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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

CONSUMER FINANCIAL PROTECTION)
BUREAU,)
)
Petitioner,)
)
v.)
)
FINANCIAL ASSET MANAGEMENT,)
INC.,)
)
Respondent.)
_____)

Case No. 2:23-mc-382

**PETITION TO ENFORCE
CIVIL INVESTIGATIVE DEMAND
AND SUPPORTING MEMORANDUM**

The Consumer Financial Protection Bureau (Bureau) petitions this Court for an order directing Financial Asset Management, Inc. (FAMI) to show cause as to why it should not comply fully with the Bureau’s civil investigative demand (CID). The Bureau is an independent federal agency charged with regulating the offering and provision of consumer financial products and services, as well as protecting consumers from unfair, deceptive, and abusive acts and practices. 12 U.S.C. §§ 5491(a), 5511. To fulfill this purpose, the Consumer Financial Protection Act of 2010 (CFPA) authorizes the Bureau to issue a CID to any entity it has reason to believe may have information relevant to a violation of federal consumer financial law. 12 U.S.C. § 5562(c)(1). A summary proceeding is necessary so the Bureau may thoroughly conduct its investigation. As set forth below, the Bureau has authority to issue the CID to FAMI, and this Court has authority to enforce it. Accordingly, the Bureau respectfully asks this Court to enter an

order requiring FAMI to show cause as to why it should not comply with the CID and, thereafter, enter an order requiring full compliance.

JURISDICTION AND VENUE

The CFPA authorizes the Bureau to file a petition for an order to enforce the CID in the federal district court where the CID recipient “resides, is found, or transacts business.” 12 U.S.C. § 5562(e)(1); 12 C.F.R. § 1080.10(b)(1). This Court has subject-matter jurisdiction under § 1052(h)(1) of the CFPA. 12 U.S.C. § 5562(h)(1). And venue is proper because FAMI is located, resides, and does business in the District of Utah.

STATEMENT OF FACTS

FAMI is a corporation that provides short-term, small-dollar, and installment loans to consumers. On December 16, 2022, the Bureau issued to FAMI a CID via e-mail, as part of an investigation into possible violations of the CFPA. Assae-Bille Decl. ¶ 6; *see* 12 U.S.C. § 5562(c)(8). The CID required FAMI to respond to six interrogatories, four requests for written reports, and nineteen requests for documents by January 26, 2023. *Id.*, Ex. A.

The parties met and conferred by telephone on December 29, 2022 and again on January 6, 2023 and January 9, 2023 to discuss and attempt to resolve all issues regarding FAMI’s compliance with the CID. During these calls, FAMI indicated an intent to comply with the CID. *Id.* ¶ 7.

On January 18, 2023 and on January 20, 2023, FAMI requested in writing modifications to the CID, including an extension of the deadline to respond to the CID. *Id.* ¶ 8, Ex. B. On February 2, 2023, the Bureau extended the CID compliance date to May 15, 2023, with interim production dates of January 26, 2023; February 13, 2023; February 27, 2023; March 13, 2023; March 20, 2023; March 27, 2023; April 3, 2023; April 24, 2023; and May 8, 2023. *Id.* ¶ 9, Ex. C.

As relevant to this petition, FAMI’s responses to Requests for Documents Nos. 15 and 16 (seeking internal communications) were due on March 20, 2023; its responses to Requests for Documents Nos. 12 and 13 (seeking loan files and information about loans) and Request for Documents No. 17 (seeking external communications) were due on March 27, 2023; and its

complete response to Request for Documents No. 18 (seeking information about its underwriting “decision engine”) was due on April 3, 2023. FAMI’s responses to the four Requests for Written Reports (seeking borrower-level, loan-level, payment-level, and note- or memo-level data) were due in four scheduled tranches: March 13, 2023; April 3, 2023, April 24, 2023, and May 15, 2023. And FAMI’s response to Interrogatory No. 5 (seeking information about how loans were underwritten) was due on May 15, 2023. *Id.* ¶ 9, Ex. C.

On March 10, 2023, FAMI requested to further extend the deadlines to respond to the CID’s four Requests for Written Reports. FAMI represented in its request that it had “completed the initial data pull” and anticipated needing “an additional two to three weeks to review and, if necessary, revise the data pull.” *Id.* ¶ 10, Ex. D. On March 15, 2023, the Bureau granted this request by extending the compliance date to May 29, 2023, with interim production dates for responses to these Requests of March 20, 2023; March 27, 2023; April 3, 2023; April 24, 2023; May 15, 2023; and May 29, 2023. *Id.* ¶ 11, Ex. E. In its letter, FAMI did not request extensions to the deadlines for any pending Requests for Documents or Interrogatories. *See* Ex. D.

FAMI made its last production of new information in response to the CID on March 27, 2023. *Id.* ¶¶ 12, 18, Ex. F.¹ To date, FAMI has not produced any responses to any of the Requests for Written Reports; Requests for Documents Nos. 12, 13, 15, 16 and 17; or Interrogatory No. 5. It has also failed to completely respond to Request for Documents No. 18. *Id.* ¶ 19.

On March 31, 2023, FAMI counsel asked the Bureau to halt its investigation of FAMI until the U.S. Supreme Court decides the Bureau’s appeal in *Com. Fin. Servs Ass’n., et. al v. CFPB*, 51 F.4th 616 (5th Cir. 2022), *cert. granted*, No. 22-448 (U.S. Feb. 27, 2023) (hereinafter, *CFSA*) (in *CFSA*, the Fifth Circuit held that the Bureau’s funding mechanism violates the

¹ Although it is not relevant to this petition, for completeness the Bureau notes that FAMI also provided a replacement production for its response to Interrogatory No. 4 on May 12, 2023. Assae-Bille Decl. ¶ 17, Ex. H.

Appropriations Clause). *Id.* ¶ 15, Ex. G. This marked the first time that FAMI raised *CFSA* or the specific issue at the center of the *CFSA* appeal—*i.e.*, the Bureau’s funding mechanism. *Id.* ¶ 16.

On April 3, 2023, the Bureau informed FAMI counsel that it did not agree to halt its investigation of FAMI, and asked FAMI to confirm its intent to comply with the CID under the modified schedule. *Id.* ¶ 15, Ex. G. On April 3, 2023, FAMI counsel confirmed that FAMI would no longer comply with the modified CID. *Id.* ¶ 15, Ex. G.

Other than the cured response to Interrogatory No. 4, FAMI has not produced responses to the CID since March 27, 2023. *Id.* ¶ 18. This refusal to comply with the CID burdens, delays, and impedes the Bureau’s investigation of FAMI’s conduct in connection with the provision short-term, small-dollar, or installment loans to consumers.

ARGUMENT

The law is well-settled that administrative agencies are to be given wide latitude in exercising their power to investigate by subpoena, including investigating by CID. *Santa Fe Energy Prods. Co. v. McCutcheon*, 90 F.3d 409, 414 (10th Cir. 1996) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950)); *see also EEOC v. Fed. Express Corp.*, 558 F.3d 842, 851 n.3 (9th Cir. 2009); *see also, e.g., FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001); *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 470 (2d Cir. 1996); *CFPB v. Ctr. for Excellence in Higher Educ.*, No. 2:19-cv-00877-RJS-CMR, 2022 WL 2718245, at *2 (D. Utah Apr. 20, 2022), *report and recommendation adopted*, 2022 WL 4182301, at *2 (D. Utah Sept. 13, 2022) (unpublished); *Morgan Drexen, Inc. v. CFPB*, 979 F. Supp. 2d. 104, 107 (D.D.C. 2013) (noting that CIDs are a form of administrative subpoena); *FTC v. Mfrs. Hanover Consumer Servs., Inc.*, 543 F. Supp. 1071, 1073 (E.D. Pa. 1982) (“A CID is analogous to an investigative subpoena.”).

Judicial enforcement of a CID is appropriate when (1) the CID seeks information within the scope of the agency’s investigative authority; (2) the CID seeks information that is relevant to that investigation; (3) the CID is not too indefinite or burdensome; and (4) all administrative prerequisites have been met. *See SEC v. Blackfoot Bituminous, Inc.*, 622 F.2d 512, 514 (10th Cir.

1980); *see also, e.g., EEOC v. Univ. of N.M.*, 504 F.2d 1296, 1302 (10th Cir. 1974) (applying the standard enumerated in *Morton Salt Co.*, 338 U.S. at 632).

These four criteria are met here.

A. The CID seeks information within the scope of the Bureau’s investigative authority.

Congress clearly granted the Bureau the authority to investigate in this instance. *See Fed. Express Corp.*, 558 F.3d at 848 (this criterion is met “unless jurisdiction is plainly lacking”) (quotation marks and citation omitted); 851 n.3 (collecting cases). The CFPA empowers the Bureau to issue a CID whenever it has reason to believe that “any person . . . may have any information[] relevant to a violation” of “Federal consumer financial law.” 12 U.S.C. § 5562(c)(1). A Bureau CID may, among other things, require the recipient to respond to interrogatories, provide written reports, produce documents, and submit tangible things. *Id.* Case law also recognizes that “agencies should remain free to determine, in the first instance, the scope of their own jurisdiction when issuing investigative subpoenas.” *Ken Roberts Co.*, 276 F.3d at 586; *see also, e.g., FTC v. Complete Merch. Sols., LLC*, No. 2:19-cv-00996-HCN-EJF, 2020 WL 2059847, at *4 (D. Utah Apr. 28, 2020) (unpublished) (finding that the FTC did not “plainly lack jurisdiction or authority to seek the information and documents sought” and that “the plain [statutory] language . . . support[ed] the FTC’s position that it ha[d] jurisdiction” over the respondent).

The violations potentially at issue here are plainly within the scope of the Bureau’s authority. As required by the CFPA, 12 U.S.C. § 1052(c)(2), the CID contained a Notification of Purpose informing FAMI that the CID was issued as part of an ongoing investigation to determine whether:

short-term or small-dollar lenders or associated persons, in connection with providing short-term, small-dollar, or installment loans, have: (1) improperly induced borrowers to take out, renew, or refinance loan products that harmed them; (2) misrepresented the full, long-term costs of serially rolling over, renewing or refinancing their loan products; or (3) misrepresented that their loans are short-term obligations despite being structured and serviced in a manner that renders them longer-term obligations for many borrowers, all in a manner that is unfair, deceptive, or abusive in violation of §§ 1031

and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536.

Assae-Bille Decl. ¶ 6, Ex. A (CID Notification of Purpose). Short-term, small-dollar, and installment loans offered and provided by FAMI, and the subsequent collection of them, are “consumer financial product[s] or service[s]” under the CFPA. 12 U.S.C. § 5481(5), (15)(A)(i), (15)(A)(x). FAMI is a “covered person” under the CFPA because it has engaged in offering and providing consumer financial products or services. 12 U.S.C. § 5481(6). As a result, if FAMI has improperly induced consumers to borrow these loan products, misrepresented their costs, or mischaracterized them as short-term obligations, then the Bureau could find that FAMI engaged in unfair, deceptive, or abusive acts or practices under the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B). The Bureau’s investigation thus falls squarely within its authority to investigate violations of federal consumer financial law. 12 U.S.C. §§ 5531(a), 5562(c).

B. The CID seeks information relevant to the Bureau’s investigation.

Relevance is interpreted broadly in the context of enforcing administrative subpoenas. *See FTC v. Texaco, Inc.*, 555 F.2d 862, 871-72 (D.C. Cir. 1977) (en banc). Courts traditionally defer to the investigating agency to determine relevance in the context of an administrative subpoena, which must be enforced if the information sought could be pertinent to a legitimate agency inquiry. *See Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 507-09 (1943); *see also, e.g., Morton Salt Co.*, 338 U.S. at 652. An agency request is relevant as long as it is “relevant to the investigation—the boundary of which may be defined quite generally” *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992); *see also Enterra Energy, LLC v. SEC*, No. 08-mc-00011, 2008 WL 802999, at *3 (N.D. Okla. March 21, 2008) (unpublished) (explaining that so long as the requested information “‘touches a matter under investigation,’ it will survive a relevancy challenge”) (quoting *EEOC v. Elrod*, 674 F.2d 601, 613 (7th Cir. 1982)). In addition, an agency like the Bureau “has a power of inquisition . . . [and] can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.” *Morton Salt Co.*, 338 U.S. at 642-43.

Here, the Bureau's CID seeks information about FAMI's business practices with respect to its provision of and collection on short-term, small-dollar, and installment loans, a consumer financial product or service. Assae-Bille Decl. ¶¶ 4, 6, Ex. A. The information sought in the CID is plainly relevant to a legitimate Bureau inquiry.

C. The CID requests at issue are not too indefinite or burdensome.

The CID requests that FAMI has refused to respond to, or to complete its response to, are not too indefinite or burdensome. As one court in this district has previously explained, “[a] demand is not too indefinite when all of the categories of information are sufficiently specific to enable the respondent to understand what information the agency seeks,” and that “[a] CID satisfies this element when it clearly identifies the information and documents sought.” *Ctr. for Excellence in Higher Educ.*, 2022 WL 2718245, at *4 (internal punctuation marks and citations omitted). “[T]he subpoena must not be so broad that compliance with its terms is unduly burdensome.” *Id.* (citation omitted). However, “[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency’s legitimate inquiry and the public interest.” *Texaco*, 555 F.2d at 882. Thus, “courts have refused to modify investigative subpoenas unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business.” *Id.*

Here, the CID seeks information regarding FAMI's operations, marketing practices, performance metrics, communications with consumers, and lending activities. This is specific enough for FAMI to understand the information the Bureau seeks. Indeed, FAMI has already responded to nearly all the CID Interrogatories and several of the Requests for Documents. Since the Bureau issued the CID in December 2022, FAMI has provided the Bureau multiple updates on its progress with respect to the remaining requests, including to the Requests for Written Reports, further indicating that FAMI understands what information the CID seeks and is able to respond. Assae-Bille Decl. ¶¶ 10, 12-14, Exs. D, F.

The Bureau has made reasonable efforts to limit FAMI's compliance burden, consistent with the needs of the investigation. For example, in its January 18, 2023 letter, FAMI

represented that responding to Request for Documents No. 12 (seeking complete loan files) and Request for Documents No. 13 (seeking information related to the complete loan files) would be burdensome because it required the manual collection and processing of hardcopy documents. *Id.* ¶ 8, Ex. B. On February 2, 2023, the Bureau accordingly narrowed the request to exclude hardcopy documents and any title loans, with the understanding that FAMI thus would be producing digital loan-level information, including information that it was “already [collecting] for production in response to the Bureau’s Requests for Written Reports.” *Id.* ¶ 9, Ex. C. And when FAMI sought, in a March 10, 2023 letter, a second extension of time to respond to the Requests for Written Reports, the Bureau promptly granted the precise dates requested. *Id.* ¶¶ 10-11, Exs. D-E.

FAMI has confirmed its ability to respond to all but two of the outstanding requests. In its March 10, 2023 request for an extension of the modified CID’s deadlines, FAMI represented that it made significant progress in gathering information responsive to the Requests for Written Reports (*i.e.*, noting that FAMI had pulled the responsive data as of March 10, 2023, and anticipated needing “an additional two to three weeks to review and, if necessary, revise the data pull”). Assae-Bille Decl. ¶ 10, Ex. D. In its March 20, 2023 production letter, FAMI represented that it was “continuing to work to complete its production in response to Request for Documents [Nos.] 15 [and] 16,” and noted that it anticipated providing responses to Request for Documents No. 16 “relatively soon.” *Id.* ¶ 13, Ex. F. And on March 27, 2023, FAMI represented that it was “continuing to work on” Request for Documents No. 17 and anticipated that it would begin a rolling production of responses within two weeks. *Id.* ¶ 14, Ex. F.

