB) Extranet enables organizations to securely upload files and receive a file transfer receipt.

How does it work?

1. If you would like to send your productions to the Bureau via the Extranet, you will need to notify the paralegal or other deputy custodian assigned to your matter in advance. The paralegal will request contact information for any individuals in your organization that require access to the Extranet. This information is needed in order to set up your Extranet accounts.
2. Once the Extranet Support team sets up the account, they will send an e-mail with instructions to activate the account.
3. Once activated, files may be uploaded at <https://extranet.cfpb.gov>.
4. Choose the folder relevant to your Matter. Files cannot be uploaded to the root folder.
5. Be sure to choose the correct files to upload. Once you upload files, you won't be able to view, modify, or remove them.
6. Choose files to upload by selecting the "Upload" button or by using drag-and-drop functionality.
7. Uploaded files are transferred to another CFPB server every 20 minutes. After this happens, you will receive a file transmission receipt e-mail and the files will be removed from the Extranet.
8. If there is a problem receiving a file, it will be noted in the file transmission receipt.



What else do I need to know?

Account expiration

Accounts expire 6 months after the creation date per CFPB's cybersecurity regulations. Accounts can be re-created quickly by the CFPB's Paralegal or other point of contact.

Multi-factor authentication

Extranet access requires the use of a one-time passcode for each login. Passcodes can be sent via e-mail, voice message, or text.

Upload policies

Size: Maximum 2 GB per file

Quantity: There is no limit to how many files can be uploaded simultaneously

File types: A list of prohibited file types is available on the 'CFPB Help' page (find the link at the top right of the page)

Directories: The system does not support uploading directories (folders). To upload a directory, please compress (or zip) the directory and upload the compressed file. Please do not encrypt the zip files, as the pipe is already encrypted.

Automatic log-out

Your account will be logged out after 10 minutes of inactivity.

Password policies

Length: 12 or more characters

Complexity: must contain a digit, a symbol, an uppercase letter and a lowercase letter

Supported browsers

Microsoft Internet Explorer 8 through 11
(Compatibility View is not supported)

Google Chrome 33.x and above

Apple Safari 5.x and 6.x running on OS X only

Mozilla Firefox 24.x and above

Having trouble?

Please contact your Deputy Custodian or point of contact if you have any problems accessing the system. If necessary, he or she will coordinate assistance with the CFPB's technical support team.

Helpful links

Add, edit or remove delivery methods for receiving one-time passcodes:

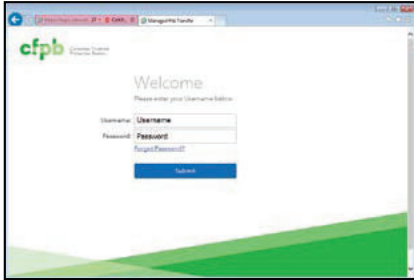
<https://login.extranet.cfpb.gov/updateprofile>

Change your password:

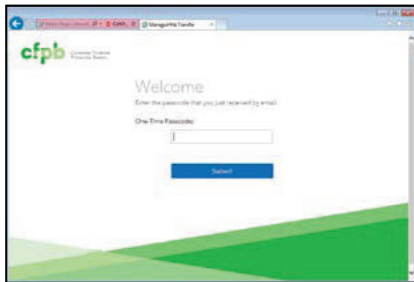
<https://login.extranet.cfpb.gov/changepassword>

Login and upload flow

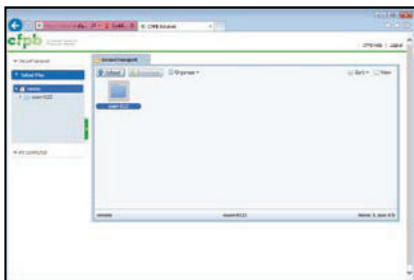
1 Login screen
Enter username and password



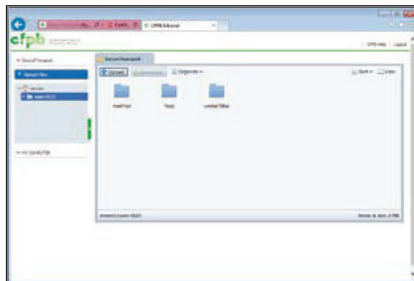
2 Login screen
Enter one-time passcode



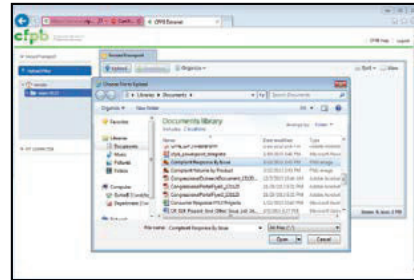
3 Root folder
Select folder



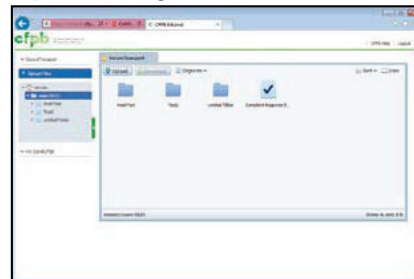
4 Selected folder
Select "Upload"



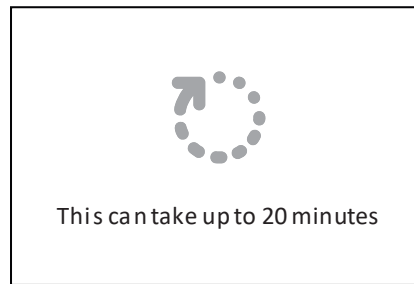
5 File browser
Select file(s) for upload



6 Selected folder
Upload any additional files



7 Wait for files to transfer
to CFPB internal servers



8 Transfer receipt
Review transfer receipt



Note: After your files have been transferred to the CFPB's internal servers, they are no longer viewable on the Extranet website.

§ 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 contumacious 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 contemptuous 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.

[FR Doc. 2012-14047 Filed 6-28-12; 8:45 am]

BILLING CODE 4810-AM-P

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.

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 Bureau of Consumer Financial Protection “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 Square, Inc., 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 Bureau of Consumer Financial Protection. 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).

David M Rubenstein

Digitally signed by David M
Rubenstein
Date: 2020.08.03 15:32:10 -04'00'

David Rubenstein
Bureau of Consumer Financial Protection
Deputy Director, Office of Enforcement

BUREAU OF CONSUMER FINANCIAL PROTECTION
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 Bureau of Consumer Financial Protection (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.

Exhibit B

1700 G Street, NW
Washington, DC 20552



August 31, 2020

Via Email

Allyson B. Baker, Esq.
Gerry S. Sachs, Esq.
Venable, LLP
600 Massachusetts Ave., NW
Washington, DC 20001
abbaker@venable.com

RE: Civil Investigative Demand Served on Square, Inc. on August 4, 2020

Dear Ms. Baker and Mr. Sachs:

This letter modifies the terms for compliance with the civil investigative demand (CID) issued to Square, Inc. (Square or the Company) by the Bureau of Consumer Financial Protection (Bureau), as permitted by 12 C.F.R. § 1080.6(d). This letter sets forth the only modifications to the CID. The Bureau's willingness to approve these modifications is based, in part, on Square's representations during the August 21, 2020 meet and confer and in its August 25, 2020 written request for modification of the CID, as described or referred to below. The production of information and documents in accordance with the modifications described below constitutes compliance with the CID.

Modifications to Requests for Tangible Things

Square requested an extension of time to search for and provide the requested Tangible Things due to its office's closure and safety factors associated with the Covid-19 pandemic. Square also represented during the meet-and-confer that obtaining physical copies of older versions of the requested Tangible Things would be difficult due to the Covid-19 pandemic. Based on these representations, the Bureau will hold in abeyance the requirement that Square produce exemplars of the tangible items provided to consumers and will accept instead complete images of the responsive material, in the order in which a consumer would have viewed it. However, the Bureau reserves the right to require production of all material responsive to this request upon notice.

Modifications to Interrogatories

Square has requested modification of Interrogatory Nos. 10 and 11, stating that the Company “does not maintain much of the requested information that these Interrogatories seek,” including “historical network traffic flows.” Further, the Company asserts that “it will be immensely burdensome to collect and produce” information pertaining to the products and services listed in Interrogatory No. 1, and seeks to limit Interrogatory Nos. 10 and 11 to customer relationship management (CRM), email, call log, call recordings, or social media contact systems.

The Bureau modifies the introductory sentence of Interrogatory No. 10 as follows:

“For all systems used by the Company (whether inhouse, hosted, or used by a vendor) pertaining to products and services listed in response to Interrogatory No. 1, provide systems diagram(s) relating to the following: consumer account and transaction information, consumer complaints, consumer requests for assistance or refunds, and any customer relationship management (CRM), email, call log, call recordings or social media contact systems.”

The Bureau modifies the introductory sentence of Interrogatory No. 11 as follows:

“For all databases, programs, platforms, services and applications (collectively, databases) used by the Company (whether in-house, hosted, or used by a vendor on the Company’s behalf) pertaining to products and services listed in Interrogatory No. 1, identify all databases relating to consumer account and transaction information, consumer complaints, consumer requests for assistance or refunds, and any customer relationship management (CRM), email, call log, call recordings or social media contact systems.”

Modifications to Requests for Written Reports

With respect to Square’s requests for clarification concerning Written Report No. 1, the Bureau clarifies that subsection (a) of the request seeks the total number of consumers with an open Cash App account as of May 31, 2020. Additionally, for subsection (d) of the request, the Bureau clarifies that “COVID-19 stimulus payments” mean Economic Impact Payments authorized pursuant to the CARES Act and issued by the Internal Revenue Service.

Timing of the Production

The CID as issued required the Company to comply fully by August 26, 2020. The CID package was served on the Company in accordance with 12 U.S.C. § 5562(c)(8)(C) by certified mail to its principal place of business on August 4, 2020, and delivered on August 8, 2020. Nevertheless, Square has represented it did not become aware of the CID until August 12, 2020, because its office is closed on account of the Covid-19 pandemic. Square further states that it faces additional burdens, due to the volume, age and location of

information requested and the impediments created by the Company's response to the Covid-19 pandemic, in searching for and producing certain information and material for the period from January 1, 2016-December 31, 2017 (the historical period). Accordingly, the Bureau agrees to extend the time for the Company's compliance as follows:

Production Date	Request Nos.
9/2/2020	Interrogatory Nos. 1, 2, 7, 8, 13, 15, and 16 Interrogatory Nos. 3 and 14, except historical period information Document Request Nos. 1-3
9/23/2020	Interrogatory Nos. 15 and 16 Interrogatory Nos. 4-6, 10 and 11, except historical period information Interrogatory No. 9 – current version Document Request Nos. 4-6, except historical period material Request for Tangible Things No. 1 – current version
10/14/2020	Interrogatory Nos. 12, 15, and 16 Interrogatory Nos. 3, 4-6, 10, 11, and 14 historical period information Interrogatory No. 9 – prior versions Document Request Nos. 7 and 8 Document Request Nos. 4-6 historical period material Request for Tangible Things No. 1 – prior versions Written Report Request Nos. 1-5

Square must produce the responsive information sought by Interrogatory Nos. 15 and 16 with respect to the information and material included in each production above simultaneously with that production.

The Company must fully comply with the modified CID by October 14, 2020.

If the Company withholds information responsive to the CID based on privilege, it must produce a privilege log in accordance with the procedures set forth in the Rules Relating to Investigations § 1080.8 (Withholding Requested Material). *See* 12 C.F.R. § 1080.8. If required, a privilege log is due within five (5) business days of the Company's final production on October 14, 2020.

Nature of the Modifications

To assist in construing any terms of this letter, the definitions set forth in the CID are incorporated by reference. This letter does not change the Company's responsibilities described in the Document Retention instruction in the CID. Further, nothing in this letter precludes the Bureau from issuing additional CIDs to or seeking discovery from the Company.

If you have any questions regarding the terms outlined above, contact Enforcement Attorney Tracy Hilmer at (202) 435-7459.

Sincerely,

David M

Rubenstein

David M. Rubenstein

Deputy Enforcement Director


 Digitally signed by David M
Rubenstein
Date: 2020.08.31 18:03:35
-04'00'

Exhibit C

Consumer Financial
Protection Bureau

United States of America

Consumer Financial Protection Bureau

Civil Investigative Demand

To **Square, Inc.**
c/o **Allyson B. Baker, Esq.**
1455 Market Street, Suite 600
San Francisco, CA 94103

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 Consumer Financial Protection Bureau.

Action Required (choose all that apply)
 Appear and Provide Oral Testimony

Location of Investigational Hearing	Date and Time of Investigational Hearing
	Bureau Investigators

 Produce Documents and/or Tangible Things, as set forth in the attached document, by the following date 08/27/2021
 Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date 08/27/2021
Notification of Purpose Pursuant to 12 C.F.R. § 1080.5

The purpose of this investigation is to determine whether financial technology companies or associated persons, in connection with deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds, or selling, providing, or issuing stored value or payment instruments, or providing payments or other financial data processing products or services, have: (1) deprived consumers of access to their funds or failed to adequately address customer concerns regarding fraud and errors in a manner that is unfair in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act, 12 U.S.C. §§ 5531, 5536; or (2) failed to follow the requirements applicable to resolving errors and liability of consumers for unauthorized transfers in a manner that violates Regulation E, 12 C.F.R. Part 1005, Subpart A, implementing the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq., principally 12 C.F.R. §§ 1005.11 and 1005.6, or 12 C.F.R. §§ 1005.18 (d) and 1005.18(e). 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

David Rubenstein/Elizabeth Rosario
Consumer Financial Protection Bureau
1700 G Street NW
ATTN: Office of Enforcement
Washington, DC 20552

Bureau Counsel

Tracy Hilmer/Joyce Chen/Christopher Martin
Consumer Financial Protection Bureau
1700 G Street NW
ATTN: Office of Enforcement
Washington, DC 20552

Date Issued

08/06/2021

SignatureDavid M.
Rubenstein

Digitally signed by David M.
Rubenstein
Date: 2021.08.05 21:48:41 -04'00'

Name / Title

David Rubenstein, 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.

