

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU,

Petitioner,

v.

NATIONAL CREDIT SYSTEMS,
INC.,

Respondent.

Case No. 1:23-mi-00007-WMR-JCF

**AMENDED PETITION TO
ENFORCE CIVIL
INVESTIGATIVE DEMAND**

1. On October 18, 2022, Petitioner, the Consumer Financial Protection Bureau (Bureau), issued a civil investigative demand (CID) to Respondent, National Credit Systems, Inc. (NCS).

2. This CID includes a Notification of Purpose stating that it is issued as part of an ongoing investigation to determine whether debt collectors, furnishers, or other persons violated the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536, and other specified financial laws and regulations, in connection with collecting debt and furnishing information to consumer reporting agencies.

3. The CID required the full production of answers to interrogatories, written reports, and documents by November 21, 2022.

4. On January 11, 2023, NCS informed the Bureau that it would not respond to the CID until the United States Supreme Court had resolved constitutional questions concerning the Bureau's funding mechanism presented in *Community Financial Services Association of America, Ltd. v. Consumer Financial Protection Bureau*, 51 F.4th 616, 624 (5th Cir. 2022) (*CFSA*).

5. On February 22, 2023, the Bureau petitioned this Court to enforce the CID against NCS (Petition). ECF No. 1.

6. By Order entered October 18, 2023, the Court stayed the Bureau's Petition pending the Supreme Court's ruling on *CFSA*. ECF No. 11.

7. On May 21, 2024, in light of the Supreme Court's decision in *CFSA*, NCS informed the Bureau that it no longer intended to resist the CID. The Bureau modified the CID production deadline to July 12, 2024.

8. NCS made its first production in response to the CID on July 12, 2024. The Bureau subsequently sent NCS notices of production deficiencies on August 8, August 20, September 10, and October 8, 2024. In response to the Bureau's deficiency notices, NCS made supplemental productions on August 20, September 13, and September 23, 2024. During this time, the Bureau and NCS agreed to seek three extensions of this Court's stay of proceedings, which the Court approved and entered on May 29, July 26, and August 29, 2024, respectively. ECF Nos. 13, 15, 17. In the Order entered on August 29, the Court

extended the stay until October 9, 2024, and directed NCS to file its response to the Petition no later than October 16, 2024. ECF No. 17.

9. By October 9, 2024, NCS's responses to the CID remained deficient. The parties did not agree to further extension of the stay.

10. On October 17, 2024, without notifying the Bureau, NCS filed an untimely motion requesting a fourteen-day extension of time to file a response to the Petition. Resp't's Mot. for a 14 Day Extension, ECF No. 18. The Bureau disagreed with purported factual assertions in NCS's motion but did not oppose NCS's request. Pet'r's Resp. To Resp't's Mot. For a 14 Day Extension, ECF No. 19.

11. By Order entered on October 18, 2024, ECF No. 20, the Court directed the Bureau to amend its Petition to set forth which CID requests remain at issue and denied NCS's motion as moot.

12. The Bureau's review of the information that NCS has produced shows that NCS's responses to CID Interrogatory Nos. 3 and 9; Request for Written Report Nos. 1-4 and 6-8; and Document Request Nos. 4, 5, 9, 12-14, 16, 17, 24, and 26 are either outstanding or deficient.¹

¹ Although the Bureau is only seeking to enforce the CID with respect to these listed Requests at this time, the Bureau reserves its rights to enforce the CID with respect to other Requests to which NCS has provided deficient responses.

13. In support of its Amended Petition, the Bureau refers to the accompanying Memorandum of Law and Declaration of Sarah Baldwin. In further support, the Bureau alleges:

JURISDICTION AND VENUE

14. This Court has subject-matter jurisdiction under § 1052(e)(1) of the CFPA. 12 U.S.C. § 5562(e)(1).

15. Venue is proper because NCS resides, is found, and transacts business in Atlanta, Georgia, which is in this district. 12 U.S.C. § 5562(e)(1).

INTRADISTRICT ASSIGNMENT

16. NCS is in Cobb County, and this action arises in Cobb County because a substantial part of the events or omissions giving rise to the claims occurred there. Accordingly, under the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of Georgia, this action should be assigned to the Atlanta Division of this Court. *See* Civil L.R. 3.1(B)(1)(a), (3).

PARTIES

17. The Bureau is an administrative agency of the United States. 12 U.S.C. § 5491(a).

18. NCS is an Atlanta, Georgia, debt collector that collects on consumer debt and furnishes information to consumer reporting agencies.

THE CID

19. Section 1052(c) of the CFPB empowers the Bureau to issue a CID seeking “any information[] relevant to a violation” of “Federal consumer financial law.” 12 U.S.C. § 5562(c)(1).

20. A Bureau CID is an administrative subpoena. *CFPB v. Harbour Portfolio Advisors, LLC*, No. 16-14183, 2017 WL 631914, *1 (E.D. Mich. Feb. 16, 2017) (noting that Bureau CIDs are “a form of administrative subpoena).

21. To obtain a court order enforcing an administrative subpoena, an agency “must establish four things: ‘[1] that the investigation will be conducted pursuant to a legitimate purpose, [2] that the inquiry may be relevant to the purpose, [3] that the information sought is not already within the agency’s possession, and [4] that the administrative steps required have been followed.’” *SEC v. Marin*, 982 F.3d 1341, 1352 (11th Cir. 2020) (alterations and citation omitted).

22. All four of these elements are met. The CID is issued pursuant to the legitimate purpose of investigating violation of federal consumer financial laws, as is set forth in the Notification of Purpose included therein, 12 U.S.C. § 5562(c)(2). The information sought in the CID is relevant to this purpose. The information the Bureau seeks is not already in the Bureau’s possession and NCS does not contend that it is. The Bureau also followed the required administrative steps to issue the

CID and to meet and confer with NCS. *See* 12 U.S.C. § 5562(c), 12 C.F.R. pt. 1080; *see also* 12 C.F.R. § 1080.6(c).

23. NCS has never submitted any written objection to any of the specific demands in the CID that are currently at issue.

24. Pursuant to modifications the Bureau issued, NCS's responses to Interrogatory Nos. 3 and 9; Request for Written Report Nos. 1-4 and 6-8; and Document Request Nos. 4, 5, 9, 12-14, 16, 17, 24, 26, addressing the modified applicable period from January 1, 2020, through May 30, 2024, were due on July 12, 2024.

25. The Bureau has established a prima facie case that enforcement is appropriate. Accordingly, the Bureau requests the relief set forth below.

WHEREFORE, the Bureau requests:

26. An order directing NCS to comply with the CID by
 - a. Producing a complete response to Interrogatory Nos. 3 and 9, Request for Written Report No. 1, and Document Request Nos. 4, 5, 9, 12-14, 16, 17, 24, and 26 in fourteen days;
 - b. Producing complete responses to Written Report Nos. 2-8 in thirty days; and
27. Such other relief as this Court deems just and proper.

Dated: November 8, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Sarah Baldwin

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**MEMORANDUM IN SUPPORT
OF AMENDED PETITION TO
ENFORCE CIVIL
INVESTIGATIVE DEMAND
[PUBLIC]**

Petitioner, the Consumer Financial Protection Bureau (Bureau), petitions this Court for an order requiring Respondent, National Credit Systems, Inc. (NCS), to respond fully to the civil investigative demand (CID) issued to NCS on October 18, 2022.

INTRODUCTION

NCS is not in compliance with its obligations under the CID. NCS's claim that it is in compliance because of the body of materials it has produced ignores the eight specific issues with NCS's production that preclude any legitimate claim of compliance. Indeed, while NCS has complained that the Bureau has made "lengthy and complex" objections to NCS's production, that's because the deficiencies with that production are, themselves, length and complex. Resp't's Mot. for a 14 Day Extension of Time, filed Oct. 17, 2024, ECF No. 18, (Resp't Mot.) at ¶ 23.

Specifically, the deficiencies in NCS's production are as follows:

I. Responses that Do Not Provide What Has Been Sought

A number of NCS's responses simply fail to answer the request. Included among these are **Interrogatory Nos. 3** (failing to identify responsive documents by the identifiers that appear in the production), **3(i)** (failing to identify base compensation or bonuses to client services associates, garnishment associates, or all law firms), **9(b)-(j)** (failing to describe the roles and responsibilities of each person identified); **Document Request Nos. 12** (failing to produce requested

emails or internal compliance review files from prior to 2022), **13** (failing to produce reports that are shown to exist in the answer to Interrogatory No. 3(e) and in documents produced in response to Document Request No. 25), **14** (producing, for example, [REDACTED], [REDACTED], **26** (providing only a draft of NCS's document retention policy, rather than the current and all prior versions of this policy).

II. Interrogatory Responses that Rely on References to Documents that Do Not In Fact Provide the Requested Information

In certain of its answers to interrogatories, NCS references documents produced to provide the answer to the interrogatory, but review of these documents shows they do not in fact provide the promised information. Specifically, in **Interrogatory Nos. 3(h)(i)**, NCS identifies letters and procedures that do not answer the question regarding the frequency of actions and the persons responsible for those actions.

III. Responses that Raise Unspecific Burden Objections

In response to **Document Request No. 24**, NCS appears to be asserting some level of a burden objection, but does so in so unspecific a manner as to make the objection without meaning.

IV. Producing Only Current Versions of Documents

A number of requests require production of all versions of specified documents, but NCS has only produced the current versions. Included among these are **Document Request Nos. 4 & 5** (producing versions of written policies and procedures, not all documents communicating or describing these policies and procedures through the applicable period), **9** (producing only 2024 versions of letters used for communications with consumers; failing to produce letters identified in response to Interrogatory No. 3).

V. Written Reports Produced In Invalid Formats

Some of NCS's responses include columns of data without clear headings or an accompanying written description of the fields, making it impossible to know what the data represents. *See* **Written Report Nos. 7, 8**. There are three written reports where data is reported in numeric sequences, but the sequences are not of uniform lengths, suggesting that the data is corrupted. **Written Report No. 7** (column A & J), and **Document Request Nos. 16, 17** (column A).

VI. Written Reports Including Unexplained Codes

A number of NCS's written reports make use of codes for which it has not provided any data dictionaries or other explanations, making it impossible to determine the meaning of the entries. **Document Request Nos. 16, 17** (column D); **Written Report Nos. 1** (column D), **7** (column N & P).

VII. Written Reports that Do Not Provide Answers to All Parts of the Request

NCS has failed to answer numerous portions of the requests for written reports, without adequate explanation or excuse. **Written Report Nos. 1 (subparts (c), (e), (h), (i)), 2 (subpart (j)), 3 (subparts (g), (j), (k)); 4 (subpart(i)), 7 (subparts (g), (h), (i), and (m)).**

VIII. Failure to Verify and Certify

NCS has not provided its written responses under oath and has not provided a certificate of compliance, in violation of CID requirements.

As is explained in more detail below, the Bureau has tried to work with NCS to rectify deficiencies, but NCS has been incapable of coming into compliance at all, much less within any reasonable timeframe. Because NCS has no legitimate excuse for its failures to meet the obligations of the Bureau's administrative subpoena, and because the Bureau has authority to issue the CID to NCS, and this Court has authority to enforce it, the Bureau respectfully requests that this Court enter an order requiring NCS to fully comply with the CID.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

NCS is an Atlanta, Georgia, debt collector that collects on consumer debt and furnishes information to consumer reporting agencies (CRAs). *See* Decl. of Sarah Baldwin in Supp. of Bureau's Pet. to Enforce, ECF No. 1-2, (Baldwin Pet.

Decl.) ¶¶ 5-6. The Bureau is investigating NCS's debt collection, credit reporting, and potential debt buying conduct, focusing on potential violations of the Consumer Financial Protection Act (CFPA)'s prohibition on unfair, deceptive, or abusive acts and practices, the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), and the FCRA's implementing rule, Regulation V. *Id.* ¶¶ 4-5. As part of that investigation, on October 21, 2022, the Bureau issued a CID to NCS that demands interrogatory answers, written reports, and documents. *Id.* ¶¶ 6-7.

I. The CID

The Notification of Purpose states that the purpose of the Bureau's investigation is to determine whether debt collectors (such as NCS), or associated persons, in connection with collecting debt and furnishing information to consumer reporting agencies have violated federal consumer financial laws, including the CFPA's prohibition on unfair, deceptive, or abusive acts and practices, the FDCPA, the FCRA, and the FCRA's implementing rule, Regulation V. *See* Decl. of Sarah Baldwin in Supp. of Bureau's Am. Pet. to Enforce (Baldwin Am. Pet. Decl.) ¶ 6; Ex. 1 to Baldwin Am. Pet. Decl. [CID] at 1.

On October 31, 2022, counsel for the Bureau and NCS met and conferred about the CID in accordance with 12 C.F.R. § 1080.6(c). Baldwin Pet. Decl. ¶ 8. At that meeting, NCS represented that it had limited ability to produce some of the

information the Bureau sought, but it was unable to provide further detail about any burden compliance would pose or articulate what modifications to the CID it believed would be appropriate. *See* Baldwin Am. Pet. Decl. ¶¶ 6–10. Although the Bureau requested a letter detailing any objections and proposed modifications to the CID, which request NCS acknowledged, NCS never sent such a letter. *Id.* ¶¶ 9–10.

II. NCS’s Petition to Set Aside the CID

On November 9, 2022, NCS filed a petition pursuant to 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e) seeking a Bureau order setting aside the CID, on sole basis that the Bureau’s statutory funding mechanism violates the Appropriations Clause. *See* Baldwin Pet. Decl. ¶ 9; Ex. 2 to Baldwin Pet. Decl. [NCS Pet. to Set Aside] at 3–5, ECF No. 1-4. Alternatively, NCS asked that, if its petition was denied, it be granted 21 days to comply with the CID. *Id.* ¶ 12. The petition did not assert that complying with the CID would impose any undue burden on NCS or that the CID should be set aside or modified due to any reason related to burden. *Id.* ¶ 9. On December 20, 2022, the Bureau denied NCS’s petition, but gave NCS the 21 days, until January 12, 2023, to comply with the CID. *Id.* ¶ 12. NCS waited until the day before that compliance deadline, and announced that it would not comply with the CID. *Id.* ¶ 13.

