

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION**

CONSUMER FINANCIAL PROTECTION  
BUREAU,

Petitioner, v.

PURPOSE FINANCIAL INC.,

Respondent.

Case No.

**PETITION TO ENFORCE CIVIL  
INVESTIGATIVE DEMAND**

1. On February 10, 2023, the Consumer Financial Protection Bureau (Bureau or CFPB) issued a civil investigative demand (February CID) to Purpose Financial, Inc. (Purpose) seeking information relating to Purpose’s lending activities. *See* Declaration of Gregory Nodler (Nodler Decl.), Ex. A. The February CID was served by email on February 10, 2023, after Purpose informed the Bureau that it would accept service by email. *Id.* at ¶ 6.

2. Purpose is a payday lender headquartered in Spartanburg, South Carolina that does business in at least 24 states, often under the name Advance America. *Id.* at ¶ 4. Purpose makes millions of loans to consumers every year and generated over \$550 million in average annual revenue from 2016 to 2021. *Id.* at ¶¶ 4-5. Purpose has referred to itself as “the largest non-bank provider of cash advance services in the United States” and “one of the largest state-licensed consumer lenders in the United States” *Id.* at ¶ 5.

3. The Bureau issued the February CID and two previous CIDs as part of an ongoing investigation to determine whether Purpose, in connection with providing short-term or small-dollar loans, has: (1) improperly induced borrowers to take out, renew, or refinance

loan products that harmed them; (2) misrepresented the full, long-term costs of serially rolling over, renewing, or refinancing their loan products; or (3) misrepresented that their loans are short-term obligations despite being structured and serviced in a manner that renders them longer-term obligations for many borrowers, in a manner that is unfair, deceptive, or abusive in violation of §§ 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536. *Id.* at ¶ 7.

4. The February CID required Purpose to respond to twenty-three document requests, answer nine interrogatories, and produce eight written reports by March 13, 2023. *Id.* at ¶ 10. Some of the document requests seek emails. *Id.* The requests for written reports seek data related to Purpose's loans and storefronts, as well as contact information for consumers and former employees. *Id.* Three of the document requests (Document Requests 1, 13, and 17) seek personnel files, loan files, and communications with consumers. To lessen the burden on Purpose, the Bureau limited these requests to the top-two and bottom-two performing stores in each state based on various criteria, which the Bureau asked Purpose to identify in a separate request of the CID. *Id.* at ¶¶ 10–11.

5. The information requested in the February CID is relevant and material to determining whether Purpose violated the CFPA as described in the February CID's Notification of Purpose. For example, the CID requests information that will assist the Bureau in determining whether Purpose improperly induced borrowers to take out, renew, or refinance loans or if Purpose misrepresented the cost or nature of its loans. *Id.* at ¶¶ 7, 41–44. The CID also requests information about Purpose's conduct and knowledge regarding the issues described above that are the focus of the investigation. *Id.* at ¶¶ 40, 42, and 44. And the CID requests information related to whether Purpose improperly incentivizes employees to engage in the practices described above, as well as information that is likely to lead to the identification of salient witnesses among current and former employees, as well

as current or former customers. *Id.* at ¶¶ 39, 41, and 42.

6. 12 C.F.R. § 1080.6(c) requires that any CID recipient meet with the Bureau to attempt to resolve all issues regarding compliance with the CID. At a meet-and-confer held on February 21, 2023, Purpose told the Bureau that, because of a recent ransomware attack it had suffered, it had not fully assessed the CID and was unable to discuss its substance but would send the Bureau a letter requesting modifications to the CID. *Id.* at ¶ 15.<sup>1</sup>

7. In a letter sent on February 24, 2023, Purpose told the Bureau that it had resumed its online lending business and begun resuming its storefront lending [following the ransomware attack], though most of its approximately 900 storefronts were working with a single workstation. *Id.* at ¶ 16. Purpose also indicated that it could respond to two interrogatories by the CID's March 13, 2023 deadline, and requested a second meet-and-confer be held on March 23, 2023, after which it could "provide a proposed production schedule for the remaining CID requests including a discussion of any requested scope modifications." *Id.*

8. On February 28, 2023, the Bureau modified the CID, extending the deadline to respond to all requests other than four interrogatories by one month, to April 13, 2023.<sup>2</sup> *Id.* at ¶ 17. In the modification letter, the Bureau explained that it would consider further modifications after a second meet-and-confer to be held the week of March 13, 2023. *Id.*

9. At that second meet-and-confer, held on March 20, 2023, Purpose told the Bureau it was still not ready to propose a production schedule, but that it would provide one in writing, along with a detailed description of the burden necessitating modifications to the

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<sup>1</sup> Purpose first informed the Bureau of the ransomware attack on February 17, 2023. Nodler Decl. ¶ 14.

<sup>2</sup> Answers to Interrogatories 1, 6, 7, and 9 remained due on March 13, 2023, and were timely produced by Purpose.

CID. *Id.* at ¶ 19. With respect to document requests that sought email, Purpose said it would propose to limit email production by custodians and keyword searches. *Id.* And with respect to the Bureau's requests for written reports, Purpose told the Bureau it may request a modification to require data only on its current system. *Id.*

10. On April 4, 2023, Purpose sent a written request for a second modification to the CID. *Id.* at ¶ 21. In that letter, Purpose altered its prior position on producing emails and written reports. Although Purpose had previously indicated that it would propose custodians and search terms to limit responsive emails, Purpose now asked to not be required to produce any emails, claiming that production would be too costly. *Id.* Purpose also asked to be entirely relieved of its obligation to produce written reports, citing limited staff capacity. *Id.*

11. In its April letter, Purpose also proposed multiple new modifications to the CID. It requested changes to several individual requests based on difficulties accessing responsive material and proposed a production schedule (excluding emails and written reports). *Id.* at ¶ 22. Finally, although Purpose had not identified the subset of highest and lowest performing stores the Bureau had asked for, Purpose also requested to discuss with the Bureau using a different way to identify the stores from which it would provide documents in response to Document Requests 1, 13, and 17. *Id.*

12. On April 12, 2023, the Bureau modified the February CID a second time. *Id.* at ¶ 23. The Bureau largely agreed to Purpose's proposed production schedule, which was a rolling production beginning the next day and ending on August 14, 2023.<sup>3</sup> *Id.* at ¶¶ 23-26.

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<sup>3</sup> The Bureau did not agree to Purpose's requests for a June 12, 2023 deadline for Document Requests 7 and 14; a July 14, 2023 deadline for Document Request 8; and no deadline for Document Request 22.

The Bureau also agreed to most of the individual modification requests that were based on Purpose’s difficulties accessing responsive material. *Id.* For example, the Bureau agreed to exclude from numerous document requests informal documents (other than email) that are not centrally or systematically saved or stored. *Id.* at ¶ 24.

13. With respect to email, the Bureau explained that Purpose had not shown that excluding all emails was necessary to avoid undue burden, but that the Bureau “remains open to limiting email production by custodian and search terms to limit the burden imposed on Purpose.” *Id.* at ¶ 25. To reduce the burden in producing written reports, the Bureau modified the February CID to require only data stored in a system currently used by Purpose. *Id.* Because Purpose had not shown that producing written reports from its current system imposed undue burden, the Bureau declined to modify the CID to exclude all written reports. *Id.* As with emails, however, the Bureau explained that it “remains open to further modifying [the requests for written reports] based on specifically described inability to access the requested data.” *Id.* To give the parties time for further discussion regarding the production of emails and written reports, the Bureau extended the deadline to produce responsive emails and written reports to April 20, 2023. *Id.*

14. Finally, the Bureau extended the deadline to respond to Document Requests 1, 13, and 17—which asked for store-level personnel files, loan files, and certain communications—until after Purpose identified the subset of relevant stores. The Bureau further explained that it was open to modifying the number of stores from which to produce responsive documents after Purpose identified the relevant stores. *Id.* at ¶ 26.

15. On April 13, 2023, the first deadline in the recently modified CID, Purpose did not produce the responses that were due. *Id.* at ¶ 27. Instead, Purpose requested that the Bureau stay its investigation pending the Supreme Court’s review of the Fifth Circuit’s

decision in *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, No. 21-50826 (5th Cir. Oct. 19, 2022) (hereinafter *CFSA*). *Id.* at ¶ 28.

16. On April 14, 2023, the Bureau informed Purpose that the Bureau would not stay the investigation. *Id.* at ¶ 29. The Bureau once again reiterated its willingness to limit email production by custodian and search terms and to further modify its requests for written reports if Purpose could not access particular data. *Id.*

17. On April 17, 2023, Purpose informed the Bureau that, “given the significant cost and burden on Purpose on continuing to comply and the serious constitutional questions before the Supreme Court in the *CFSA* appeal, at this time, Purpose [is] declining to make any further productions in response to the CID, pending the outcome of that appeal.” *Id.* at ¶ 30.

18. To date, Purpose has responded to only Interrogatories 1, 6, 7, and 9 of the February CID. *Id.* at ¶ 31. As of the date of this filing, the remaining requests are overdue:

Overdue as of April 14, 2023

- Responses to Interrogatories 2-5 and 8
- Non-email responses to Document Requests 3-4 (created during or after 2020), 11, 19, and 23

Overdue as of April 21, 2023

- Emails responsive to Document Requests 3, 4, 6-8, 10, 11, 14-18, and 21
- Written Reports 1-8

Overdue as of May 12, 2023

- Responses to Document Requests 1, 2, 3-4 (pre-2020 documents), 5-6 (corporate-level and externally created), 7 (documents created during or after 2020), 8 (except for PIPs), 9, 10 (regular committee and Board meetings), 12 (current documents), 13, 14 (final bonus/incentive plans and results), 17, 18 (current documents), and 22

*Id.* at ¶ 32.

19. Purpose never filed a petition with the Bureau to modify or set aside the February CID, nor did Purpose request an extension of time to file a petition to modify or set aside the

February CID. *Id.* at ¶ 33. Purpose’s deadline to file a petition thus expired on March 2, 2023. *See* 12 U.S.C. § 5562(f), 12 C.F.R. § 1080.6(e).

20. Purpose’s refusal to comply with the modified February 10, 2023 CID burdens, delays, and impedes the Bureau’s investigation of Purpose’s conduct in connection with the provision of short-term, small-dollar, or installment loans to consumers. *Id.* at ¶ 34.

### **Jurisdiction and Venue**

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

22. Venue is proper because Purpose resides, is found, and transacts business in Spartanburg, SC, which is in this district. 12 U.S.C. § 5562(e)(1).

### **Parties**

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

24. Purpose offers and provides payday and title loans to consumers and collects payday and title-loan debt from consumers. Payday and title loans are offered or provided for use by consumers primarily for personal, family, or household purposes and are therefore “consumer financial product[s] or service[s]” under the CFPA. 12 U.S.C. § 5481(5), (15)(A)(i), (15)(A)(x). Purpose is therefore a “covered person” under the CFPA. 12 U.S.C. § 5481(6)(A).

### **Legal Standard**

25. Section 1052(c) of the CFPA empowers the Bureau to issue a CID whenever it has reason to believe that “any person . . . may have any information[] relevant to a violation” of “Federal consumer financial law.” 12 U.S.C. § 5562(c)(1). A CID issued by the Bureau may, among other things, require the recipient to respond to interrogatories, provide

written reports, and produce documents. *Id.*

26. A CID is an administrative subpoena. *In re Civ. Investigative Demand* 15-439, No. 5:16-MC-3, 2016 WL 4275853, at \*3 (W.D. Va. Aug. 12, 2016). Upon petitioning to enforce an administrative subpoena, the issuing agency must show that: (1) the subpoena is within the agency’s authority, (2) the agency satisfied statutory requirements of due process, and (3) the information sought is relevant and material to the investigation. *E.E.O.C. v. Randstad*, 685 F.3d 433, 451 (4<sup>th</sup> Cir. 2012) (citations omitted). “Once the agency makes this showing, the court must enforce the subpoena unless the party being investigated demonstrates that the subpoena is unduly burdensome.” *E.E.O.C. v. Maryland Cup Corp.*, 785 F.2d 471, 476 (4<sup>th</sup> Cir. 1986).