The only two requests with which FAMI has represented it cannot comply are the loan file requests, Requests for Documents Nos. 12 and 13. On March 27, 2023, FAMI informed the Bureau that those requests were too burdensome and sought a modification that would allow for sampling of loan files. *Id.* ¶ 14, Ex. F. But the Bureau had already taken steps to address the burdens raised by FAMI (*e.g.*, by excluding title loans and hardcopy documents from the scope

of the request). *See id.* ¶ 9, Ex. C. In any event, FAMI indicated its intent to stop complying with the CID before the Bureau could address FAMI’s modification request. *See id.* ¶ 15, Ex. G.

Given the limited scope of these CID requests, the significant progress that FAMI has represented having made on responding to these requests, and the fact that the Bureau has made reasonable efforts to ease FAMI’s compliance burden, the CID is not unduly burdensome.

D. All administrative prerequisites are met.

The Bureau also followed all the required administrative steps to issue a civil investigative demand. 12 U.S.C. § 5562(c); 12 C.F.R. pt. 1080. On December 16, 2022, a Deputy Assistant Director of the Office of Enforcement issued the CID. The CID was then served on FAMI counsel via e-mail, with consent from FAMI. Assae-Bille Decl. ¶ 6, Ex. A. As required by the CFPA, 12 U.S.C. § 5562(c)(2), the CID also contained a Notification of Purpose apprising FAMI of the nature of the conduct under investigation and applicable provisions of law. Assae-Bille Decl. ¶ 6, Ex. A.

E. Summary enforcement is proper.

“Questions concerning agency subpoenas should be promptly determined so that the subpoenas, if valid, may be speedily enforced.” *SEC v. First Sec. Bank of Utah, N.A.*, 447 F.2d 166, 168 (10th Cir. 1971). Thus, “while the court’s function is ‘neither minor nor ministerial,’ the scope of issues which may be litigated in an enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity.” *Texaco*, 555 F.2d at 872 (internal quotations omitted); *see also EEOC v. Dillon Companies, Inc.*, 310 F.3d 1271, 1277 (10th Cir. 2002) (the 10th Circuit will not “encourage or allow . . . a summary subpoena-enforcement proceeding [to turn] into a minitrial”). This Court thus has authority to resolve this enforcement proceeding summarily.

CONCLUSION

Because the Bureau has shown that its CID is within the Bureau’s investigative authority, seeks relevant information, is not too indefinite or burdensome, and was issued pursuant to all

administrative prerequisites, the Bureau has demonstrated that enforcement of the CID is appropriate.

Therefore, the Bureau respectfully ask that this Court:

1. order FAMI to show cause, in writing, why it should not comply with the Bureau CID issued on December 16, 2022, as modified on February 2, 2023, and March 15, 2023;
2. order FAMI to comply fully with the CID within 14 days;
3. award the Bureau the costs it incurred in maintaining this action; and
4. grant such other relief as this Court deems just and proper.

Dated: June 12, 2023

Respectfully submitted,

ERIC HALPERIN
Enforcement Director

DEBORAH MORRIS
Deputy Enforcement Director

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CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating 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
(c) Attorneys (Firm Name, Address, and Telephone Number)
(see attachment)

DEFENDANTS
Financial Asset Management, Inc.
County of Residence of First Listed Defendant Utah
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
(see attachment)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, 463 Alien Detainee, 625 Drug Related Seizure, 710 Fair Labor Standards Act, 820 Copyrights, 861 HIA (1395f), 870 Taxes (U.S. Plaintiff or Defendant), 375 False Claims Act, etc.

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. 5562(e)(1)
Brief description of cause:
Petition to Enforce Civil Investigative Demand

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ N/A
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE DOCKET NUMBER

DATE 06/12/2023
SIGNATURE OF ATTORNEY OF RECORD /s/ Elisabeth Assae-Bille
Digitally signed by /s/ Elisabeth Assae-Bille Date: 2023.06.12 10:27:54 -0400'

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

CONSUMER FINANCIAL PROTECTION)
BUREAU,)
)
Petitioner,)
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v.)
)
FINANCIAL ASSET MANAGEMENT,)
INC.,)
)
Respondent.)
_____)

Case No. 2:23-mc-382

**DECLARATION OF
E. VANESSA ASSAE-BILLE**

I, E. Vanessa Assae-Bille, under 28 U.S.C. § 1746, declare as follows:

1. I am a Senior Litigation Counsel at the Consumer Financial Protection Bureau (Bureau), Office of Enforcement, and a counsel on this matter.

2. I am over 18 years of age and authorized to execute this declaration verifying the facts set forth in the Bureau’s Petition to Enforce Civil Investigative Demand and Supporting Memorandum.

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

4. I am an attorney on an ongoing Bureau investigation to determine whether short-term or small-dollar lenders or associated persons, in connection with providing short-term, small-dollar, or installment loans, have: (1) improperly induced borrowers to take out, renew, or

refinance loan products that harmed them; (2) misrepresented the full, long-term costs of serially rolling over, renewing or refinancing their loan products; or (3) misrepresented that their loans are short-term obligations despite being structured and serviced in a manner that renders them longer-term obligations for many borrowers, all in a manner that is unfair, deceptive, or abusive in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536.

5. Financial Asset Management, Inc. (FAMI) is a corporation that provides short-term, small-dollar, and installment loans to consumers.

6. On December 16, 2022, a Deputy Assistant Director of the Office of Enforcement issued a civil investigative demand (CID) to FAMI that was served on FAMI's counsel via e-mail, with consent from FAMI. As required by the CFPA, the CID contained a "Notification of Purpose" advising FAMI of the purpose of the Bureau's investigation. The CID required FAMI to produce materials that may be relevant to the purpose of the Bureau's investigation by January 26, 2023. Attached as Exhibit A to this declaration are true and correct copies of the e-mail from FAMI counsel Sarah Reise to Bureau counsel Benjamin Clark, consenting to electronic service and copying me, dated December 16, 2022, and of the CID issued to FAMI.

7. On December 29, 2022, January 6, 2023, and January 9, 2023, FAMI counsel Sarah Reise and Jason Cover met and conferred with me to discuss FAMI's compliance with the CID. During these three calls, FAMI indicated an intent to comply with the CID.

8. By letter dated January 18, 2023, and by e-mail dated January 20, 2023, FAMI counsel Sarah Reise requested modifications to the CID. Attached as Exhibit B to this declaration is a true and correct copy of FAMI's requests for modifications to the CID, dated January 18, 2023 and January 20, 2023.

9. By letter dated February 2, 2023, the Bureau modified the CID to narrow certain requests and provide FAMI extensions of time to respond to the CID, such that responses relevant to this Petition to Enforce Civil Investigative Demand and Supporting Memorandum were due as follows:

- March 13, 2023: Requests for Written Report Nos. 1 – 4 (first tranche)
- March 20, 2023: Requests for Documents Nos. 15 and 16
- March 27, 2023: Requests for Documents Nos. 12, 13 and 17
- April 3, 2023: Request for Documents 18 (third tranche);
Requests for Written Report Nos. 1 – 4 (second tranche)
- April 24, 2023: Requests for Written Report Nos. 1 – 4 (third tranche)
- May 15, 2023: Requests for Written Report Nos. 1 – 4 (fourth tranche)
Interrogatory No. 5

Attached as Exhibit C to this declaration is a true and correct copy of the Bureau’s letter modifying the CID, dated February 2, 2023.

10. By letter dated March 10, 2023, FAMI requested an extension of time to respond to Requests for Written Reports Nos. 1, 2, 3, and 4. Representing that it had “completed the initial data pull” and anticipated needing “an additional two to three weeks to review and, if necessary, revise the data pull,” FAMI sought permission to produce its responses in four tranches, on the following schedule:

- April 3, 2023: Requests for Written Report Nos. 1 – 4 (first tranche)
- April 24, 2023: Requests for Written Report Nos. 1 – 4 (second tranche)
- May 15, 2023: Requests for Written Report Nos. 1 – 4 (third tranche)
- May 29, 2023: Requests for Written Report Nos. 1 – 4 (fourth tranche)

Attached as Exhibit D to this declaration is a true and correct copy of FAMI’s request for modifications to the CID, dated March 10, 2023.

11. By letter dated March 15, 2023, the Bureau extended the due dates for Requests for Written Reports Nos. 1, 2, 3, and 4, according to the schedule proposed by FAMI in its letter dated March 10, 2023. Attached as Exhibit E to this declaration is a true and correct copy of the Bureau’s letter modifying the CID, dated March 15, 2023.

12. FAMI produced information to the Bureau on January 26, 2023; February 13, 2023; February 27, 2023; March 13, 2023; March 20, 2023; and March 27, 2023. Each

production included a cover letter. Attached as Exhibit F to this declaration are true and correct copies of the cover letters that FAMI sent with its responses to the CID, dated January 26, 2023; February 13, 2023; February 27, 2023; March 13, 2023; March 20, 2023; and March 27, 2023.

13. On March 20, 2023, FAMI made a production that failed to include responses to Request for Documents Nos. 15 and 16. In the accompanying cover letter, FAMI represented that it was “continuing to work to complete its production in response to Request for Documents [Nos.] 15 [and] 16,” and noted that it anticipated providing responses to Request for Documents No. 16 “relatively soon.” *See* Exhibit F.

14. On March 27, 2023, FAMI made a production that failed to include responses to Request for Documents Nos. 12, 13, and 17. In the accompanying cover letter, FAMI represented that it cannot comply with Requests for Documents Nos. 12 and 13 on the basis that they are too burdensome, and sought a modification that would allow for sampling of loan files. *See* Exhibit F. FAMI also represented that it was “continuing to work on” Request for Documents No. 17 and anticipated that it would begin a rolling production of responses within two weeks. *See* Exhibit F.

15. By e-mail dated March 31, 2023, FAMI counsel Sarah Reise asked the Bureau to halt its investigation of FAMI until the U.S. Supreme Court decides the Bureau’s appeal in *Com. Fin. Servs Ass’n., et. al v. CFPB*, 51 F.4th 616 (5th Cir. 2022), *cert. granted*, No. 22-448 (U.S. Feb. 27, 2023) (hereinafter, *CFSA*). On April 3, 2023, I informed FAMI counsel that the Bureau did not agree to halt its investigation of FAMI, and asked FAMI to confirm its intent to comply with the CID under the modified schedule. On April 3, 2023, FAMI counsel confirmed that FAMI would no longer comply with the modified CID. Attached as Exhibit G to this declaration is a true and correct copy of the e-mail exchange between FAMI counsel Sarah Reise and me, dated March 31, 2023 and April 3, 2023.

16. Before March 31, 2023, FAMI had not raised *CFSA* or the specific issue at the center of the *CFSA* appeal—*i.e.*, the Bureau’s funding mechanism—with Bureau counsel.

17. By e-mail dated May 9, 2023, copying me, Bureau counsel Benjamin Clark alerted FAMI that the narrative FAMI provided in response to Interrogatory No. 4, which it timely produced on February 13, 2023 appeared to be a draft answer. On May 12, 2023, FAMI counsel Sarah Reise requested via e-mail, again copying me, that the Bureau destroy its previous response to Interrogatory No. 4. FAMI counsel also attached to her e-mail a reproduction of FAMI's narrative response to Interrogatory No. 4. Attached as Exhibit H to this declaration are true and correct copies of the e-mail exchange between FAMI counsel Sarah Reise and Bureau counsel Benjamin Clark, regarding Interrogatory No. 4, dated May 9, 2023 and May 12, 2023.

18. Other than the corrected response to Interrogatory No. 4 that FAMI reproduced to the Bureau on May 9, 2023, FAMI has not responded to the CID since March 27, 2023.

19. To date, FAMI had failed to produce any responses to Requests for Written Reports Nos. 1, 2, 3, and 4; Requests for Documents Nos. 12, 13, 15, 16 and 17; and Interrogatory No. 5. FAMI also has failed to completely respond to Request for Documents No. 18.

20. FAMI is therefore out of compliance with the modified CID.

21. The Consumer Financial Protection Act and the Bureau's Rules Relating to Investigations provide CID recipients with an administrative procedure for petitioning the Bureau's Director to set aside or modify the CID. This procedure permits the CID recipient to file such a petition within 20 calendar days of service of the CID, or if the return date is less than 20 calendar days after service, prior to the CID's return date. 12 U.S.C. § 5562(f), 12 C.F.R. § 1080.6(e). FAMI received notice of these administrative procedures in the CID, as part of the CID's instructions and the Rules of Investigation attached to the CID. *See* Ex. A.

22. FAMI did not file a petition with the Bureau to modify or set aside the CID, nor did it request an extension of time to file a petition to modify or set aside the CID.

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

Executed on: June 12, 2023

/s/ E. Vanessa Assae-Bille
E. VANESSA ASSAE-BILLE

Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Attorney for Plaintiff
Consumer Financial Protection Bureau

Exhibit A

Civil Investigative Demand to Financial Asset Management, Inc.
(December 16, 2022)
and
E-mail from Sarah Reise to Benjamin Clark
(December 16, 2022)



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

December 16, 2022

Via Email

Financial Asset Management, Inc.
c/o Sarah T. Reise
Jason Miller Cover
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216

Re: Civil Investigative Demand served on Financial Asset Management, Inc. on December 16, 2022

Dear Ms. Reise and Mr. Cover:

Attached is a Civil Investigative Demand (CID) issued to Financial Asset Management, Inc. by the Consumer Financial Protection Bureau (Bureau) under 12 C.F.R. § 1080.6 and § 1052(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5562. The Bureau is currently seeking information for a non-public investigation, the purpose of which is explained on the attached CID cover sheet. Please note:

1. **Contact Bureau counsel, E. Vanessa Assae-Bille at (202) 435-7688 or elisabeth.assae-bille@cfpb.gov, as soon as possible to schedule an initial meeting that is required to be held within 10 calendar days of receipt of this CID.** During this meeting, you must discuss and attempt to resolve all issues regarding the CID, including timely compliance. The rules require that you make available at this meeting personnel with the knowledge necessary to resolve issues; such individuals may include, for example, information-technology professionals. Please be prepared to discuss your planned compliance schedule, including any proposed changes that might reduce your cost or burden while still giving the Bureau the information it needs.
2. **You must retain, and suspend any procedures that may result in the destruction of, documents, information, or tangible things that are in any way relevant to the investigation as described in the CID's Notification of Purpose.** You are required to prevent the destruction of relevant material irrespective of whether you believe such material is protected from future disclosure or discovery by privilege or otherwise. *See* 18 U.S.C. §§ 1505, 1519.

Please contact me as soon as possible to set up an initial meeting, which must be held within 10 calendar days of receipt of this CID. We appreciate your cooperation.

Sincerely,

/s/ Benjamin Clark

Benjamin Clark
Enforcement Attorney

Attachment



United States of America
Consumer Financial Protection Bureau

Civil Investigative Demand

To Financial Asset Management, Inc.
c/o Sarah T. Reise
Jason Miller Cover
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216

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 01/26/2023

Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date 01/26/2023

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

The purpose of this investigation is to determine whether short-term or small-dollar lenders or associated persons, in connection with providing short-term, small-dollar, or installment loans, have: (1) improperly induced borrowers to take out, renew, or refinance loan products that harmed them; (2) misrepresented the full, long-term costs of serially rolling over, renewing or refinancing their loan products; or (3) misrepresented that their loans are short-term obligations despite being structured and serviced in a manner that renders them longer-term obligations for many borrowers, all in a manner that is unfair, deceptive, or abusive in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

Custodian / Deputy Custodian

Deborah Morris / John Marlow
1700 G St NW
Washington DC, 20552

Bureau Counsel

Benjamin Clark / Vanessa Assae-Bille
1700 G St NW
Washington DC, 20552

Date Issued

12/16/2022

Signature

Deborah Morris Digitally signed by Deborah Morris
Date: 2022.12.16 12:25:12 -05'00'

Name / Title

Deborah Morris / Deputy Director, Office of Enforcement

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
PRODUCTION OF DOCUMENTS, WRITTEN REPORTS,
AND ANSWERS TO INTERROGATORIES**

I. Requests.

Interrogatories

1. For every former employee of the Company who was terminated or resigned during the Applicable Period, identify the following:
 - a. employee name;
 - b. position held as of date of departure;
 - c. if store employee, location of the store or stores where employee worked;
 - d. if a district manager, the name of district or districts where employee worked;
 - e. whether the departure was voluntary or involuntary;
 - f. reason for termination or resignation;
 - g. hire date;
 - h. departure date;
 - i. salary as of date of departure;
 - j. last-known telephone number(s);
 - k. last-known home address; and
 - l. last-known email address(es).