On February 22, 2023, the Bureau petitioned this Court to enforce the CID. ECF No. 1. On March 10, 2023, NCS moved to stay this summary proceeding pending the Supreme Court's decision on the merits in *CFPB v. Community Financial Services Ass'n of America, Ltd.*, (*CFSA*). NCS's Mot. to Stay, ECF No. 5. By Order entered October 18, 2023, the Court granted the stay, pending the Supreme Court's ruling in *CFSA*. ECF No. 11.

The Supreme Court issued its decision in *CFSA* on May 16, 2024. See 601 U.S. 416 (2024).

III. NCS's Further Failure to Comply with the CID

After the *CFSA* decision, the parties met and conferred regarding NCS's intentions on May 21, 2024. Baldwin Am. Pet. Decl. ¶¶ 16-17. During this conference, NCS proposed that the CID's production deadline be extended to July 12, 2024, and the scope of the relevant materials be modified to January 1, 2020, through May 30, 2024, both of which requests the Bureau granted. *Id.* ¶¶ 16-19. NCS did not request any other modifications to the scope or substantive content of the CID. *Id.*

NCS began producing materials on July 12, but did not complete its first production until July 19, 2024. *Id.* ¶ 20. The Bureau subsequently sent NCS notices of production deficiencies on August 8, August 20, September 10, and October 8, 2024. *Id.* ¶¶ 23-37. The detail regarding the depth of failures in production that led

to this series of correspondence is set forth in the accompanying declaration at ¶¶ 23-37. In sum, NCS's initial production failed to provide requested information, failed to comply with format and metadata requirements, and made conclusory statements that information was not available, *id.* at ¶ 23; when the Bureau attempted to work with NCS to resolve these issues, NCS wasn't ready or didn't have answers to essential questions, *id.* at ¶¶ 26-27; and NCS's subsequent productions often returned to practices of vague claims of inability to comply or undue burden, *id.* at ¶¶ 27, 30-32. While the Bureau continued to attempt to work with NCS to resolve deficiencies, the parties agreed to three extensions of this Court's stay of proceedings, which the Court approved and entered on May 29, July 26, and August 29, 2024, respectively. ECF Nos. 13, 15, 17. In the Order entered on August 29, the Court extended the stay until October 9, 2024, and directed NCS to file its response to the Petition no later than October 16, 2024, if necessary. ECF No. 17.

IV. Procedural History

By October 9, 2024, NCS's responses to the CID remained deficient and the parties did not agree to further extension of the stay. Baldwin Am. Pet. ¶¶ 35-38. On October 17, 2024, without notifying the Bureau, NCS filed an untimely motion requesting a fourteen-day extension of time to file a response to the Petition. *Id.* at ¶ 38. The Bureau disagreed with purported factual assertions in NCS's motion but

did not oppose NCS's request. *Id.* By Order entered on October 18, 2024, this Court directed the Bureau to amend its Petition to set forth which CID requests remain at issue and denied NCS's motion as moot. ECF No. 20.

As is discussed in more detail in Argument § III, below, to date, NCS has not made full and complete productions in response to Interrogatory Nos. 3 and 9; Request for Written Report Nos. 1-4 and 6-8; and Document Request Nos. 4, 5, 9, 12-14, 16, 17, 24, and 26. Baldwin Am. Pet. Decl. ¶ 40. The Bureau highlighted these failures in detail to NCS in an e-mail on October 25, 2024, and proposed dates by which NCS could come into compliance on each of these failures. *Id.* The Bureau also offered to meet and confer with NCS on Tuesday, October 29. *Id.* NCS did not respond to the offer to meet and confer until November 5, at which point NCS tentatively proposed responding to deficiencies in writing on or around November 15. *Id.*

LEGAL STANDARDS

The CFPA gives the Bureau authority to issue CIDs and to enforce them in federal district court. 12 U.S.C. §§ 5562(c)(1), (e)(1). CIDs are administrative subpoenas. *See, e.g., United States v. Kamal Kabakibou, MD, PC*, 522 F. Supp. 3d 1307, 1313 (N.D. Ga. 2020); *CFPB v. Harbour Portfolio Advisors, LLC*, No. 16-14183, 2017 WL 631914, *1 (E.D. Mich. Feb. 16, 2017). The Bureau may initiate a proceeding to enforce a CID by filing a petition 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).

“A district court’s role in a proceeding to enforce an administrative subpoena is limited.” *EEOC v. Tire Kingdom, Inc.*, 80 F.3d 449, 450 (11th Cir. 1996). To obtain a court order enforcing an administrative subpoena, an agency “must establish four things,” based on the test the Supreme Court laid out in *United States v. Powell*: “[1] that the investigation will be conducted pursuant to a legitimate purpose, [2] that the inquiry may be relevant to the purpose, [3] that the information sought is not already within the agency’s possession, and [4] that the administrative steps required have been followed.” *SEC v. Marin*, 982 F.3d 1341, 1352 (11th Cir. 2020) (alterations omitted) (quoting *United States v. Powell*, 379 U.S. 48, 57-58 (1964)). The burden on an agency to make this showing is “minimal.” *Id.* (quoting *United States v. Transocean Deepwater Drilling, Inc.*, 767 F.3d 485, 489 (5th Cir. 2014)). “[A]n agency can establish compliance with *Powell* by submitting an affidavit; once it has done so, the burden shifts to the party challenging the subpoena to disprove compliance with one of the *Powell* criteria.” *Marin*, 982 F.3d at 1357.

ARGUMENT

I. The Bureau’s Investigation of NCS is Conducted Pursuant to a Legitimate Purpose.

The Bureau is conducting this investigation pursuant to a legitimate purpose, set forth in the CID, of investigating whether debt collectors or associated persons had violated specified laws within CFPB’s purview. The Bureau, like the SEC and other administrative agencies with law enforcement authorities, has “broad investigatory power.” *Marin*, 982 F.3d at 1352 (quoting *United States v. Fla. Azalea Specialists*, 19 F.3d 620, 624 (11th Cir. 1994)). The Bureau may use its broad authority to investigate violations of federal consumer financial laws and to issue a CID to “any person” the Bureau “has reason to believe ... may have any information[] relevant to a violation.” 12 U.S.C. § 5562(c). A “violation” is defined as “any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.” *Id.* § 5561(5). And “Federal consumer financial law,” in turn, is defined to include (among other things) the CFPA, FDCPA, FCRA, and the regulations issued under those laws. *Id.* § 5481(12), (14). As set forth in the CID’s Notification of Purpose, the Bureau issued the CID to determine whether debt collectors or associated persons had engaged in various conduct that violated the CFPA, FDCPA, FCRA, or the FCRA’s implementing regulation, in connection with collecting debt and furnishing information to CRAs. *See* Ex. 1 to Baldwin Am. Pet. Decl. [CID] at 1

(Notification of Purpose). That inquiry fits squarely within the scope of the Bureau's statutory authority, and the CID was therefore issued for a legitimate purpose.

II. The Bureau's Inquiry Is Relevant to the Stated Purpose.

The information sought in the CID is relevant to the investigation of the potential violation of consumer financial laws set forth in the statement of purpose. "The measure of relevance used in administrative subpoena enforcement actions is quite broad." *Marin*, 982 F.3d at 1355 (alteration omitted; quoting *Fla. Azalea Specialists*, 19 F.3d at 624). The Supreme Court has held that an agency request is relevant so long as it is "not plainly incompetent or irrelevant to any lawful purpose" of the agency. *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943); accord *Kabakibou*, 522 F. Supp. 3d at 1310. Thus, a request is relevant if it "touches a matter under investigation." *Marin*, 982 F.3d at 1355 (quoting *Sandsend Fin. Consultants, Ltd. v. Fed. Home Loan Bank Bd.*, 878 F.2d 875, 882 (5th Cir. 1989)). Moreover, an agency's own appraisal of relevancy must be accepted so long as it is not "obviously wrong," and so long as the request is designed to assist the agency in ascertaining whether "the law is being violated in some way and . . . to determine whether or not to file a complaint." *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089, 1090 (D.C. Cir. 1992).

Here, the demands in the CID seek information relevant to the Bureau's investigation. Each of the CID's interrogatories, requests for written reports, and document requests seek information relating to NCS's debt collection activities and furnishing of information to CRAs, in possible violation of the identified federal consumer financial laws, and are therefore relevant to the Bureau's legitimate inquiry into whether a debt collector or associated persons have engaged in unlawful conduct relating to debt collection or furnishing. Baldwin Pet. Decl. ¶¶ 14, 33-40; Baldwin Am. Pet. Decl. ¶¶ 50-67.

III. The Information Sought Is Not Already within the Bureau's Possession

The Bureau does not already have the materials the CID requires NCS to provide. Baldwin Pet. Decl. ¶¶ 16-18. The Bureau is not asking the Court to order the production of any responsive documents or information that have already been provided in response to this or any prior CID. Baldwin Pet. Decl. ¶¶ 15-17. Instead, what the Bureau asks the Court to require NCS to provide, and NCS's failure to do so, is as follows. The Bureau has repeatedly identified all of these issues for NCS, including in its recent, October 25 email continuing to seek sufficient production, Baldwin Am. Pet. Decl. ¶ 40:

A. Responses that Do Not Provide What Has Been Sought

Interrogatory No. 3 seeks a description of NCS's debt collection activities. *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 2-6. NCS's response to

subpart (h) identifies and describes the usage of six letters and refers generally to

[REDACTED]

contains 244 letters, which reflect state-specific variations on approximately 15 templates. NCS’s response claims that the six letters can be identified by the numerical identifier in the bottom right corner of the documents contained in the pdf. Baldwin Am. Pet. Decl. ¶ 42. However, the Bureau cannot locate any of the six purported letters using the numerical identifiers NCS references. *Id.*

Additionally, NCS’s response to Interrogatory 3 fails to describe, as requested, the nine or more other template letters produced by NCS. *Id.*

Interrogatory No. 3(i) seeks a description of compensation NCS paid to “employees, managers, independent contractors, subcontractors, vendors, and other third parties” *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 2-6. In its answer, NCS states that it [REDACTED]

[REDACTED]

[REDACTED] *Id.* This answer [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

Interrogatory No. 9 seeks the identity of persons responsible for certain activities and, for each, request a description of roles and responsibilities. *See* Ex. 2

to Baldwin Am. Pet. Decl. [CID Response] at 14-15. In its answers to subparts (b)-(j) of Interrogatory No. 9, NCS identifies lists of persons, but does not provide any information on their roles and responsibilities. *Id.*

Document Request No. 12 requests all documents (defined to include communications) relating to NCS's compliance or non-compliance with various laws and regulations prohibiting unfair, deceptive, or abusive acts and practices. *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 32. Under its agreement with the Bureau, NCS was required to produce such materials for the period of January 1, 2020, through May 30, 2024. Baldwin Am. Pet. Decl. ¶ 19. The Bureau's review of the materials NCS produced shows NCS did not produce these materials for prior to 2022. Baldwin Am. Pet. Decl. ¶ 41.

Document Request No. 13 requests all regularly generated reports relating to NCS's debt collection activities. *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 32. NCS failed to produce reports that NCS identified as existing in its response to Interrogatory No. 3(e), and in other documents that NCS has produced. *See* Baldwin Am. Pet. Decl. ¶ 41; Ex. 3 to Baldwin Am. Pet. Decl. [Agreement Referencing Report].

Document Request No. 14 requests all regularly generated reports relating to consumer complaints or disputes about NCS's consumer reporting activities. *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 32. Review of NCS's

document production has shown that NCS has not produced such materials for the applicable period of January 1, 2020, through May 30, 2024; for example, NCS produced one incomplete weekly report from a system that NCS updates on a weekly basis. Baldwin Am. Pet. Decl. ¶ 41.

Document Request No. 26 requests all policies and procedures concerning NCS's document retention policies. *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 35. NCS produced instead only [REDACTED] of a retention policy. Baldwin Am. Pet. Decl. ¶ 41.

The Bureau does not have this information and it must be provided.

B. Interrogatories that NCS Has Purported to Answer By Reference to Documents that Do Not Contain the Information Sought

Interrogatory No. 3(h)(i) seeks information on NCS's collection methods and techniques, specifically including the "frequency" of those methods and information on the "Persons who implement them." *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 2-6. In response, NCS refers to template letters and procedures it produced: [REDACTED]

[REDACTED] *Id.* These materials, however, do not provide the frequency of use of the methods or information on the persons who implement them. *Id.*

C. Responses that Raise Unspecific Burden Objections

In a at least one instance, NCS appears to be asserting some level of a burden objection, but does so in so unspecific a manner as to make the objection without meaning. Baldwin Am. Pet. Decl. ¶ 43. Specifically, Document Request No. 24 requests all contracts and agreements, including notes and records of all oral contracts and agreements, and subsequent communications modifying or terminating such contracts and agreements, entered into between NCS and any original creditors or debt buyers. *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 35. Review of NCS’s document production shows that NCS has not produced management agreements for the time period of January 1, 2020 through May 30, 2024; instead, NCS produced a written statement claiming it [REDACTED]

[REDACTED] Baldwin Am. Pet. Decl. ¶ 43. As is discussed in more detail below, *see* Argument § V, NCS cannot assert burden as a legitimate objection here and, even if it could, this unspecific, unsupported claim would not suffice. In any event, it is plain that the Bureau does not have this information.