#### **The CFPB Has Authority to Issue the February CID**

27. To show that an administrative subpoena is within an agency’s authority, the agency need only show that an “arguable” or “plausible” basis for its jurisdiction exists and that its investigative authority is “not plainly lacking.” *E.E.O.C. v. Mar. Autowash, Inc.*, 820 F.3d 662, 665 (4<sup>th</sup> Cir. 2016). Here, the February CID is clearly within the CFPB’s authority. The Bureau is tasked with preventing covered persons from engaging in unfair, deceptive, or abusive acts or practices in connection with providing consumer financial products or services. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B). The February CID was issued as part of an ongoing investigation to determine whether Purpose, a covered person, is engaging in unfair, deceptive, or abusive practices in connection with providing short-term or small-dollar loans to consumers, which are consumer financial products or services. The February CID is thus squarely within the Bureau’s authority.<sup>4</sup>

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<sup>4</sup> Although there can be no doubt that Purpose is a covered person, and Purpose has never asserted otherwise, even if it was not, Purpose would still be bound to respond to the Bureau’s CIDs. The



### **The CFPB Satisfied the Statutory Requirements of Due Process**

28. The CFPB satisfied all statutory requirements of due process. As required by the CFPA, 12 U.S.C. § 5562(c)(2), the February CID was issued by a Deputy Assistant Director of Enforcement and contained a Notification of Purpose apprising Purpose of the nature of the conduct under investigation and applicable provisions of law. The February CID was duly served on Purpose through a person authorized to receive service on its behalf, as permitted by 12 U.S.C. § 5562(c)(8)(A). And Purpose had the right under 12 USC § 5562(f) and 12 C.F.R. § 1080.6(e) to file a petition to modify or set aside the CID, which it chose not to do.

### **The CID Seeks Relevant and Material Information**

29. The information sought in the February CID is relevant and material to the investigation. “Courts defer to an agency’s own appraisal of what is relevant ‘so long as it is not ‘obviously wrong.’” *E.E.O.C. v. Lockheed Martin Corp., Aero & Naval Sys.*, 116 F.3d 110, 113 (4th Cir. 1997) (citing *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992)).

30. The aim of the Bureau’s investigation is to determine whether Purpose improperly induced borrowers to take out, renew, or refinance loans that harmed them, misrepresented the costs of its loans, or misrepresented that their loans are short-term obligations despite being structured and serviced in a manner that renders them longer-term obligations for many borrowers, in a manner that is unfair, deceptive, or abusive in violation of the CFPA.

31. The February CID seeks information that is relevant and material to making this

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Bureau’s authority to issue CIDs is broader than its enforcement authority. *See* 12 U.S.C. § 5562(c)(1) (“Whenever the Bureau has reason to believe that *any person* . . . may have any information[] relevant to a violation, the Bureau may . . . issue in writing . . . a civil investigative demand. . .”) (emphasis added).

determination. In short, the February CID seeks information relating to Purpose's lending activities, including how Purpose marketed its loans and communicated with borrowers, qualified borrowers for loans, and incentivized and rewarded its employees, as well as information about the loans Purpose provided and the collection of those loans.

32. This information is squarely relevant and material to determining whether Purpose violated the CFPA as described in the Notification of Purpose. For example, the CID requests information that would assist the Bureau in determining whether Purpose improperly induced borrowers to take out, renew, or refinance loans, or if Purpose misrepresented the cost or nature of its loans. The CID also requests information about Purpose's conduct and knowledge regarding the issues described above that are the focus of the investigation. And the CID requests information related to whether Purpose improperly incentivizes employees to engage in the practices described above, as well as information that is likely to lead to the identification of salient witnesses among current and former employees, as well as current or former customers.

### **Purpose Cannot Demonstrate that the CID is Unduly Burdensome**

33. Once the CFPB shows that it has authority to issue a CID, complied with statutory requirements of due process, and seeks information relevant and material to the investigation, the burden shifts to Purpose to show that the CID is unduly burdensome. *Maryland Cup*, 785 F.2d at 476. None of the excuses Purpose provided during the meet-and-confer process would satisfy that burden.

34. First, Purpose cannot establish that it would suffer an undue burden if required to comply with the CID. "The burden of proving that an administrative subpoena is unduly burdensome is not easily met. The party subject to the subpoena must show that producing the documents would seriously disrupt its normal business operations." *Randstad*, 685 F.3d

at 451 (quoting *Maryland Cup*, 785 F.2d at 477). Despite numerous requests to do so, Purpose has not explained how complying with the modified February CID would seriously disrupt its normal business operations. Based on the bare explanations Purpose provided, the Bureau made reasonable efforts to limit Purpose's compliance burden, including postponing compliance deadlines and agreeing to nearly all of Purpose's modification requests where supported by specific claims of cost or burden. While the Bureau did not agree to exclude *all* emails and *all* written reports, the Bureau explained that it was willing to limit email production based on custodians and search terms, as Purpose itself initially indicated it would do, and that it was willing to narrow its request for written reports. Purpose never responded to that offer.

35. Second, even if Purpose could show undue burden, which it cannot, it waived its ability to challenge the CID in court on this basis because it failed to exhaust its administrative remedies.

36. It is well established that parties must exhaust their administrative remedies before seeking relief in court. *McKart v. United States*, 395 U.S. 185, 193-94 (1965). This principle applies to CID enforcement. *See, e.g., United States v. Morton Salt Co.*, 338 U.S. 632, 653-54 (1950) (applying exhaustion principles in context of FTC proceedings). Failure to exhaust applicable administrative remedies by raising objections to a CID through the Bureau's administrative process as appropriate constitutes a waiver of those objections to the CID. *See e.g., FTC v. Complete Merchant Solutions, LLC*, 2020 WL 2059847 at \*8-10 (D. Ut. 2020) (collecting cases).

37. Here, Congress and the Bureau have provided CID recipients with an administrative procedure when a CID recipient thinks it cannot or should not comply with a CID. First, a CID recipient must meet and confer with the Bureau within 10 calendar days

after receipt or before the deadline for filing a petition to modify or set aside, whichever is earlier, to “attempt to resolve all issues regarding compliance with the civil investigative demand.” 12 C.F.R. § 1080.6(c). If compliance issues cannot be resolved through the meet-and-confer process, the CID recipient can petition the Bureau’s Director to set aside or modify the CID within twenty calendar days after service of the CID, or if the return date is less than 20 calendar days after service, prior to the return date. 12 U.S.C. § 5562(f), 12 C.F.R. § 1080.6(e). Purpose received notice of these administrative procedures in the February 2022 CID, as part of its instructions and the Rules on Investigations attached to the CID. Nodler Decl. ¶ 12.

38. Purpose failed to exhaust the necessary administrative steps. On many occasions, the Bureau has requested Purpose meaningfully comply with the meet-and-confer process by discussing less burdensome ways to produce email, written reports, and other responsive material. Purpose has declined to do so. And Purpose never filed a petition to modify or set aside the CID based on burden or any other ground. The statutory deadline for filing a petition was March 2, 2023 (20 days after service of the CID), and Purpose offers no reason why it could not have timely filed a petition raising its burden-based objections.<sup>5</sup>

39. Because Purpose failed to meaningfully engage in the meet-and-confer process and failed to file a petition to modify or set aside the CID, Purpose cannot now challenge the February CID in court based on the supposed burden. *See FTC v. XCast Labs, Inc.*, 2021 WL 6297885, at \*3 (C.D. Cal. Dec. 9, 2021) (respondent “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 . . . but it chose not to avail itself of that

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<sup>5</sup> Purpose also could have requested an extension to file a petition, *see* 12 C.F.R. § 1080.6(e)(2), but did not.\* Attorney intends to file application to appear *pro hac vice*.

remedy.”).

40. Third, the Supreme Court’s consideration of the Fifth Circuit’s outlier decision in *CFSA* provides no excuse for Purpose’s failure to comply with the Bureau’s CID. The Bureau’s statutory funding mechanism is wholly consistent with the Appropriations Clause’s text, Supreme Court precedent, and historical practice dating back to the country’s founding. Every court to consider the issue, save the Fifth Circuit in *CFSA*, has reached that conclusion. *See, e.g., CFPB v. TransUnion*, No. 1:22-cv-1880, 2022 WL 17082529, at \*4–5 (N.D. Ill. Nov. 18, 2022) (gathering cases and agreeing with “substantial majority” position rejecting Appropriations Clause challenge). Among those courts is the Second Circuit, which—even after the Supreme Court granted certiorari in *CFSA*—rejected the Fifth Circuit’s reasoning and affirmed a district court final judgment enforcing a Bureau CID. *See CFPB v. L. Offs. of Crystal Moroney, P.C.*, 63 F.4th 174, 181–84 (2d Cir. 2023). This Court, too, should enforce the Bureau’s CID—a crucial tool that aids the Bureau in carrying out its statutory duty to “search[] out violations” of the law “with a view to securing [its] enforcement.” *Maryland Cup Corp.*, 785 F.2d at 478–79 (quoting *Okl. Press Publ’g Co. v. Walling*, 327 U.S. 186, 216 (1946)); *see also* 12 U.S.C. §§ 5561, 5562, 5564 (authorizing Bureau to investigate and enforce violations of Federal consumer financial law).

## CONCLUSION

Because the Bureau has shown that its CID is within the Bureau’s investigative authority, satisfied statutory due process requirements, and seeks information relevant and material to its investigation, the Bureau has demonstrated that enforcement of the CID is appropriate.

WHEREFORE, the Bureau respectfully requests that the Court enter an order:

1. requiring Purpose to show cause, in writing, why it should not comply with the Bureau CID issued on February 10, 2023, as modified on February 28, 2023, and April 12, 2023;
2. after hearing fully from the parties, order Purpose to comply fully with the CID within 14 days;
3. award the Bureau the costs it incurred in maintaining this action;
4. and grant such other relief as this Court deems just and proper.

Dated: June 12, 2023

Respectfully Submitted,

Attorneys for Petitioner,

Consumer Financial Protection Bureau

Eric Halperin  
Enforcement Director

Richa Dasgupta  
Deputy Enforcement Director

Michael Posner  
Assistant Litigation Deputy

/s/ David Hendricks  
David Hendricks  
Senior Litigation Counsel  
SC Bar No.: 10547  
Email: David.Hendricks@cfpb.gov  
Phone: 571-455-3209

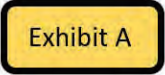
Gregory Nodler\*  
Senior Litigation Counsel  
TX Bar No.: 24053395  
E-mail: Gregory.Nodler@cfpb.gov  
Phone: 202-435-7671  
Fax: 202-435-7722

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\* Attorney intends to file application to appear *pro hac vice*.

Amy R. Mix\*  
Senior Litigation Counsel  
DC Bar No.: 483483  
E-mail: Amy.Mix@cfpb.gov  
Phone: 202-435-9924

Stephanie B. Garlock\*  
Honors Attorney  
DC Bar No.: 1779629  
E-mail: Stephanie.Garlock@cfpb.gov  
Phone: 202-435-7201



UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION

CONSUMER FINANCIAL PROTECTION  
BUREAU,  
  
Petitioner, v.  
  
PURPOSE FINANCIAL INC.,  
  
Respondent.

Case No.

**Declaration of Gregory  
Nodler in Support of Petition  
to Enforce Civil Investigative  
Demand**

Pursuant to 28 U.S.C. §1746, I, Gregory Nodler, declare as follows:

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

2. I am lead counsel on an ongoing Bureau investigation concerning possible violations of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536.

3. I am authorized to execute this declaration and verify the facts that are set forth in this declaration, which are based on my personal knowledge or information made known to me in the course of my official duties.

**Purpose Financial Inc.**

4. Purpose Financial, Inc. (Purpose) is a payday lender headquartered in Spartanburg, South Carolina that does business in at least 24 states, often under the name Advance America.



5. Purpose describes itself on its website havepurpose.com as “one of the largest state-licensed consumer lenders in the United States.” On April 25, 2023, Purpose’s parent company Grupo Elektra described Purpose in a press release as “the largest non-bank provider of cash advance services in the United States.”<sup>1</sup> Purpose also used this description in a 10K filed with the Securities and Exchange Commission in 2010. On Purpose’s consumer-facing website AdvanceAmerica.net, the company advertises that it made over “148 million loans” over the past “25+ years.” According to financial statements produced by Purpose in this investigation, from 2016 to 2021, it generated an average of \$550 million in revenue each year.

### **Procedural History of the CID**

6. On February 10, 2023, the Bureau, through Richa Dasgupta, a Deputy Assistant Director of the Office of Enforcement, issued a Civil Investigative Demand (February CID) to Purpose. *See* Exhibit A-1, attached. I served the February CID on Purpose through Purpose’s outside counsel, who was authorized to accept service on behalf of Purpose. *See* Exhibit A-2, attached. Purpose’s counsel agreed to accept service by email and confirmed receipt of the February CID on February 10, 2023. *Id.*

7. The February CID and two previous CIDs issued on July 19, 2022 and October 14, 2022 were issued as part of an ongoing investigation to determine whether Purpose, in connection with providing short-term or small-dollar loans, has: (1) improperly induced borrowers to take out, renew, or refinance loan products that harmed them; (2) misrepresented the full, long-term costs of serially rolling over, renewing, or refinancing their loan products; or (3) misrepresented that their loans are short-term obligations despite being structured and

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<sup>1</sup> *See* <https://www.prnewswire.com/news-releases/grupo-elektra-announces-10-growth-in-ebitda-to-ps6-158-million-in-the-first-quarter-of-2023--301807627.html>.

serviced in a manner that renders them longer-term obligations for many borrowers, in a manner that is unfair, deceptive, or abusive in violation of §§ 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536. *See* Exhibit A-1 at 3.