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.

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.

Paperwork Reduction Act

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

**CIVIL INVESTIGATIVE DEMAND FOR
ANSWERS TO INTERROGATORIES AND
PRODUCTION OF DOCUMENTS**

I. Requests.¹

Interrogatories

17. Identify and describe all processes, systems, and procedures that Square has employed with respect to Cash App:
- a. To monitor, receive, assess, investigate, escalate, handle, and resolve Consumer complaints, disputes, reports, and inquiries relating to a direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit, including but not limited to missing deposits;
 - b. To monitor, receive, assess, investigate, escalate, handle, and resolve suspected fraud relating to a direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit;
 - c. To set up or create new Cash App and Cash Card accounts, including but not limited to authentication procedures to prevent the establishment of fraudulent accounts. Include a description of how the Company handles accounts that it suspects are fraudulent; and
 - d. To monitor, receive, assess, investigate, escalate, handle, and resolve reversals or attempted reversals of Cash App, peer to peer, or Cash Card transactions, including but not limited to reversals or attempted reversals of debit network push payments, in instances of suspected or reported fraud, identity theft, unauthorized transfers, or other asserted errors. Include a description of the reasons why and the process by which attempted reversals would be declined.

Identify the current and former employees, agents, contractors, and consultants of the Company and of any bank, payment processor, card network (including without limitation Visa, Mastercard, Discover and American Express), or other entity identified in response to Interrogatory No. 18, who are principally responsible for managing and/or providing quality assurance checks for each activity described in subparts (a) to (d) herein.

18. Identify all banks, payment processors, card networks (including without limitation Visa, Mastercard, Discover and American Express) and any other entity with which Square has a contractual relationship, business arrangement, or other arrangement for the delivery or offering of any product, service, or feature associated with Cash App. Identify or describe the nature and scope of each business relationship and arrangement, including, without limitation:

¹ The numbering of all requests in this CID resumes where the requests in the August 4, 2020 CID ended.

- a. The specific products, services, and features encompassed by the arrangement;
 - b. The Consumer account types and date ranges encompassed by the arrangement;
 - c. The specific services, responsibilities, and obligations of each entity who is a party to the arrangement (referred to herein as “each party”);
 - d. The nature of any fee, charge or financial arrangement, including the amount of any consideration (including reimbursements) paid by each party to the other(s) in connection with the services, responsibilities, and obligations encompassed by the arrangement, the manner in which any such fees or charges are determined, and the manner in which any disputes between the parties concerning such fees or charges are resolved;
 - e. The employee(s) and former employee(s) of each party principally responsible for managing the arrangement and relationship;
 - f. The beginning and ending date of any such arrangement and relationship;
 - g. The total number, amount and reason for any such fees or charges, broken out by each month for each payee;
 - h. Each party’s involvement, roles and responsibilities, and input in the development and/or implementation of the procedures, processes or systems identified in Interrogatory Nos. 17(a)-(d), if any, including but not limited to the procedures, processes, or systems relating to the declining of attempted reversals of Cash App, peer to peer, or Cash Card transactions; and
 - i. The specific duties, workflows, roles, and responsibilities of each party in conducting the activities described in Interrogatory Nos. 20(a) to (i). Include a breakdown of the duties, roles, and responsibilities of the Company and each party in communicating with Consumers concerning each of those activities.
19. Identify all depository and non-depository institutions at which the Company has held accounts or otherwise conducted business related to Cash App, and for each such institution, state:
- a. The number of such accounts held with the institution;
 - b. The particular Cash App-related product, service, feature or Consumer account type to which each Company account pertains;
 - c. The nature of each Company account (e.g., commercial checking, pooled consumer funds, “for benefit of”, fiduciary, trust, investment, etc.) and/or the business conducted by the institution relating to each account;
 - d. The timeframe during which each account was held by the Company at the institution;
 - e. The identity and active dates of all authorized signatories on each account; and
 - f. The total amount of funds held in each account on March 31, June 30, September 30, and December 31 of each year the account was open.
20. Identify all databases, spreadsheets, tracker sheets, forms, documents, GoogleDocs, worksheets, or other data or information collection or tracking

systems (collectively referred to herein as “spreadsheets”) used by the Company with respect to Cash App (whether in-house or hosted or provided by another entity) to conduct, monitor or track progress in the activities described in the subparts below, including but not limited to spreadsheets such as the “Reg E” spreadsheet; the document referred to internally as “the Big Nasty”; Appcash; Franklin; Banklin; Frisky; Risk Arbiter; and Binfo:

- a. To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, reports, and inquiries involving asserted errors, including but not limited to unauthorized transfers that do not relate to potential fraud or identity theft;
 - b. To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports involving potential fraud or identity theft, including but not limited to account takeovers;
 - c. To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports relating to a direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit, including but not limited to missing deposits;
 - d. To identify and act upon potential fraud or identity theft in any area, including but not limited to potential fraud or identity theft in direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit;
 - e. To suspend, block, or freeze a Consumer’s access to a Cash App account or Cash Card;
 - f. To receive, assess, investigate, escalate, and resolve a Consumer’s request to close or cancel a Cash App account or Cash Card that was created without the Consumer’s authorization;
 - g. To notify or inform Consumers whose Cash Cards or Cash App accounts have been suspended, blocked, or frozen, or who are suspected victims of fraud (including a suspected account takeover) , and to provide such Consumers information regarding the Company’s action(s) in response;
 - h. To monitor chargebacks and issues relating to reversals of payments, including debit network push payments, related to Consumer allegations of fraud, identity theft, errors, and unauthorized transactions with regard to the payment(s); and
 - i. To receive, assess, investigate, escalate, and resolve questions related to limitation of liability, refunds, provisional credits, or permanent credits.
21. Identify and describe the department(s), team(s), queue(s), or group(s) within the Company that primarily handle the activities described in Interrogatory Nos. 20(a) to (i). For each department, team, queue, or group identified, identify and describe:
- a. The roles and responsibilities of the department, team, queue, or group;
 - b. The workflows of the department, team, queue, or group;
 - c. Any subgroups, teams, and/or queues within such department, team, queue, or group, and their workflows and roles and responsibilities;
 - d. The principal manager or leader of each department, team, queue, or group.

For each activity described in Interrogatory Nos. 20(a) to (i), provide a chart depicting each department, team, group, subgroup, individual, or queue (collectively referred to herein as groups) who primarily handles the activity, as well as the order in which the activity is handled. If the activity is escalated or otherwise transferred from one group to another, describe the circumstances under which the activity is escalated or transferred, which group receives it, and who makes the decision to escalate or transfer the activity.

22. For the “Big Nasty” spreadsheet about which Dusty Stolp testified in his investigational hearing on February 23, 2021, and for each spreadsheet identified in response to Interrogatory No. 20, provide and identify:
- a. The name(s) of the spreadsheet;
 - b. A description of the spreadsheet;
 - c. The data sources for the information contained in the spreadsheet;
 - d. The nature of the complaints and disputes that are documented in the spreadsheet, including the Cash App products, services, features, and accounts to which the spreadsheet pertains and, if applicable, the identity of the entity (or entities) that received the Consumer complaints and disputes documented on the spreadsheet;
 - e. The purpose of the spreadsheet and the identity of the person or entity who generated it;
 - f. The identity of the managers, leads, and other individuals in leadership or managerial positions who regularly review the spreadsheet;
 - g. The identity of the employee most knowledgeable about the spreadsheet;
 - h. A description of how the spreadsheet is populated with data or information and by whom;
 - i. The dates during which each spreadsheet is or was in use;
 - j. The period during which information in the spreadsheet is retained;
 - k. The frequency with which the spreadsheet is archived or backed-up and the method by which it is archived or backed-up;
 - l. A description of the reporting capabilities of the spreadsheet;
 - m. A description of any regular or standard reports generated from the information contained in the spreadsheet and the frequency with which such reports are generated;
 - n. A description of any processes used to ensure the accuracy of data included in each spreadsheet, including any internal controls, internal audits, or quality assurance programs performed on the spreadsheet;
 - o. An indicator (Y/N) whether the spreadsheet is shared with another entity, card network, company, or bank (collectively, entity);
 - p. If the spreadsheet is shared with another entity, identify the entity and describe how the entity and Square collaborate in their work relating to the spreadsheet;
 - q. A description of how the spreadsheet interacts with the systems of other entities;
 - r. A description of how the spreadsheet interacts with other systems the Company uses, such as file systems, other databases, etc.;

- s. Whether the spreadsheet holds attachments, such as image, audio, or PDF files, and a description of those attachments;
 - t. Whether the data stored in the spreadsheet can be exported to Microsoft Excel or other readily-available spreadsheet or database programs;
 - u. An indicator (Y/N) whether the spreadsheet is used by the Company in its audit, review, evaluation, assessment, due diligence, or quality assurance work relating to its compliance with Regulation E; and
 - v. 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.
23. For the “Big Nasty” spreadsheet about which Dusty Stolp testified in his investigational hearing on February 23, 2021, and for each spreadsheet identified in response to Interrogatory No. 20, provide and identify:
- a. The names of the data fields;
 - b. The definition of each data field identified in subpart (a), or, if none exists, a detailed description of each such data field;
 - c. The employee(s) most familiar with the data fields identified in subpart (a);
 - d. A definition or, if none exists, a detailed description of any codes, categories, or names that populate the fields (including, by way of example and without limitation, the definition for “Marqeta lost,” which appears on some Square spreadsheets);
 - e. The name of the GoogleDoc(s) or form(s) that provide the data that populate the spreadsheet;
 - f. The employee(s) who drafted the form(s) identified in subpart (e);
 - g. The name of the department(s), team(s), or group(s), and the subgroups, teams, and/or queues within such departments, teams, and groups within the Company that:
 - i. Primarily handle filling out the form(s) identified in subpart (e), and the identity of the employees who manage or lead each of them;
 - ii. Obtain and provide the information or data that populate the spreadsheet;
 - iii. Primarily handle inputting information into the spreadsheet;
 - iv. Have access to the information in the spreadsheet; and
 - v. Receive the reports identified in Interrogatory No. 22(m); and
 - h. The name of the employee(s) who manage or lead each department, team, group, subgroup, and queue identified in subpart (g).
24. For each month during the Applicable Period, identify the rate, number, and total dollar amount of initiated debit network chargebacks and Automated Clearing House (ACH) returns separately for Cash App transactions, Cash App peer to peer transactions, and Cash Card transactions, broken out by return reason (e.g., fraud, other asserted error) and card network (e.g., Visa, Mastercard, Discover, American Express), and indicate whether or not Square accepted the chargeback or return.
25. Identify whether and when, in connection with Cash App, the Company has

received or engaged in communications with any card network or financial institution in connection with the handling, investigating, or monitoring of the Company's chargebacks, ACH return rates, or related metrics, including whether the Company was told it was approaching or exceeding any thresholds. For each instance that the Company received or engaged in such communications, identify and describe:

- a. The nature of the issue raised;
- b. The card network or financial institution that raised the issue;
- c. The date of the communication;
- d. The Cash App product, service or feature involved; and
- e. Any actions taken by the Company in response.

26. Identify and describe the nature of all categories of complaints, disputes, reports, and experiences by Consumers that the Company considers to constitute:

- a. An error as defined by Regulation E;
- b. An account takeover;
- c. Identity theft;
- d. Fraud; and
- e. An unauthorized transfer.

For each category identified in subparts (a) to (e) above, describe or identify:

- i. Whether and under what circumstances an investigation is conducted, including but not limited to any time limits imposed on the Consumer to report or provide notice of the issue;
- ii. If an investigation is conducted, the entities who conduct the investigation;
- iii. If an investigation is conducted, the time frame by which Square or the entities identified in (ii) begin and complete such investigation;
- iv. The department(s), team(s), or group(s), and the subgroups, teams, and/or queues within such departments, teams, and groups within the entity identified in subpart (ii) who conduct the investigation; and
- v. The employee(s) who manages the department(s), team(s), group(s), subgroup(s), and/or queue(s) identified in subpart (iv).

27. Describe the data points, triggers, and other analyses the Company has used to determine that activity in a Cash App account warrants freezing, suspending, locking, or blocking a transaction, Cash Card, or Cash App account, or taking other action on the account or transaction to prevent suspected account takeovers, identity theft and other fraud. Identify and describe:

- a. The specific actions that the Company takes to detect and prevent suspected fraud, including whether the action is automated or not, and what factors determine whether the action is automated or not;
- b. How, when and by whom the Consumer is notified about any such action;
- c. How and when the Consumer can regain access to the account if the Company's fraud determination was in error; and
- d. The timing by which any complaints or disputes relating to such actions are resolved, and the identity of the group or team that resolves them.