D. Producing Only Current Versions of Documents

A number of requests require production of all versions of specified documents, but NCS has only produced the current versions. Included among these are Document Request Nos. 4 & 5, requesting all documents constituting,

communicating, or describing NCS's policies and procedures relating to its debt collection and consumer reporting activities. *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 27-30. Review of NCS's production has shown that NCS produced versions of formal policies, not all documents communicating or describing these policies and procedures throughout the applicable period. Baldwin Am. Pet. Decl. ¶ 44.

Document Request No. 9 requests all templates, models, or form letters used for communications with consumers. *See* Ex. 2 to Baldwin Am. Pet. Decl. [CID Response] at 30. NCS has not produced the versions of these letters as they existed in 2021, 2022, or 2023, and did not produce any versions of the six letters identified in NCS's response to Interrogatory No. 3(i). Baldwin Am. Pet. Decl. ¶ 44.

E. Written Reports Produced In Invalid Formats

The reports NCS produced in response to Request for Written Report Nos. 7 and 8 include columns of data without clear headings or a description of the fields in the columns, making it impossible to know what the data represents. *See* Baldwin Am. Pet. Decl. ¶ 45; Exs. 4-5 to Baldwin Am. Pet. Decl. [sample pages from Written Report Nos. 7 & 8]. A different, but equally problematic issue is NCS's production of Written Report No. 7 (column A & J) and documents responsive to Documents Request Nos. 16 and 17 (column A) where data is

reported in numeric sequences, but the sequences are not of uniform lengths, suggesting that the data is corrupted. *See* Baldwin Am. Pet. Decl. ¶ 45; Exs. 4, 6 to Baldwin Am. Pet. Decl. [sample pages from Written Report No. 7 and documents produced in response to Document Request Nos. 16 & 17]. NCS, in fact, seems to admit its error here, noting in its October 17 filing that its production includes “stray characters or more than one piece of data contained in a single spreadsheet cell.” *Id.* at ¶ 19. These issues prevent the Bureau from having the answers that the CID requires.

F. Written Reports Including Unexplained Codes

A number of NCS’s written reports make use of codes for which it has not provided any data dictionaries or other explanations, making it impossible to determine the meaning of the entries. This issue impacts Document Request Nos. 16, 17 (column D) and Written Report Nos. 1 (column D), 7 (column N & P). *See* Baldwin Am. Pet. Decl. ¶ 46; Exs. 4, 6, 7 to Baldwin Am. Pet. Decl. [sample pages from documents produced in response to Document Request Nos. 16 & 17 and from Written Report Nos. 1 & 7]. Because the Bureau cannot interpret this data, the Bureau does not have the materials sought.

G. Written Reports that Do Not Provide Answers to All Parts of the Request

NCS has failed to answer numerous portions of the Requests for Written Reports, without adequate explanation or excuse. This occurs in the responses to

Written Report Nos. 1 (subparts (c), (e), (h), (i)), 2 (subpart (j)), 3 (subparts (g), (j), (k)); 4 (subpart(i)), and 7 (subparts (g), (h), (i), and (m)). Because NCS has simply not answered these parts of the questions, the Bureau does not have the information required. *See* Baldwin Am. Pet. Decl. ¶ 47.

H. Failure to Verify and Certify

NCS has not provided its written responses under oath and has not provided a certificate of compliance, in violation of CID requirements and the Bureau's Rules Relating to Investigations, 12 C.F.R. §§1080.6(a)(1)(ii) and (3)(ii). *See* Baldwin Am. Pet. Decl. ¶ 48; Ex. 1 to Baldwin Am. Pet. Decl. [CID] at 21, 24-25.

IV. The Bureau Has Followed All Administrative Steps

The Bureau followed all applicable procedural requirements under the CFPA and its implementing regulation related to the issuance of a CID. 12 U.S.C. § 5562(c); 12 C.F.R. § 1080. The CID was issued by a Deputy Assistant Director of the Office of Enforcement and included a detailed Notification of Purpose advising NCS of the nature of the conduct under investigation. Baldwin Pet. Decl. ¶¶ 6, 19-20 & Ex. A at 1; *see* 12 U.S.C. § 5562(c)(2); 12 C.F.R. §§ 1080.5, 1080.6(a). The CID was duly served on NCS by certified mail. Baldwin Pet. Decl. at ¶ 7; *see* 12 U.S.C. § 5562(b)(8)(C).

V. NCS Has No Legitimate Argument to Oppose the Petition

As is demonstrated above, the Bureau has made a *prima facie* showing that enforcement is appropriate. Making that showing shifts the burden to NCS “to disprove one of the four *Powell* criteria, or to demonstrate that judicial enforcement . . . would be an abuse of the court’s process.” *Marin*, 982 F.3d at 1352 (citation omitted).

In its Motion for a 14 Day Extension, ECF No. 18, NCS raises the irrelevant arguments that its production has been significant and that its software is not capable of complying with the Bureau’s requests. *Id.* at ¶¶ 12, 19. Neither of these arguments are relevant to the *Powell* factors. Moreover, neither of these points were part of NCS’s petition to the Bureau’s Director to set aside the CID.

Under 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), NCS had no more than 20 days to file an administrative petition to modify or set aside the CID. Arguments NCS did not raise administratively cannot be raised in federal court. *See FTC v. XCast Labs, Inc.*, No. Misc. 21-1026 MWF (MRWx), 2021 WL 6297885, at *3 (C.D. Cal. Dec. 9, 2021) (holding that the defendant had “forfeited its ability to oppose enforcement of the CID in federal court” because it had “received notice of the administrative procedure to challenge the scope and contents of the CID before the FTC... [but] it chose not to avail itself of that remedy.”), *R. & R. adopted*, No. Misc. 21-1026 MWF (MRWx), 2022 WL 60527

(C.D. Cal. Jan. 6, 2022). Here, the administrative procedure to challenge the CIDs existed and NCS received notice of it in the CIDs, as part of both the instructions and the Rules on Investigations attached to the CIDs. *See* Ex. 1 to Baldwin Am. Pet. Decl [CID] at 21, 44-55. Belated claims of burden should not be credited where NCS ultimately rejected the Bureau’s request, during the initial meet and confer, that NCS provide further detail about any burden compliance would pose or articulate what modifications to the CID it believed would be appropriate.

But even if the Court entertains any such objections in this case, “unduly burdensome” is a high standard. NCS will have to show that responding to the requests would “unduly disrupt or seriously hinder normal operations of the business.” *EEOC v. Sinclair*, No. 23-23547, 2024 U.S. Dist. LEXIS 142977, at *14 (S.D. Fla. Aug. 9, 2024), *R. & R. adopted*, 2024 U.S. Dist. LEXIS 154447 (S.D. Fla. Aug. 28, 2024) (quoting *EEOC v. Citicorp Diners Club, Inc.*, 985 F.2d 1036, 1040 (10th Cir. 1993)); *CFPB v. Great Plains Lending, LLC*, No. CV-14-2090-MWF-(PLAx), 2014 WL 12685941, at *17 (C.D. Cal. May 27, 2024) (same). NCS would have had to “substantiate the position with detailed affidavits” and not “rely on simple conclusory assertions about the difficulty of complying,” as it did in its CID responses. *Sinclair*, 2024 U.S. Dist. LEXIS 142977, at *15 (citing *Horne v. Potter*, No. 07-61829-CIV, 2009 WL 10666885, at *7 (S.D. Fla. Jan. 27, 2009) (further citation omitted). *See also EEOC v. Z Foods, Inc.*, No. 1:09-CV-02127-

OWW-SMS, 2011 WL 13254378, at *5 (E.D. Cal. Feb. 23, 2011) (holding that this burden is “difficult to meet,” and enforcing the administrative subpoena); *EEOC v. Aaron Bros. Inc.*, 620 F. Supp. 2d 1102, 1106 (C.D. Cal. 2009) (same). Thus, even if NCS has not waived burdensomeness arguments by its failure to raise them before the Bureau, it has not asserted anything that rises to the necessary level to succeed in such arguments now.

CONCLUSION

For the reasons discussed above, the Bureau respectfully requests that the Court order NCS to comply fully with the CID by producing all materials not already produced to the Bureau, and grant such other relief as the Court deems just and proper.

Dated: November 8, 2024

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the foregoing was prepared in 14-point Times New Roman font.

/s/ Sarah Baldwin

SARAH BALDWIN

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Sarah Baldwin

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU,

Petitioner,

v.

NATIONAL CREDIT SYSTEMS,
INC.,

Respondent.

Case No. 1:23-mi-00007-WMR-JCF

**DECLARATION OF SARAH
BALDWIN IN SUPPORT OF
AMENDED PETITION TO
ENFORCE CIVIL
INVESTIGATIVE DEMAND
[PUBLIC]**

Pursuant to 28 U.S.C. §1746, I, Sarah Baldwin, declare as follows:

1. I am an Enforcement Attorney in the Office of Enforcement at the Consumer Financial Protection Bureau (Bureau) and the lead counsel in the Bureau's investigation involving National Credit Systems, Inc. (NCS).

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

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 refer to, and incorporate, the factual allegations set forth in the declaration I executed on February 21, 2023 (Decl. of Sarah Baldwin in Support of the Bureau's Petition to Enforce (Baldwin Pet. Decl.)) ECF No. 1-2.

5. I am an attorney on an ongoing Bureau investigation to determine whether debt collectors, furnishers, or other persons violated the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692, *et seq.*, or the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681, *et seq.* and its implementing regulation, Regulation V, 12 C.F.R. Part 1022, in connection with collecting

debt and furnishing information to consumer reporting agencies (CRAs).

NCS's Course of Dealing with the Bureau

6. On October 31, 2022, I, with other counsel for the Bureau, met and conferred with NCS about the CID issued on October 18, 2022. Joel Lackey, President of NCS, attended this telephone conference with counsel for NCS, John Bedard. The CID is Exhibit 1 to this Declaration.

7. During the telephone conference, NCS represented that, given the capabilities and limits of the software the company uses to store information related to its debt collection and furnishing activity, responding to certain CID requests would be unduly burdensome. To gather information that would enable the Bureau to consider modifications that would minimize burden while still allowing the Bureau to obtain information needed for its investigation, I asked for specifics about the software's capabilities and limitations. NCS stated that the company needed to confer with its software providers in order to provide further detail to the Bureau about any potential burden. NCS represented that it would provide this and other clarifying information in a letter setting out its concerns and objections.

8. During the telephone conference, NCS proposed using search terms to assist the company in identifying requested information. In response, I

suggested that NCS propose a list of custodians to limit any potential burden associated with the requests for internal communications related to the company's policies. NCS and counsel stated that the company would not know how to identify a sufficiently tailored list of custodians. I repeatedly indicated the Bureau's willingness to consider modifications to the CID, provided that NCS explain its justification for any modification requests in a letter setting out its concerns and objections. Counsel for NCS indicated that he understood NCS would need to submit a written modification request in order to obtain a modification to the CID.

9. During the telephone conference, counsel for NCS also requested that the Bureau modify the CID's applicable period to account for NCS's production in response to a CID issued in 2020. I explained that the Bureau could consider this request if counsel provided a justification for this requested modification in a letter setting out NCS's concerns and objections.

10. NCS did not submit any written objection to the specific demands in the CID or any written request for a modification before the CID's November 21, 2022, due date.

11. On November 9, 2022, NCS filed an administrative petition pursuant to 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e) seeking a Bureau

order setting aside the CID, on sole basis that the Bureau's statutory funding mechanism violates the Appropriations Clause. Alternatively, NCS asked that, if its petition was denied, it be granted 21 days to comply with the CID. The petition did not assert that complying with the CID would impose any undue burden on NCS or that the CID should be set aside or modified due to any reason related to burden.

12. On December 20, 2022, the Bureau denied NCS's petition, but gave NCS the 21 days, until January 12, 2023, to comply with the CID.

13. NCS waited until the day before that compliance deadline, and announced that it would not comply with the CID.

14. On February 22, 2023, the Bureau petitioned this Court to enforce the CID. ECF No. 1.

15. On March 10, 2023, NCS moved to stay this summary proceeding pending the Supreme Court's decision on the merits in *CFPB v. Community Financial Services Ass'n of Am., Ltd.*, No. 22-448 (*CFSA*). ECF No. 5. By Order entered October 18, 2023, the Court granted the stay, pending the Supreme Court's ruling in *CFSA*. ECF No. 11.

16. On May 21, 2024, the parties met and conferred regarding NCS's intentions.

17. During the May 21, 2024, meet and confer, NCS informed the Bureau that it no longer intended to resist the CID and agreed to respond fully. During this conference, NCS proposed that the CID's production deadline and applicable period be modified. NCS did not, however, seek any other modifications to the scope or substantive content of the CID.

18. The parties submitted a joint status report, on May 28, 2024, reflecting their agreement and requesting that the Court continue to stay any briefing or decision on the Bureau's Petition for 60 days to permit NCS to produce the responsive information. ECF No. 12. The Court granted this request on May 29, 2024. ECF No. 13.

19. On May 30, 2024, the Bureau modified the applicable period of the CID to January 1, 2020, through May 30, 2024, and extended NCS's compliance deadline to July 12, 2024.

20. NCS made a partial production on July 12, 2024, and stated that, due to technical issues, it would complete production by July 23, 2024. NCS completed its first production on July 19, 2024.

21. On July 25, 2025, the Parties submitted a joint status report apprising the Court of the modified CID compliance date and requesting another extension of the stay of proceedings in this case until August 28, 2024

to allow the Bureau time to review NCS's productions for compliance with the CID and allow NCS to completely produce any outstanding responsive information. ECF No. 14.