2. For each year during the Applicable Period, identify the top two and bottom two performing stores in each district by:
 - a. overall revenue;
 - b. revenue generated in connection with Deferred Deposit Loans;
 - c. overall default rate;

- d. default rate for Deferred Deposit Loans;
 - e. total number of transactions;
 - f. customer service scores; and
 - g. compliance scores.
3. Identify all telephone call recordings that the Company's compliance team has reviewed for audit purposes, and provide all associated elements as stored in Your or Your providers' databases (e.g., Customer Relations Management systems and call recording systems) at a call level, including:
 - a. account number associated with the call;
 - b. unique identifier for the call;
 - c. file extension for call recording, such as .wav file or similar;
 - d. date and time of call;
 - e. telephone number called by the Company or used to call the Company;
 - f. duration of call;
 - g. unique operator ID associated with call;
 - h. any call-type codes, disposition codes, resolution codes, product codes, or similar associated with the call (use separate columns);
 - i. notes or comments associated with the call; and
 - j. any other data unique to the call.
4. For each marketing campaign for Deferred Deposit Loans in which the Company sent emails to its existing customers, describe the criteria employed by the marketing division to develop the list of customers to whom the Company sent emails.
5. Provide the loan ID, as identified in response to Request for Written Report No. 2.a, for each loan in which the Company's decision engine treated a customer's repayment of a loan that was at least fourteen days delinquent as a positive factor in underwriting.

6. Describe all types of circumstances in which Store employees initiate post-origination communications with borrowers regarding upcoming payment due dates on Deferred Deposit Loans, Installment Loans, or Signature Loans.

Requests for Written Reports

1. For every loan that You have originated during the applicable period, except for title loans, identify in a quoted, tab-delimited .csv file the following fields related to borrower-level data:
 - a. borrower's name;
 - b. street address of borrower's residence;
 - c. city of borrower's residence;
 - d. state of borrower's residence;
 - e. zip code of borrower's residence;
 - f. borrower's email address;
 - g. borrower's phone number #1;
 - h. borrower's phone number #2;
 - i. borrower's phone number #3;
 - j. borrower's phone number #4; and
 - k. borrower's unique identifier.
2. For every loan that You have originated since May 13, 2014, except for title loans, identify in a quoted, tab-delimited .csv file the following fields related to loan-level data, as applicable:
 - a. loan ID as used in Your internal recordkeeping (or, if no such loan ID exists, a unique identifier generated for the purpose of this report);
 - b. borrower's unique identifier as identified in response to Request for Written No. 1.k.;

- c. unique identifier for branch in which loan was originated;
- d. zip code in which loan was originated;
- e. loan origination date;
- f. loan type;
- g. loan principal, as identified on the truth-in-lending disclosure;
- h. loan APR, as identified on the truth-in-lending disclosure;
- i. total of finance charge, as identified on the truth-in-lending disclosure;
- j. interest included in the finance charge;
- k. any other charge/fee included in the finance charge;
- l. any other amounts payable;
- m. total amount financed, as identified on truth-in-lending disclosure;
- n. total of payments amount, as identified on the truth-in-lending disclosure;
- o. dollar amount given to borrower directly;
- p. dollar amount of all payments applied in connection with the loan;
- q. contractual term of the loan;
- r. late fees charged;
- s. date late fees charged;
- t. late fees paid;
- u. number of payments scheduled on the loan at origination;
- v. original date the loan was scheduled to be paid off;
- w. whether the loan was extended;
- x. date loan first extended;

- y. the number of times the loan was extended;
 - z. the total length of time (in days) the loan was extended;
 - aa. the date the loan was scheduled to be paid off after its final extension;
 - bb. whether the loan was refinanced;
 - cc. the date the loan was refinanced;
 - dd. whether the loan was subject to an Extended Payment Plan;
 - ee. the specific Extended Payment Plan to which the loan was subject;
 - ff. the date the loan was placed on an Extended Payment Plan;
 - gg. the length (in days) of the Extended Payment Plan;
 - hh. the date the loan was scheduled to be paid off under the Extended Payment Plan;
 - ii. the number of payments scheduled under the Extended Payment Plan;
 - jj. the number of payments made under the Extended Payment Plan;
 - kk. the amount subject to the Extended Payment Plan;
 - ll. the amount paid under the Extended Payment Plan;
 - mm. the date on which loan was paid off;
 - nn. the date on which loan was charged off;
 - oo. at date of payoff/charge-off, amount of principal paid;
 - pp. at date of payoff/charge-off, amount of interest paid;
 - qq. at date of payoff/charge-off, amount of fees paid; and
 - rr. whether the loan was paid off through refinancing.
3. For every loan You have originated since May 13, 2014, except for title loans, identify in a quoted, tab-delimited .csv file, the following fields related to payment-level data:

- a. unique payment ID;
 - b. loan ID, as identified in response to Request for Written Report No. 2.a.;
 - c. date the Company received the payment;
 - d. date the Company applied the payment;
 - e. payment due date;
 - f. amount of payment;
 - g. whether the payment is a partial payment (Y/N);
 - h. amount of payment allocated to payment of fees;
 - i. amount of payment allocated to payment of interest;
 - j. amount of payment allocated to payment of principal;
 - k. fee balance of the loan before the payment was applied;
 - l. fee balance of the loan after the payment was applied;
 - m. interest balance of the loan before the payment was applied;
 - n. interest balance of the loan after the payment was applied;
 - o. principal balance of the loan before the payment was applied; and
 - p. principal balance of the loan after the payment was applied.
4. For every loan You have originated since May 13, 2014, except for title loans, identify in a quoted, tab-delimited .csv file, the following fields related to note-/memo-level data (e.g. collection notes):
- a. borrower's unique identifier as identified in response to Request for Written Report No. 1.k.;
 - b. loan ID, as identified in response to Request for Written Report No. 2.a.;

- c. unique identifier for the note or memo;
- d. date of the note or memo; and
- e. the full text of the note or memo, including a data dictionary for any shorthand notations reflected in the note or memo.

Requests for Documents

1. All documents related to job performance in the personnel files of employees identified in Your answer to Interrogatory No. 1 who were terminated for performance-related reasons.
2. All documents memorializing the results of the Company's audits of stores, and documents reflecting the auditor's work product upon which any conclusions were based.
3. All documents regarding store visits conducted by district managers and the operations manager at stores identified in Your answer to Interrogatory No. 2.
4. All responses to customer satisfaction surveys relating to all loans, except title loans, originated at Stores identified in Your answer to Interrogatory No. 2.
5. All communications between the Company's auditor(s) and its board of directors or compliance officer(s) regarding audits of stores.
6. All documents—including district managers' communications with store managers and district managers' communications with the operations manager—regarding the setting and approval of stores' quarterly goals.
7. All documents—including district managers' communications with store managers and district managers' communications with the operations manager—regarding monthly meetings between district managers and store managers.
8. All documents memorializing audits or reviews by the Company's compliance function of the Company's collections work.
9. Agendas, recorded minutes, presentations, and other written documents shared by or with the Company's board of directors before or after meetings of the Company's board of directors.
10. Documents sufficient to show all template versions of text and email communications used by the Company to notify consumers of upcoming payments

due on Deferred Deposit Loans, Installment Loans, and Signature Loans.

11. All documents related to the approval of loans outside of established underwriting parameters by store managers, district managers, and the operations manager for the stores identified in Your answer to Interrogatory No. 2.
12. The complete loan files, including payment receipts, payment histories, and account notes, for the loans originated at the stores identified in Your answer to Interrogatory No. 2.
13. For each loan file produced in response to Document Request No. 12, a loan or consumer-specific report providing the positive factors, negative factors, and neutral factors that contributed to the Company's underwriting decision.
14. All documents related to the Company's incentive or bonus programs for collections employees, store-level employees, district managers, and the operations manager.
15. All communications between district managers and store managers or stores related to the underwriting, origination, servicing, renewal, refinancing, or collection of Your Deferred Deposit Loans, Installment Loans, and Signature Loans.
16. All communications distributing weekly and monthly reporting of portfolio-wide performance metrics and district-specific performance metrics, and to the extent they are not attached to the email communications, weekly and monthly reporting of portfolio-wide performance metrics and district-specific performance metrics.
17. All communications between consumers and the Company's Store employees or customer service representatives regarding Your Deferred Deposit Loans, Installment Loans, and Signature Loans originated at Stores identified in Your answer to Interrogatory No. 2.
18. All documents related to the development, implementation, inputs, use, and analysis of any credit-scoring and underwriting models.
19. For each telephone call You Identified in Your answer to Interrogatory 3, the audio recording and all associated metadata from call systems and related systems.

II. Definitions.

- A. "And" and "or" must be construed both conjunctively and disjunctively.
- B. "Any" includes "all," and "all" includes "any."
- C. "CFPB" or "Bureau" means the Consumer Financial Protection Bureau.

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

E. “**Company**” or “**you**” or “**your**” means Financial Asset Management, Inc.; Tosh, Inc.; BMG Colorado, Inc.; Any kind Check Cashing, LC; Liberty Check Exchange, Inc.; VCC Credit Services; CCI Financial, Inc.; CCO Financial, LLC; CCO Alaska, Inc.; CCO Idaho, Inc.; CCO Kansas, Inc.; CCO North Dakota, Inc.; CCO Utah, Inc.; CCO Washington, Inc.; and CCO Wyoming, Inc., collectively or individually also d/b/a, among others, Check City, Check City Check Cashing, Check City Financial, Check City Title Loans, checkcity.com, and Loan City, and any successor in interest.

F. “**Deferred Deposit Loan**” means any loan offered by the Company that, at origination, is scheduled to be repaid in a single installment and for which a consumer must provide either a post-dated check or sign an ACH agreement.

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

H. “**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.

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

J. “**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.

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

L. “**Extended Payment Plan**” means any plan offered by the Company in the ordinary course of business that allows consumers to repay Deferred Deposit Loans through multiple installments.

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. **“Installment Loan”** means any loan offered by the Company that, at origination, is scheduled to be repaid in multiple installments.

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

P. **“Signature Loan”** means any loan offered by the Company that, at origination, is scheduled to be repaid in a single installment and is made to a consumer without a deposit account.

III. Instructions.

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

B. **Meet and Confer:** As stated in 12 C.F.R. § 1080.6(c), you must contact Enforcement Attorney **E. Vanessa Assae-Bille** at **(202) 435-7688** as soon as possible to schedule a meeting (telephonic or in person) to discuss your response to the CID. The meeting must be held within **10** calendar days after you receive this CID or before the deadline for filing a petition to modify or set aside the CID, whichever is earlier.

C. **Applicable Period for Responsive Materials:** Unless otherwise directed, the applicable period for the request is from **July 1, 2017 until the date of this CID**.

D. **Privilege Claims:** If any material responsive to this CID is withheld on the grounds of privilege, you must make the privilege claim no later than the date set for the production of the material. As stated in 12 C.F.R. § 1080.8(a), any such claim must include a schedule of the documents, information, or tangible things withheld that states, for each:

1. its type, specific subject matter, and date;

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

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

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

F. Modification Requests: If you believe that the scope of the search or response required by this CID can be narrowed consistent with the Bureau's need for documents or information, you are encouraged to discuss such possible modifications, including modifications of the requirements of these instructions, with Enforcement Attorney **E. Vanessa Assae-Bille** at **(202) 435-7688**. Modifications must be agreed to in writing by the Enforcement Director or a Deputy Enforcement Director. 12 C.F.R. § 1080.6(d).

G. Petition for Order Modifying or Setting Aside Demand: Under 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), you may petition the Bureau for an order modifying or setting aside this CID. To file a petition, you must send it by e-mail to the Bureau's Executive Secretary at ExecSec@cfpb.gov, copying the Enforcement Director at Enforcement@cfpb.gov, within 20 calendar days of service of the CID or, if the return date is less than 20 calendar days after service, before the return date. The subject line of the e-mail must say "Petition to Modify or Set Aside Civil Investigative Demand." If a request for confidential treatment is filed, you must file a redacted public petition in addition to the unredacted petition. All requests for confidential treatment must be supported by a showing of good cause in light of applicable statutes, rules, Bureau orders, court orders, or other relevant authority.

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

I. **Scope of Search:** 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 Enforcement Attorney **E. Vanessa Assae-Bille** for the mailing or internet-protocol address.

Please provide any tracking numbers by e-mail or telephone to Enforcement Attorney **E. Vanessa Assae-Bille** at elisabeth.assae-bille@cfpb.gov.

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 **E. Vanessa Assae-Bille** at **(202) 435-7688** 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. All references to “**year**” or “**annual**” refer to the calendar year. Where information is requested “for each year,” provide it separately for each year; where yearly data is not available, provide responsive information for the calendar year to date, unless otherwise instructed.

Q. **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 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 Financial Asset Management, 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).

Deborah Morris Digitally signed by Deborah Morris
Date: 2022.12.16 12:25:32 -05'00'

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

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

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

1. I am employed by _____ as _____ and by reason of my position am authorized and qualified to certify the authenticity of the records produced by Financial Asset Management, Inc. and submitted with this Declaration.
2. The documents produced and submitted with this Declaration by Financial Asset Management, Inc. 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

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 Financial Asset Management, Inc.
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated December 16, 2022 that are within the possession, custody, or control of Financial Asset Management, 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. Financial Asset Management, 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 Financial Asset Management, 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 December 16, 2022 are true and complete.

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

_____.

Signature

Civil Investigative Demand Document Submission Standards

BCFP Office of Enforcement



CID Document Submission Standards

This 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.

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A. Transmittal Instructions

- 1) A cover letter should be included with each production. The following information should be included in the letter:
 - a) Name of the party making the production and the date of the CID to which the submission is responsive.
 - b) List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production (refer to the media by the unique number assigned to it, see ¶ 4)
 - c) List of custodians, identifying:
 - i) The Bates Range (and any gaps therein) for each custodian,
 - ii) Total number of images for each custodian, and
 - iii) Total number of native files for each custodian
 - d) List of fields in the order in which they are listed in the metadata load file.
 - e) The specification(s) or portions thereof of the CID to which the submission is responsive.
- 2) Documents created or stored electronically MUST be produced in their original electronic format, not converted to another format such as PDF.
- 3) Data may be produced on CD, DVD, USB thumb drive, or hard drive; use the media requiring the least number of deliverables.
 - a) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container:
 - i) "MAGNETIC MEDIA – DO NOT USE METAL DETECTOR"
 - ii) "MAY BE OPENED FOR POSTAL INSPECTION"
 - b) CD-R CD-ROMs should be formatted to ISO 9660 specifications;
 - c) DVD-ROMs for Windows-compatible personal computers are acceptable;
 - d) USB 2.0 thumb drives for Windows-compatible personal computers are acceptable;
 - e) USB 3.0 or USB 3.0/eSATA external hard disk drives, formatted in a Microsoft Windows-compatible file system (FAT32 or NTFS), uncompressed data are acceptable.
- 4) Label all media with the following:
 - a) Production date
 - b) Bates range
 - c) Disk number (1 of X), if applicable
 - d) Name of producing party
 - e) A unique production number identifying each production
- 5) All productions must be produced free of computer viruses. Infected productions may affect the timing of your compliance with the CID.

- 6) All produced media must be encrypted. Encryption format must be agreed upon prior to production.
 - a) Data deliveries should be encrypted at the disc level.
 - b) Decryption keys should be provided separately from the data delivery via email or phone.
- 7) Passwords for documents, files, and compressed archives should be provided separately either via email or in a separate cover letter from the data.