28. For each type of Cash App account (e.g., peer to peer, Cash Card, etc.), describe the contents of the periodic statement, when and how frequently periodic statements are issued to Consumers, how a Consumer is notified that the periodic statement is available, and how a Consumer can access the periodic statement. If no periodic statement is provided, explain whether and what information (e.g. transactions, transaction history, account balance) is made available to the Consumer, if any; how a Consumer may access such information; and the time frame for such information that is made available.
29. Identify all individuals who participated in responding to this CID, the current position of each individual, and the specific tasks performed by each individual.
30. If, for any request, there are types or categories of documents that would have been responsive to this CID but that are now unavailable, identify each type or category of document and its last known location and custodian, and explain why the document cannot be produced.

Requests for Documents

Provide the following:

9. All contracts or other agreements relating to Cash App between the Company and any entity identified in response to Interrogatory No. 18, including any modifications or amendments, regarding products, services and features related to Cash App.
10. An exemplar of the periodic statement referred to in Interrogatory No. 28.
11. An exemplar of all documents that are shared, provided, and/or exchanged between the Company and Marqeta, Sutton Bank, and/or any card network, including but not limited to Visa, Mastercard, Discover, and American Express, in conducting the activities described in Interrogatory Nos. 20(a) to (i).
12. The “Big Nasty” spreadsheet referenced by Dusty Stolp during his investigational hearing on February 23, 2021, and all spreadsheets, databases, tracker sheets, documents, worksheets, and GoogleDocs identified in the Company’s response to Interrogatory No. 20, populated with data from the Applicable Period.
13. Communications internally within Square and externally with any entity identified in Interrogatory No. 18 regarding:
 - a. The activities described in Interrogatory Nos. 20(a) to (i) and the procedures, processes, and systems relating to such activities, including without limitation communications concerning the documents provided in response to Document Request No. 12;

- b. The documents provided in response to Document Request No. 18;
 - c. Account takeovers;
 - d. The topics referred to in Interrogatory No. 25;
 - e. The activities described in Interrogatory Nos. 17(a) to (d) and the procedures, processes, and systems relating to such activities; and
 - f. The manner in which Square would provide customer service to consumers using Cash App.
14. Communications and other documents sent or received by Brian Grassadonia regarding:
- a. Unauthorized transfers;
 - b. Suspension, blocking, or freezing of Consumers' access to their Cash App accounts or Cash Card;
 - c. Suspected or reported account takeovers, identity theft and other fraud;
 - d. Delayed payment transactions;
 - e. Closing or cancellation of Cash App accounts or Cash Cards, including but not limited to closing or cancellation of Cash App accounts or Cash Cards that were created without the Consumer's authorization;
 - f. Lost or stolen Cash Cards or Cash App accounts;
 - g. Consumers' unemployment insurance deposits, direct deposits, stimulus check deposits, and tax refund deposits;
 - h. Other asserted errors related to Cash App accounts or Cash Cards;
 - i. Limitation of liability, refunds, provisional credits, or permanent credits;
 - j. Processes, procedures or systems relating to receiving, assessing, investigating, escalating, and resolving the issues in subparts (a) to (i);
 - k. Chargebacks, ACH returns, and issues relating to reversals of payments; and
 - l. Consumer complaints about Cash App, including without limitation complaints about (a)-(k) above or Cash App's customer service.
15. Slack Channel communications regarding definitions of fields relating to:
- a. Unauthorized transfers;
 - b. Suspension, blocking, or freezing of consumers' access to their Cash App accounts or Cash Card;
 - c. Suspected or reported fraud and identity theft;
 - d. Delayed payment transactions;
 - e. Closing or cancellation of Cash App accounts or Cash Cards, including but not limited to closing or cancellation of Cash App accounts or Cash Cards that were created without the Consumer's authorization;
 - f. Account take-overs;
 - g. Lost or stolen Cash Cards or Cash App accounts;
 - h. Consumers' Unemployment deposits, direct deposits, stimulus check deposits, and tax refund deposits.
 - i. Other asserted errors related to Cash App accounts or Cash Cards;

- j. Limitation of liability, refunds, provisional credits, or permanent credits; and
 - k. Chargebacks, ACH returns, and issues relating to reversals of payments.
16. All communications on the “go page” regarding “TIPS” and questions posed to Cash Risk, as described at SQUARE_CFPBCID_001383.
17. For each account identified in response to Interrogatory No. 19, provide all statements issued by the institution during the Applicable Period and a copy of the form(s) showing the authorized signatories for each account.
18. All documents (including without limitation reports, summaries, analyses, evaluations, projections, forecasts, budgets, recommendations, audits, reviews, quality assurance, evaluations, assessments, due diligence, training documents, policies and procedures, guidelines, directives, scripts, and communications) concerning:
- a. The reports identified in response to Interrogatory No. 22(m);
 - b. Chargebacks, ACH returns, and other Cash App payment reversals;
 - c. The manner in which Square would provide customer service to consumers using Cash App, including providing customer service by e-mail;
 - d. The development, implementation, and adoption of the processes, systems, and procedures described in response to Interrogatory No. 17(a) to (d); and
 - e. The activities described in Interrogatory Nos. 17(a) to (d).

For Document Request Nos. 19 to 53, produce the tables in tab-delimited text files, using double-quote-escaped text fields when necessary. Where a table derives from separate tables or dimensions, use a separate text file for data elements along each separate dimension. This should comply with at least the first normal form (1NF). Individual records should never be of varying lengths. Produce the source code for all scripts used to pull the data responsive to each Document Request.

19. Provide all data fields and content from the Transfer table in the Franklin schema of the AppCash database. The response should provide information at the transfer level and should include, but not be limited to, the following fields:
- a. Unique Transfer ID;
 - b. Created at (timestamp);
 - c. Customer token (string tokenized version of the customer id);
 - d. Transfer Type (cash in or cash out);
 - e. Transfer State;
 - f. Amount (in cents);
 - g. Accepted Fee (in cents);
 - h. Push amount (in cents); and
 - i. All other fields at the transfer level.

20. Provide all data fields and content from the Transfer Summary table in the Franklin schema of the AppCash database. The Transfer Summary table includes information from the Transfers table, along with additional fields that measure risk. The response should provide information at the transfer summary level and should include, but not be limited to, the following fields:
 - a. Unique Transfer ID;
 - b. Created at (timestamp);
 - c. Customer token (string tokenized version of the customer id);
 - d. Type (cash in or cash out);
 - e. Amount (in cents); and
 - f. All other fields at the transfer summary level.

21. Provide all data fields and contents from the Transfer History table. The response should provide information at the transfer history level and should include, but not be limited to, the following fields:
 - a. Date;
 - b. Status;
 - c. Amount;
 - d. Source;
 - e. Action;
 - f. Target;
 - g. Client;
 - h. Created at;
 - i. Customer token;
 - j. Path;
 - k. Type;
 - l. Result;
 - m. Client IP Address; and
 - n. All other fields at the transfer history level.

22. Provide all data fields and content from the Payments table in the Franklin schema of the AppCash database. The response should provide information at the payment level and should include, but not be limited to, the following fields:
 - a. Unique Payment ID;
 - b. Created at (timestamp);
 - c. Sender Customer ID;
 - d. Recipient Customer ID;
 - e. Amount (in cents);
 - f. Payment State or Status;
 - g. Orientation;
 - h. Subject;
 - i. Sender;
 - j. Sender Source;

- k. Action;
 - l. Recipient;
 - m. Recipient Source;
 - n. Client;
 - o. Deposit Preference;
 - p. Date and time recipient received the payment; and
 - q. All other fields at the payment level.
23. Provide all data fields and content from the Payments Summary table in the Franklin schema of the AppCash database. The Payment Summary table includes information from the Payments table and additional data from relevant sources. The response should provide information at the payment summary level and should include, but not be limited to, the following fields:
- a. Unique Payment ID;
 - b. Created at (timestamp);
 - c. Sender Customer ID;
 - d. Recipient Customer ID;
 - e. Amount (in cents);
 - f. Initiator notes;
 - g. Failure reason; and
 - h. All other fields at the payment summary level.
24. Provide all data fields and content from the Movements table in the Franklin schema of the AppCash database. The response should provide information at the movement level and should include, but not be limited to, the following fields:
- a. Unique Movement ID;
 - b. Created at (timestamp);
 - c. Customer ID;
 - d. Amount (in cents);
 - e. Fee amount;
 - f. State or Status of payment (waiting on recipient, waiting on sender, waiting on risk, or scheduled); and
 - g. All other fields at the movement level.
25. Provide all data fields and content from the Transactions table in the Banklin schema of the AppCash database. The response should provide information at the transaction level and should include, but not be limited to, the following fields:
- a. Customer ID;
 - b. Balance ID;
 - c. State of transaction;
 - d. Amount of transaction (direction of transaction is determined by sign of amount);
 - e. State occurred at (timestamp);
 - f. Reason Code;

- g. Merchant Name;
 - h. Chargeback Exposure Amount (in cents);
 - i. Chargeback loss amount (in cents);
 - j. Transaction ID;
 - k. Transaction Token; and
 - l. All other fields at the transaction level.
26. Provide all data fields and content pertaining to the Cash Card Transaction Events table in the Banklin schema of the AppCash database. The response should provide information at the Cash Card transaction event level and should include, but not be limited to, the following fields:
- a. Customer ID;
 - b. Transaction token;
 - c. Created at (timestamp);
 - d. State or Status of transaction;
 - e. Statement description;
 - f. Transaction Type;
 - g. Transaction Amount (in cents);
 - h. Balance after; and
 - i. All other fields at the transaction event level.
27. Provide all data fields and content from the Rule Computation Results table in the Frisky schema of the AppCash database. The response should provide information at the event level and should include, but not be limited to, the following fields:
- a. Customer ID;
 - b. Field event;
 - c. Event ID; and
 - d. All other fields at the event level.
28. Provide all data fields and content from the Decisions table in the Frisky schema of the AppCash database. The response should provide information at the event level and should include, but not be limited to, the following fields:
- a. Customer ID;
 - b. Signal (signal description);
 - c. Value 1 (signal result description);
 - d. Event ID;
 - e. Event type; and
 - f. All other fields at the event level.
29. Provide all data fields and content from the table that includes data fields and content pertaining to all Declined transactions stored in the Franklin database. The response should provide information at the transaction level and should include, but not be limited to, the following fields:

- a. Customer ID;
 - b. Created at (timestamp);
 - c. Event ID; and
 - d. All other fields at the transaction level.
30. Provide all data fields and content from the Chargebacks table in AppCash database. The response should provide information at the chargeback level and should include, but not be limited to, the following fields:
- a. Customer ID;
 - b. Payment type (distinguish between payment and cash-in transaction);
 - c. Unique identifier of transaction (Payment ID, Transaction ID, Payment token, or Transaction token); and
 - d. All other fields at the chargeback level.
31. Provide all data fields and content from the Rollbacks table in AppCash database. The response should provide information at the rollback level and should include, but not be limited to, the following fields:
- a. Customer ID;
 - b. Payment type (distinguish between payment and cash-in transaction);
 - c. Unique identifier of transaction (Payment ID, Transaction ID, Payment token, or Transaction token); and
 - d. All other fields at the rollback level.
32. Provide all data fields and content from the Customers table in the Franklin schema of the AppCash database. The response should provide information at the customer level and should include, but not be limited to, the following fields:
- a. Customer ID;
 - b. Created at (timestamp that shows when the customer joined the app);
 - c. Customer token; and
 - d. All other fields at the customer level.
33. Provide all data fields and content from the Aliases table stored in the Franklin database. The response should provide information at the alias level and should include, but not be limited to, the following fields:
- a. Alias ID;
 - b. Created at (timestamp); and
 - c. All other fields at the Alias level.
34. Provide all data fields and content from the Instruments Links table stored in the Franklin database. The response should provide information at the instrument link level and should include, but not be limited to, the following fields:
- a. Instrument Link ID;

- b. Created at (timestamp); and
 - c. All other fields at the Instrument Link level.
35. Provide all data fields and content in the Claims table. The response should provide information at the claim level and should include, but not be limited to, the following fields:
- a. Claim Date;
 - b. Reviewer;
 - c. Cloud Case;
 - d. Token;
 - e. Claims YTD;
 - f. Prev Yr's Claims;
 - g. Prev Yr's Dispute Amount;
 - h. Prev Yr's Losses;
 - i. Claim State;
 - j. Status;
 - k. 10 BUS Days;
 - l. 45 Res Date;
 - m. Reason Code - Chargeback Descriptions;
 - n. Trxn ID;
 - o. Claim Amount;
 - p. Provisional Date;
 - q. Final Disposition;
 - r. Notes;
 - s. Claim Total Under \$25/ Risk Ops Reimbursed; and
 - t. All other fields at the Claim level.
36. Provide all data fields and content in the Cash Card Claims table. This should include, but not be limited to, the following fields:
- a. Claim Date;
 - b. Reviewer;
 - c. Cloud Case;
 - d. Token;
 - e. Claims YTD;
 - f. Prev Yr's Claims;
 - g. Prev Yr's Dispute Amount;
 - h. Prev Yr's Losses;
 - i. Claim State;
 - j. Status;
 - k. 10 BUS Days;
 - l. 45 Res Date;
 - m. Reason Code - Chargeback Descriptions;
 - n. Dispute Reason;
 - o. Transaction Type;
 - p. Merchant;