22. On July 26, 2024, the Court granted the Parties' request to continue the stay until August 28, 2024. ECF No. 15.

23. On August 8, 2024, the Bureau sent NCS a deficiency notice, notifying NCS of several deficiencies with NCS's July 12 and 19, 2024 productions. Specifically, the Bureau identified deficiencies in NCS's responses to Interrogatory Nos. 2, 3, 5-7, 15, and 16; Request for Written Report Nos. 2 and 3; and Document Request Nos. 4, 5, 7, 8, 11-14, 21, 24, and 26. The nature of the deficiencies included issues such as failure to provide requested information and documents, failure to comply with format and metadata requirements, including failure to Bates number documents, and conclusory statements that information was not available. At this stage, the Bureau had not yet been able to fully evaluate all of NCS's written report submissions due to several issues with the way the reports were produced, which did not allow the Bureau to review the data.

24. On August 20, 2024, NCS produced supplemental written responses and documents in response to the Bureau's August 8 deficiency

notice. The supplemental responses are Exhibit 2 to this Declaration.

25. On August 20, 2024, after submission of the supplemental production finally allowed the Bureau to evaluate the written reports and additional document production, the Bureau sent NCS a second deficiency notice, notifying NCS of additional deficiencies it had discovered in NCS's responses to Request for Written Report Nos. 1, 4, 6-11 and Document Request Nos. 16 and 17.

26. On August 26, 2024, the Parties attempted to confer about the Bureau's August 20 deficiency notice. However, the conference had to be suspended to allow NCS additional time to prepare for the discussion, including conferring with relevant persons regarding its data retention and production methods. On August 26, 2024, NCS agreed to provide a written response to the August 20 deficiency notice by close of business on August 27, 2024. However, later in the day, NCS informed the Bureau that it needed additional time to evaluate the deficiencies.

27. The Parties met again on August 27, 2024. During this meeting, NCS asserted that it had produced everything that the Bureau asked for. However, NCS also stated, for the first time, that there were some requested items that the company either did not have or that NCS did not capture in the

way that the Bureau had requested them. At this meeting NCS stated that it did not yet have a written explanation for all the deficiencies or a plan for when this explanation would be provided to the Bureau, but that it would propose a reasonable date by which it would respond in writing to the Bureau's August 20, 2024, deficiency notice by close of business on August 28, 2024. On August 28, 2024, NCS provided a written response to the August 20, 2024 deficiency notice. In this letter, NCS stated it did not produce any information responsive to several requests because it could not reliably query its own system to tally the requested data fields.

28. On August 28, 2024, the Parties submitted a joint status report requesting the Court extend the stay of proceedings until October 9, 2024. ECF No. 16. On August 29, 2024, the Court granted the Parties' request, extending the stay until October 9, 2024. ECF No. 17.

29. On September 5, 2024, the Bureau informed NCS that it would like to discuss NCS's August 28, 2024, response before the company produced any supplemental information and that it would also like to discuss NCS's responses to Written Report Nos. 2 and 3, and Document Request No. 18.

30. On September 10, 2024, the Bureau sent NCS a third deficiency notice in which it identified additional deficiencies with Written Report Nos.

1-4, 7, and 8 and Document Request Nos. 16-18. This notice related to NCS's failure (again) to properly format and provide legible entries in its written reports, and requested information about NCS's efforts to obtain information related to Written Report No. 8.

31. On September 10, 2024, the Parties also reconvened to discuss the deficiencies. During this meeting, the Parties discussed NCS's deficient response to Request for Written Report No. 1 for approximately two hours and thus did not have time to discuss the other deficiencies. However, the deficiencies the Bureau had identified in NCS's response to Request for Written Report No. 1 exemplified issues repeated in NCS's responses to Request for Written Report Nos. 2-4, 6-8. For example, in its letter dated August 28, 2024, NCS stated it did not produce any information responsive to several requests because it could not reliably query its own system to tally the requested data fields. During the Parties' September 10 conference, however, NCS clarified that it could identify the information requested via a manual review of the "notes" field—a natural text field—of the accounts maintained in its system of record. NCS committed to providing supplemental production as well as a written response to issues identified in the September 10 deficiency notice on September 13, 2024. Yet, to date, NCS has not produced completely legible

natural text fields for several written reports.

32. On September 13, 2024, NCS produced replacement files to attempt to rectify deficiencies in NCS's responses to Request for Written Report Nos. 1, 4, and 6-11. NCS also submitted a letter that identified subsets of information, per the CID instructions, in the production. The letter stated that NCS did not possess certain information requested by the Bureau. NCS also submitted a written response to deficiencies identified in the September 10, 2024 deficiency notice.

33. On September 23, 2024, NCS produced replacement files to rectify deficiencies in NCS's responses to Request for Written Report Nos. 2 and 3.

34. On October 3, 2024, after evaluating NCS's supplemental production and written response to the deficiency notices, the Bureau notified NCS that it had identified deficiencies in the September 13 and 23 productions, that it would provide correspondence outlining those deficiencies in detail soon, and would like to schedule a meeting to discuss the deficiencies.

35. On October 6, 2024, NCS requested that the Bureau agree to a three-month extension of the stay of the proceedings in order to allow NCS to come into compliance with the CID.

36. On October 8, the Bureau sent NCS a fourth deficiency notice,

notifying NCS of the substantial deficiencies that remained in NCS's responses to Interrogatory Nos. 3 and 15; Request for Written Report Nos. 1-4, 6-8; and Request for Production of Documents Nos. 16 and 17.

37. On October 9, 2024, the Bureau tentatively agreed to a three-month extension of the stay to January 15, 2025, in exchange for NCS's commitment to rectify the deficiencies related to Request for Written Report No. 1 by October 22, 2024; and the remaining deficiencies, related to Interrogatory Nos. 3 and 15; Request for Written Report Nos. 2-4, 6-8; and Request for Production of Documents Nos. 16 and 17, by December 18, 2024. The Parties discussed the content of a joint status report during the period from October 9 through October 16. On October 16, NCS rejected the language imposing specific deadlines for rectifying the outstanding deficiencies. The Bureau rejected NCS's characterization of discussions concerning deficiency issues and NCS's refusal to concede that several of its responses were still deficient. Therefore, the Parties did not come to an agreement.

38. On October 17, 2024, without notifying the Bureau, NCS filed an untimely motion requesting a fourteen-day extension of time to file a response to the Petition. ECF No. 18. The Bureau disagreed with purported factual assertions in NCS's motion but did not oppose NCS's request. ECF No. 19.

39. By Order entered on October 18, 2024, this Court directed the Bureau to amend its Petition to set forth which CID requests remain at issue, no later than November 8, 2024, and denied NCS's motion as moot. ECF No. 20.

The Deficient CID Requests

40. On October 25, 2024, the Bureau sent NCS a fifth deficiency notice reiterating the outstanding deficiencies. The Bureau requested that NCS produce a complete response to Request for Written Report No. 1 by November 8; complete responses to Interrogatory Nos. 3, 9, and 15 and Document Request Nos. 4, 5, 8, 9, 12-14, 16, 17, 24, and 26 by November 8; and complete responses to Written Report Nos. 2, 6-8 by November 22. The Bureau offered to meet and confer with NCS on Tuesday, October 29. NCS did not respond to this offer until November 5, at which point NCS tentatively proposed responding to the deficiencies in writing on or around November 15.

41. Several of NCS's responses simply fail to answer the request, including NCS's response to:

- Interrogatory No. 3, in which response NCS identifies responsive documents by titles that do not appear in NCS's production. NCS's written response generally refers to a single pdf containing 244 letters—reflecting state-specific variations on approximately

15 templates—and claims that the letters can be identified by the numerical identifier in the bottom right corner of the documents.

- Interrogatory No. 3(i), requesting a description of how employees, managers, independent contractors, subcontractors, vendors, and other third parties, including outside lawyers and law firms, are compensated for debt collection activities, including the amounts and types of compensation, which fails to identify base compensation or bonuses to NCS’s client services associates and garnishment associates, and all law firms retained by NCS. In its answer, NCS states that it [REDACTED]

[REDACTED]

[REDACTED]

This answer [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- Interrogatory No. 9(b)-(j), which fails to describe the roles and responsibilities of each person identified as responsible, in the past or present, either directly or indirectly, for activities related

to debt collection, furnishing, compliance, training, personnel management, and information technology at NCS.

- Document Request No. 12, which fails to include the production of any emails and any of the at least three internal compliance review files that were created prior to 2022.
- Document Request No. 13, which fails to produce reports identified in NCS's response to Interrogatory 3(e) and in documents it produced in response to Document Request No. 25. An example of an NCS-produced document referencing reports that were not produced is Exhibit 3 to this Declaration.
- Document Request No. 14, which fails to include all regularly generated reports on consumer complaints or disputes, as requested, and instead provides only samples of regularly generated reports. For example, NCS provided [REDACTED]
[REDACTED]
[REDACTED] For the four years of the relevant time period there should be more than two hundred weekly reports.
- Document Request No. 26, which fails to provide all current and prior versions of NCS's document retention policies and instead

only [REDACTED]

42. With respect to Interrogatories No. 3(h)(i), NCS references documents produced in lieu of a written response, but the Bureau's review of the documents demonstrates they do not, in fact, provide the requested information. NCS's response to subpart (h) identifies and describes the usage of six letters and refers generally to [REDACTED]

43. With respect to Document Request No. 24, NCS states that it

[REDACTED]
[REDACTED] That appears to be some level of a burden objection, but one made without any specificity as to the level of burden involved. It is plainly not a statement that the information does not exist.

44. A number of the CID requests require production of all versions of specified documents, but NCS has only produced the current versions, including in response to:

- Document Request Nos. 4 and 5, to which NCS produced some versions of written policies and procedures, not all documents communicating or describing these policies and procedures throughout the applicable period. For example, NCS did not

produce any emails in response to Document Request No. 4 and produced only 18 emails from 2023 and 2024 in response to Document Request No. 5.

- Document Request No. 9, to which NCS did not produce 2021, 2022, and 2023 versions of letters used for communications with consumers or letters identified in response to Interrogatory No. 3.

45. Some of NCS's responses to requests for documents and written report include columns of data without clear headings or an accompanying written description of the fields, making it difficult to discern what the data represents. The responses that NCS produced in invalid formats include Written Report Nos. 7, 8. An annotated example, with all annotations in red, of the deficient Written Report Nos. 7 & 8 is Exhibit 4 and Exhibit 5, respectively, to this Declaration. NCS also produced three written reports reporting data in numeric sequences of non-uniform lengths, suggesting that the data may be corrupted. NCS has failed to explain whether there are leading zeroes [REDACTED] [REDACTED] These include Written Report No. 7 (column A) (*see* Ex.7) and Document Request Nos. 16 and 17 (column A). An annotated example of the deficient Document Request Nos. 16 and 17 is Exhibit 6 to this Declaration.

46. Several of NCS's written reports utilize codes for which it has not provided data dictionaries or other explanations, making it impossible to determine the meaning of the entries. These include Document Request Nos. 16 and 17 (column D) (*see* Ex. 6), and Written Report Nos. 1 (column D) and 7 (column N & P) (*see* Ex. 4). An annotated example of the deficient Written Report No. 1 is Exhibit 7 to this Declaration.

47. Several of NCS's written reports do not provide answers to all parts of the request. These include Request for Written Report Nos. 1 (subparts (c), (e), (h), (i)); 2 (subparts (g), (j), (k)); 4 (subpart (i)); 7 (subparts (g), (h), (i), and (m)).

48. Finally, NCS has failed to provide its written responses under oath or submit a signed certificate of compliance as required by the CID and the Bureau's Rules Relating to Investigations, 12 C.F.R. §§1080.6(a)(1)(ii) and (3)(ii).

The Requests at Issue Are Relevant and Material to the Investigation

49. The CID requests at issue in the instant action seek information relevant and material to the Bureau's investigation.

50. Interrogatory No. 3 requests information about NCS's debt collection activities. This information is relevant and material to the

investigation because, among other things, it relates to NCS's methods and techniques for collecting, and attempting to collect, debt from consumers. This information may also assist in the identification of salient witnesses.

51. Interrogatory No. 9 requests identification of each Person who is or has been responsible, either directly or indirectly, for activities related to debt collection, credit reporting, compliance, training, personnel management, and information technology systems maintenance, and for each, a description of his or her roles and responsibilities. This information is relevant and material to the investigation because, among other things, it may assist in the identification of salient witnesses.

52. Written Report No. 1 requests identification of each consumer complaint or dispute NCS received during the applicable period of the CID and for each, details about the circumstances, nature, and resolution of the complaint or dispute. This information is relevant and material to the investigation because, among other things, it relates to NCS's conduct and knowledge regarding consumers' disputes to NCS related to debts that NCS reported information about to CRAs.

53. Written Report No. 2 requests identification of, and specific information about, each debt for which NCS received a written notification

from the consumer that the debt, or any portion thereof, was disputed, within thirty days of the consumer's receipt of the written notice of the debt from NCS under 15 U.S.C. § 1692g(a). This information is relevant and material to the investigation because, among other things, it relates to NCS's conduct and knowledge regarding consumers' disputes to NCS related to debts that NCS reported information about to CRAs.

54. Written Report No. 3 requests identification of, and specific information about, each Debt for which NCS received a written notification from the consumer that the debt, or any portion thereof, was disputed, more than thirty days after the consumer's receipt of the written notice of the debt from NCS under 15 U.S.C. § 1692g(a). This information is relevant and material to the investigation because, among other things, it seeks information about NCS's conduct and knowledge regarding consumers' disputes to NCS related to debts that NCS reported information about to CRAs.

55. Written Report No. 4 requests identification of, and specific information about, each debt for which NCS received an oral notification from the consumer that the debt, or any portion thereof, was disputed. This information is relevant and material to the investigation because, among other things, it seeks information about NCS's conduct and knowledge regarding

consumers' disputes to NCS related to debts that NCS reported information about to CRAs.