8. The July 19, 2022 CID required Purpose to respond to five document requests, answer eight interrogatories, produce one written report, and appear at an investigational hearing to testify on seven topics. The October 14, 2022 CID was identical to the July 19, 2022 CID, except that it changed the name of an investigational hearing investigator and provided a 9:00 am start time for the investigational hearing. The Bureau modified each of the first two CIDs twice. *See* Exhibit A-3, attached [four modification letters, not the CID itself]. Purpose completed its written responses to the modified July 19, 2022 CID on November 7, 2022 and appeared for the investigational hearing on December 14, 2022.

9. As required by the CFPA, 12 U.S.C. § 5562(c)(2), the February CID was issued by a Deputy Assistant Director of Enforcement and contained a Notification of Purpose apprising Purpose of the nature of the conduct under investigation and applicable provisions of law. *See* Exhibit A-1 at 3.

10. The February CID required Purpose to respond to twenty-three document requests, answer nine interrogatories, and produce eight written reports by March 13, 2023. *Id.* at 3-13. Some of the document requests seek emails. *Id.* at 5-8. The requests for written reports seek data related to Purpose's loans and stores where Purpose offers loans, as well as contact information for consumers and former employees. *Id.* at 9-13. Three of the document requests (Document Requests 1, 13, and 17) seek personnel files, loan files, and communications with consumers from stores that Purpose identifies in response to Request for Written Report 6. *Id.* at 5, 7, and 8. Written Report 6, in turn, asks Purpose to identify the top-two and bottom-two performing stores in each state based on various criteria. *Id.* at 12.

11. In drafting the February CID, I limited Document Requests 1, 13, and 17 to the subset of stores in Request for Written Report 6, to reduce the burden on Purpose.

12. The February CID informed Purpose of its right to file a petition to modify or set aside the February CID and contained instructions on how to do so, in both the CID's instructions and the Rules Relating to Investigations attached to the CID. *See* Exhibit A-1 at 17 (Instruction G) and 50 (Rules Relating to Investigations).

13. On February 13, 2023, while scheduling the meet-and-confer that is required by 12 C.F.R. § 1080.6(c), I wrote in an email to Purpose, "since the CID is largely data-focused, it would be helpful to have an e-discovery person from the company there to help explain any modification requests based on burden." *See* Exhibit A-4, attached.

14. On February 17, 2023, Purpose's counsel informed me that Purpose had been subject to a ransomware attack on February 7<sup>th</sup>, which limited its ability to conduct business. I was later informed by Purpose's counsel that the ransomware attack caused Purpose to temporarily cease originating loans online or in stores.

15. On February 21, 2023, I, along with Bureau staff, including a member of the Office of Enforcement e-Discovery team, met by telephone and video conference with in-house and outside counsel for Purpose about the February CID to discuss and attempt to resolve all issues that Purpose would raise regarding its ability to fully comply with the CID, in accordance with 12 C.F.R. § 1080.6(c). At that meeting, Purpose informed Bureau staff that due to the ransomware attack, it had not fully assessed the February CID and was unable to discuss its substance, but would send the Bureau a letter describing the need for and requesting modifications to the February CID.

16. On February 24, 2023, I received a letter from Purpose regarding the February CID. *See* Exhibit A-5, attached. Purpose stated in the letter that it had resumed its online

lending business and had begun resuming its storefront lending, though most of its approximately 900 storefronts were working with a single workstation. *Id.* at 2. Purpose also indicated in the letter that it could respond to Interrogatories 6 and 7 by the CID's March 13, 2023 deadline. *Id.* at 4. Purpose requested a second meet-and-confer be held on March 23, 2023, after which it could "provide a proposed production schedule for the remaining CID requests including a discussion of any requested scope modifications." *Id.*

17. On February 28, 2023, the Bureau modified the February CID, extending the deadline to respond to all requests other than Interrogatories 1, 6, 7, and 9 to April 13, 2023. *See Exhibit A-6, attached.* In the modification letter, the Bureau explained that it would consider further modifications after a second meet-and-confer to be held the week of March 13, 2023. *Id.* at 1.

18. The answers to Interrogatories 1, 6, 7, and 9 remained due on March 13, 2023. *Id.* at 2.

19. On March 20, 2023, I, along with Bureau staff, including a member of the Office of Enforcement e-Discovery team, met for a second time with outside counsel for Purpose about the modified February CID to discuss and attempt to resolve all issues that Purpose might raise regarding its ability to comply with the CID. Again, Purpose was unable to propose a production schedule or discuss with particularity any technical reasons why it anticipated requesting specific modifications to the CID. I explained that the Bureau was open to modifying the CID based on a detailed description of why the modifications are necessary and that the Bureau was open to limiting email production by custodian and keyword search. Purpose told the Bureau that after spending more time assessing its ability to respond to the February CID, it would provide in writing a detailed description of the burden necessitating various modifications; a proposed plan to limit email production by

custodians and keyword searches; and a proposed production schedule. With respect to the Bureau's requests for written reports, Purpose told the Bureau it may request a modification to exclude data kept only on its legacy systems.

20. On March 29, 2023, I emailed Purpose to ask when it would send a written request for modification and proposed schedule, stating "I want to make sure there is enough time for the Bureau to consider changes well before the current deadline for full compliance with the CID (4/13/23)." *See* Exhibit A-7, attached.

21. On April 4, 2023, I received a letter from Purpose requesting modifications to the CID. *See* Exhibit A-8, attached. Although Purpose had previously indicated that it would propose custodians and search terms to limit responsive emails, in its April letter Purpose requested to not produce any emails and stated that, while it initially hoped to produce some written reports if the requests were limited to data in its current system, it was now requesting to not produce any written reports because the team that would normally prepare responses was still responding to the ransomware attack, and another employee that Purpose hoped could help with the production planned to be on extended personal leave. *Id.* at 3-5.

22. In its April 4 letter, Purpose also requested to modify several individual requests based on difficulties accessing responsive material and proposed a production schedule (excluding emails and written reports). *Id.* at 5-9. Finally, although Purpose had not identified the stores that were responsive to Request for Written Report 6, Purpose also requested to discuss with the Bureau using a different way (other than Written Report 6) to identify the stores from which to provide documents in response to Document Requests 1, 13, and 17. *Id.* at 4.

23. On April 12, 2023, the Bureau modified the February CID a second time. *See* Exhibit A-9, attached. The Bureau agreed to Purpose's proposed production schedule except

with regard to Purpose's requests for a June 12, 2023 deadline for Document Requests 7 and 14; a July 14, 2023 deadline for Document Request 8; no deadline for Document Requests 1, 13, 17, and 22, and an exclusion of all email and written reports. *Id.* at 5-6.

24. The Bureau also agreed to most of the individual modification requests that were based on Purpose's difficulties accessing responsive material. *Id.* at 4-5. For example, the Bureau agreed to exclude from numerous document requests informal documents (other than email) that are not centrally or systematically saved or stored. *Id.* at 4.

25. With respect to email, the Bureau explained that Purpose had not shown that excluding all emails was necessary to avoid undue burden, but that the Bureau "remains open to limiting email production by custodian and search terms to limit the burden imposed on Purpose." *Id.* at 2. To reduce the burden in producing written reports, the Bureau modified the February CID to require only data stored in a system currently used by Purpose. *Id.* at 3. Because Purpose had not shown that producing written reports from its current system imposed undue burden, the Bureau declined to exclude the written reports altogether. *Id.* As with emails, the Bureau explained that it "remains open to further modifying [the requests for written reports] based on specifically described inability to access the requested data." *Id.* To give the parties time for further discussion regarding the production of emails and written reports, the Bureau extended the deadline to produce responsive emails and written reports to April 20, 2023. *Id.* at 5.

26. With respect to Document Requests 1, 13, and 17, the Bureau extended the deadline to respond until after Written Report 6 was due and explained that it was open to modifying the number of stores from which to produce responsive documents "after Purpose determines the number of stores responsive to Request for Written Report 6." *Id.* at 3.

27. On April 13, 2023, the first deadline in the recently modified CID, Purpose did

not produce the responses that were due.

28. Instead, Purpose requested in an email sent to me that the Bureau stay its investigation pending the Supreme Court’s review of the Fifth Circuit’s decision in *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, No. 21-50826 (5th Cir. Oct. 19, 2022) (hereinafter *CFSA*). Exhibit A-10, attached.

29. On April 14, 2023, the Bureau informed Purpose that the Bureau would not stay the investigation. Exhibit A-11, attached. The Bureau once again reiterated its willingness to limit email production by custodian and search terms and to further modify its requests for written reports if Purpose could not access particular data. *Id.*

30. On April 17, 2023, Purpose informed the Bureau that, “given the significant cost and burden on Purpose on continuing to comply and the serious constitutional questions before the Supreme Court in the *CFSA* appeal, at this time, Purpose [is] declining to make any further productions in response to the CID, pending the outcome of that appeal.” Exhibit A-12, attached.

31. To date, Purpose has responded to only Interrogatories 1, 6, 7, and 9 of the February CID.

32. As of the date of this declaration, the remaining requests are overdue:

Overdue as of April 14, 2023

- Responses to Interrogatories 2-5 and 8
- Non-email responses to Document Requests 3-4 (created during or after 2020), 11, 19, and 23

Overdue as of April 21, 2023

- Emails responsive to Document Requests 3, 4, 6-8, 10, 11, 14-18, and 21
- Written Reports 1-8

Overdue as of May 12, 2023

- Responses to Document Requests 1, 2, 3-4 (pre-2020 documents), 5-6 (corporate-level and externally created), 7 (documents created during or after 2020), 8 (except for PIPs), 9, 10 (regular committee and Board meetings), 12 (current documents), 13, 14 (final bonus/incentive plans and results), 17, 18 (current documents, and 22

33. Purpose never filed a petition with the Bureau to modify or set aside the February CID, nor did Purpose request an extension of time to file a petition to modify or set aside the February CID.

34. Purpose's refusal to comply with the modified February 10, 2023 CID burdens, delays, and impedes the Bureau's investigation of Purpose's conduct in connection with the provision of short-term, small-dollar, or installment loans to consumers.

#### **Purpose's Ability to Access Data and Use of Email**

35. My colleague Amy Mix and I wrote the February CID after we conducted an investigational hearing of Purpose Executive Vice President Scot Goodman (Goodman), testifying on behalf of Purpose, on December 14, 2022.

36. Among other topics, Goodman described the ease with which Purpose could obtain some of the data requested in the requests for written reports:

Q: At the corporate level is there any tracking or comparison of profitability of the individual stores?

A: Well, I mean, we -- we obviously have the -- I mean, the P&Ls kind of roll up from the individual center P&L and kind of rolling up through that process. So, I mean, yeah, there's a record of the store profitability.

Q: If you wanted to know what was the most profitable store last year, then would that be easy information to obtain?

A: I mean, somebody in accounting and finance would be able to see that. Yes.

Q: Okay. Would they be able to say which store generated the most loans?

A: Yeah. I mean, the same thing: loan counts, new customer counts, revenue counts, yes.

*See Exhibit A-13 at 142:9-143:1, attached.*



37. Goodman testified at the investigational hearing that management and corporate-level employees communicate with each other through email and Microsoft Teams, but branch-level employees share one account per store. Goodman also testified that Purpose communicates with consumers by email; Purpose stores communicate with each other by email; and Purpose’s corporate office shares information with employees by email (*see e.g.*, “each Monday as the last week’s data refreshes, we do a kind of incentive report update that’s emailed out directly through our communications team”). *See Id.* at 161:3-6. *See also Id.* at 54:15-25, 83:10-14, 95:21-24, 173:23-25.

### **The Relevancy and Materiality of the Requests**

38. The February 2022 CID requests seek information that is relevant and material to the Bureau’s investigation.

39. Document Requests 1 and 2 seek personnel files from select current or former employees; Request for Written Report 8 seeks certain data about former employees, including their dates of employment and contact information; and Document Requests 21 and 22 seek documents reflecting employee grievances and posts on Purpose’s internal electronic message board. This information is relevant and material to the investigation because, among other things, it may assist in the identification of salient witnesses among Purpose’s current or former employees.

40. Document Request 15 seeks documents, including emails, reflecting communications between company leadership and management relating to underwriting, origination, servicing, renewal, refinancing, or collections. This information is relevant and material to the investigation because, among other things, it seeks information relating to Purpose’s conduct and knowledge regarding issues of focus in this investigation.