B. Delivery Formats

1) General ESI Standards

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

All productions must follow the specifications outlined below:

De-duplication

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

Bates Numbering Documents

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

Document Retention / Preservation of Metadata

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

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

2) Native and Image Production

In general, and subject to the specific instructions below: (1) produce electronic documents in their complete native/original format along with corresponding bates-labeled single page TIFF images (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 following default delimiters:

TABLE 1: DAT FILE DELIMITERS

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

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

TABLE 2: DAT FILE FIELDS

Field Name	Description
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 ##) If multiple, separate by semi-colon
DR_NUM	Indicate Document Request document is responsive to. (DR ##) If multiple, separate by semi-colon
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)
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
CONVERSATION_INDEX	Conversation thread ID/Index value
PARENT_ID	Populated only for email attachments, this field will display the Image Tag field value of the attachment record’s parent.

b) Document Text

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

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

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

- ii) For documents redacted on the basis of any privilege, provide the OCR text for unredacted/unprivileged portions.

- iii) The text should be delivered in the following method: As multi-page ASCII text files with the files named the same as the Bates_Begin field. Text files can be placed in a separate folder or included with the .TIFF files.
- c) Linked Native Files
 - Copies of original email and native file documents/attachments must be included for all electronic productions.
 - i) Native file documents must be named per the BATES_BEGIN number (the original file name should be preserved and produced in the FILENAME metadata field).
 - ii) The full path of the native file must be provided in the .DAT file in the NATIVELINK field.
- d) Images
 - i) Images should be single-page, Group IV TIFF files, scanned at 300 dpi.
 - ii) File names should be titled per endorsed bates number.
 - iii) Color should be preserved when necessary to interpret the document.
 - iv) Bates numbers should be endorsed on the lower right corner of all images.
 - v) For documents partially redacted on the basis of any privilege, ensure the redaction box is clearly labeled "REDACTED".
- e) Image Cross Reference File
 - i) The image cross-reference file is needed to link the images to the database. It is a comma-delimited file consisting of seven fields per line. There must be a line in the cross-reference file for every image in the database.

TABLE 3: IMAGE CROSS REFERENCE FILE FIELDS

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

	<i>*This file should not contain a header row.</i>
--	--

SAMPLE:

```

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

```

3) PDF File Production

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

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

4) Transactional Data

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

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

5) Audio/Video/Electronic Phone Records

- a) Audio files must be produced in a format that is playable using Microsoft Windows Media Player. Types of audio files that will be accepted include:
 - Nice Systems audio files (.aud). AUD files offer efficient compression and would be

preferred over both NMF and WAV files.

- Nice Systems audio files (.nmf).
- WAV Files
- MP3, MP4
- WMA
- AIF

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

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

TABLE 4: AUDIO METADATA FIELDS

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

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

- b) Video files must be produced in a format that is playable using Microsoft Windows Media Player along with any available metadata. If it is known that the video files do not contain associated audio, indicate this in the accompanying transmittal letter.

Types of video files accepted include:

- MPG
- AVI
- WMV
- MOV
- FLV

C. Production of Partially Privileged Documents

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

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

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.

§ 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.

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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.

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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 contumacious conduct, or contemptuous language during an investigational hearing, the Bureau may take further action, including action to suspend or disbar the attorney from further participation in the investigation or further practice before the Bureau pursuant to 12 CFR 1081.107(c). The Final Rule also includes other nonsubstantive changes, including clarifying that the 30-day period that the witness has to sign and submit his or her transcript should be computed using calendar days.

Section 1080.10 Noncompliance With Civil Investigative Demands

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

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

Section 1080.11 Disposition

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

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

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

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

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

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

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

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

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

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

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

Section 1080.13 Custodians

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

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

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

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

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

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

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

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

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

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

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

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

VII. Section 1022(b)(2) Provisions

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

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

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

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

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

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

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

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

A commenter asserted that disfavoring extensions of petitions to

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

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

VIII. Procedural Requirements

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

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

List of Subjects in 12 CFR Part 1080

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

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

PART 1080—RULES RELATING TO INVESTIGATIONS

Sec.

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

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

§ 1080.1 Scope.

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

§ 1080.2 Definitions.

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

Bureau means the Bureau of Consumer Financial Protection.

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

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

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

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

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

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

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

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

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

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

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

§ 1080.3 Policy as to private controversies.

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

§ 1080.4 Initiating and conducting investigations.

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

§ 1080.5 Notification of purpose.

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

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

§ 1080.6 Civil investigative demands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cause shown, may extend the time prescribed for compliance.

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

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

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

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

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

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

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

§ 1080.7 Investigational hearings.

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

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

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

§ 1080.8 Withholding requested material.

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

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

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

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

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

(i) The disclosure was inadvertent;

(ii) The holder of the privilege or protection took reasonable steps to prevent disclosure; and

(iii) The holder promptly took reasonable steps to rectify the error, including notifying a Bureau investigator of the claim of privilege or protection and the basis for it.

(2) After being notified, the Bureau investigator must promptly return, sequester, or destroy the specified information and any copies; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if he or she disclosed it before being notified; and, if appropriate, may sequester such material until such time as a hearing officer or court rules on the merits of the claim of privilege or protection. The producing party must preserve the information until the claim is resolved.

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

(i) The waiver is intentional;

(ii) The disclosed and undisclosed information or communications concern the same subject matter; and

(iii) They ought in fairness to be considered together.

§ 1080.9 Rights of witnesses in investigations.

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

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

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

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

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

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

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

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

§ 1080.10 Noncompliance with civil investigative demands.

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

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

and the General Counsel of the Bureau are authorized to:

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

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

§ 1080.11 Disposition.

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

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

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

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

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

§ 1080.13 Custodians.

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

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

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

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

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

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

Dated: June 4, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[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.

From: [Reise, Sarah T.](#)
To: [Clark, Benjamin \(CFPB\)](#); [Cover, Jason M.](#)
Cc: [Assae-Bille, Vanessa \(CFPB\)](#)
Subject: RE: Check City
Date: Friday, December 16, 2022 10:48:20 AM

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Good morning, Ben. Our clients have authorized us to accept service of the new CIDs via email.

Thank you,
Sarah

Sarah T. Reise

Counsel

troutman pepper

Direct: 404.885.3803 | Mobile: 404.697.7117

sarah.reise@troutman.com

Pronouns: she, her, hers

From: Clark, Benjamin (CFPB) <Benjamin.Clark@cfpb.gov>
Sent: Thursday, December 15, 2022 5:17 PM
To: Reise, Sarah T. <Sarah.Reise@troutman.com>; Cover, Jason M. <Jason.Cover@troutman.com>
Cc: Assae-Bille, Vanessa (CFPB) <Elisabeth.Assae-Bille@cfpb.gov>
Subject: RE: Check City

EXTERNAL SENDER

Thanks very much, Sarah. Have a nice evening.

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

From: Reise, Sarah T. <Sarah.Reise@troutman.com>
Sent: Thursday, December 15, 2022 5:16 PM
To: Clark, Benjamin (CFPB) <Benjamin.Clark@cfpb.gov>; Cover, Jason M. <Jason.Cover@troutman.com>
Cc: Assae-Bille, Vanessa (CFPB) <Elisabeth.Assae-Bille@cfpb.gov>
Subject: RE: Check City

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[report a suspicious email.](#)

Good afternoon, Ben. I expect Jason and I will be able to accept service, but we are just confirming with our clients to make sure we do not speak out of turn. I have not heard back from them yet, but will follow up and hopefully will get back to you either later this evening or late morning tomorrow (accounting for the time difference between us and our clients).

Sarah T. Reise

Counsel

troutman pepper

Direct: 404.885.3803 | Mobile: 404.697.7117

sarah.reise@troutman.com

Pronouns: she, her, hers

From: Clark, Benjamin (CFPB) <Benjamin.Clark@cfpb.gov>

Sent: Thursday, December 15, 2022 12:15 PM

To: Reise, Sarah T. <Sarah.Reise@troutman.com>; Cover, Jason M. <Jason.Cover@troutman.com>

Cc: Assae-Bille, Vanessa (CFPB) <Elisabeth.Assae-Bille@cfpb.gov>

Subject: Check City

EXTERNAL SENDER

Sarah and Jason,

We are planning on serving second CIDs on FAMI and CCP by the end of this week. Can you please confirm that you are authorized to accept service of the CIDs by email, as you were for the initial ones?

Thanks,

Ben Clark

Attorney | Office of Enforcement

Telephone: (202) 435-7871

Pronouns: he/him/his

Consumer Financial Protection Bureau

consumerfinance.gov

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Exhibit B

Letter from Sarah Reise and Jason Cover to E. Vanessa Assae-Bille
(January 18, 2023)
and
E-mail from Sarah Reise to E. Vanessa Assae-Bille
(January 20, 2023)

Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216

troutman.com



Sarah T Reise
sarah.reise@troutman.com

Jason Miller Cover
jason.cover@troutman.com

January 18, 2023

VIA EMAIL

CONFIDENTIAL TREATMENT REQUESTED - FOIA EXEMPTION (B)(4)

Vanessa Assae-Bille
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
Elisabeth.Assae-Bille@cfpb.gov

Re: December 16, 2022 Civil Investigative Demands to Financial Asset Management, Inc.

Dear Ms. Assae-Bille:

This letter is to follow-up on our December 29, 2022, January 5, 2023, and January 9, 2023 telephone conferences ("Meet and Confer") with you and your team about the December 16, 2022 Civil Investigative Demand ("CID") issued to our client, Financial Asset Management, Inc. ("FAMI"). During the Meet and Confer, we discussed FAMI's desire to work cooperatively with the Bureau in providing it with the documents and information that it needs in a timely manner. We also discussed a proposed production schedule and proposed modifications to certain requests.

FAMI takes its obligation to respond to the CID very seriously and intends to work cooperatively with the Bureau in doing so. As you are aware, the CID calls for the production of a great deal of data and information. Consequently, while FAMI intends to respond a number of the CID Requests by the original return date of January 26, 2023, FAMI asks that the Bureau modify certain requests and provide additional time to respond to a number of Requests. We understand that in granting any of these proposals the Bureau reserves the right to request additional responsive documents or information as the investigation progresses.

Requests for Which No Modification is Requested

FAMI intends to respond to the following CID requests by January 26, 2023 without modification (although it proposes to provide partial responses on this date to other requests, as outlined below):

- Interrogatories 1, 2, and 6
- Requests for Documents 2, 5, 6, 8, 9, 11, 14, and 19

Modification Requests

FAMI requests modifications for of the remainder of the CID requests for the reasons detailed below.

1. Interrogatory 3

Interrogatory 3 requests certain metadata related to phone calls that have been reviewed by FAMI's Compliance Department. As we discussed, pursuant to FAMI's retention policy and data storage limitations, FAMI historically retains a limited volume of phone calls (no more than a terabyte of data). FAMI is working to collect the call recordings that are available and to provide them to its counsel to process and produce and it anticipates producing these recordings by the original deadline of January 26, 2023 in response to Request for Documents 19.

However, FAMI is unable to generate a report containing all of the information requested in subparts (a) through (j). To the extent the recordings contain metadata responsive to this Interrogatory, FAMI anticipates that it can produce that information in a report generated by its counsel after the recordings are processed for production. This metadata addresses the information requested in subparts (b), (c), and partial (d) (date, not time). Additionally, FAMI will produce the corresponding audit reports in response to Request for Documents 8, which generally contain information requested in, and on which FAMI will rely pursuant to Instruction N in the CID, for subparts (a), (d) and (g). FAMI anticipates producing this information and these documents by the original deadline of January 26, 2023. Finally, neither FAMI nor its counsel can extract the duration of any particular call, requested in subpart (f), without opening and manually reviewing each file. However, FAMI refers to and relies on the recordings themselves, which will be produced in by the original deadline of January 26, 2023.

However, the information requested in subparts (e) (the consumer's phone number), (h) (any call-type, disposition, resolution, product or other codes associated with the call), and (i) (notes or comments associated with the call), will be pulled in connection with FAMI's response to Request for Written Report 4, to the extent such information exists. Therefore, FAMI requests that the deadline to respond to subparts (e), (h), and (i) be extended consistent with Written Report 4 (discussed in detail below).

2. Interrogatory 4

Interrogatory 4 requests a description of the factors used to develop the list of customers to whom marketing emails are sent related to the Company's Deferred Deposit Loans. We understand based on our discussion during the Meet and Confer that the Bureau is not

necessarily looking for the specific criteria used for every marketing campaign, but rather a list of the criteria generally used by FAMI when it develops these campaigns. With that understanding, FAMI requests a 30 day extension and proposes to respond to this Interrogatory on February 27, 2023. This request will be handled by FAMI's Data Team, which is staffed by two individuals, and it requires that they search in multiple databases to locate the relevant information as far back as 2017. However, this is the same Team responsible for preparing and running the data queries and generating FAMI's (and Check City's) responses to the Bureau's Requests for Written Report (discussed below). Given the limited personnel available and the significant amount of work required to generate the written reports (in addition to their day-to-day responsibilities), FAMI requests an additional 30 days to respond to Interrogatory 4.

3. Written Reports 1-4, Interrogatory 5

These Requests and Interrogatory seek loan/transactional level data and related underwriting information. With respect to *online* loans, FAMI proposes *both* a geographic and temporal scope modification given that historical online loan information (pre-December 2020) is housed on archived legacy systems. With respect to storefront limitations, FAMI requests a significant extension of time and a rolling production schedule to respond due to personnel and system limitations that will impact its ability to pull the volume of data requested without significant business disruption.

However, FAMI notes that it may be able to respond to Interrogatory 5 sooner. Preliminarily, it does not appear that FAMI's decision engine considered "repayment of a loan that was at least 14 days delinquent" as a positive underwriting criteria. However, FAMI is continuing to research this topic, which requires a review of all versions and iterations of its decision engine matrix and underwriting criteria. If FAMI confirms that the specific criteria was not used as a positive factor, FAMI anticipates that it will be able to respond to Interrogatory 5 by February 27, 2023. However, if it appears that this was at any time used as a positive factor, FAMI will not be able to respond to Interrogatory 5 until Written Report 2(a) is completed.

a. Historical Online Lending Operations (Pre-November 2019)

Since May 2014 (the beginning date of the relevant requests), FAMI has upgraded its online lending system twice. Its current system was fully implemented for the entities identified in the CID on August 19, 2020.¹ At the time of each system upgrade, only information related to FAMI's current customer base was imported. Therefore, historical data is located *only* on the two archived systems.

At this point, these legacy systems are no longer accessible because the user interfaces for these legacy databases are no longer available. Therefore, FAMI would have to re-create a

¹ Indeed, because FAMI wound down its operations in Washington and North Dakota prior to this date, FAMI has no data related to these two states available on its current system; all loan/transaction-level data is archived.

means to visually access, review, and search the data. FAMI previously estimated that it would take a least one month to re-create an interface to be able to query the data base (although this process has not been previously attempted, so this is only a good-faith estimate). Once the databases are again accessible, FAMI will have to develop queries to attempt to capture the relevant data, run those queries, and test/audit the results to ensure the correct data is being captured. Only at that time could FAMI actually begin the process of pulling the data required to prepare the requested reports.

This process is further hampered by personnel limitations. First, most of the individuals with knowledge of these systems, which are proprietary to FAMI, are no longer employed by the Company. Second, the Development Team, which would be responsible for re-creating the user interface, only has a staff of three employees. Once the archived databases are accessible, the Data Team would create, test, and run the necessary queries. However, that Team is staffed by two employees and they will also be working to assist *both* FAMI and Check City fin responding to their respective CIDs by collecting data from the current online lending system and their storefront operations.

Given the significant challenges and burdens related to accessing the legacy online lending databases, FAMI proposes *both* a geographic and temporal limitation.