56. Written Report No. 6 requests identification of, and specific information about, every legal action filed against NCS for violation of the FDCPA, the FCRA, or any other federal consumer financial law, or any state law regarding debt buying, debt collection activities, or consumer reporting activities. This information is relevant and material to the investigation because, among other things, it relates to NCS's conduct and knowledge regarding issues of focus in the investigation.

57. Written Report No. 7 requests a list of every instance where NCS made a telephone call relating to debt collection during the applicable period of the CID, including specific details for each instance. This information is relevant and material to the investigation because, among other things, it relates to the nature and frequency of NCS's communications, and attempted communications, with consumers, regarding debt collection activities.

58. Written Report No. 8 requests identification of all instances in which any consumer listed in the report produced in response to Request for Written Report No. 7 notified NCS in writing that the consumer wished NCS to cease communicating with the consumer, and the date and time of each such

instance. This information is relevant and material to the investigation because, among other things, it relates to whether NCS abided by consumers' requests that NCS cease contact.

59. Document Request Nos. 4 and 5 request all documents (defined to include communications) constituting, communicating, or describing NCS's policies and procedures relating to its debt collection and consumer reporting activities. This information is relevant and material to the investigation because, among other things, it relates to NCS's own stated rules and instructions for addressing a number of areas of focus of the investigation.

60. Document Request No. 9 requests all templates, models, or form letters used for communications with consumers, including notices of debt required by § 1692g(a) of the FDCPA, verifications of a debt required by § 1692g(b) of the FDCPA, and communications with consumers who have disputed the accuracy or completeness of any information NCS has furnished to a consumer reporting agency. This information is relevant and material to the investigation because, among other things, it relates to NCS's representations to consumers in regularly generated correspondence regarding debt collection.

61. Document Request No. 12 requests all documents (defined to include communications) relating to NCS's compliance or non-compliance with

the FDCPA, the FCRA, Regulation V, or state and federal laws prohibiting unfair, deceptive, or abusive acts and practices. This information is relevant and material to the investigation because, among other things, it relates to NCS's conduct and knowledge regarding issues of focus in the investigation.

62. Document Request No. 13 requests all regularly generated reports relating to NCS's debt collection activities. This information is relevant and material to the investigation because, among other things, it relates to NCS's conduct and knowledge regarding its allocation of debt portfolios by original creditor, attempts to recover debts, overall recovery by balance, and variance in success rate due to the quality of account information provided by the original creditors.

63. Document Request No. 14 requests all regularly generated reports relating to consumer complaints or disputes about NCS's consumer reporting activities. This information is relevant and material to the investigation because, among other things, it relates to NCS's conduct and knowledge regarding the accuracy and integrity of the information NCS provided to the CRAs.

64. Document Request No. 16 requests all documents relating to, indicating, or reflecting NCS's contact or attempted contact with a consumer at his or her place of employment, by phone, e-mail, text message, or in person. If

logs contain abbreviations or shorthand, this request requires NCS to provide a dictionary or glossary sufficient to interpret all such abbreviations or shorthand. This information is relevant and material to the investigation because, among other things, it relates to the nature and frequency of NCS's communications, and attempted communications, with consumers regarding debt collection.

65. Document Request No. 17 requests all documents relating to, indicating, or reflecting NCS's contact or attempted contact with a consumer's references, by phone, e-mail, text message, or in person, including complete logs for each account for which the Company contacted or attempted to contact a Consumer's references. If logs contain abbreviations or shorthand, this request requires NCS to provide a dictionary or glossary sufficient to interpret all such abbreviations or shorthand. This information is relevant and material to the investigation because, among other things, it relates to the nature and frequency of NCS's communications, and attempted communications, with consumers regarding debt collection.

66. Document Request No. 24 requests all contracts and agreements, including notes and records of all oral contracts and agreements, and subsequent communications modifying or terminating such contracts and agreements, entered into between NCS and any original creditors or debt

buyers. This information is relevant and material to the investigation because, among other things, it relates to the terms that influence or determine NCS's efforts to collect debts from consumers.

67. Document Request No. 26 requests all policies and procedures concerning NCS's document retention policies. This information is relevant and material to the investigation because, among other things, it relates to whether NCS preserves information demonstrating compliance with the FDCPA, the FCRA, and Regulation V.

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

Executed on November 8, 2024

/s/ Sarah Baldwin
SARAH BALDWIN

Exhibit 1



Consumer Financial
Protection Bureau

United States of America

Consumer Financial Protection Bureau

Civil Investigative Demand

To **Joel Lackey**
National Credit Systems, Inc.
(c/o CT Corporation System)
289 S Culver St
Lawrenceville, GA 30046

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 11/21/2022

Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date 11/21/2022

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

The purpose of this investigation is to determine whether debt collectors, or associated persons, in connection with collecting debt and furnishing information to consumer reporting agencies (CRAs) have: (1) made false or misleading representations to consumers, made prohibited communications to consumers or third parties, collected or attempted to collect amounts from consumers that could not lawfully be collected, in a manner that is unfair, deceptive or abusive, in violation of the Consumer Financial Protection Act (CFPA), 12 U.S.C. §§ 5531, 5536, and/or in a manner that violates the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., principally §§ 1692d-g; (2) furnished inaccurate information to CRAs while knowing or having reasonable cause to believe the information was inaccurate or after having been notified by consumers that furnished information was inaccurate, failed to correct furnished information that it determined was inaccurate, failed to follow required procedures upon receiving notices of dispute, and failed to establish and implement appropriate policies and procedures, and/or failed to perform other duties of a furnisher, in a manner that violates the FCRA, 15 U.S.C. § 1681 et seq., principally § 1681s-2(a), (b), and Regulation V, 12 C.F.R. Part 1022, principally Subpart E; (3) failed to follow required procedures for notice and validation of debts in a manner that violates the FDCPA, 15 U.S.C. § 1692 et seq., principally § 1692g; and (4) engaged in any other conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt from consumers in a manner that is unfair or unconscionable, in violation of the FDCPA, 15 U.S.C. § 1692 et seq., principally 15 U.S.C. §§ 1692d and 1692f, and/or in a manner that is unfair or abusive in violation of the CFPA, 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

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

Bureau Counsel

Tracee Plowell/Sarah Baldwin
Consumer Financial Protection Bureau
1700 G Street NW
ATTN: Office of Enforcement
Washington, DC 20552

Date Issued

10/18/2022

Signature

David M. Rubenstein

Digitally signed by David M.
Rubenstein

Date: 2022.10.18 08:08:09 -04'00'

Name / Title

David Rubenstein, Deputy Enforcement Director

Service

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

Travel Expenses

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

Right to Regulatory Enforcement Fairness

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

Paperwork Reduction Act

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

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

I. Requests.

Interrogatories

1. Identify all Persons who participated in responding to this CID and the specific tasks performed by each Person.
2. Describe the complete organizational structure of the Company, Identifying all of its parents, wholly or partially owned subsidiaries, affiliates, unincorporated divisions, joint ventures, and franchises. For each entity, state the following:
 - a. The legal name and principal place of business;
 - b. The date and jurisdiction where the entity is incorporated or organized;
 - c. All names under which the entity has done business;
 - d. The types of business in which the entity engages, including whether their business includes Debt Buying, Debt Collection Activities, or Consumer Reporting Activities;
 - e. Each state in which the entity has done business and the time period during which it has done business in that state;
 - f. The address of all offices, places of business, and places where the entity has any physical presence;
 - g. The names and percentages of ownership of all Persons holding ownership in the entity; and
 - h. The identity of all officers, managers, and directors of the entity, and when each began employment.
3. Describe the Company's Debt Collection Activities, including the following:
 - a. The types and sources of Debt collected;
 - b. The identity of each Original Creditor or Debt Buyer for which the Company collects Debt;
 - c. The documentation and information that the Company receives from the Client in the process of onboarding a Debt, Including any documentation relating to the Original Creditor;
 - d. Whether the Company collects Debt in the Original Creditor's name or in the Company's name;
 - e. The types of Debt collection services provided by the Company to the Person for whom it is collecting the debt (e.g. reports of attempted collections, reports of amounts collected);
 - f. The number of Persons who collect Debt on behalf of the Company as well as their locations and status (e.g., employee, independent contractor, subcontractor);
 - g. The Company's use of independent contractors, subcontractors, vendors, and other third parties that engage in Debt collection on behalf of the Company;

- submitted orally or in writing; and
 - c. How the Company obtains and provides to the Consumer a copy of a judgment against the Consumer after receipt of an oral or written dispute about the validity of the Debt or portion thereof, including whether the Company's policies, procedures, and practices differ depending on whether the dispute is received within or beyond 30 days from the date the Consumer receives notice of the Debt under 15 U.S.C. § 1692g(a).
6. Describe the Company's policies, procedures, and practices, including unwritten policies, procedures, and practices, relating to compliance with 15 U.S.C. § 1681s-2(a)(1)-(3), (6), (8)(E), 15 U.S.C. § 1681s-2(b)(1)-(2), and 12 C.F.R. § 1022.42, -43, Including the Company's policies, procedures, and practices relating to:
- a. The accuracy and integrity of the information relating to Consumers that it furnishes to a CRA;
 - b. How the Company creates, maintains, implements, and updates its policies and procedures regarding the accuracy and integrity of the information related to Consumers that it furnishes to a CRA, including how the Company gives consideration to the guidelines set forth in Appendix E to 12 C.F.R. part 1022;
 - c. How the Company investigates, resolves, and provides Consumers with the results of investigations of both Indirect Disputes and Direct Disputes, including steps taken by the Company to investigate Indirect Disputes and Direct Disputes, whether and how the Company undertakes the review of documents provided by the disputing Consumers, any deadlines for investigation of such Indirect Disputes and Direct Disputes, and whether and how the Company undertakes reviews of exception reports provided by Consumer Reporting Agencies;
 - d. How the Company ensures that, when it receives a dispute from a Consumer about the completeness or accuracy of any information it furnished to a CRA, it does not furnish the information to any CRA without notice that such information is disputed by the Consumer; and
 - e. How the Company corrects information that it previously furnished to a CRA upon discovering that the information is inaccurate.
7. For each policy, procedure, or practice identified in response to Document Requests Nos. 4-6, provide the following information:
- a. A brief description of the policy, procedure, or practice;
 - b. The Bates number(s) of the Document(s) that reflect or describe the policy, procedure, or practice;
 - c. The date the policy, procedure, or practice went into effect; and
 - d. If applicable, the date on which the policy, procedure, or practice became ineffective or was superseded and Identify the policy, procedure, or practice that superseded or replaced it.
8. Describe all training the Company provides to its employees, contractors, and agents regarding Debt Collection Activities and Consumer Reporting Activities.

9. Identify each Person who is or has been responsible, either directly or indirectly, for each of the activities below, and for each, describe his or her roles and responsibilities:
 - a. Creating, updating, evaluating, or ensuring compliance with the Company's policies and procedures relating to Debt Collection Activities or Debt Buying;
 - b. Creating updating, evaluating, or ensuring compliance with the Company's policies and procedures relating to Consumer Reporting Activities;
 - c. Creating, updating, evaluating, or ensuring compliance with the Company's policies and procedures relating to Consumer disputes and complaints;
 - d. Training or overseeing the Company's employees, contractors, and agents with responsibilities relating to Debt Collection Activities;
 - e. Training or overseeing the Company's employees, contractors, and agents with responsibilities relating to Consumer Reporting Activities;
 - f. Training or overseeing the Company's employees, contractors, and agents with responsibilities relating to Consumer disputes and complaints;
 - g. Managing the Company's call centers;
 - h. Evaluating or approving the purchase of Debt Portfolios;
 - i. Overseeing the development and maintenance of databases maintained by the Company relating to Debt Collection Activities, Debt Buying or Consumer Reporting Activities, including records of communications with Consumers; and
 - j. Furnishing information to CRAs.

10. Identify the Company's current and former employees and contractors during the Applicable Period who had responsibilities relating to Debt Buying, Debt Collection Activities, or Consumer Reporting Activities, including the intake, investigation, or resolution of Consumer complaints and disputes. For each, provide the following information:
 - a. The period of time during which the individual was employed by or otherwise performed work for the Company;
 - b. The individual's position(s) and a brief description of their responsibilities, including how they related to Debt Buying, Debt Collection Activities, or Consumer Reporting Activities;
 - c. The entity that employed the individual and the location(s) where they were employed;
 - d. If applicable, the reason(s) for their ceasing work for the Company, including whether they were involuntarily terminated; and
 - e. The individual's last known home address, e-mail address, and all telephone numbers.