41. Requests for Written Reports 1 – 7 seek account-level data about consumer loans;

Document Request 23 seeks a dictionary file identifying certain data Purpose collects from its stores; Interrogatory 2 seeks a description of the circumstances that could result in the creation of a unique loan identifier; and Document Request 13 seeks a selection of consumer loan files, which may include email. This information is relevant and material to the investigation because, among other things, it may assist in the determining whether Purpose improperly induced borrowers to take out or refinance loans or misrepresented the cost or nature of its loans, as well as the identification of salient consumer witnesses among Purpose's current or former customers.

42. Document Requests 3 – 10 and 16 seek documents, including email, regarding developing and communicating performance metrics and tracking and evaluating financial performance of stores; Document Request 14 seeks documents, including email, relating to employee incentive or bonus programs; and Interrogatory 5 seeks a description of employee incentive or bonus programs. This information is relevant and material to the investigation because, among other things, it seeks information relating to Purpose's conduct and knowledge regarding issues of focus in this investigation, including whether Purpose improperly incentivizes employees to engage in the practices described in the Notification of Purpose.

43. Document Requests 11, 17, 19, and 20 seek documents, including emails, containing or relating to communications with consumers; and Interrogatories 3 and 8 seek a description of certain consumer marketing efforts used by Purpose. This information is relevant and material to the investigation because, among other things, it may assist in determining whether Purpose misrepresented the cost or nature of its loans to consumers.

44. Document Requests 12 and 18 seek documents, including email, regarding the creation and use of Purpose's underwriting processes; Interrogatory 4 seeks a description of

information consumers must provide Purpose when applying for a loan; and Interrogatory 9 seeks a description of how Purpose estimates default rates. This information is relevant and material to the investigation because, among other things, it seeks information relating to Purpose's conduct and knowledge regarding issues of focus in this investigation, including whether Purpose improperly induced borrowers to take out, renew, or refinance loan products that were unaffordable to Purpose customers.

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

Executed on June 8, 2023

/s/ Gregory Nodler  
Greg Nodler  
Senior Litigation Counsel  
TX Bar No.: 24053395  
E-mail: Gregory.Nodler@cfpb.gov  
Phone: 202-435-7671



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

February 10, 2023

Served via email at [Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)

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

Re: Civil Investigative Demand served on Purpose Financial, Inc. on February 10, 2023

To whom it may concern:

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

- 1. Contact Bureau counsel, Gregory Nodler 202-435-7619, [Gregory.nodler@cfpb.gov](mailto:Gregory.nodler@cfpb.gov) as soon as possible to schedule an initial meeting that is required to be held within 10 calendar days of receipt of this CID.** During this meeting, you must discuss and attempt to resolve all issues regarding the CID, including timely compliance. The rules require that you make available at this meeting personnel with the knowledge necessary to resolve issues; such individuals may include, for example, information-technology professionals. Please be prepared to discuss your planned compliance schedule, including any proposed changes that might reduce your cost or burden while still giving the Bureau the information it needs.
- 2. This CID relates to a non-public, law-enforcement investigation being conducted by the Bureau.** We ask that you not disclose the existence of this CID, except to legal counsel or as otherwise required by law, until you have been notified that the investigation has been completed. Premature disclosure of this investigation could interfere with the Bureau's law-enforcement activities.
- 3. You must retain, and suspend any procedures that may result in the destruction of, documents, information, or tangible things that are in any way relevant to the investigation as described in the CID's Notification of**

**Purpose.** You are required to prevent the destruction of relevant material irrespective of whether you believe such material is protected from future disclosure or discovery by privilege or otherwise. *See* 18 U.S.C. §§ 1505, 1519.

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

Sincerely,

Gregory Nodler  
Enforcement Attorney

Attachment



United States of America  
Consumer Financial Protection Bureau

# Civil Investigative Demand

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

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

## Action Required (choose all that apply)

**Appear and Provide Oral Testimony**

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

**Produce Documents and/or Tangible Things**, as set forth in the attached document, by the following date 03/13/2023

**Provide Written Reports and/or Answers to Questions**, as set forth in the attached document, by the following date 03/13/2023

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

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

### Custodian / Deputy Custodian

Richa Dasgupta/ Steven Yokay  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

### Bureau Counsel

Gregory Nodler and Amy Mix  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

### Date Issued

02/10/2023

### Signature

**RICHA  
DASGUPTA**

Digitally signed by RICHA  
DASGUPTA  
Date: 2023.02.10  
10:50:46 -05'00'

### Name / Title

**Richa Dasgupta/ 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](http://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  
ANSWERS TO INTERROGATORIES,  
PRODUCTION OF DOCUMENTS AND WRITTEN REPORTS**

**I. Requests**

**Interrogatories**

1. Describe how the Company creates and assigns a Borrower ID to a consumer and all circumstances, if any, under which a consumer might be assigned more than one Borrower ID.
2. For each loan type offered in each state, describe all circumstances, if any, under which a change to the terms of a loan (e.g., conversion of a single-payment loan to an installment loan or payment plan; extension of a loan; reborrowing, refinancing, rolling over, cash again, etc.) could result in the creation of a new Loan ID.
3. For each marketing effort that involved contacting an existing or former loan customer for the purpose of advising the consumer of available loan products or additional loan funds that the consumer might be eligible to receive from the Company, describe: (a) the marketing effort; and (b) the criteria employed by the Company to develop the list of consumers to whom the communications were sent.
4. For each loan type that You offered or serviced during the Applicable Period, state the following:
  - (a) all information that an applicant was required to provide when applying for a loan;
  - (b) all information that an applicant was required to provide when requesting to alter the original quoted terms of a loan, including but not limited to entering an extended payment plan, converting a single payment loan to an installment loan, refinancing an existing loan, or changing the loan amount or cost of the loan; and
  - (c) for each type of information listed in response to part (a) and (b) of this Interrogatory, state whether the information collected from the applicant is provided to the loan underwriter for use in the underwriting process.

If any of the answers to this interrogatory have changed during the Applicable Period or vary in any respect, including but not limited to variances based on the loan product, locality, or whether the consumer is a New Customer, Current Customer, or Inactive Customer, include the changes and variances in your answer.

5. Describe all employee or Center-based incentive or bonus programs in effect at any time during the Applicable Period.
6. Identify the state or local laws, rules, or regulations that Scot Goodman referred to as not permitting the Company to hold payments beyond a customer's due date. *See* Investigational Hearing of Scot Goodman on behalf of the Company (Goodman IH) at 139:21-22, 180:13-15.
7. Identify the state or local laws, rules, or regulations that Scot Goodman referred to as requiring the Company to refinance loans. *See* Goodman IH at 119:10-14.
8. Describe all customer incentive programs in effect at any time during the Applicable period, *e.g.*, lower interest rate or higher loan amount after on-time payments or gift cards for customer referrals.
9. Describe how You estimate default or write-off rates for individual or pooled loans, including but not limited to identifying any factors or characteristics about individual consumers, their payment history, or their loans that you consider in estimating default or write-off rates.

### **Requests for Documents**

1. The Personnel File for each employee identified in Your answer to Written Report 8(o) (former employees who worked at one or more of the Centers identified in Your answer to Written Report 6).
2. The Personnel File for each of the following current or former employees:<sup>1</sup>
  - (a) Paul Cho
  - (b) Mickey Durkin
  - (c) Travis Gonzalez
  - (d) Scot Goodman
  - (e) Jim McHugh
  - (f) Steve Ritter
  - (g) Steven Weese
  - (h) Jim McQueen

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<sup>1</sup> To the extent any of these names are shared by more than one current or former employee, the Company is directed to produce the Personnel File for each of the employees with the identified name.



- (i) Stacy Johnson
  - (j) Jessica Rustin
  - (k) James Ovendon
  - (l) Leigh Santanello
3. All Documents reflecting the creation and setting of performance goals for regions, districts, and Centers.
  4. All Documents reflecting communication of performance goals to department heads, regional managers, district managers, Center managers, and Center employees.
  5. All Documents reflecting growth reviews, performance reports, monitoring reports, or audits regarding financial performance of one or more of the Company's Centers, regardless of whether conducted by the Company or another entity.
  6. All Documents reflecting any evaluation or discussion regarding the results of a growth review, performance report, monitoring report, or audit related to financial performance, including but not limited to documents regarding decisions made or actions taken or considered because of information within a review, report, or audit related to financial performance.
  7. All Documents reflecting results of evaluations, summaries, or reports of Center visits conducted by an owner or board member of the Company, the Company's chief executive officer, the Company's chief compliance officer, a representative of the Company's compliance department, a representative of the Company's operations department, a district manager, or a regional manager.
  8. All Documents reflecting any evaluation or discussion regarding the results of a Center evaluation, summary, or report, including but not limited to a Center Business Review (CBR) and any Documents regarding decisions made or actions taken or considered because of information in the evaluation, summary, or report.

9. All Documents reflecting:
  - (a) any audit related to loan origination;
  - (b) any audit related to servicing;
  - (c) any audit related to collection practices and operations; and
  - (d) any evaluation or discussion regarding loan origination, servicing, or collection practices or operations, including but not limited to any Documents reflecting decisions or actions taken or considered because of information contained in an audit or review of loan origination, servicing, or collection practices or operations.
10. All Documents reflecting agendas, recorded minutes, handwritten notes, and other Documents circulated before, during, or after meetings involving at least one of the Company's owners or Board Members (or a representative thereof), the Company's chief executive officer, or the Company's chief compliance officer regarding financial performance or compliance.
11. Documents sufficient to show all template versions of text and email communications used by the Company to notify borrowers of upcoming payments due on a loan issued or serviced by the Company.
12. All Documents reflecting the Company's underwriting criteria and process, including but not limited to, any use of credit scoring or other automated models (e.g., LexisNexis RiskView).
13. The complete loan files for all loans originated at the Centers identified in Your answer to Written Report 6, including but not limited to payment receipts, payment histories, call histories, and account notes. Your response should be organized by Borrower ID and Loan ID.
14. Documents reflecting the terms of, eligibility for, results of, or discussions regarding the creation of each incentive or bonus program offered by the Company to collections employees, Center-level employees, district managers, and regional managers.
15. All Documents reflecting the content of any communication involving at least one of the Company's owners or Board Members (or a representative thereof), the Company's chief executive officer, the Company's chief compliance officer, a regional manager, or a district manager that relate to underwriting, origination, servicing, renewal, refinancing, or collections.
16. All Documents reflecting:

- (a) communications distributing regular (*e.g.*, weekly, monthly, quarterly, etc.) reporting of Center-specific, region-specific, or district-specific performance metrics, including all attachments to such communications; and
  - (b) to the extent that they have not otherwise been produced, all regular (*e.g.*, weekly, monthly, quarterly, etc.) reporting of Center-specific, region-specific, or district-specific performance metrics.
17. All Documents reflecting the content of a discussion between a consumer and the Company's customer service representatives (including Center-level employees) regarding any loan originated at Centers identified in Your answer to Written Report 6.
  18. All documents related to the development, implementation, inputs, use, and analysis of any credit-scoring and underwriting models.
  19. One copy of all Company policies, procedures, and training materials relating to recording telephone calls and storing telephone call recordings.
  20. All recordings of telephone calls between the Company and its customers, and all notes from such calls.
  21. All Documents reflecting employee grievances or complaints submitted through a centralized grievance hotline, email, message board, or other electronic means.
  22. All Documents reflecting posts by Company employees on the Achievers platform.
  23. A dictionary file that identifies the following for each Center:
    - (a) Center ID;
    - (b) name;
    - (c) address; and
    - (d) loan types offered at the Center.

### **Requests for Written Reports**

Produce the following data in tab-delimited text files, using double-quote-escaped text fields when necessary. Where data derives from separate tables or dimensions, use a

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

1. For every loan You have originated since July 1, 2017, identify:
  - (a) Loan ID;
  - (b) Borrower ID;
  - (c) borrower's name;
  - (d) street address of borrower's residence;
  - (e) city of borrower's residence;
  - (f) state of borrower's residence;
  - (g) zip code of borrower's residence;
  - (h) borrower's phone number; and
  - (i) Employee ID for the employee who originated the loan.
  