With respect geographic scope, FAMI proposes that the Bureau modify the geographic scope in the same manner it modified its July 5, 2022 CID. See July 29, 2022 Modification Letter. Specifically, FAMI proposes to exclude the following states and entities listed in the CID's definition of "Company": Alaska (CCO Alaska, Inc.), Idaho (CCO Idaho, Inc.), Kansas (CCO Kansas, Inc.), North Dakota (CCO North Dakota, Inc.), Washington (CCO Washington, Inc.), and Wyoming (CCO Wyoming, Inc.) (hereinafter, the "Excluded States"). The Company has no store front operations in these states; its business is (or was) *online only*.

Geographically, the following states/entities would remain within the scope of the CID²:

- Utah: Tosh, Inc. (online and storefront) and CCO Utah, Inc. (online and storefront)
- Colorado: BMG Colorado, Inc. (online and storefront)
- Virginia: Anykind Check Cashing, LC (storefront) and VCC Credit Services (storefront)
- Nevada (although note that information related to Nevada is requested from, and will be produced by, Check City Partnership, LLC in response to the CID served on Check City) (online and storefront).

² FAMI, Liberty Check Exchange, Inc., CCI Financial, Inc., and CCO Financial, LLC are also included in the definition of Company. However, these entities are non-lending entities. Instead, they are parent or holding entities. Therefore, their inclusion in the CID does not materially add to FAMI's burden of responding to the CID.

As discussed in connection with the Bureau's July 5, 2022 CID, these states and entities represent 98 to 99% of the Company's business in the states included in the CID's definition of "Company", as represented by loan volume and money lent. By way of reminder, below is the information provided in the FAMI's July 5, 2022 Modification Request, which is supplemented to include data from May 2014-June 2017:

	% of Loans NV, UT, CO, VA	% of Money Lent NV, UT, CO, VA
May 13, 2014 to Jun 30, 2015	99.0%	99.0%
July 1, 2015 to Jun 30, 2016	99.4%	99.4%
July 1, 2016 to Jun 30, 2017	99.5%	99.5%
July 1, 2017 to Jun 30, 2018	99.3%	99.4%
July 1, 2018 to Jun 30, 2019	99.1%	99.2%
July 1, 2019 to Jun 30, 2020	99.2%	99.3%
July 1, 2020 to Jun 30, 2021	98.9%	98.9%
July 1, 2021 to Jun 30, 2022	98.3%	98.5%
TOTAL	99.1%	99.1%

As this information and the information previously produced demonstrates, FAMI conducts very limited business in the Excluded States, both currently and historically during the relevant period.

With respect to the remaining *online* operations in Utah and Colorado (note that information related to Nevada will be provided by Check City Partnership, and Virginia is storefront only), FAMI proposes that the date range for these Requests be modified to November 15, 2019 through the date of the CID. Online loans were not offered in Colorado until 2022, so this modification will not affect the data to be produced for Colorado online lending. For Utah, online lending was migrated to the current system on November 15, 2019. The volume of loans managed in the archived database from 2014 to 2019 (the time period FAMI proposes to exclude) was relatively small (less than 7%) and steadily declined after 2017:

	Percentage of Utah Loans Originated Online
2014	6.58%
2015	5.84%
2016	5.86%
2017	6.32%
2018	5.48%
2019	4.77%

Therefore, although these scope modifications would *significantly* reduce the Company's burden to respond to the CID, it will not result in any material deficiencies in the information produced to the Bureau. First, the Excluded States represent only 1-2% of FAMI's business. Second, even with the proposed modification to the relevant time period for these requests, the Bureau will still receive information that is relevant to FAMI's online business from November 15, 2019 through December 2022. The Bureau will also receive information related to its storefront operations, which represents the vast majority of its business in both Utah and Colorado, for the entire requested period.

b. Storefront and Post-November 2019 Online Lending Operations

Although FAMI does not have the same type of access challenges to its store-front lending data and current online lending data, the collection and production of the volume of data requested by the CID will nevertheless be laborious and very time-consuming, and therefore, FAMI requests a modification to the production schedule.

First, as discussed above, the Data Team has a staff of two employees who will be responsible for developing, testing and running the queries needed to pull the requested data. These employees perform a number of critical functions for the Company, so while they will prioritize their work needed to respond to the CID, they must continue to balance and perform their responsibilities that are critical to the Company's operations and ability to serve its customers.

Second, these Requests seek nearly a decade of data—an incredible volume and far more data than FAMI has ever attempted to pull from its systems at one time. Due to system and bandwidth limitations, FAMI will be unable to run the necessary system queries during business hours, as it would create significant lag in the systems its storefronts depend upon to operate day-to-day. To avoid substantial and harmful interruptions of its business, FAMI will be able to run these queries *only* during nights and weekends. Moreover, until FAMI actually is in position to begin running these queries, it is very difficult to predict how long it may take. Indeed, in undersigned counsel's experience assisting other clients responding to similar requests for data from the Bureau, system queries of this breadth and nature often take much longer to run than anticipated.

Based on its best estimates, and given the challenges and limitations described above, FAMI proposes the following rolling collection and production schedule³:

- If the CID is modified as requested, FAMI anticipates that it will be able to produce the requested data from its current online database from November 15, 2019 through December 16, 2022, and from the storefront database from January 1, 2020 through December 16, 2020 by March 26, 2023.
 - Note, however, that if FAMI's data teams need to also access the historical online lending databases and develop searches on these unfamiliar legacy systems, that may divert necessary resources and delay its ability to meet this proposed deadline.
- Rolling productions of storefront loan data consisting of two years of data every 60 days. The first such production containing data from 2018-2019 would occur on May 26, 2023 for storefront data for 2018-2019, with subsequent productions containing data for 2016-2017 and 2014-2015 to be made by July 26, 2023 and September 26, 2023, respectively.
- With respect to Interrogatory 5, because this Interrogatory is based on the information produced in response to Written Report 2.a, FAMI will need 15 days after it completes the response to Request for Written Report 2 to analyze the data and prepare its response (unless, as discussed above, FAMI determines by February 27, 2023 that, based on its decision engine criteria, that the answer is "none").

For these reasons, FAMI requests that the CID be narrowed in scope both geographically and temporally to exclude its archived legacy online lending databases, consistent with the modification approved in connection with the Bureau's July 5, 2022 CID, and that the Bureau approve the production schedule proposed above that reflects the associated significant system, personnel and business limitations.

4. Request for Documents 1

FAMI proposes to respond to Request for Documents 1 by February 27, 2023. FAMI requires some additional time to respond to this request because there is no centralized human resources database containing personnel files. Therefore, after FAMI identifies the relevant list of employees in response to Interrogatory 2, *i.e.*, the subset of employees who were terminated for performance reasons, FAMI has to conduct a manual collection, including contacting individual storefront managers, to determine whether the requested documents still exist and request copies of any available documents. At this time, FAMI estimates that approximately 600 employees have left since the beginning of the Applicable Period, and therefore, this could

³ As discussed above, FAMI's productions in response to Request for Written Report 4 will also include the information responsive to Interrogatory 3(e), (h) and (i).

be a significant amount of manual work to locate, compile (including scanning any documents stored in physical personnel files), and produce.

5. Requests for Documents 3, 4, 12, 13, and 17

With respect to Requests for Documents 3, 4, 12, 13 and 17, FAMI will need additional time to respond, although it is not yet able to propose a specific production schedule.

All of these Requests for Documents seek various documents related to the stores identified in response to Interrogatory 2 (the "Interrogatory 2 Stores"). As of the date of this letter, FAMI is still working to identify the Interrogatory 2 Stores. Importantly, as Interrogatory 2 is drafted, it is impossible to even guess at the number of potential stores at issue. Specifically, Interrogatory 2 asks for the two top and two bottom stores in each district for *seven* different metrics. FAMI has four districts. While it is possible that the same relatively small number of stores will consistently be identified as the top and bottom stores based on the identified metrics, it is also possible that there will be a large number of stores ultimately identified in response to Interrogatory 2 depending on store performance year over year, metric by metric. The number of stores directly impacts the burden of responding to every request that is derived from Interrogatory 2.⁴

In addition to the potentially massive scope of Interrogatory 2, there are specific challenges related to many of these requests, such as the collection, review and production of email, or the need to conduct a manual search and collection of documents. These challenges are outlined below. Given that these challenges cannot be fully assessed until FAMI can respond to Interrogatory 2 and identify the number of stores (and relevant personnel) at issue, FAMI proposes that the Bureau hold these Requests in abeyance until after FAMI responds to Interrogatory 2 on January 26, 2023. At that time, FAMI will be able to more fully examine the burdens and challenges associated with the Requests that are derivative of Interrogatory 2, and we will be able to further meet and confer with the Bureau in the weeks after January 26, 2023 regarding a production schedule or other proposed modifications.

a. Request for Documents 3

Request for Documents 3 seeks all documents related to store visits conducted by district managers and the operations manager for the Interrogatory 2 Stores. However, FAMI does not maintain regular documentation related to such store visits. For instance, there is no routine form that is completed for each visit. To the extent any particular manager maintains his or her

⁴ For example, if the same four stores in each of FAMI's four districts are consistently the top and bottom performers across each of the seven identified metrics over the six year Applicable Period, that would result in pulling current and historical documents (including email) from 16 different stores (4 per district). That would itself require a significant amount of work. However, if store performance varied even slightly year-to-year or metric-by-metric, the volume of responsive documents and information, and the resulting work needed to respond to the CID requests that are derived from Interrogatory 2, would increase dramatically.

own documentation, it is not centrally saved. Therefore, to the extent responsive documents exist, FAMI anticipates that it will need to collect and search email to identify potentially responsive documents after the Interrogatory 2 Stores are identified. Once the Interrogatory 2 Stores are identified, FAMI will be able to identify the appropriate custodians (including store managers) and assess the volume of email for potential collection, as well as potential methods to searching and reviewing the collected email. Once the email has been collected and a review protocol is finalized, FAMI will be able to propose to the Bureau a potential production schedule and/or scope modification based on the estimated cost and time to review and produce emails in response to the CID.

b. Request for Documents 4

Request for Documents 4 requests the responses to customer satisfaction surveys for the Interrogatory 2 Stores. FAMI uses a third party, Survey Monkey, to request customer feedback. In connection with its communication of survey results with stores (which are requested and will be produced in response to Request for Documents 16), FAMI reviews and uses the information provided by Survey Monkey, but does not download and save or otherwise retain the results themselves. Therefore, FAMI will need to determine what information is retained by Survey Monkey, including the time period for which data or documents may be available. FAMI is still waiting for a response from Survey Monkey. However, FAMI expects to have the necessary information no later than the date the Interrogatory 2 Stores are identified, and FAMI will be able at that time to provide more specific information regarding what data is available and the timeline for production of same.

c. Requests for Documents 12, 13, and 17

With respect to Request for Documents 12, 13, and 17, these requests seek the complete loan files, specific underwriting factors, and communications with consumers for *each and every* loan originated in Interrogatory 2 Stores since 2017. In addition to the inability to estimate the potential volume of loans at issue, as discussed above, pulling the requested documents is incredibly laborious.

As an initial matter, FAMI requests that the scope of Document Request 18 be modified to exclude title loans. Every other request in the CID requesting loan information seeks information and documents related to Deferred Deposit, Installment, and Signature loans, and excludes title loans. In addition to being more consistent with the scope of the rest of the CID, excluding title loans will reduce the volume of loans at issue which in turn will reduce the burden of production.

With respect to the loan files themselves, information is stored in various locations, and it can vary store-by-store. First, to the extent loan data is maintained in Cashwise, FAMI's store-front loan system, such information is already being collected for production in response to the Bureau's Requests for Written Reports. Second, some documents, such as customer loan application forms, are maintained *only* in hardcopy. Third, some documents may be maintained

either digitally or in hardcopy, depending on a store manager's preference. For example, some stores retain copies of documents supporting an application (such as proof of identification) only in hardcopy, whereas others save such documents in Cashwise. Collecting and organizing these documents from the various systems therefore requires significant manual effort (and older hardcopy documents may be stored offsite).

Based on its experience responding to audit requests from state regulators, FAMI estimates that it is able to collect and collate an average of ten loan files per day, although this pace may be slower for loans that involve more hardcopy documents. Part of this work involves manual review to ensure that the documents collected are complete and contain the correct documents (where a consumer may have multiple transactions and therefore, multiple histories, etc.). Additionally, once all hardcopy documents are located and organized by store managers, they will need to be scanned so they can be transmitted to and produced by counsel.

Given the scope these Requests, FAMI does not believe it will be able to respond to this Request as drafted and produce *all* Deferred Deposit, Installment, and Signature loan files originated in each to-be-determined store from 2017 within any reasonable time frame, given the burden involved and its experience responding to its State regulators' similar, narrower requests.

Therefore, FAMI proposes to produce a sample of loan files to be selected by the Bureau after FAMI completes its production in response to Request for Written Report 1. The time period for production will need to be discussed, as it will depend not only on the size of the sample selected, but will also depend on how many older files are selected for which any physical documentation is now maintained in offsite storage that will require additional time to request and physically review.

6. Requests for Documents 7, 15, and 16

Request for Documents 7, 15, and 16 also seek various categories of internal communications, which are primarily conducted via email. Therefore, FAMI will continue to update the Bureau regarding its email collection and proposed modification(s) as described above in connection with Request for Documents 3.

7. Request for Documents 10

Request for Documents 10 seeks the production of all template versions of text and email communications to consumers. FAMI will need additional time to respond to this Request because these communications are warehoused in three separate systems – a text system, a system managed and provided by Hubspot, and emails. FAMI will need an additional 30 days, through February 27, 2023, to collect templates for texts and communications sent via Hubspot. This additional time is necessary to conduct a thorough manual search to ensure all historical templates are located and produced. However, FAMI needs more time to collect templates of its email communications. The employee who managed and had experience with the relevant

system where these templates are warehoused sadly died on November 28, 2022 and the other employees with the general technical knowledge sufficient to become familiar with and learn to navigate that system are already fully engaged in assisting FAMI respond to the other CID requests that seek data and digital information. Therefore, FAMI requests an additional extension through March 26, 2023 to identify and produce template email communications, given its personnel limitations as a result of the death of the employee who was solely responsible for managing that system.

8. Document Request 18

Request for Documents 18 seeks all documents related to the development, implementation, inputs, use, and analysis of FAMI's credit-scoring and underwriting model. Effectively, this Request seeks the work product of an entire department at FAMI for the entire time the decision engine has been in use (it was implemented in 2017). None of the requested documents are stored in any centralized location, much of it contains large data sets that contains sensitive PII (which will significantly increase the time to review and collect the responsive information), and all of this will make the documents and data difficult to organize. As a result, FAMI proposes to respond to this Request on the following timeline:

- Produce documents related to the use of the decision engine, e.g., the credit scorecards, by February 27, 2023;
- Produce documents related to analysis and implementation of the decision engine by March 26, 2023; and
- Produce documents related to the development of the decision engine by April 26, 2023.

Conclusion

In summary, FAMI proposes to respond to the December 16, 2023 CID as follows:

- January 26, 2023:
 - Interrogatories 1, 2, 3 (partial) and 6
 - Requests for Documents 2, 5, 6, 8, 9, 11, 14 and 19
- February 27, 2023:
 - Interrogatory 4
 - Request for Documents 1, 10 (texts and Hubspot templates), and 18 (partial)
- March 26, 2023

Vanessa Assae-Bille
January 18, 2023
Page 12



-
- Interrogatory 3 (remainder)
 - Requests for Written Report 1-4 for current online database and storefront data for 2020-2022, and Interrogatory 3(e), (h), and (i)
 - Document Requests 10 (email templates) and 18 (partial)
 - April 26, 2023: Requests for Documents 18 (remainder)
 - May 26, 2023: Requests for Written Report 1-4 for storefront data for 2018-2019
 - July 26, 2023: Requests for Written Report 1-4 for storefront data for 2016-2017
 - September 26, 2023: Requests for Written Report 1-4 for storefront data for 2014-2015
 - October 11, 2023: Interrogatory 5

FAMI requests that the Bureau hold in abeyance for a short time Requests for Documents 3, 4, 7, 12, 13, 15, 16 and 17. After FAMI responds to Interrogatory 2 on January 26, 2023, the subset of stores relevant to most of these Requests will have been identified, and FAMI will be able to assess the burden and challenges of production and develop a production schedule. Similarly, FAMI will know the full list of relevant custodians to further develop its email collection and review protocol. FAMI anticipates promptly scheduling a further meet and confer discussion with the Bureau in early February 2023 to finalize a production schedule or discuss any proposed modifications for these requests.