11. State the Dispute Address used by the Company.

12. Identify all CRAs to which the Company furnishes information, the type of information the Company reports to each, and the number of reports the Company made to each CRA during each year of the Applicable Period.
13. Identify any investigation or inquiry conducted during the Applicable Period by or on behalf of any governmental agency or private Consumer protection entity (e.g., Better Business Bureau) relating to the Company's Debt Buying, Debt Collection Activities, or Consumer Reporting Activities. For each, provide the following information:
 - a. The identity of the entity that conducted the investigation or inquiry;
 - b. The dates such investigation or inquiry commenced and ended;
 - c. The nature and subject of the investigation or inquiry; and
 - d. The final outcome.
14. Identify all databases used by the Company relating to Debt Buying, Debt Collection Activities, or Consumer Reporting Activities. For each, provide the following information:
 - a. The database system name and version, commercial software name and version (if different), and technology platform;
 - b. The dates during which each database is or was in use;
 - c. The names and descriptions of the data fields contained in the database;
 - d. The data type (e.g., date/time; integer; text) in each data field;
 - e. The purposes for which the database is used in Debt Buying, Debt Collection Activities, or Consumer Reporting Activities;
 - f. The process by which the database is used in Debt Buying, Debt Collection Activities, or Consumer Reporting Activities;
 - g. A description of each category of persons who has access to any part(s) of the database, the identity of the part(s) to which each category of persons has access and for what purposes;
 - h. The timeframe for which information in each data field is stored or maintained;
 - i. A description of how the database is populated with data and information and by whom;
 - j. A description of how the database interacts with other systems the Company uses, such as file systems, other databases, etc.;
 - k. A description of any processes used to assure the accuracy of data included in each database, including any internal controls, internal audits, or quality assurance programs performed on the database;
 - l. Whether the database holds attachments, such as image, audio, or PDF files, and a description of those attachments;
 - m. A description of the reporting capabilities of the database;
 - n. A description of any regular or standard reports generated from the database and the frequency with which such reports are generated;
 - o. Whether the data stored in the database can be exported to Microsoft Excel, a .csv file, or other readily available spreadsheet or database programs; and

- p. A description of the frequency with which the database is archived or backed up and the method by which it is accomplished.
15. Provide a data dictionary containing the following data elements for each data field in each database referenced in Interrogatory No. 14:

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

16. Identify and describe all types of reports that the Company has generated from the E-OSCAR system, including archive reports and dispute response notification reports. For each type of report, in addition to the identifying information, provide the following information:
- The name of the type of report and its purpose;
 - The procedures used to generate the report;
 - The individual(s) responsible for generating the report;
 - The frequency with which the Company generates the report; and
 - The Company's policies governing retention or destruction of the report.
17. If, for any Request for Documents, there are Documents that would be responsive to this CID but are unavailable because they were destroyed, mislaid, transferred, deleted, altered, or over-written, Identify the Documents and describe the date and circumstances of their unavailability.

Requests for Written Reports

- In a Microsoft Excel spreadsheet or .csv file, Identify each Consumer complaint

or dispute the Company received during the Applicable Period and for each, provide the following information, with the information responsive to each subpart in a separate column:

- a. A unique identifier for the Debt that was the subject of the complaint or dispute;
 - b. The date the Company received the complaint or dispute;
 - c. For disputes, whether the dispute was a Direct Dispute or an Indirect Dispute;
 - d. The nature of the complaint or dispute (i.e., the Consumer's asserted basis for disputing the validity or amount of the Debt), including any notes in the Company's systems or databases describing the nature of the complaint or dispute;
 - e. The result of any investigation by the Company of the complaint or dispute, including any notes in the Company's systems or databases describing the result of the investigation;
 - f. A Yes/No (Y/N) indicator for whether the Company modified information furnished to a CRA in response to the complaint or dispute;
 - g. A Y/N indicator for whether the Company deleted information furnished to a CRA in response to the complaint or dispute;
 - h. The date the complaint or dispute was resolved;
 - i. The date the results of the investigation were communicated to the consumer; and
 - j. A list of all fields or codes in the Company's systems or databases relating to the complaint or dispute, including any fields or codes used to describe the nature of the complaint or dispute and the result of any investigation.
2. In a Microsoft Excel spreadsheet or .csv file, Identify each Debt for which the Company received a **written notification** from the Consumer that the Debt, or any portion thereof, was disputed, **within thirty days** of the Consumer's receipt of the written notice of the Debt from the Company under 15 U.S.C. § 1692g(a). For each such Debt, provide the following information, with the information responsive to each subpart in a separate column:
- a. A unique identifier for the Debt that was the subject of the dispute;
 - b. The date that the Company received the written notification from the Consumer that the Debt, or any portion thereof, was disputed;
 - c. All codes or data fields describing the nature or substance of the dispute;
 - d. A Y/N indicator for whether the Company obtained verification of the Debt or a copy of a judgment against the Consumer;
 - e. If the answer to subpart (d) is "Y," the date on which the Company received such verification or judgment;
 - f. If the answer to subpart (d) is "Y," the date on which the Company mailed a copy of such verification or judgment to the Consumer;
 - g. A Y/N indicator for whether, after receiving the Consumer's dispute, the Company determined that the Consumer owed the Debt or the disputed portion thereof;

- h. A Y/N indicator for whether the Company, after receiving the Consumer's dispute, determined that the Consumer did not owe the Debt or the disputed portion thereof;
 - i. The dates of all communications with the Consumer subsequent to the Company's receipt of the Consumer's written dispute, set forth in separate columns;
 - j. For each communication identified in subpart (i), the applicable letter code and version number identified in response to Interrogatory No. 3(h)(ii) above, with the letter code and version number set forth in separate columns;
 - k. The dates of all instances in which the Company furnished information about the Debt to a CRA subsequent to the Company's receipt of the Consumer's written dispute, set forth in separate columns;
 - l. For each instance of furnishing identified in response to subpart (k), a Y/N indicator for whether the Company informed the CRA that the Debt was disputed; and
 - m. Any notes associated with the Debt.
3. In a Microsoft Excel spreadsheet or .csv file, Identify each Debt for which the Company received a **written notification** from the Consumer that the Debt, or any portion thereof, was disputed, **more than thirty days** after the Consumer's receipt of the written notice of the Debt from the Company under 15 U.S.C. § 1692g(a). For each such Debt, provide the following information, with the information responsive to each subpart in a separate column:
 - a. A unique identifier for the Debt that was the subject of the dispute;
 - b. The date that the Company received the written notification from the Consumer that the Debt, or any portion thereof, was disputed;
 - c. All codes or data fields describing the nature or substance of the dispute;
 - d. A Y/N indicator for whether the Company obtained verification of the Debt or a copy of a judgment against the Consumer;
 - e. If the answer to subpart (d) is "Y," the date on which the Company received such verification or judgment;
 - f. The dates of all communications with the Consumer subsequent to the Company's receipt of the Consumer's written dispute, set forth in separate columns;
 - g. For each communication identified in subpart (f), the applicable letter code and version number identified in response to Interrogatory No. 3(h)(ii) above, with the letter code and version number set forth in separate columns;
 - h. A Y/N indicator for whether, after receiving the Consumer's dispute, the Company determined that the Consumer owed the Debt or the disputed portion thereof;
 - i. A Y/N indicator for whether, after receiving the Consumer's dispute, the Company determined that the Consumer did not owe the Debt or the disputed portion thereof;
 - j. The dates of all instances in which the Company furnished information about the Debt to a CRA subsequent to the Company's receipt of the

- Consumer's written dispute, set forth in separate columns;
- k. For each instance of furnishing identified in response to subpart (j), a Y/N indicator for whether the Company informed the CRA that the Debt was disputed; and
 - l. Any notes associated with the Debt.
4. In a Microsoft Excel spreadsheet or .csv file, Identify each Debt for which the Company received an **oral notification** from the Consumer that the Debt, or any portion thereof, was disputed. For each such Debt, provide the following information, with the information responsive to each subpart in a separate column:
- a. A unique identifier for the Debt that was the subject of the dispute;
 - b. The date that the Company received the oral notification from the Consumer that the Debt, or any portion thereof, was disputed;
 - c. All codes or data fields indicating the nature or substance of the dispute;
 - d. A Y/N indicator for whether the Company obtained verification of the Debt or a copy of a judgment against the Consumer;
 - e. If the answer to subpart (d) is "Y," the date on which the Company received such verification or judgment;
 - f. A Y/N indicator for whether, after receiving the Consumer's dispute, the Company determined that the Consumer owed the Debt or the disputed portion thereof;
 - g. A Y/N indicator for whether, after receiving the Consumer's dispute, the Company determined that the Consumer did not owe the Debt or the disputed portion thereof;
 - h. The dates of all communications with the Consumer subsequent to the Company's receipt of the Consumer's oral dispute, set forth in separate columns;
 - i. For each communication identified in subpart (h), the applicable letter code and version number identified in response to Interrogatory No. 3(h)(ii) above, with the letter code and version number set forth in separate columns;
 - j. The dates of all instances in which the Company furnished information about the Debt to a CRA, subsequent to the Company's receipt of the Consumer's written dispute, set forth in separate columns;
 - k. For each instance of furnishing identified in response to subpart (j), a Y/N indicator for whether the Company informed the CRA that the Debt was disputed; and
 - l. Any notes associated with the Debt.
5. In a Microsoft Excel spreadsheet or .csv file, Identify each Debt for which the Company furnished information to a CRA prior to or without an initial communication with the Consumer. For each such Debt, provide the following information, with the information responsive to each subpart in a separate column:
- a. A unique identifier assigned by the Company to each Debt on the

- spreadsheet or csv. file;
 - b. The date the Company initially furnished any information about the Debt to a CRA;
 - c. If Company furnished negative information about the Debt to CRA (i.e., delinquency, late payment, or default), the date the Company initially furnished such negative information;
 - d. If the Company furnished negative information about the Debt to a CRA, the type of negative information initially furnished (i.e., delinquency, late payment, or default);
 - e. A Y/N indicator for whether the Company sent an initial communication about the Debt to the Consumer;
 - f. If the answer to subpart (e) is “Y,” the date of the Company’s initial communication with the Consumer;
 - g. The dates of all subsequent communications with the Consumer, set forth in separate columns; and
 - h. A Y/N indicator for whether the Consumer disputed the validity of the Debt or portion thereof;
 - i. If the answer to subpart (h) is “Y,” all codes or data fields describing the nature or substance of the dispute;
 - j. If the answer to subpart (h) is “Y,” a Y/N indicator for whether the Company obtained verification of the Debt or a copy of a judgment against the Consumer;
 - k. If the answer to subpart (h) is “Y,” a Y/N indicator for whether the Company determined that the Consumer owed the Debt or the disputed portion thereof;
 - l. A Y/N indicator for whether the Company determined that the Consumer did not owe the Debt or the disputed portion thereof; and
 - m. Any notes associated with the Debt.
6. In a Microsoft Excel spreadsheet or .csv file, Identify every legal action filed against the Company for violation of the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), or any other federal consumer financial law, or any state law regarding Debt Buying, Debt Collection Activities, or Consumer Reporting Activities, and for each, provide the following information, with the information responsive to each subpart in a separate column:
- a. The parties;
 - b. The case number;
 - c. The name and location of the court or adjudicative body;
 - d. The date the action was filed;
 - e. The subject matter of the claims asserted;
 - f. A Y/N indicator as to whether the suit was filed as a class action;
 - g. A Y/N indicator as to whether the court certified a class;
 - h. The date of final disposition or, if applicable, an indication that the case is “ongoing;” and
 - i. The final outcome of the case.

7. In a Microsoft Excel spreadsheet or .csv file, list every instance where the Company made a telephone call relating to Debt collection during the Applicable Period, and for each, provide the following information, with the information responsive to each subpart in a separate column:
 - a. Any unique Consumer identifier assigned by the Company to the telephoned Consumer;
 - b. The Consumer's name (last, first, middle);
 - c. The Consumer's street address most recently provided to the Company;
 - d. The city of the Consumer's most recent address;
 - e. The state of the Consumer's most recent address;
 - f. The zip code of the Consumer's most recent address;
 - g. The Consumer's home phone number;
 - h. The Consumer's mobile phone number;
 - i. The Consumer's work phone number;
 - j. The Consumer's account or identification number assigned by the Company;
 - k. The date and time of the telephone call;
 - l. The telephone number called;
 - m. The duration of the telephone call;
 - n. The operator name and/or identifier associated with the telephone call;
 - o. Any unique identifier associated by the Company to the call; and
 - p. Any notes or comments associated with the call.
8. In a Microsoft Excel spreadsheet or .csv file, Identify all instances in which any Consumer listed in the report produced in response to Request for Written Report No. 7 notified the Company in writing that the Consumer wished the Company to cease communicating with the Consumer, and the date and time of each such instance. In a separate column, provide the date on which the Company ceased communicating with the Consumer.
9. In a comma-delimited or tab-delimited text file, provide an archive report generated from the E-OSCAR system that contains all data available from the E-OSCAR system relating to all Automated Credit Dispute Verifications (ACDVs) submitted to the Company in the 120 days preceding November 21, 2022 (Report Date), including all data in the following fields for each such ACDV:
 - a. Account number;
 - b. Consumer name;
 - c. Social security number;
 - d. Response code;
 - e. Dispute code 1;
 - f. Dispute code 2;
 - g. FCRA relevant information;
 - h. Whether images are associated with the ACDV;
 - i. Date dispute submitted;
 - j. Date dispute resolved; and
 - k. Dispute response due date.

10. In a comma-delimited or tab-delimited text file, provide a dispute response notification report generated from the E-OSCAR system that contains all data available from the E-OSCAR system relating to all ACDVs submitted in the 120 days immediately preceding the Report Date.
11. In a comma-delimited or tab-delimited text file, for each other type of report that can be generated by the Company from the E-OSCAR system, provide a written report that contains all data available from the E-OSCAR system for each field of the report for the maximum time period allowed by the E-OSCAR system.