2. For every loan You have originated since July 1, 2017, identify:
  - (a) Loan ID;
  - (b) Borrower ID;
  - (c) Center ID for Center in which loan was originated;
  - (d) zip code in which loan was originated;
  - (e) loan origination date;
  - (f) loan type;
  - (g) loan principal, as identified on the truth-in-lending disclosure;
  - (h) loan APR, as identified on the truth-in-lending disclosure;
  - (i) total of finance charge, as identified on the truth-in lending disclosure;
  - (j) interest included in the finance charge;
  - (k) any other charge or fee included in the finance charge;

- (l) any other amounts payable;
  - (m) total amount financed, as identified on truth-in-lending disclosure;
  - (n) total of payments amount, as identified on the truth-in-lending disclosure;
  - (o) amount provided to borrower directly;
  - (p) amount paid on borrower's account (net balance minus prior account);
  - (q) contractual term of the loan;
  - (r) original date on which the loan was scheduled to be paid off;
  - (s) the number of times the loan was extended;
  - (t) the total length of time the loan was extended;
  - (u) date on which the loan was scheduled to be paid off after its final extension;
  - (v) date on which the loan was paid off;
  - (w) date on which the loan was charged off;
  - (x) at date of payoff or charge-off, the total amount of principal paid;
  - (y) at date of payoff or charge-off, the total amount of interest paid;
  - (z) at date of payoff or charge-off, the total amount of fees paid;
  - (aa) whether the loan was paid off through refinancing; and
  - (bb) Employee ID for the employee who originated the loan.
3. For every loan payment You have received since July 1, 2017, identify:
- (a) Loan ID;
  - (b) Borrower ID;
  - (c) refinance Loan ID(s), if different from Loan ID used at origination;
  - (d) extended payment plan ID, if different from Loan ID used at origination;
  - (e) payment due date;
  - (f) date of payment;
  - (g) amount of payment;
  - (h) partial payment (yes/no);
  - (i) amount of payment allocated to payment of fees;
  - (j) amount of payment allocated to repayment of interest;
  - (k) amount of payment allocated to repayment of principal;
  - (l) fee balance of the loan after the payment was made on the account;
  - (m) interest balance of the loan after the payment was made on the account;

- (n) principal balance of the loan after the payment was made on the account; and
  - (o) Employee ID for the employee who originated the loan.
4. For every loan You have originated since July 1, 2017, identify the following fields related to note- and memo-level data (e.g., collection notes):
- (a) Loan ID;
  - (b) Borrower ID;
  - (c) unique identifier for the note or memo;
  - (d) date of the note or memo;
  - (e) the full text of the note or memo, including a data dictionary for any shorthand notations reflected in the note or memo;
  - (f) Employee ID for the Company employee who made the note or memo;
5. For each Center operated by the Company during the Applicable Period, provide the following information:
- (a) Center ID;
  - (b) name;
  - (c) street address;
  - (d) city;
  - (e) state;
  - (f) zip code;
  - (g) date that the Center was first opened for business;
  - (h) date the Center ceased operation (if applicable);
  - (i) the gross profit for the Center by year for each year of the Applicable Period;
  - (j) annual number of loans to New Customers;
  - (k) annual number of loans to Current Customers;
  - (l) annual number of loans to Inactive Customers;
  - (m) average number of loans to New Customers;
  - (n) average number of loans to Current Customers;
  - (o) average number of loans to Inactive Customers;
  - (p) the type of loans offered at the Center; and
  - (q) whether the Center is identified in Your response to Written Report 6 (yes/no).

6. For each year during the Applicable Period, provide the names and Center IDs for the top two and bottom two performing Centers in each state based on each of the following criteria:
  - (a) overall revenue;
  - (b) revenue generated in connection with each loan type offered by the Company;
  - (c) overall default rate (low default rate should indicate high Center performance);
  - (d) overall default rate for each loan type offered by the Company in that state (low default rate should indicate high Center performance);
  - (e) number of transactions;
  - (f) number of loans;
  - (g) number of loans to New Customers;
  - (h) number of loans to Current Customers;
  - (i) number of loans to Inactive Customers; and
  - (j) number of Center employees who earned budget or performance-based bonuses as described in Your response to Interrogatory No. 5 (high number of employees receiving bonuses should indicate high Center performance).
  
7. For each Center identified in Your response to Written Report 6, provide the following information:
  - (a) Center ID;
  - (b) name of Center;
  - (c) the name of the current Center manager or, if no longer operating, the name of the Center manager at time of closing;
  - (d) the name of the current regional manager of the Center or, if no longer operating, the name of the regional manager at time of closing; and
  - (e) the name of the current district manager of the Center or, if no longer operating, the name of the district manager at time of closing.
  
8. For every former employee of the Company who was terminated or resigned during the Applicable Period, provide the following:
  - (a) Employee ID;
  - (b) employee name;
  - (c) position held as of date of termination or resignation;

- (d) whether the former employee was terminated or resigned;
- (e) reason for termination or resignation, including (where applicable) specifying when a resignation was in lieu of termination, suspension, or other disciplinary action;
- (f) date employment began;
- (g) date employment ended;
- (h) if Center-level employee, address and ID of each Center where the employee worked;
- (i) if a district or regional manager, the name of each district and region where the employee worked;
- (j) the dates and reasons for every suspension or other disciplinary action taken with respect to the employee;
- (k) last known telephone numbers;
- (l) last known email addresses;
- (m) last known home address;
- (n) the number of times the employee received one or more incentives or bonuses (as described in Your response to Interrogatory No. 5); and
- (o) whether the employee ever worked at one or more of the Centers identified in Your response to Written Report 6 (yes/no).

## II. Definitions

- A. “**Borrower ID**” means a unique identifier used in Your internal recordkeeping to identify individual consumers (or, if unavailable, a unique identifier generated for purpose of responding to this CID).
- B. “**CFPB**” or “**Bureau**” means the Consumer Financial Protection Bureau.
- C. “**CID**” means the Civil Investigative Demand, including the Interrogatories, Requests, Definitions, and Instructions.
- D. “**Center**” means a physical storefront in which You do in-person business directly with consumers, or the place from which You originate online loans.
- E. “**Center ID**” means a unique identifier used in Your internal recordkeeping to identify individual Centers (or, if unavailable, a unique identifier generated for purpose of responding to this CID).
- F. “**Company**” or “**You**” or “**Your**” means Purpose Financial, Inc.; Advance America; National Cash Advance; First American Cash Advance; First American Loans; Cash Advance; Purpose Money; Purpose Financial; Express Check



Advance; First American Title Loans; Anytime Wallet' Kickstand Lending; and any successor in interest.

- G. **“Current Customer”** is a term used by the Company to mean a consumer actively making payments to the Company on a non-defaulted loan or a consumer who paid off a loan to the Company within the previous 60 days. *See* Goodman IH at 128:1-129:20. Depending on the point-of-sale or recordkeeping system used at the time, the time period used to define the consumer may vary slightly. *See* Goodman IH at 130:1-11.
- H. **“Deputy Enforcement Director”** refers to a Deputy Assistant Director of the Office of Enforcement.
- I. **“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.
- J. **“Electronically Stored Information,”** or **“ESI,”** means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise) of any electronically created or stored information, including but not limited to e-mail, instant messaging, videoconferencing, SMS, MMS, or other text messaging, and other electronic correspondence (whether active, archived, unsent, or in a sent or deleted-items folder), word-processing files, spreadsheets, databases, unorganized data, document metadata, presentation files, and sound recordings, regardless of how or where the information is stored, including if it is on a mobile device.
- K. **“Employee ID”** means a unique identifier used in Your internal recordkeeping to identify individual employees (or, if unavailable, a unique identifier generated for purpose of responding to this CID).
- L. **“Enforcement Director”** refers to the Assistant Director of the Office of Enforcement.
- M. **“Identify”** means to provide:
  - (a) for natural persons, their name, title or position, present business affiliation, present business address, e-mail address, and telephone number, or if a present business affiliation or present business address is not known, the last known business address, home address, e-mail address, and telephone number;
  - (b) for businesses or other organizations, the name, address, identities of officers, directors, or managers of the business or organization, and contact persons with e-mail addresses and telephone numbers, where applicable; and

(c) for documents, the title, date, authors, recipients, Bates numbers, if applicable, type of document or some other means of identifying the document, and the present or last known location or custodian.

- N. **“Inactive Customer”** is a term used by the Company to mean a consumer that had a loan with the Company within the previous 61 days to 18 months. *See* Goodman IH at 128:11-22. Depending on the point-of-sale or recordkeeping system used at the time, the time period used to define the consumer may vary slightly. *See* Goodman IH at 130:1-11.
- O. **“Loan ID”** means a unique identifier used in Your internal recordkeeping to identify individual loans (or, if unavailable, a unique identifier generated for purpose of responding to this CID).
- P. **“New Customer”** is a term used by the Company to mean a first-time customer or a consumer who has not had an outstanding loan balance with the Company in the previous 18 months. *See* Goodman IH at 128:1-10. Depending on the point-of-sale or recordkeeping system used at the time, the time period to define the consumer may vary slightly. *See* Goodman IH at 130:1-11.
- Q. **“Person”** means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.
- R. **“Personnel File”** means all job-related documents regarding an employee, regardless of whether such documents are stored and maintained by the Company’s human resources department, and including—but not limited to—records related to hiring (e.g., employment applications), copies of employment contracts or compliance agreements, job descriptions, training completion records, performance evaluations, records relating to disciplinary action considered or taken by the Company, separation paperwork (e.g., termination notices, resignation letters), salary information, and performance awards received.

### 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 **Gregory Nodler at (202) 435-7619** 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 **ten (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 each request is from **July 1, 2017, until February 1, 2023.**
- 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:
- (a) its type, specific subject matter, and date;
  - (b) the names, addresses, positions, and organizations of all authors and direct or indirect recipients;
  - (c) the specific grounds for claiming the privilege;
  - (d) the request to which the privileged document, information, or thing is responsive; and
  - (e) 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 **Gregory Nodler** at **(202) 435-7619**. 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](mailto:ExecSec@cfpb.gov), copying the Enforcement Director at [Enforcement@cfpb.gov](mailto: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.
- (a) For all packages destined for Bureau offices, please contact Enforcement Attorney **Gregory Nodler** for the mailing or internet-protocol address.
  - (b) Please provide any tracking numbers by e-mail to Enforcement Attorney **Gregory Nodler** at [gregory.nodler@cfpb.gov](mailto:gregory.nodler@cfpb.gov).
- K. **Separation of Documents for Production:** Documents may not be combined for the purpose of production unless the documents are stored together as a single file in the normal course of business. To the extent that a document consists of a printed version of an internet or intranet website, the produced document should consist only of the printout of a single webpage. Such website printouts should not be attached to each other or combined for production into a larger document unless such consolidation is necessary for the understanding of a specific page within the webpage.

- L. **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.
- M. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information, sensitive health information of any individual, or Suspicious Activities Reports, please contact Enforcement Attorney **Gregory Nodler** at **(202) 435-7619** 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.

- N. **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.
- O. **Submission of Documents in lieu of Answers:** Documents in existence before your receipt of this CID that contain the information requested in any interrogatory may be submitted as part of or in lieu of an answer to the interrogatory. If you submit documents as part of or in lieu of an answer, you must clearly indicate the specific request to which the documents are responsive, and you must clearly identify the specific portion of the documents that are responsive, including page, paragraph, and line numbers, as applicable.
- P. **Declaration Certifying Records of Regularly Conducted Business Activity:** Attached is a Declaration Certifying Records of Regularly Conducted Business Activity, which may limit the need to subpoena you to testify at future proceedings to establish the admissibility of documents produced in response to this CID. Please execute this Declaration and provide it with your response.

- Q. All references to “**year**” or “**annual**” refer to the calendar year. Where information is requested “for each year,” provide it separately for each year; where yearly data is not available, provide responsive information for the calendar year to date, unless otherwise instructed.
- R. **Duty to Estimate:** If you are unable to answer any interrogatory fully, supply such information as is available. Explain why such answer is incomplete, the efforts you made to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation “est.” If there is no reasonable way to make an estimate, provide an explanation.

**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 Purpose Financial, Inc. and submitted with this Declaration.
2. The documents produced and submitted with this Declaration by Purpose Financial, 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



**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 Purpose Financial, Inc..
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated February 10, 2023 that are within the possession, custody, or control of Purpose Financial, 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. Purpose Financial, 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 February 10, 2023 are true and complete.



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

\_\_\_\_\_.

\_\_\_\_\_  
Signature

## 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 Purpose Financial, 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).