Pursuant to the Bureau's Regulations (12 C.F.R. §§ 1070.20, 1070.36(b)(4) and (b)(7), 1070.41, and 1080.14(a)), we request that the Bureau maintain this letter and the enclosed information as confidential and not make any of it available in response to a FOIA request or subpoena without giving notice to the Company and Troutman Pepper, and provide the opportunity to object, as set forth in § 1070.20. We are cooperating with the Bureau during this investigation. This cooperation, however, should not be construed as, and is not intended to be, a waiver of any substantive or procedural rights or privileges.

We respectfully request that the Bureau permit FAMI to respond to the CIDs in the manner and on the time frame set forth in this letter. Jason Cover and I are available to discuss anything set forth in this letter at any time.

Vanessa Assae-Bille
January 18, 2023
Page 13



Sincerely,

A handwritten signature in black ink that reads "Sarah T. Reise".

Sarah T Reise

Jason Miller Cover

Enclosure

cc: Benjamin Clark (via email)
John Marlow (via email)

Assae-Bille, Vanessa (CFPB)

From: Reise, Sarah T. <Sarah.Reise@troutman.com>
Sent: Friday, January 20, 2023 4:59 PM
To: Assae-Bille, Vanessa (CFPB)
Cc: Marlow, John (CFPB); Clark, Benjamin (CFPB); Cover, Jason M.
Subject: RE: Check City

CAUTION: This email originated from a non-government domain. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact Cybersecurity Incident Response Team (CSIRT) at 202-435-7200 or [report a suspicious email](#).

Thank you, Vanessa. I have one correction/revision we just noticed today in connection with preparing for our January 26, 2023 production.

For FAMI, Document Request 6 is identified in the list for production next week. However, given that this requests specifically seeks internal communications, Document Request 6 will need to be addressed in the email process. I apologize for the misclassification of this Request – as you can see from the two letters we submitted, we were marshalling a lot of information for both CIDs, which resulted in the oversight.

Thank you, and have a great weekend.

Sarah

Sarah T. Reise

Counsel

troutman pepper

Direct: 404.885.3803 | Mobile: 404.697.7117

sarah.reise@troutman.com

Pronouns: she, her, hers

From: Assae-Bille, Vanessa (CFPB) <Elisabeth.Assae-Bille@cfpb.gov>

Sent: Friday, January 20, 2023 1:48 PM

To: Reise, Sarah T. <Sarah.Reise@troutman.com>

Cc: Marlow, John (CFPB) <John.Marlow@cfpb.gov>; Clark, Benjamin (CFPB) <Benjamin.Clark@cfpb.gov>; Cover, Jason M. <Jason.Cover@troutman.com>

Subject: RE: Check City

EXTERNAL SENDER

Thank you, Sarah. We'll take these requests back.

Best,
Vanessa

E. Vanessa Assae-Bille

Senior Litigation Counsel

Office of Enforcement

Consumer Financial Protection Bureau (CFPB)

(o) 202.435.7688 | (c) 202.257.2068

Exhibit C

Letter from Deborah Morris to Sarah Reise and Jason Cover
(February 2, 2023)



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

February 2, 2023

Via Email

Financial Asset Management, Inc.
c/o Sarah Reise and Jason Cover
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216

Re: Civil Investigative Demand served on Financial Asset Management, Inc.
on December 16, 2022

Dear Ms. Reise and Mr. Cover:

This letter modifies the terms for compliance with the December 16, 2022 Civil Investigative Demand (CID) issued to Financial Asset Management, Inc. (FAMI) by the Consumer Financial Protection Bureau (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 FAMI's representations 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 Interrogatories

Interrogatory 3

Interrogatory No. 3 requests that FAMI identify all telephone call recordings that the Company's compliance team has reviewed for audit purposes, and that it provide all associated elements, including items described in subparts (a) through (j). Subpart (h) seeks "any call-type codes, disposition codes, resolution codes, product codes, or similar associated with the call (use separate columns)." In the interest of clarity, the Bureau modifies subpart (h) as follows:

- h. any call-type codes, disposition codes, resolution codes, product codes, or similar codes associated with the call (use separate columns);

Interrogatory 5

Interrogatory No. 5 requests that FAMI identify each loan in which the Company's decision engine treated a customer's repayment of a loan that was at least fourteen days delinquent as a positive factor in underwriting. In its January 18 Letter, FAMI represented that loan-level information responsive to Interrogatory No. 5, as it relates to six entities in the CID's definition of Company—CCO Alaska, Inc.; CCO Idaho, Inc.; CCO Kansas, Inc.; CCO North Dakota, Inc.; CCO Washington, Inc.; and CCO Wyoming, Inc.—is stored and maintained on older legacy systems for which FAMI does not have a ready access. FAMI further represented that these entities, which exclusively provide online loans, only comprise 1-2% of the Company's lending.

FAMI also represented that the Company migrated Utah online lending to its current system on November 15, 2019, and the volume of loans managed in the archived database from 2014 to 2019 comprises less than 7 percent of the Company's lending, and that this fraction steadily declined after 2017.

Based on these representations, Interrogatory No. 5 is modified to exclude loans originated by CCO Alaska, Inc.; CCO Idaho, Inc.; CCO Kansas, Inc. CCO North Dakota, Inc.; CCO Washington, Inc.; and CCO Wyoming, Inc.

Interrogatory No. 5 is further modified as follows:

5. Provide the loan ID, as identified in response to Request for Written Report No. 2.a, for each loan the Company originated in stores during the applicable period, and online since November 15, 2019, in which the Company's decision engine treated a customer's repayment of a loan that was at least fourteen days delinquent as a positive factor in underwriting.

Modifications to Requests for Written Reports

Requests for Written Reports Nos. 1-4

Requests for Written Reports Nos. 1 through 4, and their subparts, seek borrower-level, loan-level, payment-level, and account-level information relating to certain loans originated by FAMI originated through the date of the CID. The effective period begins on July 1, 2017, for Request for Written Reports No. 1; and May 13, 2014, for Requests for Written Reports Nos. 2-4.

Based on FAMI's representations about the archived online loans, Requests for Written Reports Nos. 1 through 4 are modified to exclude information related to loans originated by CCO Alaska, Inc.; CCO Idaho, Inc.; CCO Kansas, Inc. CCO North Dakota, Inc.; CCO Washington, Inc.; and CCO Wyoming, Inc.

The first paragraph of each Request for Written Reports is further modified as follows:

1. For every loan that You have originated in stores during the applicable period, and online since November 15, 2019, excluding all title loans, identify in a quoted, tab-delimited .csv file the following fields related to borrower-level data:
2. For every loan that You have originated in stores since May 13, 2014, and online since November 15, 2019, excluding all title loans, identify in a quoted, tab-delimited .csv file the following fields related to loan-level data, as applicable:
3. For every loan You have originated in stores since May 13, 2014, and online since November 15, 2019, excluding all title loans, identify in a quoted, tab-delimited .csv file, the following fields related to payment-level data:
4. For every loan You have originated in stores since May 13, 2014, and online since November 15, 2019, excluding all title loans, identify in a quoted, tab-delimited .csv file, the following fields related to note-/memo-level data (e.g. collection notes):

Modification to Document Request

Request for Documents No. 12

Request for Documents No. 12 seeks the complete loan files for the loans originated at the top two and bottom two performing stores in each district during each year of the Applicable Period. FAMI represents that the loan files are partially digitized and partially maintained in hardcopy documents. FAMI estimates that it can collate an average of ten loan files per day and represents that the process involves a manual review to ensure completeness. FAMI proposes producing a sample of loan files to be selected by the Bureau, out of the Company's response to Request for Written Report No. 1.

The Bureau declines to limit the scope of the request to a sample. However, the Bureau is also willing to exclude title loans and hardcopy documents—provided that FAMI submit to the Bureau:

(1) a complete, written list of the documents comprising a complete loan file, annotating which documents are fully digitized, partially digitized, and maintained in hardcopy only, and noting any material changes to the list during the Applicable Period, to be submitted to the Bureau **no later than February 13, 2023**; and

(2) one sample of a complete loan file for each year during the Applicable Period, including the corresponding hardcopy documents, to be selected by the Bureau and submitted to the Bureau **within 10 business days** of the request.

The Bureau may request additional hardcopy documents at a later time.

Request of Documents No. 12 is modified to read as follows:

18. The complete loan files, including payment histories and account notes, but excluding documents stored exclusively in hardcopy, for the loans originated at the stores identified in Your answer to Interrogatory No. 2, with the exception of title loans.

Timing of the Production

The CID as issued requires FAMI to comply fully by **January 26, 2023**. In its January 18 Letter to the Bureau, FAMI represents that complying with the CID by this deadline would be burdensome with respect to all but three Interrogatories and eight Requests for Documents. Specifically, FAMI identifies a number of significant burdens requiring an extension of time to respond to the CID, including:

- the large scope of information potentially responsive to the Bureau's request that FAMI identify the top two and bottom two performing stores for each year during the applicable period, and based on several factors;
- the limited number of staff able to complete certain requests for the Company and for the service provider CCI, on behalf of the Company;
- the storage and archiving of certain data across multiple systems;
- the system limitations requiring large data queries to be run after business hours and on the weekends to avoid disrupting business operations;
- the lack of a centralized human resources database containing personnel files and inconsistent recordkeeping practices across managers, requiring manual gathering and review to produce certain responses;
- the use of a third-party to survey consumers; and
- the extent of the email search required to identify certain responsive documents.

The Bureau agrees to extend FAMI's compliance as follows:

January 26, 2023

- Interrogatory No. 1
- Interrogatory No. 2
- Interrogatory No. 3 (a-d, f, g, j)
- Interrogatory No. 6
- Request for Documents No. 2
- Request for Documents No. 5
- Request for Documents No. 8
- Request for Documents No. 9
- Request for Documents No. 11

- Request for Documents No. 14
- Request for Documents No. 19

February 13, 2023

- Interrogatory No. 4

February 27, 2023

- Request for Documents No. 1
- Request for Documents No. 10 (excluding email templates)
- Request for Documents No. 18 – First Tranche (Documents related to the use of the decision engine)

March 13, 2023

- Interrogatory No. 3 (e, h, i)
- Request for Written Report No. 1 – First Tranche (Jan. 1, 2020 – Dec. 16, 2022)
- Request for Written Report No. 2 – First Tranche (Jan. 1, 2020 – Dec. 16, 2022)
- Request for Written Report No. 3 – First Tranche (Jan. 1, 2020 – Dec. 16, 2022)
- Request for Written Report No. 4 – First Tranche (Jan. 1, 2020 – Dec. 16, 2022)
- Request for Documents No. 18 – Second Tranche (Documents related to the analysis and implementation of the decision engine)

March 20, 2023

- Request for Documents No. 6
- Request for Documents No. 7
- Request for Documents No. 15
- Request for Documents No. 16

March 27, 2023

- Requests for Documents No. 3
- Requests for Documents No. 4
- Request for Documents No. 10 (email templates)
- Requests for Documents No. 12
- Requests for Documents No. 13
- Requests for Documents No. 17

April 3, 2023

- Request for Written Report No. 1 – Second Tranche (Jan. 1, 2018 – Dec. 31, 2019)
- Request for Written Report No. 2 – Second Tranche (Jan. 1, 2018 – Dec. 31, 2019)

- Request for Written Report No. 3 – Second Tranche (Jan. 1, 2018 – Dec. 31, 2019)
- Request for Written Report No. 4 – Second Tranche (Jan. 1, 2018 – Dec. 31, 2019)
- Request for Documents No. 18 – Third Tranche (Documents related to the development of the decision engine)

April 24, 2023

- Request for Written Report No. 1 – Third Tranche (Jan. 1, 2016 – Dec. 31, 2017)
- Request for Written Report No. 2 – Third Tranche (Jan. 1, 2016 – Dec. 31, 2017)
- Request for Written Report No. 3 – Third Tranche (Jan. 1, 2016 – Dec. 31, 2017)
- Request for Written Report No. 4 – Third Tranche (Jan. 1, 2016 – Dec. 31, 2017)

May 8, 2023

- Request for Written Report No. 1 – Last Tranche (pre Jan. 1, 2016)
- Request for Written Report No. 2 – Last Tranche (pre Jan. 1, 2016)
- Request for Written Report No. 3 – Last Tranche (pre Jan. 1, 2016)
- Request for Written Report No. 4 – Last Tranche (pre Jan. 1, 2016)

May 15, 2023

- Interrogatory No. 5

FAMI must fully comply with the modified CID by **May 15, 2023**.

If FAMI 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 by the final CID production date of **May 15, 2023**.

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 FAMI'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 FAMI.

If you have any questions regarding the terms outlined above, contact Enforcement Attorney E. Vanessa Assae-Bille at (202) 435-7688.

Sincerely,

Deborah Morris

Deborah M. Morris
Deputy Enforcement Director

Exhibit D

Letter from Sarah Reise and Jason Cover to E. Vanessa Assae-Bille
(March 10, 2023)

Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216

troutman.com



Sarah T Reise
sarah.reise@troutman.com

Jason Miller Cover
jason.cover@troutman.com

March 10, 2023

VIA EMAIL

CONFIDENTIAL TREATMENT REQUESTED - FOIA EXEMPTION (B)(4)

Vanessa Assae-Bille
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
Elisabeth.Assae-Bille@cfpb.gov

Re: December 16, 2022 Civil Investigative Demands to FAMI, Inc. and Check City Partnership, LLC

Dear Ms. Assae-Bille:

I am writing to provide an update and to make a further request for modification of the CIDs issued to both FAMI, Inc. ("FAMI") and Check City Partnership, LLC ("Check City") related to the Bureau's Requests for Written Report. Pursuant to the Bureau's February 2, 2023 Modification Letter (FAMI) and March 6, 2023 Modification Letter (Check City), FAMI and Check City's first tranches of data in response to the Bureau's Requests for Written Report are due to be produced March 13, 2023.

As we previously discussed in connection with FAMI and Check City's initial modification requests, CCI Financial, Inc. is the service provider that is working on drafting the queries and running the searches to create the requested reports for both entities. However, CCI's data team is staffed by two employees. Additionally, due to system and bandwidth limitations, CCI has been unable to run the necessary system queries during business hours, as it would create significant lag in the systems Check City and FAMI's storefronts depend upon to operate day-to-day. To avoid substantial and harmful interruptions of its business and ability to serve its customers, CCI has been able to run these queries only outside of business hours. For these reasons, FAMI and Check City proposed to respond to the Bureau's written reports on a rolling basis, beginning on March 26, 2023.

Despite these challenges, FAMI and Check City have been working diligently and in good faith to meet the Bureau's March 13, 2023 deadline. Despite their best efforts, however, the first production of written reports are not yet complete. As of March 9, 2023, CCI's Data Team has completed the initial data pull for FAMI. However, that data has not yet been reviewed for

Vanessa Assae-Bille
March 10, 2023
Page 2



quality and accuracy by FAMI's Operations team. In undersigned counsel's experience, initial written reports need significant review for quality and, in most cases, queries must be revised in order to address minor system or field changes over time, or to correct drafting errors that become apparent only when reviewing a larger set of data. Therefore, FAMI anticipates needing an additional two to three weeks to review and, if necessary, revise the data pull.