Requests for Documents

1. The Articles of Incorporation, Partnership Agreement, or other origination Documents, for each entity identified in response to Interrogatory No. 2.
2. All non-identical organizational charts or other Documents showing for each entity identified in response to Interrogatory No. 2:
 - a. How each entity relates to the Company's other entities; and
 - b. The hierarchy of officers, directors, managers, or supervisors of each entity, including the date(s) each Document represents.
3. Audited financial statements for the Company for the Applicable Period and the most recent unaudited financial statements for 2022. These statements should include balance sheets, profit and loss statements, and cash flow statements, and accompanying notes.
4. All Documents constituting, communicating, or describing the Company's policies and procedures relating to its Debt Collection Activities, including all e-mails, manuals, training materials, presentations, memoranda, and written guidance or instructions constituting, communicating, or describing:
 - a. Policies and procedures identified in response to Interrogatory No. 5;
 - b. Policies and procedures relating to compliance with any state or federal laws or regulations governing Debt Collection Activities, including the FDCPA and the CFPA;
 - c. Policies and procedures for investigating, disciplining, or terminating employees, contractors, or agents employed or used by the Company, suspected or determined to have failed to comply with any state or federal laws or regulations governing Debt Collection Activities or the Company's policies and procedures to ensure compliance with those laws;
 - d. Policies and procedures relating to the manner in which the Company communicates with Consumers relating to Debt collection, including form of communication, and when and where (home, work, other locations) Consumers may be contacted by

- telephone;
- e. Policies and procedures relating to how the Company processes, investigates, evaluates, responds to, and resolves a written or oral notification from any Consumer or any Person on behalf of a Consumer indicating that:
 - i. the Company has contacted the wrong Person;
 - ii. the Consumer has already been sued on the Debt;
 - iii. the Consumer requests further information or documentation regarding the Debt;
 - iv. the Consumer disputes the Debt or any portion of the Debt;
 - v. the Consumer disputes the accuracy or completeness of any information provided in validation of the Debt;
 - vi. the Consumer refuses to pay the Debt;
 - vii. the Consumer is unable to pay the Debt;
 - viii. the Consumer has requested that the Company cease all further communications with the Consumer;
 - ix. the Consumer has requested that the Company cease all further communications with third parties;
 - x. the Consumer has requested that the Company cease all further communications at the Consumer's place of employment;
 - xi. the Consumer has requested that the Company contact his or her attorney instead of the Consumer;
 - xii. the alleged Debt has been discharged in bankruptcy;
 - xiii. the alleged Debt was covered by an Original Creditor's Debt-protection product;
 - xiv. the alleged Debt is beyond the applicable statute of limitations period;
 - xv. the Consumer disputes the accuracy or completeness of any information the Company furnished to a CRA; and
 - xvi. the Consumer or Person acting on behalf of the Consumer has made any other complaint or dispute relating to the Debt or information the Company furnished about the Debt;
 - f. Policies and procedures relating to how the Company monitors and audits collections calls or other oral communications with Consumers;
 - g. Policies and procedures relating to how the Company monitors written correspondence with Consumers relating to Debt collection;
 - h. Policies and procedures relating to how the Company manages any Debt collection litigation conducted by the Company, including monitoring of outside counsel in connection with such litigation;
 - i. Policies and procedures relating to how the Company determines whether a particular Debt is beyond the applicable statute of limitations;
 - j. Policies and procedures relating to how the Company determines whether the statute of limitations has run prior to the initiation of legal action against the Consumer for alleged nonpayment of Debt; and
 - k. Policies and procedures relating to how the Company calculates and collects interest or fees, including attorney's fees, in excess of the amount owed at the time of Consumer's default to the Original Creditor.

5. All Documents constituting, communicating, or describing the Company's policies and procedures relating to its Consumer Reporting Activities, including all e-mails, manuals, training materials, presentations, memoranda, and written guidance or instructions constituting, communicating, or describing:
 - a. Policies and procedures identified in response to Interrogatory No. 6;
 - b. Policies and procedures relating to compliance with any state or federal laws or regulations governing Consumer Reporting Activities, including the FCRA and the Furnisher Rule, 12 C.F.R. §§ 1022.40–1022.43; and
 - c. Policies and procedures for investigating, disciplining, or terminating employees, contractors, or agents employed or used by the Company, suspected or determined to have failed to comply with any state or federal laws or regulations governing Consumer Reporting Activities or the Company's policies and procedures to ensure compliance with those laws.
6. All Documents constituting, communicating, or describing the Company's policies and procedures relating to its Debt Buying.
7. To the extent not produced in response to Document Requests Nos. 4-5, Documents sufficient to show any practice identified in response to Interrogatories Nos. 5 or 6.
8. All versions of scripts, talk offs, talking points, or other written instructions that the Company uses or has used in communications with Consumers to collect Debt, including but not limited to, scripts used by employees, independent contractors, subcontractors, vendors, or other third parties for interacting with Consumers during collection communications, for contacting third parties, and for responding to requests for verification of Debts.
9. All templates, models, or form letters used for communications with Consumers, including Notices of Debt required by § 1692g(a) of the FDCPA, verifications of a Debt required by § 1692g(b) of the FDCPA, and communications with Consumers who have disputed the accuracy or completeness of any information the Company has furnished to a CRA.
10. All templates, models, or form letters used for communications with third parties regarding Debts, including communications with CRAs or letters regarding location information, disputes, garnishment, or litigation.
11. All communications with a CRA relating to the accuracy or completeness of any information the Company furnished to a CRA.
12. All Documents relating to the Company's compliance or non-compliance with the FDCPA, the FCRA, the Furnisher Rule, 12 C.F.R. §§ 1022.40–1022.43, Subpart E to 12 C.F.R. Part 1022, or state and federal laws prohibiting unfair, deceptive, or abusive acts and practices, including audits, reports from internal or external

auditors, meeting minutes, presentations, e-mails, and whistleblower complaints.

13. All regularly-generated reports relating to Debt Collection Activities, including reports relating to the number of accounts with delinquencies or in default, and reports relating to the effectiveness of the Debt collection efforts of the employees, independent contractors, or other third parties working for the Company.
14. All regularly-generated reports relating to Consumer complaints or disputes about the Company's Consumer Reporting Activities, including reports relating to the type, frequency, or distribution of such complaints or disputes, reports relating to the accuracy or completeness of information the Company furnished to a CRA, and reports relating to the resolution of such complaints or disputes.
15. All reports the Company has generated from the E-OSCAR system relating to Consumer disputes about information the Company furnished about a Consumer to a CRA.
16. All Documents relating to, indicating, or reflecting the Company's contact or attempted contact with a Consumer at his or her place of employment, by phone, e-mail, text message, or in person, including complete logs for each account for which the Company contacted or attempted to contact a Consumer at his or her place of employment. If logs contain abbreviations or shorthand, provide a dictionary or glossary sufficient to interpret all such abbreviations or shorthand.
17. All Documents relating to, indicating, or reflecting the Company's contact or attempted contact with a Consumer's references, by phone, e-mail, text message, or in person, including complete logs for each account for which the Company contacted or attempted to contact a Consumer's references. If logs contain abbreviations or shorthand, provide a dictionary or glossary sufficient to interpret all such abbreviations or shorthand.
18. All recordings or transcripts of telephone calls, in whatever format stored, between the Company and a Consumer, other than at his or her place of employment, during the Applicable Period made in the process of collecting or attempting to collect Debt or obtaining or attempting to obtain location information for the debtor.
19. All image files held by E-OSCAR that are associated with your responses to Requests for Written Report Nos. 9-11, and a tab-delimited text file associating each image file with its corresponding entry in your responses to Requests for Written Report Nos. 9-11.
20. Unique versions of all form communications that provide the Dispute Address and were sent to Consumers with respect to whom the Company furnishes information to a CRA.
21. For each Debt identified in response to Request for Written Report No. 2 for

which the Company responds to subpart (d) with “Y,” documents sufficient to show that the Company mailed to the Consumer a copy of the verification of the Debt or a copy of a judgment.

22. For each Debt identified in response to Request for Written Report No. 3 for which the Company responds to subpart (d) with “Y,” a copy of the verification of the Debt or copy of a judgment obtained by the Company. If the Company has not retained a copy of the verification of the Debt or a copy of a judgment, documents sufficient to show that the Company obtained verification of the Debt or a copy of a judgment.
23. For each Debt identified in response to Request for Written Report No. 4 for which the Company responds to subpart (d) with “Y,” a copy of the verification of the Debt or copy of a judgment obtained by the Company. If the Company has not retained a copy of the verification of the Debt or a copy of a judgment, documents sufficient to show that the Company obtained verification of the Debt or a copy of a judgment.
24. All contracts and agreements, including notes and records of all oral contracts and agreements, and subsequent communications modifying or terminating such contracts and agreements, entered into between the Company and any Original Creditors or Debt Buyers.
25. All contracts and agreements, including notes and records of all oral contracts and agreements, and subsequent communications modifying or terminating such contracts and agreements, entered into between the Company and any third-party Debt Collectors, including lawyers and law firms that file suit and collect Debt on the Company’s behalf.
26. All policies and procedures concerning the Company’s Document retention policies.
27. All Documents relied upon in preparing your answers to the Interrogatories or identified in response to any of the Interrogatories.

II. Definitions.

- A. “**And**” and “**or**” must be construed both conjunctively and disjunctively.
- B. “**Any**” includes “**all**” and “**all**” includes “**any**.”
- C. “**CID**” means the Civil Investigative Demand, including the Requests, Definitions, and Instructions.
- D. “**CFPB**” or “**Bureau**” means the Consumer Financial Protection Bureau.
- E. “**Client**” means any person who places Debts with the Company for the purpose of engaging in Debt Collection Activities or Consumer Reporting Activities.

- F. “**Communication**” means the transmittal of information by any means, including, but not limited to emails, PowerPoint presentations, written reports, letters sent by courier or postal mail, faxes, meeting agendas, meeting minutes, messages sent by slack or other comparable software and documents posted to an intranet or extranet. Communications are a subset of Documents, and accordingly a request for Documents shall be deemed to encompass Communications.
- G. “**Company**” or “**you**” or “**your**” means National Credit Systems, Inc., and any successor in interest.
- H. “**Consumer**” means “any natural person obligated or allegedly obligated to pay any debt,” as set forth in 15 U.S.C. § 1692a(3).
- I. “**Consumer Reporting Activities**” means all activities related in any way to the furnishing of Company account information relating to Consumers to one or more Consumer Reporting Agencies, either directly, or by a third-party debt collector or Debt Buyer.
- J. “**CRA**” means “any person which, for monetary fees, dues, or on a nonprofit basis, regularly engages in whole or in part the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports,” as set forth in 15 U.S.C. § 1681a(f).
- K. “**Credit**” means “the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or service and defer payment for such purchase,” as set forth in 12 U.S.C. § 5481(7).
- L. “**Debt**” means “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment,” as set forth in 15 U.S.C. § 1692a(5).
- M. “**Debt Buyer**” means a Person who purchases a Debt Portfolio.
- N. “**Debt Buying**” means the purchasing of a Debt Portfolio.
- O. “**Debt Collection Activities**” means all activities related in anyway to efforts to collect Debt either directly or indirectly.
- P. “**Debt Collector**” means “any person who uses any instrumentality of interstate commerce or the mails in any business, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another,” as set forth in 15 U.S.C. § 1692a(6).

Q. “**Debt Portfolio**” means a collection of accounts or portfolios of accounts that are delinquent or allegedly in default and sold to a Debt Buyer.

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

S. “**Direct Dispute**” means “a dispute submitted directly to a furnisher (including a furnisher that is a debt collector) by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer,” as set forth in 12 C.F.R. § 1022.41(b).

T. “**Dispute Address**” means the address of the Company at which it accepts Direct Dispute notices from Consumers.

U. “**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.

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

W. “**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.

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

Y. “**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.

Z. “**Including**” means including but not limited to.

AA. “**Indirect Dispute**” means Consumer disputes that are sent to the Company by

a Consumer Reporting Agency.

BB. “**Original Creditor**” means a person who offers or extends credit creating a consumer debt or to whom a debt was owed prior to default.

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

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 **Sarah Baldwin** at sarah.baldwin@cfpb.gov, (202) 480-6912, as soon as possible to schedule a meeting (telephonic or in person) to discuss your response to the CID. The meeting must be held within 10 calendar days after you receive this CID or before the deadline for filing a petition to modify or set aside the CID, whichever is earlier.

C. **Applicable Period for Responsive Materials:** Unless otherwise directed, the applicable period for the request is from January 1, 2018 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 **Sarah Baldwin** at sarah.baldwin@cfpb.gov, (202) 480-6912. 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 **Sarah Baldwin** at sarah.baldwin@cfpb.gov, (202) 480-6912 for the mailing or Internet protocol address.

Please provide any tracking numbers by e-mail or telephone to Enforcement Attorney **Sarah Baldwin** at sarah.baldwin@cfpb.gov, (202) 480-6912.

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, or sensitive health information of any individual, please contact Enforcement Attorney **Sarah Baldwin** at sarah.baldwin@cfpb.gov, (202) 480-6912 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 Reports or 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

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 National Credit Systems, Inc.
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated October 18, 2022 that are within the possession, custody, or control of National Credit Systems, 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. National Credit Systems, 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, that meet the definition of confidential as that term is used for purposes of the Freedom of Information Act, 5 U.S.C. § 552(b)(4).
5. All answers and reports prepared in response to the Civil Investigative Demand dated October 18, 2022 are true and complete.

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

_____.

Signature

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

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

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

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

Signature

CONSUMER FINANCIAL PROTECTION BUREAU | JULY 2021

Civil Investigative Demand Document Submission Standards

CFPB Office of Enforcement



CID Document Submission Standards

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

A. Transmittal Instructions

- 1) A cover letter should be included with each production. The following information should be included in the letter:
 - a) Name of the party making the production and the date of the CID to which the submission is responsive.
 - b) List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production (refer to the media by the unique number assigned to it, see ¶ 4)
 - c) The Bates Range (and any gaps therein)
 - d) The specification(s) or portions thereof of the CID to which the submission is responsive.
- 2) Documents created or stored electronically MUST be produced in their original electronic format, not converted to another format such as PDF.
- 3) Transmittal Methods
 - a) Extranet

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

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

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

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

- iv) USB 2.0 thumb drives for Windows-compatible personal computers are acceptable;
- v) USB 3.0 or USB 3.0/eSATA external hard disk drives, formatted in a Microsoft Windows-compatible file system (FAT32 or NTFS), uncompressed data are acceptable.
- vi) Physical media should be delivered via overnight delivery service or courier, NOT via US Postal Service.
- vii) Label all media with the following:
 - (1) Production date
 - (2) Bates range
 - (3) Disk number (1 of X), if applicable
 - (4) Name of producing party
 - (5) A unique production number identifying each production
- 4) All productions must be produced free of computer viruses. Infected productions may affect the timing of your compliance with the CID.
- 5) All physical produced media must be encrypted. Encryption format must be agreed upon prior to production.
 - a) Data deliveries should be encrypted at the disc level.
 - b) Decryption keys should be provided separately from the data delivery via email or phone.
- 6) Passwords for documents, files, and compressed archives should be provided separately either via email or in a separate cover letter from the data.