**RICHA  
DASGUPTA** Digitally signed by RICHA  
DASGUPTA  
Date: 2023.02.10  
10 50:04 -05'00'

Richa Dasgupta  
Consumer Financial Protection Bureau  
Deputy Director, Office of Enforcement

# 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:

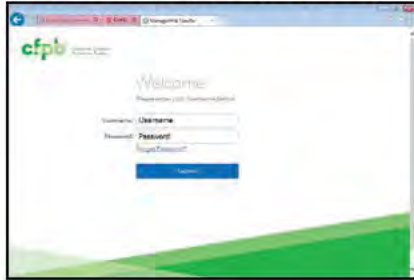
<https://login.extranet.cfpb.gov/updateprofile>

## Change your password:

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

# Login and upload flow

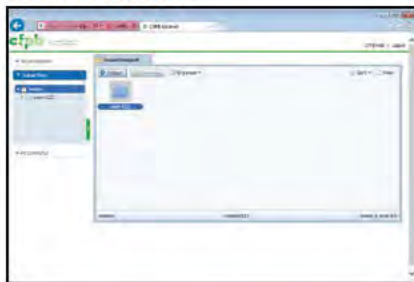
**1** Login screen  
**Enter username and password**



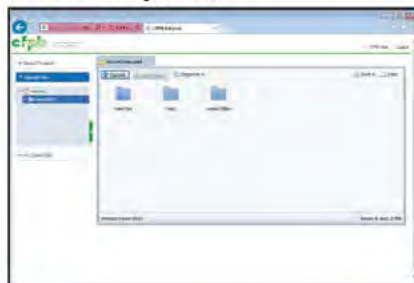
**2** Login screen  
**Enter one-time passcode**



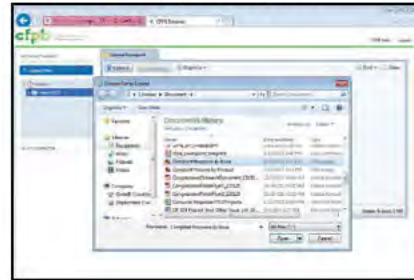
**3** Root folder  
**Select folder**



**4** Selected folder  
**Select "Upload"**



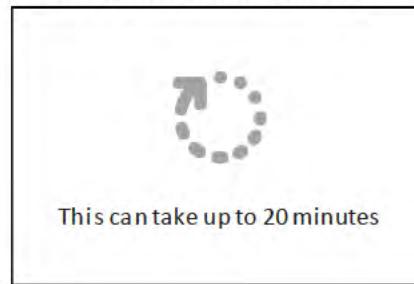
**5** File browser  
**Select file(s) for upload**



**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.

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
<b>Required Fields</b>	
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
<b>Additional Fields for Email Productions</b>	
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(E MAIL)	"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.
	<b>Note:</b> 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	

**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.



**§ 1081.405 Decision of the Director.**

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

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

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

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

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

**§ 1081.406 Reconsideration.**

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

**§ 1081.407 Effective date; stays pending judicial review.**

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

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

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

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

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

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

Dated: June 4, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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

[Docket No.: CFPB-2011-0007]

RIN 3170-AA03

**Rules Relating to Investigations**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

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

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

**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.<sup>1</sup>

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.

<sup>1</sup> 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](http://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.

1700 G Street NW,  
Washington, DC 20552



August 8, 2022

Via email at [stefanie.jackman@troutman.com](mailto:stefanie.jackman@troutman.com)

Stefanie Jackman  
Troutman Pepper Hamilton Sanders LLP  
600 Peachtree Street NE, Suite 3000  
Atlanta, GA 30308-2216  
Re: Civil Investigative Demand issued to Purpose Financial, Inc. on July 19, 2022

Dear Ms. Jackman:

This letter modifies the terms for compliance with the civil investigative demand (“CID”) issued to Purpose Financial, Inc. (“Purpose” or the “Company”) on July 19, 2022 by the Consumer Financial Protection Bureau (“Bureau”), as permitted by 12 C.F.R. § 1080.6(d). This letter sets forth the only modifications to the CID. The Bureau’s willingness to approve these modifications is based, in part, on Purpose’s representations made at the July 29, 2022 meet-and-confer, and on the representations made in your letter dated August 2, 2022. The production of information in accordance with the modifications described below constitutes compliance with the CID.

### **Document Request 5**

Document Request 5 seeks certain materials related to the marketing, underwriting, origination, servicing, renewal, refinancing, or collection of Purpose’s loans. Purpose requests that the Bureau narrow the scope of this request to exclude certain categories of documents to reduce Purpose’s production burden. The Bureau agrees to modify Document Request 5 to exclude only:

- technical procedures solely related to payment processing; and
- policies and procedures solely related to: anti-money-laundering compliance; data security, fraud prevention, and red flags; and the Equal Credit Opportunity Act.<sup>1</sup>

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<sup>1</sup> Purpose requested that the Bureau exclude human-resource policies, such as policies related to dress code and tardiness. But the CID as issued does not request dress-code or tardiness policies because they are unrelated to the marketing, underwriting, origination, servicing, renewal, refinancing, or collection of Purpose’s loans.

## Timing of the Production

The CID as issued requires Purpose to comply fully by August 18, 2022. Purpose requests additional time to produce historical information for certain requests and to respond to Interrogatories 7 and 8. The Bureau agrees to extend compliance as follows:

- Due on August 18, 2022:
  - Interrogatories 1, 2, 3, 4, 5, 6 with respect to current information
  - Document Request 2
  - Document Requests 1, 3, 4, 5 with respect to current information
  - Written Report 1 with respect to current information
- Due on September 19, 2022:
  - Interrogatories 1, 2, 3, 4, 5, 6 with respect to historical information
  - Document Requests 1, 3, 4, 5 with respect to historical information
  - Written Report 1 with respect to historical information
- Due on October 3, 2022:
  - Interrogatories 7 and 8

## Investigational Hearing

The CID as issued requires Purpose to provide oral testimony on September 15, 2022. Given the modified deadlines to produce responsive information, the Bureau modifies the date of the investigational hearing to October 26, 2022.

\* \* \* \* \*

If the Company withholds information responsive to the CID based on privilege, it must produce a privilege log in accordance with the procedures set forth in the Rules Relating to Investigations § 1080.8 (Withholding Requested Material). *See* 12 C.F.R. § 1080.8. If required, a privilege log is due by the final CID production date of October 3, 2022.

## Nature of the Modifications

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

\*\*\*

If you have any questions regarding the terms outlined above, contact Senior Litigation Counsel Greg Nodler at (202) 435-7619.

Sincerely,

**RICHA  
DASGUPTA**

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DASGUPTA  
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**Richa Dasgupta  
Deputy Enforcement Director**

1700 G Street, NW  
Washington, DC 20552



October 3, 2022

Via Email at Sarah.Reise@troutman.com

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

Re: Second Modification to the Civil Investigative Demand issued to Purpose  
Financial, Inc. on July 19, 2022

Dear Ms. Reise:

This letter further modifies the terms for compliance with the Civil Investigative Demand (CID) issued to Purpose Financial, Inc. (“Purpose” or the “Company”) on July 19, 2022, by the Consumer Financial Protection Bureau (“Bureau”), as permitted by 12 C.F.R. § 1080.6(d). This letter and the modification sent on August 8, 2022, set forth the only modifications to the CID. The Bureau’s willingness to approve these modifications is based, in part, on Purpose’s representations made in a call on September 26, 2022, and on the representations made in email dated September 28, 2022. The production of information in accordance with the modifications described below constitutes compliance with the CID.

The July 29, 2022 CID, as modified on August 8, 2022, requires Purpose to respond to Interrogatory 7 by October 3, 2022. Interrogatory 7 requests that for each Document the Company produces in response to Requests for Documents 3-5, the Company shall produce the effective dates that each Document was in use. To reduce the Company’s burden, Purpose requests a modification to allow for a rolling production, by date and topic. The Bureau agrees to extend compliance as follows:

- Due on October 3, 2022:
  - Interrogatory 7 as to the training modules produced in response to Document Request 5

- Due on October 21, 2022:
  - Interrogatory 7 as to all company-wide policies and procedures produced in response to Document Request 5 that are currently in use by the Company.
  - An updated response to Request for Written Report 1 that will: include the dates each product identified in Written Report 1 was offered and identify by title and Bates number, which form loan documents produced in response to Document Request 3 relate to each product identified in Written Report 1.

The Bureau agrees to defer until a later date the remainder of Interrogatory 7 while the Bureau continues to review the Company's productions in response to Document Requests 3-5. The Bureau reserves its right to require production of all information responsive to Interrogatory 7 at a later date.

If you have any questions regarding the terms outlined above, contact Senior Litigation Counsel Greg Nodler at (202)435-7619.

Sincerely,

**RICHA**  
**DASGUPTA**

Digitally signed by RICHA  
DASGUPTA  
Date: 2022.10.03  
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Richa Dasgupta  
Deputy Enforcement Director

1700 G Street, NW  
Washington, DC 20552



October 21, 2022

Via Email at [Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)

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

Re: Modification to the Civil Investigative Demand issued to Purpose Financial, Inc.  
on October 14, 2022

Dear Ms. Jackman:

This letter modifies the terms for compliance with the Civil Investigative Demand (CID) issued to Purpose Financial, Inc. (“Purpose” or the “Company”) on October 14, 2022 by the Consumer Financial Protection Bureau (“Bureau”), as permitted by 12 C.F.R. § 1080.6(d).

The CID requires Purpose to appear for an investigational hearing on October 26, 2022 at 9:00 AM. Purpose has requested a delay due to scheduling issues.

The Bureau agrees to modify the CID such that the investigational hearing will take place on November 9, 2022 at 10:00 AM.

If you have any questions regarding the terms outlined above, contact Senior Litigation Counsel Greg Nodler at (202)435-7619.

Sincerely,

**RICHA**  
**DASGUPTA**  
Digitally signed by RICHA  
DASGUPTA  
Date: 2022.10.21  
17:19:26 -04'00'

Richa Dasgupta  
Deputy Enforcement Director



1700 G Street, NW  
Washington, DC 20552



November 4, 2022

Via Email at [Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)

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

Re: Modification to the Civil Investigative Demand issued to Purpose Financial, Inc.  
on October 14, 2022.

Dear Ms. Jackman:

This letter modifies the terms for compliance with the Civil Investigative Demand (CID) issued to Purpose Financial, Inc. (“Purpose” or the “Company”) on October 14, 2022 by the Consumer Financial Protection Bureau (“Bureau”), as permitted by 12 C.F.R. § 1080.6(d).

On July 19, 2022, the Bureau issued a CID that required that the Company appear for an investigational hearing and testify on certain topics on September 15, 2022 in Greenville, South Carolina, where the Company is located. Since that time, the Bureau has already extended the date of the hearings several times.

- On August 8, 2022, the Bureau modified the July 19th CID to postpone the investigational hearing until October 26, because Purpose needed additional time to produce documents that the Bureau intended to review prior to the investigational hearing.
- On October 14, 2022, the Bureau issued a new CID to update the Bureau investigators who would conduct the investigational hearing; the date and topics for the hearing remained the same.
- On October 20, 2022, Purpose requested that the hearing be postponed by another 60 days; the Bureau agreed to delay the investigational hearing until November 9, 2022.



Then on November 2, 2022, the Company informed the Bureau that due to scheduling issues, it could not appear for the investigational hearing on November 9th and requested that the Bureau reschedule it for December 14, 2022.

The Bureau agrees to modify the October 14, 2022 CID such that the investigational hearing will take place on **December 14, 2022, at 10 AM**. The investigational hearing will take place at the United States Attorney's Office, District of South Carolina, Greenville Office, 55 Beattie Pl, #700, Greenville, SC 29601.

If you have any questions regarding the terms outlined above, contact Senior Litigation Counsel Greg Nodler at (202)435-7619.

Sincerely,

**RICHA  
DASGUPTA**  Digitally signed by RICHA  
DASGUPTA  
Date: 2022.11.04  
09:40:52 -04'00'

Richa Dasgupta  
Deputy Enforcement Director

1700 G Street, NW  
Washington, DC 20552



February 28, 2023

[Via Email at Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)

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

Re: Civil Investigative Demand issued to Purpose Financial, Inc. on February 10, 2023

Dear Ms. Jackman:

This letter modifies the terms for compliance with the civil investigative demand (CID) issued to Purpose Financial, Inc. (Purpose) on February 10, 2023 by the Consumer Financial Protection Bureau (Bureau), as permitted by 12 C.F.R. § 1080.6(d). This letter sets forth the only modifications to the CID. The Bureau's willingness to approve these modifications is based, in part, on Purpose's representations at the February 21, 2023 meet & confer and your letter dated February 24, 2023.

In these, you described a February 7, 2023 ransomware attack that necessitated Purpose shutting down its entire network and ceasing originating loans to investigate the incident and ensure customer, employee, and company information is protected. In your letter, you report "many of the servers and systems necessary for Purpose to search for documents and collect data needed to respond to the CID remain offline," and although Purpose restarted originating loans online on February 17, 2023, it continues not to originate loans in branches. You indicated that Purpose would respond to Interrogatories 6 and 7 by March 13, 2023, but said that you could not estimate a production schedule for any other requests at this time.

As a result of the incident, the Bureau agrees to extend the deadline of most requests and to consider further modification requests at a meet & confer to be held the week of March 13, 2023.

## Timing of the Production

The CID as issued requires the Company to comply fully by **March 13, 2023**. The Bureau agrees to extend the Company's compliance as follows:

Due on March 13, 2023

- Interrogatories 1, 6, 7, 9

Due on April 13, 2023

- Interrogatories 2, 3, 4, 5, 8
- Document Requests 1-23
- Requests for Written Report 1-8

The Company must fully comply with the modified CID by April 13, 2023.