With respect to Check City, CCI estimates that the initial data pull for Check City will be complete in approximately one week. Check City's data collection is taking longer than FAMI's due to the staffing limitations described above, and the fact that the queries for Check City and FAMI are slightly different, which requires additional work. Specifically, there are differences between the products offered by Check City and FAMI, and Check City's CID requests additional data not included in FAMI's CID. Therefore, accounting for these differences in drafting the system queries has taken additional time.

Despite their best efforts, given that the initial data pulls are or will be only recently completed, FAMI and Check City must request an additional modification to the CIDs. Specifically, FAMI and Check City propose the following modification to the production schedule for responding to the requests for written report:

FAMI:

- April 3, 2023: Requests for Written Report 1-4 (first tranche)
- April 24, 2023: Requests for Written Report 1-4 (second tranche)
- May 15, 2023: Requests for Written Report 1-4 (third tranche)
- May 29, 2023: Requests for Written Report 1-4 (fourth tranche)

Check City:

- April 10, 2023: Requests for Written Report 1-4 (first tranche)
- May 1, 2023: Requests for Written Report 1-4 (second tranche)
- May 22, 2023: Requests for Written Report 1-4 (third tranche)
- June 5, 2023: Requests for Written Report 1-4 (fourth tranche)

Pursuant to the Bureau's Regulations (12 C.F.R. §§ 1070.20, 1070.36(b)(4) and (b)(7), 1070.41, and 1080.14(a)), we request that the Bureau maintain this letter and the enclosed information as confidential and not make any of it available in response to a FOIA request or subpoena without giving notice to the Company and Troutman Pepper, and provide the opportunity to object, as set forth in § 1070.20. We are cooperating with the Bureau during this investigation. This cooperation, however, should not be construed as, and is not intended to be, a waiver of any

Vanessa Assae-Bille
March 10, 2023
Page 3



substantive or procedural rights or privileges.

We respectfully request that the Bureau permit FAMI Check City to respond to the Bureau's Requests for Written Reports on the time frame set forth in this letter. Jason Cover and I are available to discuss anything set forth in this letter at any time if the Bureau needs additional information.

Sincerely,

A handwritten signature in cursive script that reads "Sarah T. Reise".

Sarah T Reise

Jason Miller Cover

Enclosure

cc: Benjamin Clark (via email)
John Marlow (via email)

Exhibit E

Letter from Deborah Morris to Sarah Reise and Jason Cover
(March 15, 2023)



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

March 15, 2023

Via Email

Financial Asset Management, Inc.
c/o Sarah Reise and Jason Cover
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216

Re: Civil Investigative Demand served on Financial Asset Management, Inc.
on December 16, 2022

Dear Ms. Reise and Mr. Cover:

This letter modifies the terms for compliance with the Civil Investigative Demand (CID) issued to Financial Asset Management, Inc. (FAMI) by the Consumer Financial Protection Bureau (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 FAMI's representations described or referred to below. The production of information and documents in accordance with the modifications described below constitutes compliance with the CID.

Timing of the Production

The Bureau last modified the CID in a letter dated February 2, 2023 (Bureau Modification Letter 1). Under Bureau Modification Letter 1, the CID requires FAMI to comply fully by **May 15, 2023**.

Requests for Written Reports Nos. 1-4

Requests for Written Reports Nos. 1 through 4, and their subparts, seek borrower-level, loan-level, payment-level, and account-level information relating to certain loans originated by FAMI originated through the date of the CID. Bureau Modification Letter 1 extended the compliance date to allow FAMI to respond to Requests for Written Reports Nos. 1 through 4 in four tranches, due on March 13, 2023; April 3, 2023; April 24, 2023; and May 8, 2023.

In a letter dated March 10, 2023, FAMI represents that the initial data pull for FAMI is complete but that the information requires significant review for quality and that the related system queries must be revised to address identified errors. Accordingly, FAMI seeks a short extension of time to respond to these requests.

The Bureau agrees to extend FAMI's compliance as follows:

January 26, 2023

- Interrogatory No. 1
- Interrogatory No. 2
- Interrogatory No. 3 (a-d, f, g, j)
- Interrogatory No. 6
- Request for Documents No. 2
- Request for Documents No. 5
- Request for Documents No. 8
- Request for Documents No. 9
- Request for Documents No. 11
- Request for Documents No. 14
- Request for Documents No. 19

February 13, 2023

- Interrogatory No. 4

February 27, 2023

- Request for Documents No. 1
- Request for Documents No. 10 (excluding email templates)
- Request for Documents No. 18 – First Tranche (Documents related to the use of the decision engine)

March 13, 2023

- Interrogatory No. 3 (e, h, i)
- Request for Documents No. 18 – Second Tranche (Documents related to the analysis and implementation of the decision engine)

March 20, 2023

- Request for Documents No. 6
- Request for Documents No. 7
- Request for Documents No. 15
- Request for Documents No. 16

March 27, 2023

- Requests for Documents No. 3
- Requests for Documents No. 4
- Request for Documents No.10 (email templates)
- Requests for Documents No. 12
- Requests for Documents No. 13
- Requests for Documents No. 17

April 3, 2023

- Request for Written Report No. 1 – First Tranche (Jan. 1, 2020 – Dec. 16, 2022)
- Request for Written Report No. 2 – First Tranche (Jan. 1, 2020 – Dec. 16, 2022)
- Request for Written Report No. 3 – First Tranche (Jan. 1, 2020 – Dec. 16, 2022)
- Request for Written Report No. 4 – First Tranche (Jan. 1, 2020 – Dec. 16, 2022)
- Request for Documents No. 18 – Third Tranche (Documents related to the development of the decision engine)

April 24, 2023

- Request for Written Report No. 1 – Second Tranche (Jan. 1, 2018 – Dec. 31, 2019)
- Request for Written Report No. 2 – Second Tranche (Jan. 1, 2018 – Dec. 31, 2019)
- Request for Written Report No. 3 – Second Tranche (Jan. 1, 2018 – Dec. 31, 2019)
- Request for Written Report No. 4 – Second Tranche (Jan. 1, 2018 – Dec. 31, 2019)

May 15, 2023

- Interrogatory No. 5
- Request for Written Report No. 1 – Third Tranche (Jan. 1, 2016 – Dec. 31, 2017)
- Request for Written Report No. 2 – Third Tranche (Jan. 1, 2016 – Dec. 31, 2017)
- Request for Written Report No. 3 – Third Tranche (Jan. 1, 2016 – Dec. 31, 2017)
- Request for Written Report No. 4 – Third Tranche (Jan. 1, 2016 – Dec. 31, 2017)

May 29, 2023

- Request for Written Report No. 1 – Last Tranche (pre Jan. 1, 2016)
- Request for Written Report No. 2 – Last Tranche (pre Jan. 1, 2016)
- Request for Written Report No. 3 – Last Tranche (pre Jan. 1, 2016)
- Request for Written Report No. 4 – Last Tranche (pre Jan. 1, 2016)

FAMI must fully comply with the modified CID by **May 29, 2023**.

If FAMI 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 by the final CID production date of **May 29, 2023**.

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 FAMI'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 FAMI.

If you have any questions regarding the terms outlined above, contact Enforcement Attorney E. Vanessa Assae-Bille at (202) 435-7688.

Sincerely,

Deborah Morris

Deborah M. Morris
Deputy Enforcement Director

Exhibit F

Letters from Sarah Reise to E. Vanessa Assae-Bille
(January 26, 2023; February 13, 2023; February 27, 2023;
March 13, 2023; March 20, 2023; March 27, 2023)

Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216



troutman.com

Sarah T Reise
sarah.reise@troutman.com

January 26, 2023

VIA EMAIL

Vanessa Assae-Bille
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
elisabeth.assae-bille@cfpb.gov

Re: Production by Financial Asset Management, Inc. in response to the December 16, 2022 Civil Investigative Demand

Dear Vanessa:

Enclosed with this letter is Financial Asset Management, Inc.'s ("FAMI") production of materials responsive to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") December 16, 2022 Civil Investigative Demand ("CID"), and as proposed in FAMI's modification proposal dated January 18, 2023 ("Proposal"). This production contains a document bates labeled FAMI00006836 - FAMI00044244.

Certain facts and documents requested by the CID are highly sensitive, so FAMI is asking for the maximum available protection from public disclosure of those facts and documents. Therefore, we have designated this entire production as being "Confidential – Subject to FOIA exemption (b)(4)." Pursuant to the Bureau's regulations (specifically, 12 C.F.R. §§ 1070.20, 1070.37(b)(4) and (b)(7), 1070.41, and 1080.14(a)), we request that the Bureau maintain these documents as confidential and not make them available in response to a FOIA request or subpoena without giving notice and the opportunity to object to FAMI, as set forth in § 1070.20. In addition, FAMI's responses and document production should not be construed as, and are not intended to be, a waiver of any substantive or procedural rights FAMI may have, including the attorney-client privilege.

We appreciate the Bureau's flexibility in working with our client to make the process of production under the CIDs as manageable and efficient as possible. If you have any questions, please let me know.

Vanessa Assae-Bille
January 26, 2023
Page 2



Sincerely,

A handwritten signature in black ink that reads "Sarah T. Reise".

Sarah T Reise

Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216



troutman.com

Sarah T Reise

sarah.reise@troutman.com

February 13, 2023

VIA EMAIL

Vanessa Assae-Bille
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
elisabeth.assae-bille@cfpb.gov

Re: Production by Financial Asset Management, Inc. in response to the December 16, 2022 Civil Investigative Demand

Dear Vanessa:

Enclosed with this letter is Financial Asset Management, Inc.'s ("FAMI") production of materials responsive to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") December 16, 2022 Civil Investigative Demand ("CID"), pursuant to the Bureau's modification letter dated February 2, 2023.

Certain facts and documents requested by the CID are highly sensitive, so FAMI is asking for the maximum available protection from public disclosure of those facts and documents. Therefore, we have designated this entire production as being "Confidential – Subject to FOIA exemption (b)(4)." Pursuant to the Bureau's regulations (specifically, 12 C.F.R. §§ 1070.20, 1070.37(b)(4) and (b)(7), 1070.41, and 1080.14(a)), we request that the Bureau maintain these documents as confidential and not make them available in response to a FOIA request or subpoena without giving notice and the opportunity to object to FAMI, as set forth in § 1070.20. In addition, FAMI's responses and document production should not be construed as, and are not intended to be, a waiver of any substantive or procedural rights FAMI may have, including the attorney-client privilege.

Vanessa Assae-Bille
February 13, 2023
Page 2



If you have any questions or issues accessing any part of FAMI's production, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Sarah T. Reise".

Sarah T Reise

Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216



troutman.com

Sarah T Reise

sarah.reise@troutman.com

February 27, 2023

VIA EMAIL

Vanessa Assae-Bille
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
elisabeth.assae-bille@cfpb.gov

Re: Production by Financial Asset Management, Inc. in response to the December 16, 2022 Civil Investigative Demand

Dear Vanessa:

Enclosed with this letter is Financial Asset Management, Inc.'s ("FAMI") production of materials responsive to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") December 16, 2022 Civil Investigative Demand ("CID"), pursuant to the Bureau's modification letter dated February 2, 2023. This production contains documents bates FAMI00044245- FAMI00045406.

Certain facts and documents requested by the CID are highly sensitive, so FAMI is asking for the maximum available protection from public disclosure of those facts and documents. Therefore, we have designated this entire production as being "Confidential – Subject to FOIA exemption (b)(4)." Pursuant to the Bureau's regulations (specifically, 12 C.F.R. §§ 1070.20, 1070.37(b)(4) and (b)(7), 1070.41, and 1080.14(a)), we request that the Bureau maintain these documents as confidential and not make them available in response to a FOIA request or subpoena without giving notice and the opportunity to object to FAMI, as set forth in § 1070.20. In addition, FAMI's responses and document production should not be construed as, and are not intended to be, a waiver of any substantive or procedural rights FAMI may have, including the attorney-client privilege.

Vanessa Assae-Bille
February 27, 2023
Page 2



If you have any questions or issues accessing any part of FAMI's production, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Sarah T. Reise".

Sarah T Reise

Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216



troutman.com

Sarah T Reise

sarah.reise@troutman.com

March 13, 2023

VIA EMAIL

Vanessa Assae-Bille
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
elisabeth.assae-bille@cfpb.gov

Re: Production by Financial Asset Management, Inc. in response to the December 16, 2022 Civil Investigative Demand

Dear Vanessa:

Enclosed with this letter is Financial Asset Management, Inc.'s ("FAMI") production of materials responsive to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") December 16, 2022 Civil Investigative Demand ("CID"), pursuant to the Bureau's modification letter dated February 2, 2023. This production contains documents bates labeled FAMI00045407-FAMI00045734.

Certain facts and documents requested by the CID are highly sensitive, so FAMI is asking for the maximum available protection from public disclosure of those facts and documents. Therefore, we have designated this entire production as being "Confidential – Subject to FOIA exemption (b)(4)." Pursuant to the Bureau's regulations (specifically, 12 C.F.R. §§ 1070.20, 1070.37(b)(4) and (b)(7), 1070.41, and 1080.14(a)), we request that the Bureau maintain these documents as confidential and not make them available in response to a FOIA request or subpoena without giving notice and the opportunity to object to FAMI, as set forth in § 1070.20. In addition, FAMI's responses and document production should not be construed as, and are not intended to be, a waiver of any substantive or procedural rights FAMI may have, including the attorney-client privilege.

Vanessa Assae-Bille
March 13, 2023
Page 2



If you have any questions or issues accessing any part of FAMI's production, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Sarah T. Reise". The signature is written in a cursive, flowing style.

Sarah T Reise

Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216



troutman.com

Sarah T Reise

sarah.reise@troutman.com

March 20, 2023

VIA EMAIL

Vanessa Assae-Bille
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
elisabeth.assae-bille@cfpb.gov

Re: Production by Financial Asset Management, Inc. in response to the December 16, 2022 Civil Investigative Demand

Dear Vanessa:

Enclosed with this letter is Financial Asset Management, Inc.'s ("FAMI") production of materials responsive to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") December 16, 2022 Civil Investigative Demand ("CID"), pursuant to the Bureau's modification letter dated February 2, 2023. This production contains documents bates labeled FAMI00045735-FAMI00046884.

Additionally, FAMI will be supplementing its production with a small number of additional documents this week in response to Request for Document 6 and Request for Document 7. While processing these documents for production, it appears that 16 of the files were or became corrupted and did not process correctly. We have requested replacement documents from FAMI and we will produce these additional responsive documents to the Bureau as soon as possible this week.

Finally, FAMI is continuing to work to complete its production in response to Requests for Documents 15, 16, and 17, all of which involve the production of emails. We anticipate having an update regarding the status of the collection and development of search terms likely next week on March 27, 2023. We also anticipate being able to produce documents responsive to Request for Document 16 relatively soon.

Certain facts and documents requested by the CID are highly sensitive, so FAMI is asking for the maximum available protection from public disclosure of those facts and documents. Therefore, we have designated this entire production as being "Confidential – Subject to FOIA exemption (b)(4)." Pursuant to the Bureau's regulations (specifically, 12 C.F.R. §§ 1070.20, 1070.37(b)(4) and (b)(7), 1070.41, and 1080.14(a)), we request that the Bureau maintain these

Vanessa Assae-Bille
March 20, 2023
Page 2



documents as confidential and not make them available in response to a FOIA request or subpoena without giving notice and the opportunity to object to FAMI, as set forth in § 1070.20. In addition, FAMI's responses and document production should not be construed as, and are not intended to be, a waiver of any substantive or procedural rights FAMI may have, including the attorney-client privilege.

If you have any questions or issues accessing any part of FAMI's production, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Sarah T. Reise".