- q. Transaction #;
 - r. Trxn ID;
 - s. Transaction Date;
 - t. Card Reissue;
 - u. Card Last Four;
 - v. NEW Card Last Four;
 - w. Claim Amount;
 - x. Provisional Date;
 - y. Final Disposition;
 - z. Notes;
 - aa. Claim Total Under \$25/ Risk Ops Reimbursed; and
 - bb. All other fields at the Cash Card Claims level.
37. Provide all data fields and content in the Chargeback Reports table. This should include, but not be limited to, the following fields:
- a. Token;
 - b. Last Four;
 - c. Network;
 - d. Mcc;
 - e. Role;
 - f. Current State;
 - g. Previous State;
 - h. Original Created Time;
 - i. Submission Time;
 - j. Last Modified Time;
 - k. Original Tran Token;
 - l. Reason Code;
 - m. Reason;
 - n. Network Reason Code;
 - o. Network Case ID;
 - p. Has Documentation;
 - q. Provision Credit;
 - r. Notes;
 - s. Amount; and
 - t. All other fields at the Chargebacks Report level.
38. Provide all data fields and content in the Virtual Card Claims table. This should include, but not be limited to, the following fields:
- a. SQ Notice Date;
 - b. Status;
 - c. Customer Token;
 - d. Marqeta Ticket;
 - e. Waiting for Cust Reply;
 - f. Cloud Case;
 - g. Claim Amount;

- h. Disposition;
 - i. 10 Business Days;
 - j. 45 Calendar Days;
 - k. Provisional Credit;
 - l. Amount Reimbursed;
 - m. VC Last Four;
 - n. Transaction Date;
 - o. Recipient;
 - p. Transaction #;
 - q. Dispute Reason;
 - r. Transaction Type;
 - s. VC Reissue;
 - t. Claim Type;
 - u. JIRA;
 - v. Cust Notified;
 - w. Customer Notes; and
 - x. All other fields at the Virtual Card Claims level.
39. Provide all data fields and content in the VC Reissue table. This should include, but not be limited to, the following fields:
- a. Reviewer;
 - b. SQ Notice Date;
 - c. Customer Token;
 - d. Cloud Case;
 - e. VC Last Four;
 - f. Transaction #;
 - g. Recipient;
 - h. Summary;
 - i. JIRA;
 - j. JIRA Ticket;
 - k. Cust Notified;
 - l. Customer Notes; and
 - m. All other fields at the VC level.
40. Provide all data fields and content in the Marqeta Dispute table. The response should provide information at the Marqeta dispute level and should include, but not be limited to, the following fields:
- a. Transaction Token;
 - b. Created at (timestamp);
 - c. Reason Code;
 - d. Merchant Name;
 - e. Memo;
 - f. Dispute Amount Change Reason;
 - g. Shard; and
 - h. All other fields at the Marqeta Dispute level.

41. Provide all data fields and content in the APP_CASH_CS_SBOX.PUBLIC.CASE_REPORTS table. The response should provide information at the case reports level and should include, but not be limited to, the following fields:
 - a. Case ID;
 - b. Customer Token;
 - c. Report; and
 - d. All other fields at the case reports level.

42. Provide all data fields and content in the APP_CASH_CS.CFONE_CLASSIC.ALL_BASE_CASES_RAW table. The response should provide information at the all base cases level and should include, but not be limited to, the following fields:
 - a. Case ID;
 - b. Channel;
 - c. Case Number; and
 - d. All other fields at the all base cases level.

43. Provide all data fields and content in the app_cash.app.support_case_summary table. The response should provide information at the support case summary level and should include, but not be limited to, the following fields:
 - a. Service Cloud Case;
 - b. Franklin Case ID;
 - c. Customer Token; and
 - d. All other fields at the Support Case Summary level.

44. Provide all data fields and content in the cash_pii_data.public.encrypted_support_case_creation_events table. The response should provide information at the support case creation events level and should include, but not be limited to, the following fields:
 - a. Support Case ID;
 - b. Customer Token;
 - c. Message; and
 - d. All other fields at the Support Case Creation Events level.

45. Provide all data fields and content in the dessa_notebooks."sf-email-exchanges".email_messages table. The response should provide information at the email messages level and should include, but not be limited to, the following fields:
 - a. Messages Parent ID;
 - b. Text Body; and

- c. All other fields at the Email Messages level.
46. Provide all data fields and content in the `app_cash.app.support_case_macro_labels` table. The response should provide information at the macro label level and should include, but not be limited to, the following fields:
 - a. Service Cloud Case;
 - b. Macro Label; and
 - c. All other fields at the Macro Label level.
47. Provide all data fields and content in the `APP_CASH_CS.PUBLIC.SUPPORT_CASES` table. The response should provide information at the support cases level and should include, but not be limited to, the following fields:
 - a. Case ID;
 - b. Origin;
 - c. Status;
 - d. Language;
 - e. Auto Response Category;
 - f. Auto Responder Only Case;
 - g. Customer ID;
 - h. Case Creation Date Time;
 - i. Selected Category;
 - j. Last Assigned Queue; and
 - k. All other fields at the support cases level.
48. Provide all data fields and content in the `APP_CASH.APP.CUSTOMER_SUMMARY_SIMPLE` table. The response should provide information at the customer summary level and should include, but not be limited to, the following fields:
 - a. Customer Token;
 - b. Blacklisted;
 - c. Status Level; and
 - d. All other fields at the customer summary level
49. Provide all data fields and content in the `APP_CASH_CS.PUBLIC.RISK_CASH_CARD_DISPUTE_FACT` table. The response should provide information at the cash card dispute fact level and should include, but not be limited to, the following fields:
 - a. Transaction Token;
 - b. Comment;
 - c. Hashtag;
 - d. Dispute Chargeback Amount;

- e. Dispute Win Loss;
 - f. Dispute State; and
 - g. All other fields at the Cash Card Dispute Fact level
50. Provide all data fields and content in the APP_CASH_CS.PUBLIC.ATO_HASHTAGS table. The response should provide information at the ATO Hashtags level and should include, but not be limited to, the following fields:
- a. Employee ID;
 - b. Target Token;
 - c. Comment;
 - d. Hashtag AT; and
 - e. All other fields at the ATO Hashtags level
51. Provide all data fields and content in the FRANKLIN.PD_MYSQL_FRANKLIN__UNIFIED__VT_FRANKLIN_CUSTOMER.SUPPORT_CASES table. The response should provide information at the support cases level and should include, but not be limited to, the following fields:
- a. Service Cloud Case;
 - b. Routing Group;
 - c. Banking Transaction Token;
 - d. Payment ID;
 - e. Transfer ID; and
 - f. All other fields at the Support Cases level.
52. Provide all data fields and content in the APP_CASH_CS.PUBLIC.RISK_DISPUTES_FACT table. The response should provide information at the risk disputes fact level and should include, but not be limited to, the following fields:
- a. Transfer ID;
 - b. Payment Created At;
 - c. Reported Date;
 - d. Dispute Created At;
 - e. Chargeback Amount (in cents);
 - f. Win Loss;
 - g. Decision;
 - h. Summary;
 - i. Regulator Case ID; and
 - j. All other fields at the Risk Disputes Fact level.
53. Provide all data fields and content in the APP_CASH_CS.PUBLIC.RISK_CASH_CARD_DISPUTES_COMMENTS table. The response should provide information at the Cash Card dispute level and

should include, but not be limited to, the following fields:

- a. Target token;
- b. Token type;
- c. UID;
- d. Comment;
- e. Hashtag;
- f. SF case number;
- g. Audit log created at; and
- h. All other fields at the Cash Card Dispute level.

II. Definitions.

- A. “**American Express**” means American Express Company.
- B. “**Bureau**” means the Consumer Financial Protection Bureau.
- C. “**Cash App**” is the App owned by Square that provides mobile payment services.
- D. “**Cash Card**” means the virtual or physical card that Square provides to Consumers through its partnership with Marqeta and Sutton Bank in connection with Cash App.
- E. “**CID**” means the Civil Investigative Demand, including the Requests, Definitions, and Instructions.
- F. “**Company**” or “**you**” or “**your**” means Square, Inc, and any successor in interest.
- G. “**Consumer**” means an individual or an agent, trustee, or representative acting on behalf of an individual. 12 U.S.C. § 5481(4).
- H. “**Deputy Enforcement Director**” refers to a Deputy Assistant Director of the Office of Enforcement.
- I. “**Discover**” means Discover Financial Services, Inc.
- J. “**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.
- K. “**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.

- L. “**Enforcement Director**” refers to the Assistant Director of the Office of Enforcement.
- M. “**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.
- N. “**Marqeta**” means Marqeta, Inc., and any successor in interest.
- O. “**Mastercard**” means Mastercard Inc.
- P. “**Person**” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.
- Q. “**Stimulus check**” means any check issued by the United States Treasury to Consumers who meet the parameters defined in the Coronavirus Aid, Relief, and Economic Security Act; Consolidations Appropriations Act, 2021; and H.R. 1319, the American Rescue Plan Act of 2021.
- R. “**Sutton Bank**” means Sutton Bank, with a principal place of business located in Attica, Ohio, and any successor in interest.
- S. “**Visa**” means Visa, Inc.

III. Instructions.

NOTE: This CID is issued in conformance with Sections 2702 and 2703 of Title 18 of the United States Code (The Electronic Communications Privacy Act). To the extent that you are a provider of electronic communication service or remote computing service, your response to this CID should not divulge a record or information pertaining to a subscriber or customer of your service, other than that

allowed pursuant to 18 U.S.C. § 2703(c)(2). If you have any questions, please contact Enforcement Attorney Joyce Chen at joyce.chen@cfpb.gov and 202-702-4226 before providing responsive information.

- 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 Joyce Chen at joyce.chen@cfpb.gov and 202-702-4226 as soon as possible to schedule a telephonic meeting 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, 2016 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 any Subject. 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 Joyce Chen at joyce.chen@cfpb.gov and 202-702-4226. Modifications must be agreed to in writing by the Enforcement Director or a Deputy Enforcement Director. *See* 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:** 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. **Document Production:** The Bureau encourages the electronic production of all material responsive to this CID; please follow the enclosed Document Submission Standards and submit the production following the enclosed Extranet Guide.

For all packages destined for Bureau offices, please contact Joyce Chen at joyce.chen@cfpb.gov and 202-702-4226 for the mailing or internet-protocol address.

Please provide any tracking numbers by e-mail or telephone to Enforcement Attorney Joyce Chen at joyce.chen@cfpb.gov and 202-702-4226.

- K. 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.
- L. Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information, sensitive health information of any individual, or Suspicious Activities Reports, please contact Enforcement Attorney Joyce Chen at joyce.chen@cfpb.gov and 202-702-4226 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.

- M. 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.
- N. Submission of Documents in lieu of Answers:** Documents in existence before your receipt of this CID that contain the information requested in any interrogatory may be submitted as part of or in lieu of an answer to the interrogatory. If you submit documents as part of or in lieu of an answer, you must clearly indicate the specific request to which the documents are responsive, and you must clearly identify the specific portion of the documents that are

responsive, including page, paragraph, and line numbers, as applicable.

O. 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.

- P. 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.

CERTIFICATE OF COMPLIANCE

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

1. I have confirmed that a diligent search has been made for all responsive documents and information in the possession, custody, or control of Square, Inc.
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated August 6, 2021 that are within the possession, custody, or control of Square, Inc. 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, 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.
4. Square, Inc. has reviewed all responsive answers, reports, other documents and tangible things (collectively “Responses”), and has designated as confidential all those Responses, and only those Responses, the disclosure of which would cause substantial harm to the competitive position of Square, Inc., as that term is used for purposes of the Freedom of Information Act.
5. All answers and reports prepared in response to the Civil Investigative Demand dated August 6, 2021 are true and complete.

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

_____.

Signature

**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 Square, Inc. and submitted with this
Declaration.
2. The documents produced and submitted with this Declaration by Square, Inc.,
which are numbered _____ through _____, 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
_____.

Signature

CONSUMER FINANCIAL PROTECTION BUREAU | JULY 2021

Civil Investigative Demand Document Submission Standards

CFPB Office of Enforcement



CID Document Submission Standards

This document describes the technical requirements for producing electronic document collections to the Bureau of Consumer Financial Protection (“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.

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) The Bates Range (and any gaps therein)
 - d) 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) Transmittal Methods
 - a) Extranet

The Extranet is the Bureau's secure file transfer solution that is used to receive productions from third parties via a web-based FTPS protocol utility. Instructions on how to access the Extranet and corresponding credentials are provided upon request. When utilizing the Extranet, the following policies must be adhered to:

 - i) Directories: The system does not support uploading directories (folders). To upload a directory, please compress (or zip) and upload the zipped container.
 - ii) Size: Maximum 2 GB per file or container. Larger productions should be split across multiple 2 GB zipped containers.
 - iii) Quantity: There is no limit to how many files or containers can be uploaded simultaneously.
 - iv) File types: A list of prohibited file types is available in Appendix B.
 - b) Physical Media

The Bureau recognizes that some conditions of environment or data format may restrict production eligibility for transmittal via the Extranet. Such productions may be produced on CD, DVD, USB thumb drive, or hard drive; use the media requiring the least number of deliverables.