B. Delivery Formats

1) General ESI Standards

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

All productions must follow the specifications outlined below:

De-duplication

De-duplication of documents should be applied across custodians (global); each custodian should be identified in the Custodian field in the metadata load file separated

by semi-colon. The first name in the Custodian list should represent the original holder of the document.

Bates Numbering Documents

The Bates number must be a unique, sequential, consistently formatted identifier, i.e., an alpha prefix unique to each producing party along with a fixed length number, i.e., ABC0000001. This format must remain consistent across all productions. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should hyphens or other separators be added or deleted.

Document Retention / Preservation of Metadata

The recipient of this CID should use reasonable measures to maintain the original native source documents in a manner so as to preserve the metadata associated with these electronic materials as it existed at the time of the original creation.

Email Threading

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

2) Native and Image Production

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

a) Metadata File

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

- i) The first line of the .DAT file must be a header row identifying the field names.
- ii) The .DAT file must use the default delimiters (see **Table 1**)
- iii) Date fields should be provided in the format: mm/dd/yyyy
- iv) All attachments should sequentially follow the parent document/email.

- v) All documents shall be produced in both their native/original form and as a corresponding bates-labeled single page TIFF image; provide the link to the original/native document in the NATIVELINK field.
 - vi) Produce extracted metadata for each document in the form of a .DAT file, and include the fields in **Table 2** (fields should be listed but left blank if not applicable):
- b) Document Text
- Searchable text of the entire document must be provided for every record, at the document level.
- i) Extracted text must be provided for all documents that originated in electronic format.
Note: Any document in which text cannot be extracted must be OCR'd.
 - ii) For documents redacted on the basis of any privilege, provide the OCR text for unredacted/unprivileged portions.
 - iii) The text should be delivered as multi-page ASCII text files with the files named the same as the Bates_Begin field. Text files can be placed in a separate folder or included with the .TIFF files.
- c) Linked Native Files
- Copies of original email and native file documents/attachments must be included for all electronic productions.
- i) Native file documents must be named per the BATES_BEGIN number (the original file name should be preserved and produced in the FILENAME metadata field).
 - ii) The full path of the native file must be provided in the .DAT file in the NATIVELINK field.
- d) Images
- i) Images should be single-page, Group IV TIFF files, at 300 dpi.
 - ii) File names should be titled per endorsed bates number.
 - iii) Color should be preserved when necessary to interpret the document.
 - iv) Bates numbers should be endorsed on the lower right corner of all images.
 - v) For documents partially redacted on the basis of any privilege, ensure the redaction box is clearly labeled "REDACTED".
- e) Image Cross Reference File
- i) The image cross-reference file is needed to link the images to the database. It is a comma-delimited file consisting of seven fields per line. There must be a line in the cross-reference file for every image in the database.

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

3) PDF File Production

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

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

4) Transactional Data

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

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

5) Audio/Video/Electronic Phone Records

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

Audio files must be produced in a format that is playable using Microsoft Windows Media Player. Types of audio files that will be accepted include:

- Nice Systems audio files (.aud). AUD files offer efficient compression and would be preferred over both NMF and WAV files.
- Nice Systems audio files (.nmf).

- WAV Files
- MP3, MP4
- WMA
- AIF

Produced audio files must be in a separate folder compared to other data in the production. Additionally, the call information (metadata) related to each audio recording must be produced if it exists. The metadata file must be produced in delimited text format (DAT, CSV, or TXT), using a tab or pipe delimiter. Field names must be included in the first row of the metadata file. Please note that the field names are case sensitive and should be created as listed below. The metadata must include, if available, the fields listed in **Table 5**.

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

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

Types of video files accepted include:

- MPG
- AVI
- WMV
- MOV
- FLV

C. Production of Partially Privileged Documents

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

- a) If originally stored as native electronic files, the image(s) of the unredacted portions are submitted in a way that preserves the same appearance as the original without the redacted material (i.e., in a way that depicts the size and location of the redactions). The OCR text will be produced from the redacted image(s). Any redacted, privileged material should be clearly labeled to show the redactions on the

tiff image(s). Any metadata not being withheld for privilege should be produced in the DAT file; any content (e.g., PowerPoint speaker notes, Word comments, Excel hidden rows, sheets or columns) contained within the native and not being withheld for privilege should be tiffed and included in the production.

- b) If originally in hard copy form, the unredacted portions are submitted in a way that depicts the size and location of the redactions; for example, if all of the content on a particular page is privileged, a blank, sequentially numbered page should be included in the production where the responsive material, had it not been privileged, would have been located.

APPENDIX A: TABLES

TABLE 1: DAT FILE DELIMITERS

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

TABLE 2: DAT FILE FIELDS

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

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

TABLE 3: IMAGE CROSS REFERENCE FILE FIELDS

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

TABLE 4: IMAGE CROSS REFERENCE FILE SAMPLE

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

TABLE 5: AUDIO METADATA FIELDS

Field Name	Description
AgentName	Name of agent/employee
AgentId	Unique identifier of agent/employee
Group	Name for a collection of agents
Supervisor	Name of the Agent's supervisor
Site	Location of call facility
DNIS	Dialed Number Identification Service, identifies the number that was originally called
Extension	Extension where call was routed
CallDirection	Identifies whether the call was inbound, outbound, or internal
CallType	Purpose of the call

Duration	Duration of call
CustomerId	Customer's identification number
CustomerCity	Customer's city of residence
CustomerState	Customer's state of residence
CallDateTime	Date and start time of call (MM/DD/YYYY HH:MM:SS)
CustomerName	Name of person called
FileName	Filename of audio file
BatesBegin	Unique number of the audio file
CalledPartyNumber	The call center or phone number called
CallSize	File size of audio file
CallService	Call service code
MD5Hash	The 32 digit value representing each unique document
DocReq	Document request number to which the file is responsive
Custodian	Individual(s) or department(s) from which the recording originated
FolderPath	Folder path of the audio file in the original source
Source	Original path to where the source file resided
Timezone	The time zone of the original call
GroupID	A unique group identifier for grouping multiple calls
Codec	Encoding/decoding of the audio digital stream
Bitrate	The number of bits that are conveyed or processed per unit of time

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

APPENDIX B: PROHIBITED FILE TYPES FOR EXTRANET

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

What is the CFPB Extranet?

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

How does it work?

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



What else do I need to know?

Account expiration

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

Multi-factor authentication

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

Upload policies

Size: Maximum 2 GB per file

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

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

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

Automatic log-out

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

Password policies

Length: 12 or more characters

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

Supported browsers

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

Google Chrome 33.x and above

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

Mozilla Firefox 24.x and above

Having trouble?

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

Helpful links

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

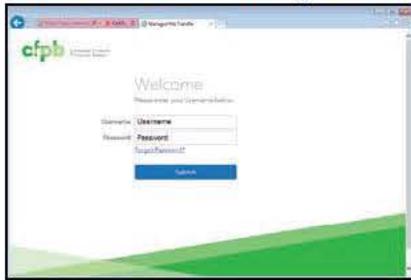
<https://login.extranet.cfpb.gov/updateprofile>

Change your password:

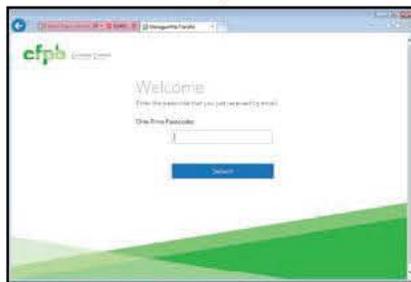
<https://login.extranet.cfpb.gov/changepassword>

Login and upload flow

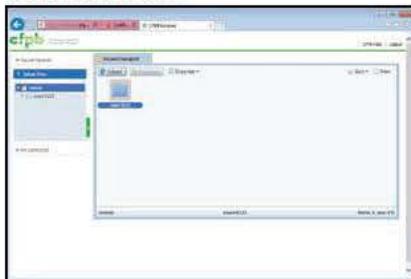
1 Login screen
Enter username and password



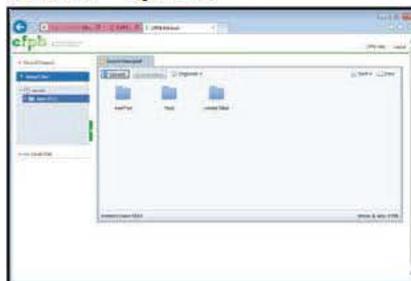
2 Login screen
Enter one-time passcode



3 Root folder
Select folder



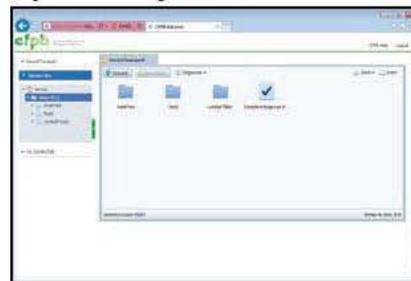
4 Selected folder
Select "Upload"



5 File browser
Select file(s) for upload



6 Selected folder
Upload any additional files



7 Wait for files to transfer
to CFPB internal servers



8 Transfer receipt
Review transfer receipt



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

§ 1081.405 Decision of the Director.

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

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

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

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

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

§ 1081.406 Reconsideration.

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

§ 1081.407 Effective date; stays pending judicial review.

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

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

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

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

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

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

Dated: June 4, 2012.

Richard Cordray,
Director, Bureau of Consumer Financial Protection.

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

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION**12 CFR Part 1080**

[Docket No.: CFPB-2011-0007]

RIN 3170-AA03

Rules Relating to Investigations

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION:**I. Background**

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

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

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

II. Summary of the Final Rule

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

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

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

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

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

III. Legal Authority

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

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

IV. Overview of Public Comments on the Interim Final Rule

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

the real estate finance industry, and other financial institutions.

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

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

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

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

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

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

V. General Comments

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

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

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

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

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

VI. Section-by-Section Summary

Section 1080.1 Scope

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

Section 1080.2 Definitions

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

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

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

Section 1080.3 Policy as to Private Controversies

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

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

Section 1080.4 Initiating and Conducting Investigations

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

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

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

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

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

Section 1080.5 Notification of Purpose

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

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

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

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

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

Section 1080.6 Civil Investigative Demands

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

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

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

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

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

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

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

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

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

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

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

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

Section 1080.7 Investigational Hearings

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

transcript is provided to the designated custodian.

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

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

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

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

Section 1080.8 Withholding Requested Material

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

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

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

Section 1080.9 Rights of Witnesses in Investigations

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

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

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

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

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

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

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

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

Section 1080.10 Noncompliance With Civil Investigative Demands

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

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

Section 1080.11 Disposition

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

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

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

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

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

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

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

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

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

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

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

Section 1080.13 Custodians

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

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

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

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

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

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

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

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

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

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

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

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

VII. Section 1022(b)(2) Provisions

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

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

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

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

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

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

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

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

A commenter asserted that disfavoring extensions of petitions to

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

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

VIII. Procedural Requirements

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

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

List of Subjects in 12 CFR Part 1080

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

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

PART 1080—RULES RELATING TO INVESTIGATIONS

Sec.

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

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

§ 1080.1 Scope.

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

§ 1080.2 Definitions.

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

Bureau means the Bureau of Consumer Financial Protection.

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

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

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

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

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

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

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

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

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

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

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

§ 1080.3 Policy as to private controversies.

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

§ 1080.4 Initiating and conducting investigations.

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

§ 1080.5 Notification of purpose.

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

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

§ 1080.6 Civil investigative demands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cause shown, may extend the time prescribed for compliance.

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

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

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

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

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

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

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

§ 1080.7 Investigational hearings.

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

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

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

§ 1080.8 Withholding requested material.

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

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

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

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

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

(i) The disclosure was inadvertent;

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

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

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

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

(i) The waiver is intentional;

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

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

§ 1080.9 Rights of witnesses in investigations.

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

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

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

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

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

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

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

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

§ 1080.10 Noncompliance with civil investigative demands.

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

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

and the General Counsel of the Bureau are authorized to:

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

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

§ 1080.11 Disposition.

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

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

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

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

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

§ 1080.13 Custodians.

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

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

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

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

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

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

Dated: June 4, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1082

[Docket No. CFPB-2011-0005]

RIN 3170-AA02

State Official Notification Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background

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

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

II. Summary of the Final Rule

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

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

III. Legal Authority

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

IV. Overview of Comments Received

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

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

CERTIFICATE OF COMPLIANCE WITH RFPA

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

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

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

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



Digitally signed by David M. Rubenstein
Date: 2022.10.18 08:08:32 -04'00'

**CONSUMER FINANCIAL PROTECTION BUREAU
1700 G Street NW, Washington, D.C. 20552**

Notice to Persons Supplying Information

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

A. False Statements; Perjury

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

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

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

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

B. The Fifth Amendment; Your Right to Counsel

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

Right to Counsel. You have the right to be accompanied, represented and advised by counsel of your choice. For further information, you should consult Bureau regulations at

12 C.F.R. § 1080.9(b).

C. Effect of Not Supplying Information

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

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

D. Privacy Act Statement

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

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

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

Exhibit 2

-- FILED UNDER SEAL --

Exhibit 3

-- FILED UNDER SEAL --

Exhibit 4

-- FILED UNDER SEAL --

Exhibit 5

-- FILED UNDER SEAL --

Exhibit 6

-- FILED UNDER SEAL --

Exhibit 7

-- FILED UNDER SEAL --