Sarah T Reise

Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216



troutman.com

Sarah T Reise

sarah.reise@troutman.com

March 27, 2023

VIA EMAIL

Vanessa Assae-Bille
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
elisabeth.assae-bille@cfpb.gov

Re: Production by Financial Asset Management, Inc. in response to the December 16, 2022 Civil Investigative Demand

Dear Vanessa:

Enclosed with this letter is Financial Asset Management, Inc.'s ("FAMI") production of materials responsive to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") December 16, 2022 Civil Investigative Demand ("CID"), pursuant to the Bureau's modification letter dated March 15, 2023. This production contains a document bates labeled FAMI00046885.

With respect to Request for Document No. 12, which seeks the loan files for all loans originated in the store identified in Interrogatory No. 2, FAMI remains unable to produce the documents responsive to this Request as drafted. In its response to Interrogatory No. 2, FAMI ultimately identified every storefront location. Therefore, Request for Document No. 12 seeks the complete loan files of each loan that has been originated by the Company since 2017. For the reasons described in FAMI's modification proposal dated January 18, 2023, producing loans files requires a laborious and highly manual procedure to locate and compile documents. Even with a smaller subset of storefront locations, collecting and imaging loans files for a nearly six-year period would have been extremely challenging and likely to take many, many months. However, on a Company-wide basis, this Request is simply impossible based on FAMI's available resources and personnel. Given these issues, FAMI renews its previous proposal that the parties collaborate on a sampling process so that FAMI can produce a representative sample of loan files to the Bureau, consistent with the productions FAMI regularly makes to its other regulators.

Finally, with respect to Request for Document No. 17, FAMI is continuing to work on this Request, which involves the production of data already requested in a Written Report. First, in response to Written Report No. 4, FAMI intends to provide to the Bureau all consumer-level loan account notes that coincide with each of the loans that have been originated at FAMI's

Vanessa Assae-Bille
March 27, 2023
Page 2



storefront locations since 2017. This data will be provided on a rolling basis pursuant to the Bureau's most recent modification letter dated March 15, 2023. Second, to the extent email communications exist that are responsive to this Request, FAMI through CCI Financial, Inc. (CCI), is continuing to work on this Request, along with Document Request No. 15. FAMI has identified custodians and collected email accounts. The total population is over 200,000 documents, which is cost-prohibitive to review. As such, FAMI is in the process of finalizing search terms to narrow the population of emails for review to those most likely to be responsive to this Request and is potentially 1-2 weeks away from beginning its review and rolling production.

Certain facts and documents requested by the CID are highly sensitive, so FAMI is asking for the maximum available protection from public disclosure of those facts and documents. Therefore, we have designated this entire production as being "Confidential – Subject to FOIA exemption (b)(4)." Pursuant to the Bureau's regulations (specifically, 12 C.F.R. §§ 1070.20, 1070.37(b)(4) and (b)(7), 1070.41, and 1080.14(a)), we request that the Bureau maintain these documents as confidential and not make them available in response to a FOIA request or subpoena without giving notice and the opportunity to object to FAMI, as set forth in § 1070.20. In addition, FAMI's responses and document production should not be construed as, and are not intended to be, a waiver of any substantive or procedural rights FAMI may have, including the attorney-client privilege.

If you have any questions or issues accessing any part of FAMI's production, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Sarah T. Reise".

Sarah T Reise

Exhibit G

E-mail exchange between Sarah Reise and E. Vanessa Assae-Bille
(March 31, 2023 to April 3, 2023)

From: [Reise, Sarah T.](#)
To: [Assae-Bille, Vanessa \(CFPB\)](#)
Cc: [Clark, Benjamin \(CFPB\)](#); [Cover, Jason M.](#); [Marlow, John \(CFPB\)](#)
Subject: RE: CIDs to Check City Partnership and FAMI, Inc.
Date: Monday, April 3, 2023 4:59:33 PM

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Vanessa,

Thank you for the response. We understand the Bureau's position. However, given the growing cost and burden on FAMI and Check City on continuing to comply and the serious constitutional questions before the Supreme Court in the *CFSA* appeal, at this time, FAMI and Check City are declining to continue to make productions in response to the CIDs, pending the outcome of that appeal.

We remain open to a tolling agreement, as previously proposed, if you would like to send us a draft to discuss with our clients.

Thank you,
Sarah

Sarah T. Reise

Counsel

troutman pepper

Direct: 404.885.3803 | Mobile: 404.697.7117

sarah.reise@troutman.com

Pronouns: she, her, hers

From: Assae-Bille, Vanessa (CFPB) <Elisabeth.Assae-Bille@cfpb.gov>
Sent: Monday, April 3, 2023 12:38 PM
To: Reise, Sarah T. <Sarah.Reise@troutman.com>
Cc: Clark, Benjamin (CFPB) <Benjamin.Clark@cfpb.gov>; Cover, Jason M. <Jason.Cover@troutman.com>; Marlow, John (CFPB) <John.Marlow@cfpb.gov>
Subject: RE: CIDs to Check City Partnership and FAMI, Inc.

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Good afternoon Sarah,

Thank you for the proposal in your email dated March 31, 2023. The Bureau is always open to discussing tolling agreements. However, the Bureau remains in disagreement with the Fifth Circuit's

interpretation of the Appropriations Clause. Accordingly, the Bureau does not agree to stay the ongoing investigations into Check City and FAMI pending a Supreme Court decision in *CFSA* (No. 21-50826, cert. granted on February 27, 2023). The Bureau expects Check City and FAMI to comply in full with the CID issued to each entity, pursuant to the schedule modifications in our letters dated March 15, 2023, which the Bureau granted in response to the requests for additional time that Check City and FAMI submitted on March 10, 2023.

At your earliest convenience, please confirm Check City and FAMI's intent to comply in full with the CIDs under the modified schedule.

Thank you,
Vanessa

E. Vanessa Assae-Bille
Senior Litigation Counsel
Office of Enforcement
Consumer Financial Protection Bureau (CFPB)
(o) 202.435.7688 | (c) 202.341.8722
Elisabeth.Assae-Bille@cfpb.gov
consumerfinance.gov

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From: Reise, Sarah T. <Sarah.Reise@troutman.com>
Sent: Friday, March 31, 2023 2:16 PM
To: Assae-Bille, Vanessa (CFPB) <Elisabeth.Assae-Bille@cfpb.gov>
Cc: Clark, Benjamin (CFPB) <Benjamin.Clark@cfpb.gov>; Cover, Jason M. <Jason.Cover@troutman.com>
Subject: CIDs to Check City Partnership and FAMI, Inc.

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Vanessa,

We have been continuing to confer with our clients FAMI, Inc. and Check City Partnership, LLC, regarding the pending Civil Investigative Demands and the Bureau's ongoing investigation.

As you know, the United States Supreme Court recently granted the Bureau's petition for certiorari seeking review of the Fifth Circuit's decision in *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, No. 21-50826 (5th Cir. Oct. 19, 2022), which held that the Bureau's funding mechanism was unconstitutional and suggesting that any action taken by the Bureau using unconstitutionally appropriated funds

may be similarly unconstitutional. And just last week, the Second Circuit issued a decision disagreeing with the Fifth Circuit in *Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C.*, Case No. 20-3471 (2d Cir. Mar. 23, 2023). As a result of the Second Circuit's decision, there is now a split of authority on this critical constitutional issue that will be decided during the Supreme Court's next term.

Given the pending constitutional questions related to the constitutionality of the Bureau's funding and this investigation, FAMI and Check City respectfully request that the Bureau's investigation be stayed pending resolution of the appeal of the *CFSA* appeal. If the *CFSA* decision stands, it could result in the Bureau's Civil Investigative Demand being deemed unconstitutional in its entirety. Such a decision could have a significant impact on this investigation, which justifies a stay. See, e.g., *CFPB v. MoneyGram Int'l, Inc.*, No. 22 Civ. 3256, 2022 U.S. Dist. LEXIS 223995 (S.D.N.Y. Dec. 9, 2022) (granting the defendant's motion to stay enforcement lawsuit pending resolution of petition for certiorari and/or appeal of *CFSA v. CFPB*). The Bureau also agreed to a stay of the *Ace Cash Express* case pending the outcome of the Supreme Court's consideration of the *CFSA* case.

Given that the Supreme Court has granted the Bureau's petition for certiorari and it will issue a decision during its next term, a stay will not unreasonably delay this investigation. Additionally, FAMI and Check City are willing to enter into a tolling agreement for the duration of any stay, further minimizing the risk of any prejudice to the Bureau.

Accordingly, FAMI and Check City respectfully request that the Bureau stay this investigation pending the resolution of the pending appeal in *CFSA v. CFPB*.

Can you please let us know the Bureau's position after consideration?

Thank you,
Sarah

Sarah T. Reise

Counsel

Direct: 404.885.3803 | Mobile: 404.697.7117

sarah.reise@troutman.com

Pronouns: she, her, hers

troutman pepper

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Atlanta, GA 30308

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computer viruses, but you should scan attachments for viruses and other malicious threats; we are not liable for any loss or damage caused by viruses.

Exhibit H

E-mail exchange between Sarah Reise and Benjamin Clark
(May 9, 2023 to May 12, 2023)

From: [Reise, Sarah T.](#)
To: [Clark, Benjamin \(CFPB\)](#); [Cover, Jason M.](#)
Cc: [Assae-Bille, Vanessa \(CFPB\)](#)
Subject: RE: FAMI and Check City CIDs
Date: Friday, May 12, 2023 1:21:43 PM
Attachments: [2021-05-12 Supplemental CID Responses - FAMI.pdf](#)

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Ben,

Thank you for bringing these issues to our attention. Below is a summary of our findings, which we hope is sufficient to resolve these open items.

Document Request No. 11 - FAMI

Document Request No. 11 seeks documents related to manual approval of loans by FAMI's store managers. In FAMI's narrative response dated January 26, 2023, we inadvertently asserted that FAMI had documents in its possession responsive to this request. However, because FAMI does not approve loans outside of its established underwriting parameters, FAMI does not have in its possession any documents that are responsive to this request. Attached is an updated, supplemental response that clarifies that no responsive documents exist.

Interrogatory No. 4 - FAMI

We inadvertently included a privileged comment in FAMI's narrative response to Interrogatory No. 4. Therefore, we request that the Bureau destroy, in its entirety, the narrative responses that FAMI provided to the Bureau on February 13, 2023. As required by 12 C.F.R. § 1080.8(a), below is a schedule related to the assertion of privilege. We are also attaching a final, non-privileged version of FAMI's narrative responses dated February 13, 2023 that also contains the response to Document Request 11 described above.

Document Type	Subject Matter	Date of Item	Name, Position, Organization, and Address of Author	Name, Position, Address, and Organization of Recipients	Privilege Claimed
Word Document	Narrative Response to CID	February 13, 2023	Sarah T. Reise Of Counsel Troutman Pepper LLP 600 Peachtree Street, N.E. Suite 3000 Atlanta, GA	N/A	Attorney-client privilege; attorney- work product

Document Requests No. 11 and 19 - Check City

Per the Bureau's Modification Letter dated February 2, 2023, Check City's responses to Document

Requests No. 11 and 19 became due for production on March 6, 2023. As previously explained however, the only documents Check City responsive to these requests are emails, which require a cumbersome and time-consuming process to collect, search, and review. As such, Check City had not yet been able to complete its response to this request. However, as discussed in its request to stay this investigation pending resolution of the U.S. Supreme Court's impending review of the Fifth Circuit's decision in *Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C.*, Check City intends to complete its response to this Request pending the resolution of the CFSA appeal pending before the United States Supreme Court.

Document Requests No. 14 and 16 - Check City

Document Requests 14 and 16 (as well as Document Request 15) request documents related to specified agendas and minutes. Check City produced documents responsive to these Requests on January 26, 2023 and February 13, 2023. Check City was able to complete its production in February, and therefore, it had no additional responsive documents to produce in March.

Please let us know if you have any questions or would like to discuss.

Thanks, and have a nice weekend.

Sarah T. Reise

Counsel

troutman pepper

Direct: 404.885.3803 | Mobile: 404.697.7117

sarah.reise@troutman.com

Pronouns: she, her, hers

From: Clark, Benjamin (CFPB) <Benjamin.Clark@cfpb.gov>

Sent: Tuesday, May 9, 2023 9:18 AM

To: Reise, Sarah T. <Sarah.Reise@troutman.com>; Cover, Jason M. <Jason.Cover@troutman.com>

Cc: Assae-Bille, Vanessa (CFPB) <Elisabeth.Assae-Bille@cfpb.gov>

Subject: FAMI and Check City CIDs

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Dear Sarah and Jason,

I hope you've been well. As you may have noticed from my email last week, I have returned from parental leave. There are a few issues with productions from FAMI and Check City Partnership that we would like you to clarify for us by the end of the week.

First, with respect to FAMI:

- Responses to Document Request No. 11 were due on January 26, 2023. FAMI's response that day indicated that it had produced documents with "11" in the "DR_11" metadata field, but

FAMI's production contained no such identifying metadata. Please indicate your intent to produce (or reproduce) documents responsive to Document Request No. 11.

- Second, FAMI's response to Interrogatory No. 4 was due on February 13, 2023. The response that FAMI provided then appears to be a draft. Consistent with 12 C.F.R. 1080.8(c), we have sequestered that information. Please indicate your intent to provide a non-draft response for Interrogatory No. 4.

Second, with respect to Check City Partnership, the company's responses to Document Request Nos. 11 and 19 were due on March 6, 2023, along with the last tranche of response to Document Request Nos. 14 and 16. We do not have a record of responses from March 6. Please indicate your intent to produce the information that was due on March 6.

Thank you.

Ben Clark
Attorney | Office of Enforcement
Telephone: (202) 281-8401
Pronouns: he/him/his

Consumer Financial Protection Bureau
consumerfinance.gov

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

CONSUMER FINANCIAL PROTECTION)	
BUREAU,)	
)
Petitioner,)	
)
v.)	
)
FINANCIAL ASSET MANAGEMENT,)	
INC.,)	
)
Respondent.)	
<hr/>	

Case No. 2:23-mc-382

[PROPOSED] ORDER TO SHOW CAUSE

The Petitioner, Consumer Financial Protection Bureau (Bureau), having filed a Petition to Enforce Civil Investigative Demand (CID) against Respondent Financial Asset Management, Inc., the Court having considered the Petition and documents filed in support thereof, and good cause having been shown, the Court being fully advised in this matter, and there being no just cause for delay:

IT IS HEREBY ORDERED that, within 21 days of service of a copy of this Order, Respondent shall, in writing, show cause, if there be any, why an Order Compelling Compliance with CID should not be granted in accordance with the Petition filed by the Bureau.

IT IS FURTHER ORDERED that:

1. A copy of this Order, together with the Petition and its exhibits, shall be served in accordance with Rule 4.1(a) of the Federal Rules of Civil Procedure and 12 U.S.C. § 5562(e)(2) upon Respondent within 21 days of the date that this Order is served upon counsel for the Bureau. Proof of service must be made to the Court pursuant to Rule 4(l) unless Respondent has waived service. Pursuant to Rule 4.1(a), the Court hereby appoints E. Vanessa Assae-Bille, or any other person designated by the Bureau, to effect service in this case.

2. Proof of service completed pursuant to paragraph 1, above, shall be filed with the Clerk as soon as practicable.

3. The file in this case reflects a showing that the CID is within the Bureau's investigative authority, seeks relevant information, is not too indefinite or burdensome, and was issued pursuant to all procedural requirements required by the Consumer Financial Protection Act of 2010 and its implementing regulations.

4. If Respondent has any defense to present or opposition to the petition, such defense or opposition shall be made in writing and filed with the Clerk and copies served on counsel for the Bureau 21 days after Respondent has been served with this Order pursuant to paragraph 1. The Bureau may file a reply memorandum to any opposition within 14 days after Respondent has filed any opposition.

5. If the Court determines that a show cause hearing is appropriate, only those issues brought into controversy by the responsive pleadings and factual allegations supported by the Assae-Bille Declaration will be considered. Any uncontested allegation in the petition will be considered admitted.

Dated: _____

United States District Judge