 - i) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container:
 - (1) "MAGNETIC MEDIA – DO NOT USE METAL DETECTOR"
 - (2) "MAY BE OPENED FOR POSTAL INSPECTION"
 - ii) CD-R CD-ROMs should be formatted to ISO 9660 specifications;
 - iii) DVD-ROMs for Windows-compatible personal computers are acceptable;

- iv) USB 2.0 thumb drives for Windows-compatible personal computers are acceptable;
- v) 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.
- vi) Physical media should be delivered via overnight delivery service or courier, NOT via US Postal Service.
- vii) Label all media with the following:
 - (1) Production date
 - (2) Bates range
 - (3) Disk number (1 of X), if applicable
 - (4) Name of producing party
 - (5) A unique production number identifying each production
- 4) All productions must be produced free of computer viruses. Infected productions may affect the timing of your compliance with the CID.
- 5) All physical 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.
- 6) 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. 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.

Email Threading

The use of email threading for review is encouraged, but production of relevant email threads must include both inclusive and non-inclusive individual emails and attachments unless otherwise agreed to during the Meet & Confer.

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 (with the exception of large spreadsheets and/or text files, those files should be processed and a placeholder TIFF image indicating that they were produced natively provided); (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 default delimiters (see **Table 1**)
- 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 the fields in **Table 2** (fields should be listed but left blank if not applicable):
- 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 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, 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.

- ii) See **Table 3** and **Table 4** for Image Cross Reference File fields and an example file.

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:

- MS Access
- XML
- CSV
- TSV
- Excel (with prior approval)

5) Audio/Video/Electronic Phone Records

These instructions refer to the production of stand alone audio files such as those from call recording systems. Audio files that are attached to emails should be processed normally.

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 fields listed in **Table 5**.

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.

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.

APPENDIX A: TABLES

TABLE 1: DAT FILE DELIMITERS

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

TABLE 2: DAT FILE FIELDS

Field Name	Description
Required Fields	
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
ATTACH_NAME	Populates parent records with original filenames of all attached records, separated by semi-colons.
PRIV	Indicate "YES" if document has a Privilege claim
ROG_NUM	Indicate Interrogatory number(s) document is responsive to. (ROG ##) **semi-colon should be used to separate multiple entries
DR_NUM	Indicate Document Request (DR ##) or Written Report number (WR ##) document is responsive to. **semi-colon should be used to separate multiple entries
RECORDTYPE	<u>Email</u> : Populate field as "E-Mail" <u>Email Attachment</u> : Populate field as "Attachment (E-mail)" <u>Loose Native</u> : Populate field as "E-Document" <u>Other Attachment</u> : Populate field as "Attachment" <u>Scanned Paper</u> : Populate field as "Paper"
CUSTODIAN	Individual(s) or department(s) from which the record originated **semi-colon should be used to separate multiple entries
FILENAME	Email: Filename of loose email or subject of non-loose email Non-email: original file name
PGCOUNT	Number of pages in document/email
MD5HASH	The 32 digit value representing each unique document

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
DATE_CREATED	The date and time the electronic file was created ** format example: "04/20/2021 5:15 PM" or "04/20/2021 17:15"
DATE_MOD	Date and time an electronic file was last modified ** format example: "04/20/2021 5:15 PM" or "04/20/2021 17:15"
PRINT_DATE	Date and time the document was last printed ** format example: "04/20/2021 5:15 PM" or "04/20/2021 17:15"
FILE_SIZE	Size of native file document/email in KB
FILE_EXT	The file extension representing the email or native file document
AUTHOR	Email: (empty) Non-email: Author of the document
SUBJECT(EDOC)	Subject metadata from electronic files (non-email)
TITLE	Title metadata from electronic files (non-email)
COMPANY	Company (organization) metadata from electronic files
NATIVELINK	Hyperlink to the email or native file document **The linked file must be named per the BATES_BEGIN Number
TEXTPATH	Contains path to OCR/Extracted text file that is titled after the document BATES_BEGIN
Additional Fields for Email Productions	
TO	Recipient(s) of email **semi-colon should be used to separate multiple entries
FROM	Sender of email
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
EMAIL_SUBJECT(EMAIL)	"Subject" line of the email
DATE_SENT	Date and time that the email message was sent.
DATE_RECVD	Date and time that the email message was received.
TIME_ZONE	Time Zone processed in
PARENT_ID	Populated only for email attachments, this field will display the Image Tag field value of the attachment record's parent.

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>

TABLE 4: IMAGE CROSS REFERENCE FILE 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\IMG0000004.TIF,Y,,,1
 IMG0000005,OPTIONALVOLUMENAME,E:\001\IMG0000005.TIF,Y,,,2
 IMG0000006,OPTIONALVOLUMENAME,E:\001\IMG0000006.TIF,,,,

TABLE 5: 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
BatesBegin	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
DocReq	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
GroupID	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

APPENDIX B: PROHIBITED FILE TYPES FOR EXTRANET

.ade	.mar	.vbe
.adp	.mas	.vbs
.app	.mat	.vsmacros
.asp	.mau	.vss
.bas	.mav	.vst
.bat	.maw	.vsw
.cer	.mda	.ws
.chm	.mdb	.wsc
.cmd	.mde	.wsf
.com	.mdt	.wsh
.cpl	.mdw	
.crt	.mdz	
.csh	.msc	
.dll	.msi	
.exe	.msp	
.fxp	.mst	
.gadget	.ops	
.hlp	.pcd	
.hta	.pif	
.inf	.prf	
.ins	.prg	
.isp	.pst	
.its	.rar	
.js	.reg	
.jse	.scf	
.ksh	.scr	
.lnk	.sct	
.mad	.shb	
.maf	.shs	
.mag	.tmp	
.mam	.url	
.maq	.vb	

What is the CFPB Extranet?

The Consumer Financial Protection Bureau (CFPB) Extranet enables organizations to securely upload files and receive a file transfer receipt.

How does it work?

1. If you would like to send your productions to the Bureau via the Extranet, you will need to notify the paralegal or other deputy custodian assigned to your matter in advance. The paralegal will request contact information for any individuals in your organization that require access to the Extranet. This information is needed in order to set up your Extranet accounts.
2. Once the Extranet Support team sets up the account, they will send an e-mail with instructions to activate the account.
3. Once activated, files may be uploaded at <https://extranet.cfpb.gov>.
4. Choose the folder relevant to your Matter. Files cannot be uploaded to the root folder.
5. Be sure to choose the correct files to upload. Once you upload files, you won't be able to view, modify, or remove them.
6. Choose files to upload by selecting the "Upload" button or by using drag-and-drop functionality.
7. Uploaded files are transferred to another CFPB server every 20 minutes. After this happens, you will receive a file transmission receipt e-mail and the files will be removed from the Extranet.
8. If there is a problem receiving a file, it will be noted in the file transmission receipt.



What else do I need to know?

Account expiration

Accounts expire 6 months after the creation date per CFPB's cybersecurity regulations. Accounts can be re-created quickly by the CFPB's Paralegal or other point of contact.

Multi-factor authentication

Extranet access requires the use of a one-time passcode for each login. Passcodes can be sent via e-mail, voice message, or text.

Upload policies

Size: Maximum 2 GB per file

Quantity: There is no limit to how many files can be uploaded simultaneously

File types: A list of prohibited file types is available on the 'CFPB Help' page (find the link at the top right of the page)

Directories: The system does not support uploading directories (folders). To upload a directory, please compress (or zip) the directory and upload the compressed file. Please do not encrypt the zip files, as the pipe is already encrypted.

Automatic log-out

Your account will be logged out after 10 minutes of inactivity.

Password policies

Length: 12 or more characters

Complexity: must contain a digit, a symbol, an uppercase letter and a lowercase letter

Supported browsers

Microsoft Internet Explorer 8 through 11
(Compatibility View is not supported)

Google Chrome 33.x and above

Apple Safari 5.x and 6.x running on OS X only

Mozilla Firefox 24.x and above

Having trouble?

Please contact your Deputy Custodian or point of contact if you have any problems accessing the system. If necessary, he or she will coordinate assistance with the CFPB's technical support team.

Helpful links

Add, edit or remove delivery methods for receiving one-time passcodes:

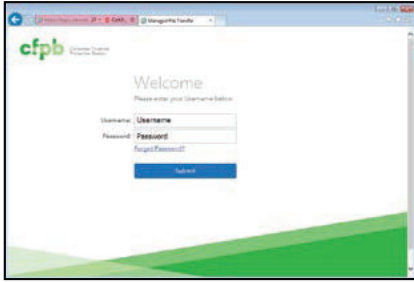
<https://login.extranet.cfpb.gov/updateprofile>

Change your password:

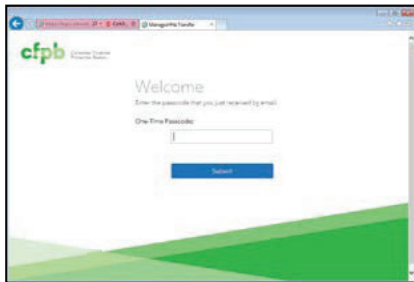
<https://login.extranet.cfpb.gov/changepassword>

Login and upload flow

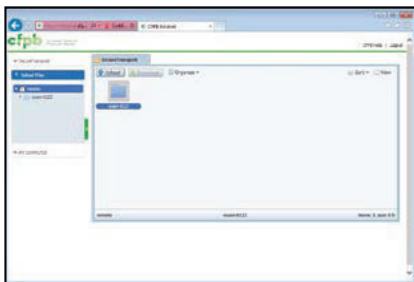
1 Login screen
Enter username and password



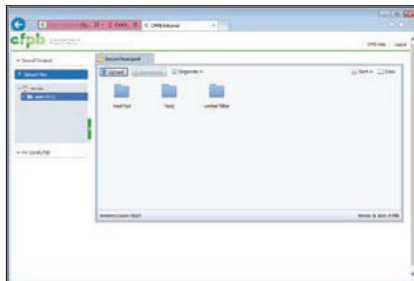
2 Login screen
Enter one-time passcode



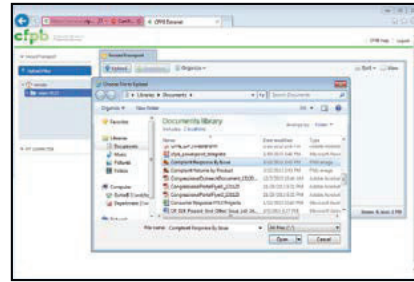
3 Root folder
Select folder



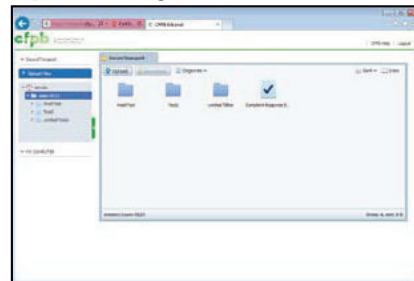
4 Selected folder
Select "Upload"



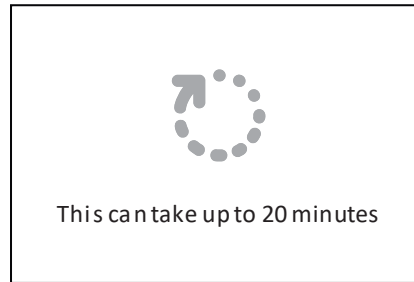
5 File browser
Select file(s) for upload



6 Selected folder
Upload any additional files



7 Wait for files to transfer
to CFPB internal servers



8 Transfer receipt
Review transfer receipt



Note: After your files have been transferred to the CFPB's internal servers, they are no longer viewable on the Extranet website.

§ 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 contemptuous 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.

[FR Doc. 2012-14047 Filed 6-28-12; 8:45 am]

BILLING CODE 4810-AM-P

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.

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 “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 Square, Inc., 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).

David M.
Rubenstein

Digitally signed by David M.
Rubenstein
Date: 2021.08.05 21:49:34 -04'00'

David Rubenstein
Consumer Financial Protection Bureau
Deputy Director, Office of Enforcement

**CONSUMER FINANCIAL PROTECTION BUREAU
1700 G Street NW, 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.

Right to 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.

Exhibit D



1700 G Street NW, Washington, D.C. 20552

September 16, 2021

Via Email

Allyson Baker, Esq.
Erin Zacuto Cass, Esq.
Michael Marusak, Esq.
Venable LLP
600 Massachusetts Avenue, NW
Washington, D.C. 20001
ABBaker@Venable.com
EZCass@Venable.com
MMarusak@Venable.com

RE: Civil Investigative Demand Served on Square, Inc. on August 6, 2021

Dear Ms. Baker, Ms. Cass, and Mr. Marusak:

This letter modifies the terms for compliance with the civil investigative demand (CID) served on August 6, 2021, to Square, Inc. (Square or the Company) by the Consumer Financial Protection Bureau (the Bureau), as permitted by 12 C.F.R. § 1080.6(d). The modifications set forth in this letter are the only modifications to the CID. The Bureau's willingness to approve these additional modifications is based, in part, on the representations Square made at the meet and confer meetings held on August 13, 19, and 20, 2021 and in its letter dated September 2, 2021. The production of information and documents in accordance with the modifications described below constitutes compliance with the CID.