If the Company withholds information responsive to the CID based on privilege, it must produce a privilege log in accordance with the procedures set forth in the Rules Relating to Investigations § 1080.8 (Withholding Requested Material). *See* 12 C.F.R. § 1080.8. If required, a privilege log is due by the final CID production date of **April 13, 2023**.

## Nature of the Modifications

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

If you have any questions regarding the terms outlined above, contact Enforcement Attorney **Amy Mix** at (202) 435-9924.

Sincerely,

RICHA  
DASGUPTA



Digitally signed by RICHA  
DASGUPTA  
Date: 2023.02.28  
09 03:28 -05'00'

Richa Dasgupta  
Deputy Enforcement Director

1700 G Street, NW  
Washington, DC 20552



April 12, 2023

[Via Email at Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)

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

Re: Civil Investigative Demand issued to Purpose Financial, Inc. on February 10, 2023

Dear Ms. Jackman:

This letter modifies the terms for compliance with the civil investigative demand (CID) issued to Purpose Financial, Inc. (Purpose) on February 10, 2023 by the Consumer Financial Protection Bureau (Bureau), as permitted by 12 C.F.R. § 1080.6(d).

This is the second modification of the CID. It follows two meet-and-confers and numerous other meetings and letters discussing the requests in the CID.

At the first meet-and-confer, held on February 21, 2023, Purpose explained to the Bureau that on February 7, 2023, Purpose was subject to a ransomware attack that limited its ability to conduct business, and that it had not assessed the CID and was unable to discuss the substance of individual requests. In a letter sent on February 28, 2023 (February Letter), Purpose told the Bureau that Purpose had resumed its online lending business on February 17, 2023, and had begun resuming its storefront lending, though most of its approximately 900 storefronts were working with a single workstation. Purpose indicated in the February Letter it could respond to two interrogatories by the CID's March 13, 2023 deadline and requested a second meet-and-confer be held on March 23, 2023, after which it could "provide a proposed production schedule for the remaining CID requests including a discussion of any requested scope modifications."

Based on Purpose's representation at the first meet-and-confer and in the February Letter that "many of the servers and systems necessary for Purpose to search for documents and collect data needed to respond to the CID remain offline," the Bureau

modified the CID on February 28, 2023. Specifically, the Bureau extended the deadline from March 13, 2023 until April 13, 2023 to respond to all requests other than four interrogatories. Purpose's ability to respond to the four interrogatories was not likely impacted by the February 7, 2023 incident, so they remained due on the original due date. In the modification letter, the Bureau stated it would consider further modifications after a second meet-and-confer to be held the week of March 13, 2023.

At the second meet-and-confer, held on March 20, 2023, Purpose told the Bureau it was still not ready to propose a production schedule, but that it would provide one in writing, along with a detailed description of the burden necessitating various modifications. With respect to document requests that included email, Purpose explained that it would propose to limit email production by custodians and keyword searches. With respect to the Bureau's requests for written reports, Purpose told the Bureau it may request a modification to exclude data kept only on its legacy systems but did not anticipate doing so would materially impact the amount or quality of the data because the vast majority of information had been transferred to its current system.

On April 4, 2023, Purpose sent a written request for a second modification to the CID (April Letter). Based on the representations made at the two meet-and-confers and in the February Letter and April Letter, the Bureau agrees to the modifications described below.

## **Emails**

Although Purpose indicated on March 20th that it would propose custodians and keywords to limit responsive emails, in its April Letter Purpose now requests to not produce any responsive emails.<sup>1</sup> Purpose asserts that producing emails "could easily approach \$500,000," which it claims is too burdensome. But Purpose does not appear to have conducted any searches to arrive at this cost estimate, and has not identified any custodians or keywords that would reduce its burden. Because Purpose has not shown that excluding *all* emails is necessary to avoid unduly disrupting or seriously hindering its normal operation of business, the Bureau declines to modify the CID to exclude all emails. The Bureau remains open to limiting email production by custodian and search terms to limit the burden imposed on Purpose. To give Purpose additional time to propose custodians and search terms, the Bureau extends the CID's deadline for responsive emails until April 20, 2023.<sup>2</sup>

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<sup>1</sup> In the April Letter, Purpose states "Document Requests 3, 4, 7, 8, 10, 14, 15, and 16 seek email, either as drafted or as indicated during our discussions." The Bureau notes that responsive emails may also exist for Document Requests 6, 11, 17, 18, and 21.

<sup>2</sup> The Bureau will also consider requests to narrow the scope of individual requests.

## Written Reports

In the April Letter, Purpose requests the CID be modified to exclude all requests for written reports. Purpose explained that it initially hoped it could produce some written reports if the scope was modified to include only data in its current data warehouse, because accessing data in its legacy systems that inadvertently was not added to the current system would require “an enormous amount of effort and resources.” Now, however, Purpose requests to not produce any written reports because the team that would normally assist with preparing responses is still responding to the February 7, 2023 ransomware attack, and Purpose recently learned that another employee that Purpose hoped could help with the production will be on personal leave for a significant period of time.

Given the effort that Purpose asserts would be required to access data in legacy systems, the Bureau agrees to modify Requests for Written Reports 1-8 to only require data stored in a data warehouse or repository currently in use by Purpose. The Bureau extends the deadline to produce these written reports until April 20, 2023.

Because Purpose has not shown that producing the written reports with the data from its current system would unduly disrupt or seriously hinder its normal operation of business, the Bureau declines to exclude Requests for Written Reports 1-8 altogether. The Bureau remains open to further modifying these requests based on specifically described inability to access the requested data and will consider further modification requests by Purpose before the written reports are due.

## Store-Based Document Production

Document Requests 1, 13, and 17 seek personnel files, loan files, and communications with consumers from the stores identified in response to Request for Written Report 6—that is, the top-two and bottom-two performing stores in each state based on various criteria, such as overall revenue and number of loans. In drafting the CID, the Bureau limited these document requests to this subset of stores to reduce the burden on Purpose. Although Purpose has not yet identified the number of stores that are responsive to Request for Written Report 6, in the April Letter Purpose speculates that Written Report 6 “could easily identify hundreds of centers.” Purpose therefore requests that the Bureau collaborate with Purpose to identify a different subset of stores from which to base its responses to Document Requests 1, 13, and 17.

Because Purpose has not shown that responding to Document Requests 1, 13, and 17 as drafted would be unduly burdensome, the Bureau declines to modify these document requests at this time. The Bureau extends the deadline to respond to Document Requests 1, 13, and 17 until May 12, 2023, two weeks after the modified deadline to produce Written Report 6. The Bureau is open to further modifications to Document Requests 1, 13, and 17 after Purpose determines the number of stores responsive to Request for Written Report 6.

## Remaining Modifications

For several document requests, Purpose seeks to exclude drafts or workpapers because they are not centrally or systematically saved or stored, and therefore “attempting to locate [them] would require significant manual effort that is likely to be of limited success.” The Bureau agrees to modify Document Requests 3, 5, 6, 7, 10, 12, and 18 to exclude informal documents not centrally or systematically saved or stored. This modification does not apply to emails.

Purpose requests to modify Document Request 2 to: (1) exclude non-managerial or non-executive employees; (2) exclude materials from Jessica Rustin’s Personnel File predating her roles as Chief Executive Officer and Chief Operating Officer; and (3) correct the spelling of James Ovenden’s name. The Bureau agrees to these requests.

In its April Letter, Purpose requests additional time to respond to several document requests. The Bureau agrees to make most of the requested modifications. Specifically, the Bureau agrees to extend the existing deadlines as follows:<sup>3</sup>

- Document Request 2 is now due on May 12, 2023.
- For Document Requests 3 and 4, the modified deadline to produce documents created before 2020 is May 12, 2023; documents created during or after 2020 remain due April 13, 2023.
- For Document Requests 5 and 6, the modified deadline to produce corporate-level and externally created documents is May 12, 2023; branch-level documents are due June 12, 2023.
- For Document Request 7, the modified deadline to produce responsive documents created during or after 2020 is May 12, 2023; pre-2020 documents are due June 12, 2023.
- For Document Request 8, the modified deadline to produce responsive documents other than Performance Improvement Plans (PIPs) is May 12, 2023; PIPs are due July 14, 2023.
- Document Request 9 is now due on May 12, 2023.

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<sup>3</sup> These deadlines do not apply to responsive emails, which as discussed above, are now due on April 20, 2023.



- For Document Request 10, the modified deadline to produce minutes and materials related to regular committee and Board meetings is May 12, 2023; minutes and materials related to other meetings are due June 12, 2023.
- For Document Request 12, the modified deadline to produce documents reflecting current, final iterations of underwriting criteria and process is May 12, 2023; historical documents reflecting final iterations of underwriting criteria and process are due August 14, 2023.
- For Document Request 14, the modified deadline to produce documents reflecting the final terms of, eligibility for, and results of each incentive or bonus program is May 12, 2023; documents reflecting discussions regarding the creation of each incentive or bonus program are due June 12, 2023.
- For Document Request 18, the modified deadline to produce documents relating to the development, implementation, inputs, use, and analysis of current credit-scoring and underwriting models is May 12, 2023; documents relating to the development, implementation, inputs, use, and analysis of historical credit-scoring and underwriting models are due August 14, 2023.
- Document Request 20 is now due on June 12, 2023.
- The modified deadline to produce documents responsive to Document Request 22 is May 12, 2022. In the April Letter, Purpose stated it was still “researching to determine if the Achievers platform posts could be exported” and that it “requires additional time to determine whether Purpose is able to produce these documents and, if so, on what timeframe.” The Bureau is open to further modification of this request after Purpose has spent additional time researching its ability to respond to the request.

### **Timing of the Production**

Given the previous extension and the extensions described above, the production schedule for the entire CID, as currently modified, is as follows:

April 13, 2023:

- Interrogatories 2-5 and 8
- Document Requests 3-4 (non-email documents created during or after 2020); 11 (non-email); 19; 21 (non-email); 23

April 20, 2023:

- Emails responsive to Document Requests 3, 4, 6- 8, 10, 11, 14- 18, and 21;
- Written Reports 1-8

May 12, 2023

- Document Requests 1; 2; 3-4 (pre-2020 documents); 5-6 (corporate-level and externally created); 7 (documents created during or after 2020); 8 (except for PIPs); 9; 10 (regular committee and Board meetings); 12 (current documents); 13; 14 (final bonus/incentive plans and results); 17; 18 (current documents); 22

June 12, 2023

- Document Requests 5-6 (branch level); 7 (pre-2020); 10 (other meetings); 14 (creation documents); 20

July 14, 2023

- Document Request 8 (PIPs)

August 14, 2023

- Document Request 12 (historical documents); 18 (historical documents).

The Company must fully comply with the modified CID by **August 14, 2023**.

If the Company withholds information responsive to the CID based on privilege, it must produce a privilege log in accordance with the procedures set forth in the Rules Relating to Investigations § 1080.8 (Withholding Requested Material). *See* 12 C.F.R. § 1080.8. If required, a privilege log is due by the final CID production date of **August 14, 2023**.

### **Nature of the Modifications**

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

If you have any questions regarding the terms outlined above, contact Senior Litigation Counsel **Gregory Nodler** at (202) 435-7619

Sincerely,

**RICHA**

**DASGUPTA**

Richa Dasgupta

Deputy Enforcement Director

Digitally signed by RICHA  
DASGUPTA  
Date: 2023.04.12  
11:29:43 -04'00'

**From:** [Reise, Sarah T.](#)  
**To:** [Nodler, Gregory \(CFPB\)](#); [Jackman, Stefanie H.](#)  
**Cc:** [Mix, Amy \(CFPB\)\(she/her\)](#); [Yokay, Steven \(CFPB\)](#)  
**Subject:** RE: Purpose Financial, Inc. CID dated February 10, 2023  
**Date:** Thursday, April 13, 2023 4:17:42 PM  
**Attachments:** [Tolling Agreement Purpose.DOCX](#)

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Greg and Amy,

We appreciate the Bureau's consideration of Purpose's modification requests and the attempt to accommodate some of the burdens and challenges presented by the Civil Investigative Demands and the Bureau's ongoing investigation.

However, given the significant burdens and the serious challenges Purpose is still navigating, as articulated in its letters dated February 24 and April 4, 2023, and given the pending appeal before the United States Supreme Court of the Fifth Circuit's decision in *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, No. 21-50826 (5th Cir. Oct. 19, 2022), Purpose respectfully believes that a stay of this investigation is in the best interests of both parties. The *CFSA* appeal will determine whether the Bureau's funding mechanism is unconstitutional, and similarly, whether action taken by the Bureau using allegedly unconstitutionally appropriated funds are similarly unconstitutional. And recently, the Second Circuit issued a decision disagreeing with the Fifth Circuit in *Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C.*, Case No. 20-3471 (2d Cir. Mar. 23, 2023). As a result of the Second Circuit's decision, there is now a split of authority on this critical constitutional issue that will be decided during the Supreme Court's next term.