Modifications to Interrogatories

Interrogatory No. 18: Square represented during the August 13, 2021 meet and confer that there may be numerous ancillary entities with which Square has some relationship for the delivery or offering of any product, service, or feature associated with Cash App, and requests that the scope of this request be limited. Accordingly, the Bureau holds in abeyance Square's obligation to respond with respect to any entities that do not facilitate actions that Square or its agents take:

- To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, reports, and inquiries involving asserted errors, including but not limited to unauthorized transfers that do not relate to potential fraud or identity theft;
- To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports involving potential fraud or identity theft, including but not limited to account takeovers;
- To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports relating to a direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit, including but not limited to missing deposits;
- To identify and act upon potential fraud or identity theft in any area, including but not limited to potential fraud or identity theft in direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit;
- To suspend, block, or freeze a Consumer's access to a Cash App account or Cash Card;
- To receive, assess, investigate, escalate, and resolve a Consumer's request to close or cancel a Cash App account or Cash Card that was created without the Consumer's authorization;
- To notify or inform Consumers whose Cash Cards or Cash App accounts have been suspended, blocked, or frozen, or who are suspected victims of fraud (including a suspected account takeover), and to provide such Consumers information regarding the Company's action(s) in response;
- To monitor chargebacks and issues relating to reversals of payments, including debit network push payments, related to Consumer allegations of fraud, identity theft, errors, and unauthorized transactions with regard to the payment(s); and
- To receive, assess, investigate, escalate, and resolve questions related to limitation of liability, refunds, provisional credits, or permanent credits.

The Bureau reserves the right to require a complete response to Interrogatory No. 18 upon notice.

Interrogatory No. 19: Square represented during the August 13, 2021 meet and confer that Square may have numerous accounts for conducting business "related to Cash App," and requests that the scope of Interrogatory No. 19 be limited to accounts that hold customer funds. The Bureau modifies the preamble to Interrogatory No. 19 as follows:

"Identify all depository and non-depository institutions at which the Company has held accounts that hold Cash App customer funds, and identify and describe each such account at each depository and non-depository institution. For each such institution, state:"

Interrogatory No. 21: Square represented in its September 2, 2021 letter that the response to Interrogatory No. 21 is dependent in part on any modifications to Interrogatory No. 20, and Square requested a modification to the preamble of Interrogatory No. 20. Enforcement staff explained during the August 19, 2021 meet and confer that

Interrogatory No. 21 refers to the activities as described only in subparts (a) to (i) of Interrogatory No. 20, and that the preamble to Interrogatory No. 20 should not be considered in answering Interrogatory No. 21. For clarity, the Bureau modifies the first sentence of Interrogatory No. 21 as follows:

“Identify and describe the department(s), team(s), queue(s), or group(s) within the Company that primarily handle the following activities:

- a. To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, reports, and inquiries involving asserted errors, including but not limited to unauthorized transfers that do not relate to potential fraud or identity theft;
- b. To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports involving potential fraud or identity theft, including but not limited to account takeovers;
- c. To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports relating to a direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit, including but not limited to missing deposits;
- d. To identify and act upon potential fraud or identity theft in any area, including but not limited to potential fraud or identity theft in direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit;
- e. To suspend, block, or freeze a Consumer’s access to a Cash App account or Cash Card;
- f. To receive, assess, investigate, escalate, and resolve a Consumer’s request to close or cancel a Cash App account or Cash Card that was created without the Consumer’s authorization;
- g. To notify or inform Consumers whose Cash Cards or Cash App accounts have been suspended, blocked, or frozen, or who are suspected victims of fraud (including a suspected account takeover), and to provide such Consumers information regarding the Company’s action(s) in response;
- h. To monitor chargebacks and issues relating to reversals of payments, including debit network push payments, related to Consumer allegations of fraud, identity theft, errors, and unauthorized transactions with regard to the payment(s); and
- i. To receive, assess, investigate, escalate, and resolve questions related to limitation of liability, refunds, provisional credits, or permanent credits.”

Interrogatory Nos. 22 and 23: Square represents in its September 2, 2021 letter that the definition of “spreadsheet” in Interrogatory No. 20 is overly broad and requests that the definition of spreadsheet be narrowed to tracker documents that record actions taken by Square relating to activities set forth in subparts (a) to (i) of Interrogatory No. 20. Although the Bureau declines to narrow the definition of spreadsheet, for Interrogatory Nos. 22 and 23 only, the Bureau will hold in abeyance Square’s obligation to supply information regarding any database identified in response to Interrogatory No. 20 that does not contain any of the tables requested in Document Request Nos. 19-53. The Bureau

reserves the right to require a complete response to Interrogatory Nos. 22 and 23 upon notice.

Modifications to Document Requests

Document Request No. 11: Square's September 2, 2021 letter indicates that it understands Document Request No. 11 to be dependent on the preamble to Interrogatory No. 20. The preamble to Interrogatory No. 20 should not be considered in answering Document Request No. 11. For clarity, the Bureau modifies Document Request No. 11 as follows:

“An exemplar of all documents that are shared, provided, and/or exchanged between the Company and Marqeta, Sutton Bank, and/or any card network, including but not limited to Visa, Mastercard, Discover, and American Express, in conducting the following activities:

- a. To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, reports, and inquiries involving asserted errors, including but not limited to unauthorized transfers that do not relate to potential fraud or identity theft;
- b. To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports involving potential fraud or identity theft, including but not limited to account takeovers;
- c. To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports relating to a direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit, including but not limited to missing deposits;
- d. To identify and act upon potential fraud or identity theft in any area, including but not limited to potential fraud or identity theft in direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit;
- e. To suspend, block, or freeze a Consumer's access to a Cash App account or Cash Card;
- f. To receive, assess, investigate, escalate, and resolve a Consumer's request to close or cancel a Cash App account or Cash Card that was created without the Consumer's authorization;
- g. To notify or inform Consumers whose Cash Cards or Cash App accounts have been suspended, blocked, or frozen, or who are suspected victims of fraud (including a suspected account takeover), and to provide such Consumers information regarding the Company's action(s) in response;
- h. To monitor chargebacks and issues relating to reversals of payments, including debit network push payments, related to Consumer allegations of fraud, identity theft, errors, and unauthorized transactions with regard to the payment(s); and
- i. To receive, assess, investigate, escalate, and resolve questions related to limitation of liability, refunds, provisional credits, or permanent credits.”

Document Request No. 13: Square’s September 2, 2021 letter indicates that Square understands Document Request No. 13 to be dependent on portions of Interrogatory Nos. 17 and 20. That was not intended. For clarity, the Bureau modifies Document Request No. 13 as follows:

“Communications internally within Square and externally with any entity identified in Interrogatory No. 18 regarding:

- a. The activities described only in subparts (a) to (i) of Interrogatory No. 20, not including the preamble, and the procedures, processes, and systems relating to such activities, including without limitation communications concerning the documents provided in response to Document Request No. 12;
- b. The documents provided in response to Document Request No. 18;
- c. Account takeovers;
- d. The handling, investigating, or monitoring of the Company’s chargebacks, ACH return rates, or related metrics, including whether the Company was told it was approaching or exceeding any thresholds;
- e. The activities described in subparts (a) to (d) of Interrogatory No. 17, not including the preamble, and the procedures, processes, and systems relating to such activities; and
- f. The manner in which Square would provide customer service to consumers using Cash App.”

Document Request No. 18: Square’s September 2, 2021 letter indicates that Square understands Document Request No. 18 to be dependent on certain portions of Interrogatory No. 17. That was not intended.

For clarity, the Bureau modifies subparts (d) and (e) of Document Request No. 18 as follows:

- “d. The development, implementation, and adoption of the processes, systems, and procedures described in response to Interrogatory Nos. 17(a) to (d), not including the coda to Interrogatory No. 17; and
- e. The activities described in subparts (a) to (d) of Interrogatory No. 17, not including the preamble or the coda to Interrogatory No. 17.”

Timing of the Production

Square requested additional time to provide responses to all of the Interrogatories and Document Requests in the CID. In its September 2, 2021 letter, Square proposed a rolling production schedule and represented that its proposed schedule reflects the time needed to compile the information. At the August 13, 2021 meet and confer, Square also represented that information prior to January 1, 2020 (historical period) will take longer to obtain, compared to information dating from January 1, 2020 to present (as of 2020).

Accordingly, the Bureau modifies the time for Square's compliance as follows:

Production Date	Request Nos.
9/30/2021	Interrogatory Nos. 17(a)-(c) (as of 2020); 18 (as of 2020); 19 (as of 2020); 21 (as of 2020); 26 (as of 2020); 27 (as of 2020); 28; 29 (to be provided with responses). Document Request Nos. 10; 11; 17.
10/22/2021	Interrogatory Nos. 17(d) (as of 2020); 17(coda) (as of 2020); 20; 21 (historical period); 24; 25; 29 (to be provided with responses). Document Request Nos. 9; 15; 18 (all responsive documents that are not communications).
11/5/2021	Interrogatory Nos. 17(a)-(c) (historical period); 17(d) (historical period); 17(coda) (historical period); 18 (historical period); 19 (historical period); 22; 23; 26 (historical period); 27 (historical period); 29 (to be provided with responses). Document Request Nos. 12; 13; 14; 16 (as of 2020); 16 (historical period); 18 (communications); 35-40; 42; 47; 49-50; 52-53.
12/2/2021	Document Request Nos. 19-34; 41; 43-46; 48; 51.

Square must fully comply with the CID, as modified, by December 2, 2021. If Square withholds information responsive to the CID based on privilege, it must produce a privilege log in accordance with the procedures set forth in the Rules Relating to Investigations § 1080.8 (Withholding Requested Material). *See* 12 C.F.R. § 1080.8. If required, a privilege log is due on December 2, 2021.

Nature of the Modifications

To assist in construing any terms of this letter, the definitions set forth in the CID are incorporated by reference. This letter does not change Square's responsibilities described in the Document Retention instruction in the CID. Further, nothing in this letter precludes the Bureau from issuing additional CIDs to or seeking discovery from Square.

If you have any questions regarding the terms outlined above, contact Enforcement Attorney Joyce Chen at (202) 702-4226 or joyce.chen@cfpb.gov.

Sincerely,

David M. Rubenstein
Deputy Enforcement Director

Exhibit E



1700 G Street NW, Washington, D.C. 20552

October 22, 2021

Via Email

Allyson Baker, Esq.
Paul Hastings LLP
2050 M Street NW
Washington, D.C. 20036
allysonbaker@paulhastings.com

Meredith Boylan, Esq.
Erin Zacuto Cass, Esq.
Michael Marusak, Esq.
Venable LLP
600 Massachusetts Avenue, NW
Washington, D.C. 20001
MLBoylan@Venable.com
EZCass@Venable.com
MMarusak@Venable.com

RE: Civil Investigative Demand Served on Square, Inc. on August 6, 2021

Dear Ms. Baker, Ms. Boylan, Ms. Cass, and Mr. Marusak:

This letter modifies the terms for compliance with the civil investigative demand (CID) served on August 6, 2021, to Square, Inc. (Square or the Company) by the Consumer Financial Protection Bureau (the Bureau), as permitted by 12 C.F.R. § 1080.6(d). The modifications set forth in this letter and the modification letter dated September 16, 2021 are the only modifications to the CID. The Bureau's willingness to approve this additional modification is based, in part, on the representations Square made at the meet and confer meeting held on August 19, 2021, in its letter dated September 2, 2021, and in its email dated October 13, 2021. The production of information and documents in accordance with the modification described below constitutes compliance with the CID.

Document Request No. 13

Document Request No. 13: Square represented during the August 19, 2021 meet and confer and in its letter dated September 2, 2021 that this document request seeks a

voluminous amount of communications. Square proposed in its October 13, 2021 email to limit the request to particular custodians.

To relieve any unnecessary burden, the Bureau holds in abeyance two aspects of Square's obligation to respond to this request. First, the Bureau holds in abeyance Square's obligation to provide any external communications between Square and any entity that is *not* included in any of the following categories:

- Bank, payment processor, or card network (including without limitation Visa, Mastercard, Discover and American Express) with which Square has a contractual relationship, business arrangement, or other arrangement for the delivery or offering of any product, service, or feature associated with Cash App; or
- Any entity that facilitates actions that Square or its agents take:
 - To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, reports, and inquiries involving asserted errors, including but not limited to unauthorized transfers that do not relate to potential fraud or identity theft;
 - To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports involving potential fraud or identity theft, including but not limited to account takeovers;
 - To receive, assess, investigate, escalate, and resolve Consumer complaints, disputes, and reports relating to a direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit, including but not limited to missing deposits;
 - To identify and act upon potential fraud or identity theft in any area, including but not limited to potential fraud or identity theft in direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit;
 - To suspend, block, or freeze a Consumer's access to a Cash App account or Cash Card;
 - To receive, assess, investigate, escalate, and resolve a Consumer's request to close or cancel a Cash App account or Cash Card that was created without the Consumer's authorization;
 - To notify or inform Consumers whose Cash Cards or Cash App accounts have been suspended, blocked, or frozen, or who are suspected victims of fraud (including a suspected account takeover), and to provide such Consumers information regarding the Company's action(s) in response;
 - To monitor chargebacks and issues relating to reversals of payments, including debit network push payments, related to Consumer allegations of fraud, identity theft, errors, and unauthorized transactions with regard to the payment(s); and
 - To receive, assess, investigate, escalate, and resolve questions related to limitation of liability, refunds, provisional credits, or permanent credits.

Second, the Bureau holds in abeyance Square's obligation to produce in response to Document Request No. 13 any communications that do not include as a recipient, sender, cc, or bcc, the following custodians:

- Nicole Grazioso
- Garth Peterson
- Dave Baldwin
- Kelly Lord
- Ayo Omojola
- Jim Esposito
- Chris Davis
- Chris Draper
- April Powell
- Emma Butler
- Matt McComb
- Melanie Cox
- Michael Hanks
- Sheryl Large
- Ryan Fichte
- Dustin Moring
- Brian Grassadonia
- Catherine Card

The Bureau reserves the right to require a complete response to Interrogatory No. 13 upon notice.


Nature of the Modifications

To assist in construing any terms of this letter, the definitions set forth in the CID are incorporated by reference. This letter does not change Square's responsibilities described in the Document Retention instruction in the CID. Further, nothing in this letter precludes the Bureau from issuing additional CIDs to or seeking discovery from Square.

If you have any questions regarding the terms outlined above, contact Enforcement Attorney Joyce Chen at (202) 702-4226 or joyce.chen@cfpb.gov.

Sincerely,

David M.
Rubenstein

 Digitally signed by David M.
Rubenstein
Date: 2021.10.22 13:57:10 -04'00'

David M. Rubenstein
Deputy Enforcement Director

Exhibit F



1700 G Street NW, Washington, D.C. 20552

December 16, 2021

Via Email

Allyson Baker, Esq.
Meredith Boylan, Esq.
Erin Zacuto Cass, Esq.
Michael Marusak, Esq.
Michelle Liu, Esq.
Paul Hastings LLP
2050 M Street NW
Washington, D.C. 20036
allysonbaker@paulhastings.com
meredithboylan@paulhastings.com
erincass@paulhastings.com
michaelmarusak@paulhastings.com
michelleliu@paulhastings.com

RE: Civil Investigative Demand Served on Square, Inc. on August 6, 2021

Dear Ms. Baker, Ms. Boylan, Ms. Cass, Mr. Marusak, and Ms. Liu:

This letter modifies the terms for compliance with the civil investigative demand (CID) served on August 6, 2021, to Square, Inc. (Square or the Company) by the Consumer Financial Protection Bureau (the Bureau), as permitted by 12 C.F.R. § 1080.6(d). The modifications set forth in this letter and the modification letters dated September 16, 2021 and October 22, 2021 are the only modifications to the CID. The Bureau's willingness to approve this additional modification is based, in part, on the representations Square made at the meet and confer meetings held on November 23, 2021 and November 30, 2021, in its letter dated October 15, 2021, and in its emails dated October 25, 2021, November 24, 2021 and December 3, 2021. The production of information and documents in accordance with the modification described below constitutes compliance with the CID.

Modifications to Document Requests

Document Request No. 18: Square represented during the November 24, 2021 meet and confer that this document request is burdensome and overlaps with documents sought in Document Request No. 13, for which a modification was provided to hold in abeyance

email communications outside of certain custodians. Square proposed in its November 24, 2021 email to limit the request to the same custodians as provided for Document Request No. 13.

To relieve any unnecessary burden, the Bureau holds in abeyance Square's obligation to produce in response to Document Request No. 18 any communications that do not include as a recipient, sender, cc, or bcc, the following custodians:

- Dusty Stolp
- David Puldon
- Christopher Skeels
- Daniel Doerr
- Murad Salahi
- Brian Boates
- Ryan Brackney
- Erin Gluck
- Patrick Capstick
- Chris Davis
- Chris Draper
- Sheryl Large
- Ryan Fechte
- Ellen Mauger
- Miles Baker
- Jessica Bullitt
- Owen Jennings
- Conor Walsh
- Dustin Moring
- Brian Grassadonia
- Catherine Card
- James Esposito

The Bureau reserves the right to require a complete response to Document Request No. 18 upon notice.

Document Request Nos. 19-34, 43-46, 48 and 51: Square represented in its October 15, 2021 letter that Document Request Nos. 19-34, 43-46, 48 and 51 are burdensome because production of such Document Requests may require many hours of retrieval, research, scoping, and engineering work. In its December 3, 2021 email, Square represented that it sought to provide data for Written Report No. 2 in Exhibit A as to years 2019 to 2021 by the New Year, and for years 2016 to 2018 by mid-February of 2022. Square also represented that it sought to provide data for Written Report Nos. 1 and 3 as to years 2020 and 2021 in January, and for years 2016 to 2019 as soon as possible thereafter. Based on

the Company's representations, and contingent upon the production of the Written Reports as outlined in Exhibit A according to the timeline below, the Bureau will hold in abeyance Document Request Nos. 19-34, 43-46, 48 and 51. The Bureau reserves the right to require production of Document Request Nos. 19-34, 43-46, 48 and 51 upon notice.

Timeline for Production of Written Reports in Exhibit A

Production Date	Written Report Nos.
1/3/2022	2 (2019-2021)
1/31/2022	1 and 3 (2020-2021)
2/14/2022	1 and 3 (2016-2019)
2/14/2022	2 (2016-2018)

Modifications to Interrogatory Nos. 22 and 23

Interrogatory Nos. 22 and 23: Square requested in its October 25, 2021 email that Interrogatory Nos. 22 and 23, as modified by the Bureau's September 16, 2021 modification letter, be held in abeyance pending the response to Interrogatory No. 20 and continued discussion regarding Document Request Nos. 19-34, 43-46, 48, and 51. According to the Bureau's September 16, 2021 modification letter, Square's obligation to supply information in response to Interrogatory Nos. 22 and 23 regarding any database identified in response to Interrogatory No. 20 that does not contain any of the tables requested in Document Request Nos. 19-53 was held in abeyance. During the meet and confer meeting on November 23, 2021, Square represented that production of the responses to Interrogatory Nos. 22 and 23 relating to the tables requested in Document Request Nos. 19-34, 43-46, 48 and 51 would be burdensome and time-consuming.

Based on the Company's representations, the Bureau further modifies Interrogatory Nos. 22 and 23 to additionally hold in abeyance Square's obligation to supply information regarding any database identified in response to Interrogatory No. 20 that contains the tables requested in Document Request Nos. 19-34, 43-46, 48 and 51, contingent upon the production of information regarding any database identified in response to Interrogatory No. 20 that contains the tables from which the data in the Written Reports in Exhibit A derive. The Bureau reserves the right to require production of the remainder of Interrogatory Nos. 22 and 23 upon notice.

Timeline for Production of Interrogatory Nos. 22 and 23

Production Date	Interrogatory Nos. 22 and 23
11/5/2021	Responses regarding any database identified in response to Interrogatory No. 20 that contains the tables requested in Document Request Nos. 35-42,47,49,50.* *Some of these Document Requests have yet to be produced.
1/3/2022	Responses regarding any database identified in response to Interrogatory No. 20 that contains the tables from which Written Report No. 2 (2019-2021) in Exhibit A derives.
1/31/2022	Responses regarding any database identified in response to Interrogatory No. 20 that contains the tables from which Written Report Nos. 1 and 3 (2020-2021) in Exhibit A derives.
2/14/2022	Responses regarding any database identified in response to Interrogatory No. 20 that contains the tables from which Written Report Nos. 1 and 3 (2016-2019) in Exhibit A derives.
2/14/2022	Responses regarding any database identified in response to Interrogatory No. 20 that contains the tables from which Written Report No. 2 (2016-2018) in Exhibit A derives.

Nature of the Modifications

To assist in construing any terms of this letter, the definitions set forth in the CID are incorporated by reference. This letter does not change Square's responsibilities described in the Document Retention instruction in the CID. Further, nothing in this letter precludes the Bureau from issuing additional CIDs to or seeking discovery from Square.

If you have any questions regarding the terms outlined above, contact Enforcement Attorney Joyce Chen at (202) 702-4226 or joyce.chen@cfpb.gov.

Sincerely,

David M. Rubenstein
Deputy Enforcement Director

EXHIBIT A**Requests for Written Reports**

Produce the following data in tab-delimited text files, using double-quote-escaped text fields when necessary. Where data derives from separate tables or dimensions, use a separate text file for data elements along each separate dimension. This should comply with at least the first normal form (1NF). Include both unique identifiers, primary keys, and foreign keys (i.e., all fields used to perform joins between tables) in each file expressing the relationship between these files. When data is available for some records and not others, leave the unavailable data items blank (omissions due to unavailability should be identified and discussed during the meet and confer process and described in narrative with the production). Individual records should never be of varying lengths. Where information exists at the record level requested but is not included in the individual Written Report Request, you are expected to include this information in additional columns in your response to the written report. Produce the source code for all scripts used to query data responsive to each Request for Written Report. If the data is converted from its native format to comply with the format requirements, please provide the file from which it was derived.

1. For Cash App accounts for which a Consumer made a complaint, dispute, or report regarding an unauthorized transfer in a peer to peer payment during the Applicable Period, provide all data at the level of each reported unauthorized transfer, including the following:
 - a. Unique identifier for the Consumer associated with the account;
 - b. Unique identifier for the Consumer account as used by the Company;
 - c. Unique identifier of the complaint or dispute;
 - d. Unique identifier of the unauthorized transfer (i.e. each complaint or dispute can contain multiple unauthorized transfers);
 - e. An indicator (Y/N) whether the Company (or another entity on behalf of the Company) conducted an error resolution investigation regarding the unauthorized transfer described in subpart (d);
 - f. An indicator (Y/N) whether the Company reported the results of any investigation to the Consumer;
 - g. Amount of unauthorized transfer claimed by Consumer;
 - h. Date the unauthorized transfer occurred;
 - i. Date that the Consumer provided notification of the unauthorized transfer;
 - j. Date that the Company began its error resolution investigation regarding the unauthorized transfer described in subpart (d), if applicable;
 - k. Date that the Company determined whether an unauthorized transfer occurred;
 - l. Date the Company reported the results of any investigation to the Consumer;

- m. An indicator (Y/N) whether the Company notified the Consumer of their right to request the documents that the institution relied on in making its determination;
 - n. Amount of provisional credit provided to the Consumer for the unauthorized transfer, if applicable;
 - o. Date that the provisional credit was provided to Consumer, if applicable;
 - p. Amount refunded to the Consumer for the unauthorized transfer, if applicable;
 - q. An indicator (Y/N) whether the unauthorized transfer resulted from identity theft;
 - r. An indicator (Y/N) whether the unauthorized transfer was associated with loss or theft of Consumer's phone;
 - s. An indicator (Y/N) whether the unauthorized transfer was a result of an account takeover; and
 - t. All macros that the Company sent to the Consumer.
2. For Cash Cards issued in connection with Cash App and for which a Consumer made a complaint, dispute, or report regarding an unauthorized transfer on the Cash Card during the Applicable Period, provide all data at the level of each reported unauthorized transfer, including the following:
- a. Unique identifier for Consumer associated with the Cash Card;
 - b. Unique identifier for the Consumer account as used by the Company;
 - c. Unique identifier for the Consumer account as used by Marqeta (if different);
 - d. Unique identifier of the complaint or dispute;
 - e. Unique identifier of the unauthorized transfer (i.e. each complaint or dispute can contain multiple unauthorized transfers);
 - f. An indicator (Y/N) whether the Company (or another entity on behalf of the Company) conducted an error resolution investigation regarding the unauthorized transfer described in subpart (e);
 - g. An indicator (Y/N) whether the Company reported the results of any investigation to the Consumer;
 - h. Amount of unauthorized transfer claimed by Consumer;
 - i. Date the unauthorized transfer occurred;
 - j. Date that the Consumer provided notification of the unauthorized transfer;
 - k. Date that the Company began its error resolution investigation regarding the unauthorized transfer described in subpart (e), if applicable;
 - l. Date that the Company determined whether an unauthorized transfer occurred;
 - m. Date the Company reported the results of any investigation to the Consumer;
 - n. An indicator (Y/N) whether the Company notified the Consumer of their right to request the documents that the institution relied on in making its determination;

- o. Amount of provisional credit provided to the Consumer by the Company for the unauthorized transfer, if applicable;
 - p. Date that the Company provided provisional credit to Consumer, if applicable;
 - q. Amount refunded to the Consumer for the unauthorized transfer, if applicable;
 - r. An indicator (Y/N) whether the unauthorized transfer resulted from identity theft;
 - s. An indicator (Y/N) whether the unauthorized transfer was associated with loss or theft of Consumer's Cash Card or phone;
 - t. An indicator (Y/N) whether the unauthorized transfer was a result of an account takeover; and
 - u. All macros that the Company sent to the consumer.
3. For Cash App accounts for which a Consumer made a complaint, dispute, or report regarding an unauthorized transfer that was not a Cash Card or peer to peer payment transaction, provide all data at the level of each reported unauthorized transfer, including the following:
- a. Unique identifier for the Consumer associated with the account;
 - b. Unique identifier for the Consumer account as used by the Company;
 - c. Unique identifier of the complaint or dispute;
 - d. Unique identifier of the unauthorized transfer (i.e. each complaint or dispute can contain multiple unauthorized transfers);
 - e. An indicator (Y/N) whether the Company (or another entity on behalf of the Company) conducted an error resolution investigation regarding the unauthorized transfer described in subpart (d);
 - f. An indicator (Y/N) whether the Company reported the results of any investigation to the Consumer;
 - g. Amount of unauthorized transfer claimed by Consumer;
 - h. Date the unauthorized transfer occurred;
 - i. Date that the Consumer provided notification of the unauthorized transfer;
 - j. Date that the Company began its error resolution investigation regarding the unauthorized transfer described in subpart (d), if applicable;
 - k. Date that the Company determined whether an unauthorized transfer occurred;
 - l. Date the Company reported the results of any investigation to the Consumer;
 - m. An indicator (Y/N) whether the Company notified the Consumer of their right to request the documents that the institution relied on in making its determination;
 - n. Amount of provisional credit provided to the Consumer for the unauthorized transfer, if applicable;
 - o. Date that the provisional credit was provided to Consumer, if applicable;
 - p. Amount refunded to the Consumer for the unauthorized transfer, if applicable;

- q. An indicator (Y/N) whether the unauthorized transfer resulted from identity theft;
- r. An indicator (Y/N) whether the unauthorized transfer was associated with loss or theft of Consumer's phone;
- s. An indicator (Y/N) whether the unauthorized transfer was a result of an account takeover; and
- t. All macros that the Company sent to the Consumer.

Exhibit G



1700 G Street NW, Washington, D.C. 20552

July 11, 2022

Via Email

Allyson Baker, Esq.
Meredith Boylan, Esq.
Erin Zacuto Cass, Esq.
Michael Marusak, Esq.
Paul Hastings LLP
2050 M Street NW
Washington, D.C. 20036
allysonbaker@paulhastings.com
meredithboylan@paulhastings.com
erincass@paulhastings.com
michaelmarusak@paulhastings.com

RE: Deficiencies in production of Block, Inc. in response to Civil Investigative Demands served on August 4, 2020 and August 6, 2021

Dear Counsel:

The Bureau has identified significant deficiencies in Block, Inc.'s (Block) production in response to the civil investigative demands (CID) served on August 4, 2020 (first CID) and August 6, 2021 (second CID).¹ We have set forth some of these deficiencies below and request that Block resolve them by the dates indicated below. These deficiencies constitute failures to comply with the CIDs. Pursuant to 12 U.S.C. § 5562(e), the Bureau is authorized to enforce its CIDs in federal district court.

Block has Provided No Responsive Information or Documents in Response to At Least 10 Requests

¹ The review of Block's responses to the CIDs continues, and the Bureau reserves the right to raise additional deficiencies as they are identified.

Block has failed to produce any information or documents whatsoever in response to Interrogatory Nos. 24, 25, 27, 29, and 30, Document Request Nos. 13, 14, 15, 16, and 18 in the second CID, despite the fact that nearly a year has elapsed since it was served on the Company.

At Block's behest,² the Bureau modified the deadlines for all but one of these requests, requiring production on various dates between September 2021 and November 2021.³ Yet Block failed to produce any information or documents in response to the requests by the deadlines. After failing to meet the deadlines, Block represented in a January 2022 letter that it "hoped" or "expected" to produce responses to Interrogatory No. 24, and Request for Document Nos. 15 and 16 by the end of January 2022, and Interrogatory Nos. 27 and 29 by early February 2022, but to date, the Bureau has not received a single document or response to any of the aforementioned Interrogatories or Requests for Documents.

In its January 2022 letter, Block provided no expected dates by which it would comply with the other outstanding Requests. Block further communicated that it would have a better idea on production deadlines for four of the Requests after it had further conversation with the Bureau about search terms.⁴ However, by that time in January,

² The Bureau modified its second CID to extend certain deadlines and otherwise address Block's assertions of burden three times: on September 16, 2021, October 22, 2021, and December 16, 2021.

³ In response to Block's request for modification, the Bureau provided extended deadlines as follows: Interrogatory No. 24 (Oct. 22, 2021); Interrogatory No. 25 (Oct. 22, 2021); Interrogatory No. 27 (Sept. 30, 2021 for pre-2020 responses; Nov. 5, 2021 for as of 2020 responses); Interrogatory No. 29 (due with each production); Request for Document No. 13 (Nov. 5, 2021); Request for Document No. 14 (Nov. 5, 2021); Request for Document No. 15 (Oct. 22, 2021); Request for Document No. 16 (Nov. 5, 2021); and Request for Document No. 18 (Oct. 22, 2021 for documents that were not communications; Nov. 5, 2021 for communications).

⁴ In its January letter, Block stated that it "expect[ed] that [its] conversation [with the Bureau] next week regarding search terms will inform the production schedule for Interrogatory No. 25 and Requests 13, 14, and 18." However, Block did not provide its expected production schedule for these Requests, and it proposed search terms only for Document Request Nos. 13 and 18.

Block had already had over five months to evaluate the CID and propose search terms.⁵ Nonetheless, the Bureau worked with Block on developing search terms for Request Nos. 13 and 18; to date, more than five months from the Bureau's conversation with Block on search terms (and eleven months from the service of the CID), Block has not produced a single document in response to Request Nos. 13 and 18. In addition, although Block expressed that it expected to propose search terms for other Requests, the Bureau has not received any such proposals.

In February 2022, after Block missed its production deadline for several Written Reports, the Bureau again noted Block's delinquencies in producing both responses to Written Reports as well as to other Requests. The Bureau reminded Block that if any production cannot be made in a timely fashion, Block should explain the basis of its delay, the date when it expects to complete production, and whether and why certain subparts of a production cannot be produced on time.

But with the exception of limited communications around Request for Documents Nos. 13 and 18, Block has been entirely silent about these outstanding requests.

These deficiencies must be remedied by producing complete responses to each of these requests by August 11, 2022.

Additional Deficient Responses

In addition to Block's failure to respond at all to certain requests, the Bureau has identified deficient responses to certain requests in both the first and second CIDs, which are outlined further below.

Deficient Responses to the First CID

Block's response to the first CID is deficient because it does not include all existing documents that are responsive to Request for Document Nos. 5 and 6, which generally request documents relating to policies and procedures. Namely, various documents that Block produced refer, by title, to other policy documents that would be responsive to Request for Document Nos. 5 and/or 6, but these documents do not appear to have been produced. For example, a document entitled "Disputes – Chargebacks & Payment Disputes," does not appear to have been produced, even though it was referred to within the documents, "Policies & Process – Knowledge Resources for CCO Support For P_P," at SQUARE_CFPBCID_002485 and "Policies & Process – Knowledge Resources for CCO

⁵ Although Block discussed proposing search terms for Interrogatory No. 25 and Document Request No. 14 in its January 2022 letter, Block to date has not proposed any such search terms, and production for these requests remain outstanding.

Support For P_P – Updated” at SQUARE_CFPBCID_002490. As another example, the document at SQUARE_CFPBCID_001393 at 1395 provides a link to a document entitled “Stimulus workflow” and no such document has been produced. This document is described as a “step by step procedural document outlining how to handle missing Stimulus Payment JIRAs in bulk.” Numerous such policy and procedure documents responsive to Request for Document Nos. 5 and/or 6 are referenced in Block’s productions to the first and second CIDs, but do not appear to have been produced.

In addition, some policy documents that Block produced in response to Document Request Nos. 5 and 6 refer to the use of various macros as part of Block’s policies in responding to consumers or handling issues identified in Document Request Nos. 5 and 6, but Block has not produced documents containing the content of these macros.

These deficiencies must be remedied by August 11, 2022.

Deficient Responses to the Second CID

Block’s responses to Interrogatory Nos. 17, 18, 21, 26, and 28 are deficient in numerous respects. Block failed to answer significant portions of each Interrogatory. Additionally, in some responses, it referenced documents to answer all or part of the Interrogatory, but the documents do not provide an adequate response. These must be remedied by August 25, 2022. The deficiencies are outlined below:

- Interrogatory No. 17(a): The documents referenced do not address the “processes, systems, and procedures that Square has employed with respect to Cash App...to monitor, receive, assess, investigate, escalate, handle, and resolve Consumer complaints, disputes, reports, and inquiries” relating to unemployment insurance deposits or stimulus check deposits.
- Interrogatory No. 17(b): The documents referenced do not describe all processes, systems, and procedures that Square has employed with respect to Cash App “[t]o monitor, receive, assess, investigate, escalate, handle, and resolve suspected fraud relating to a direct deposit, unemployment insurance deposit, tax refund, or stimulus check deposit.”
- Interrogatory No. 17(c): The documents referenced do not describe “all processes, systems, and procedures that Square has employed with respect to Cash App [t]o set up or create new Cash App and Cash Card accounts, including but not limited to authentication procedures to prevent the establishment of fraudulent accounts.”
- Interrogatory No. 18: Interrogatory 18 seeks information about Block’s business relationships with banks, payment processors, and card networks. Block references

documents in its response to certain subparts, but the documents referenced for subparts (d), (g), (h), and (i) did not provide the information sought.⁶

- Interrogatory No. 21: Interrogatory No. 21 requested that Block “Identify and describe the department(s), team(s), queue(s), or group(s) within the Company that primarily handle the activities described in Interrogatory Nos. 20(a) to (i),” but Block provided no response as to the activities described in Interrogatory Nos. 20(c) and 20(f) to (i), which seek information about which organizational teams or entities are responsible for: consumer complaints relating to direct deposits or other deposits; consumers’ requests to close an account or notify about unauthorized accounts; informing consumers about cards or accounts that have been suspended, blocked, or frozen or about fraud; monitoring chargebacks or reversals; and receiving and addressing questions about limitation of liability, refunds, or provisional or permanent credits.
- Interrogatory No. 21 (last paragraph): Block did not provide any response at all to the last paragraph of Interrogatory No. 21: “For each activity described in Interrogatory Nos. 20(a) to (i), provide a chart depicting each department, team, group, subgroup, individual, or queue (collectively referred to herein as groups) who primarily handles the activity, as well as the order in which the activity is

⁶ Interrogatory No. 18(d), (g), (h), and (i) requests that Block:

“[i]dentify all banks, payment processors, card networks (including without limitation Visa, Mastercard, Discover and American Express) and any other entity with which Square has a contractual relationship, business arrangement, or other arrangement for the delivery or offering of any product, service, or feature associated with Cash App. Identify or describe the nature and scope of each business relationship and arrangement, including, without limitation:

d. The nature of any fee, charge or financial arrangement, including the amount of any consideration (including reimbursements) paid by each party to the other(s) in connection with the services, responsibilities, and obligations encompassed by the arrangement, the manner in which any such fees or charges are determined, and the manner in which any disputes between the parties concerning such fees or charges are resolved;

g. The total number, amount and reason for any such fees or charges, broken out by each month for each payee;

h. Each party’s involvement, roles and responsibilities, and input in the development and/or implementation of the procedures, processes or systems identified in Interrogatory Nos. 17(a)-(d), if any, including but not limited to the procedures, processes, or systems relating to the declining of attempted reversals of Cash App, peer to peer, or Cash Card transactions; and

i. The specific duties, workflows, roles, and responsibilities of each party in conducting the activities described in Interrogatory Nos. 20(a) to (i). Include a breakdown of the duties, roles, and responsibilities of the Company and each party in communicating with Consumers concerning each of those activities.

handled. If the activity is escalated or otherwise transferred from one group to another, describe the circumstances under which the activity is escalated or transferred, which group receives it, and who makes the decision to escalate or transfer the activity.”

- Interrogatory No. 26: Block’s Interrogatory response provides no information in response to the question as to: subparts (i) to (v)⁷ for each of the following five circumstances: Reg E errors, account takeovers, id theft, fraud, and unauthorized transfers.
- Interrogatory No. 28: Interrogatory 28 seeks information about periodic statements for each type of account offered by Cash App. Block referenced documents in its response and also provided a narrative response, but did not answer the portion of the interrogatory as to “how a Consumer is notified that the periodic statement is available.”

To date, the Bureau has only received less than 11 months of data for Written Report Nos. 1 and 3. A complete response to those reports was due on February 14, 2022—i.e. nearly five months ago-- and should have included an additional 4 years and 8 months of data. The Bureau continues to try and work with Block regarding any burdens associated with production of Written Report Nos. 1, 2, and 3 and other data-related Interrogatory and Document Requests, but Block’s production thus far is woefully inadequate.

* * * * *

The Bureau expects Block to produce responses to all the outstanding documents and information without further delay. In particular, Block must produce complete responses to Document Request Nos. 5 and 6 of the first CID, and Interrogatory Nos. 24, 25, 27, 29, and 30, and Document Request Nos. 13, 14, 15, 16, and 18 of the second CID by August 11,

⁷ Interrogatory No. 26(i) to (v) requests:

“For each category identified in subparts (a) to (e) above, describe or identify:

- i. Whether and under what circumstances an investigation is conducted, including but not limited to any time limits imposed on the Consumer to report or provide notice of the issue;
- ii. If an investigation is conducted, the entities who conduct the investigation;
- iii. If an investigation is conducted, the time frame by which Square or the entities identified in (ii) begin and complete such investigation;
- iv. The department(s), team(s), or group(s), and the subgroups, teams, and/or queues within such departments, teams, and groups within the entity identified in subpart (ii) who conduct the investigation; and
- v. The employee(s) who manages the department(s), team(s), group(s), subgroup(s), and/or queue(s) identified in subpart (iv).”

2022; and complete responses to Interrogatory Nos. 17, 18, 21, 26, and 28, and Written Report Nos. 1 and 3 of the second CID by August 25, 2022. If Block fails to comply, the Bureau may enforce the CID in federal court.

Please do not hesitate to reach out if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Joyce Chen".

Joyce Chen

Senior Litigation Counsel | Office of Enforcement

Office: (202) 435-9215 | Mobile: (202) 702-4226

Joyce.chen@cfpb.gov