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

Given that the Supreme Court has granted the Bureau's petition for certiorari and it will issue a decision during its next term, a stay will not unreasonably delay this investigation. Additionally, Purpose is willing to enter into a tolling agreement for the duration of any stay, further minimizing the risk of any prejudice to the Bureau. A proposed draft, which is similar to a tolling agreement proposed by the Bureau in another recent matter, is attached for consideration.

Accordingly, Purpose respectfully requests that the Bureau stay this investigation pending the resolution of the pending appeal in *CFSA v. CFPB*. Can you please let us know the Bureau's position after consideration?

Thank you,

Sarah

**Sarah T. Reise**

Counsel

**troutman pepper**

Direct: 404.885.3803 | Mobile: 404.697.7117

sarah.reise@troutman.com

Pronouns: she, her, hers

---

**From:** Nodler, Gregory (CFPB) <Gregory.Nodler@cfpb.gov>

**Sent:** Wednesday, April 12, 2023 12:10 PM

**To:** Jackman, Stefanie H. <Stefanie.Jackman@troutman.com>; Reise, Sarah T. <Sarah.Reise@troutman.com>

**Cc:** Mix, Amy (CFPB)(she/her) <Amy.Mix@cfpb.gov>; Yokay, Steven (CFPB) <Steven.Yokay@cfpb.gov>

**Subject:** Second Modification to CID sent to Purpose Financial on February 10, 2023

CAUTION: This message came from outside the firm. DO NOT click links or open attachments unless you recognize this sender (look at the actual email address) and confirm the content is safe.

Stefanie and Sarah,

See attached second modification to the CID sent to Purpose Financial on February 10, 2023.

Please let me know if you have questions or wish to discuss.

Thanks,  
Greg

**Greg Nodler**

Senior Litigation Counsel

Consumer Financial Protection Bureau

Tel: 202-435-7619

Mob: 202-329-7671

[gregory.nodler@cfpb.gov](mailto:gregory.nodler@cfpb.gov)

[consumerfinance.gov](https://consumerfinance.gov)

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**From:** [Nodler, Gregory \(CFPB\)](#)  
**To:** [Reise, Sarah T.](#); [Jackman, Stefanie H.](#)  
**Cc:** [Mix, Amy \(CFPB\)\(she/her\)](#); [Yokay, Steven \(CFPB\)](#)  
**Subject:** RE: Purpose Financial, Inc. CID dated February 10, 2023  
**Date:** Friday, April 14, 2023 5:55:00 PM  
**Attachments:** [4-14-23 Tolling Agreement Purpose-signed by CFPB.pdf](#)

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Sarah,

After consideration, the Bureau remains unable to grant your request to stay its investigation of Purpose Financial, Inc.

The due dates described in the April 12, 2023 modification to the CID sent on February 10, 2023 remain as follows:

April 13, 2023:

- Interrogatories 2-5 and 8
- Document Requests 3-4 (non-email documents created during or after 2020); 11 (non-email); 19; 21 (non-email); 23

April 20, 2023:

- Emails responsive to Document Requests 3, 4, 6- 8, 10, 11, 14- 18, and 21;
- Written Reports 1-8

May 12, 2023

- Document Requests 1; 2; 3-4 (pre-2020 documents); 5-6 (corporate-level and externally created); 7 (documents created during or after 2020); 8 (except for PIPs); 9; 10 (regular committee and Board meetings); 12 (current documents); 13; 14 (final bonus/incentive plans and results); 17; 18 (current documents); 22

June 12, 2023

- Document Requests 5-6 (branch level); 7 (pre-2020); 10 (other meetings); 14 (creation documents); 20

July 14, 2023

- Document Request 8 (PIPs)

August 14, 2023

- Document Request 12 (historical documents); 18 (historical documents).

As stated in the April 12, 2023 modification letter, the Bureau remains open to limiting email production by custodian and search terms to limit the burden imposed on Purpose, and to further modifying Requests for Written Reports 1-8 based on specifically described inability to access the requested data. Let me know if the April 13, 2023 production was made or if it is on the way.

A signed copy of the tolling agreement with today's date on it is attached. If you still wish to do so, please send me a copy with your signature.

Thanks,  
Greg

**Greg Nodler**  
Senior Litigation Counsel  
Consumer Financial Protection Bureau  
Tel: 202-435-7619  
Mob: 202-329-7671  
[gregory.nodler@cfpb.gov](mailto:gregory.nodler@cfpb.gov)

[consumerfinance.gov](https://www.consumerfinance.gov)

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---

**From:** Reise, Sarah T. <Sarah.Reise@troutman.com>  
**Sent:** Thursday, April 13, 2023 4:17 PM  
**To:** Nodler, Gregory (CFPB) <Gregory.Nodler@cfpb.gov>; Jackman, Stefanie H. <Stefanie.Jackman@troutman.com>  
**Cc:** Mix, Amy (CFPB)(she/her) <Amy.Mix@cfpb.gov>; Yokay, Steven (CFPB) <Steven.Yokay@cfpb.gov>  
**Subject:** RE: Purpose Financial, Inc. CID dated February 10, 2023

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Greg and Amy,

We appreciate the Bureau's consideration of Purpose's modification requests and the attempt to accommodate some of the burdens and challenges presented by the Civil Investigative Demands and the Bureau's ongoing investigation.

However, given the significant burdens and the serious challenges Purpose is still navigating, as articulated in its letters dated February 24 and April 4, 2023, and given the pending appeal before the United States Supreme Court of the Fifth Circuit's decision in *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, No. 21-50826 (5th Cir. Oct. 19, 2022), Purpose respectfully believes that a stay of this investigation is in the best interests of both parties. The *CFSA* appeal will determine whether the Bureau's funding mechanism is unconstitutional, and similarly, whether action taken by the Bureau using allegedly unconstitutionally appropriated funds are similarly unconstitutional. And recently, the Second Circuit issued a decision disagreeing with the Fifth Circuit in *Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C.*, Case No. 20-3471 (2d Cir. Mar. 23, 2023). As a result of the Second Circuit's decision, there is now a split of authority on this critical constitutional issue that will be decided during the Supreme Court's next term.

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



Given that the Supreme Court has granted the Bureau's petition for certiorari and it will issue a decision during its next term, a stay will not unreasonably delay this investigation. Additionally, Purpose is willing to enter into a tolling agreement for the duration of any stay, further minimizing the risk of any prejudice to the Bureau. A proposed draft, which is similar to a tolling agreement proposed by the Bureau in another recent matter, is attached for consideration.

Accordingly, Purpose respectfully requests that the Bureau stay this investigation pending the resolution of the pending appeal in *CFSA v. CFPB*. Can you please let us know the Bureau's position after consideration?

Thank you,

Sarah

**Sarah T. Reise**

Counsel

**troutman pepper**

Direct: 404.885.3803 | Mobile: 404.697.7117

[sarah.reise@troutman.com](mailto:sarah.reise@troutman.com)

Pronouns: she, her, hers

---

**From:** Nodler, Gregory (CFPB) <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>

**Sent:** Wednesday, April 12, 2023 12:10 PM

**To:** Jackman, Stefanie H. <[Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)>; Reise, Sarah T. <[Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)>

**Cc:** Mix, Amy (CFPB)(she/her) <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>; Yokay, Steven (CFPB) <[Steven.Yokay@cfpb.gov](mailto:Steven.Yokay@cfpb.gov)>

**Subject:** Second Modification to CID sent to Purpose Financial on February 10, 2023

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Stefanie and Sarah,

See attached second modification to the CID sent to Purpose Financial on February 10, 2023.

Please let me know if you have questions or wish to discuss.

Thanks,

Greg

**Greg Nodler**

Senior Litigation Counsel

Consumer Financial Protection Bureau

Tel: 202-435-7619

Mob: 202-329-7671

[gregory.nodler@cfpb.gov](mailto:gregory.nodler@cfpb.gov)

[consumerfinance.gov](https://consumerfinance.gov)

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UNITED STATES OF AMERICA

Before the

CONSUMER FINANCIAL PROTECTION BUREAU

----- )

In the Matter of: ) Matter No.

PURPOSE FINANCIAL ) 2022-2226-02

----- )

Greenville, South Carolina

Examination

Wednesday, December 14, 2022

The investigational hearing testimony of SCOT J. GOODMAN, commenced, pursuant to notice, at 10:05 a.m. Eastern Time.

Reported by:

Colette Cantoni, RMR-CRR-RPR

1 A P P E A R A N C E S:

2 For the Consumer Financial Protection Bureau:

3

4 CONSUMER FINANCIAL PROTECTION BUREAU

5 1700 G Street, N.W.

6 Washington, D.C. 20005

7 202-604-5278

8 BY: AMY MIX, ESQ.

9 and

10 GREGORY NODLER, ESQ.

11

12 For Purpose Financial and the witness:

13

14 TROUTMAN PEPPER HAMILTON SANDERS

15 600 Peachtree Street, N.E., Suite 3000

16 Atlanta, Georgia 30308

17 404-885-3000

18 BY: STEFANIE H. JACKMAN, ESQ.

19 and

20 SARAH T. REISE, ESQ.

21

22 ALSO PRESENT:

23 DENAE ROTH, General Counsel, Purpose Financial

24

25

1 Purpose Financial and Advance America interchangeably  
2 or should I be saying Purpose Financial?

3 A I am fine with -- I consider them together;  
4 so, yes.

5 Q And in a minute I'm going to ask you to --

6 A Okay.

7 Q -- help me understand the structure of  
8 that.

9 A Okay.

10 Q So for now we'll use the name Purpose  
11 Financial; but if at any point it would be more  
12 correct to say Advance America, I want you to let me  
13 know.

14 A Okay.

15 Q So you understand that you're testifying  
16 here today on behalf of the company and not in your  
17 individual capacity, right?

18 A Yes.

19 Q So if you'll go about seven pages from the  
20 end, and I'll show --

21 A From the end?

22 Q Yes. And I'll show you what it looks like.  
23 At the top it says, "Notice to Persons Supplying  
24 Information."

25 A Yes.

1 Q And then does the CSM do performance  
2 reviews with the other staff in the center?

3 A They'll participate in the performance  
4 review for any employees below them, and that's a  
5 partnership with the divisional director of  
6 operations.

7 Q Do they get written reviews, the staff  
8 within the storefront?

9 A Again, it's all in the software program in  
10 SuccessFactors.

11 Q Great, thank you. And the people at the  
12 storefront, the CSM and then the staff they  
13 supervise, they have access to company email for  
14 communications?

15 A They have a branch email system that's  
16 dedicated to our stores. They're not on our, like,  
17 Microsoft Office email program; they're on a separate  
18 store email system.

19 Q So an individual storefront communication  
20 system is only with people within that storefront?

21 A I mean, they can email anyone within the  
22 company. But just for cost, I mean, every Office 365  
23 account costs money. So we don't do a license for  
24 Office 365 for every employee or every storefront; we  
25 have a branch mail network email system.



1 if the store qualified for a bonus, all employees  
2 would qualify for the bonus.

3 Q I see. And so the reports that are coming  
4 that are those monthly, the field, the center or  
5 field reports, those are coming to the storefront as  
6 a whole?

7 A Yes.

8 Q Okay. And those are going to the manager  
9 of the storefront?

10 A Well, they would go to the RDO and DDO, and  
11 then they would sort the report down to their  
12 division; instead of sending out a longer report,  
13 they would just sort down to their store and email  
14 that to the store.

15 Q And they are coming to those folks from  
16 this rewards compensation team?

17 A It's actually coming -- the report is  
18 pulled together, is given to our communications team.  
19 The communications team actually distributes the  
20 report on a weekly basis.

21 Q You did tell me that it's always the  
22 communications team. Thank you.

23 A Yes. To always maintain the record of what  
24 we're distributing.

25 Q I appreciate that. It was not a gotcha!

1 Q Would there be anything in Fuse saying  
2 whether the borrower qualifies for any particular  
3 marketing campaigns?

4 A How would you define a marketing campaign?

5 Q There's a document that we're probably  
6 going to get into later -- that we may get into  
7 later -- it is for a tax season settlement campaign,  
8 where, you know, it's tax season and there's a --  
9 it's an email blast -- and we can go through it  
10 later, I don't want to, like, trip you up or  
11 anything.

12 A Yeah.

13 Q -- but it's saying there are certain  
14 customers who qualify to get some of their old loan  
15 forgiven.

16 A Yeah.

17 Q Does that sound familiar?

18 A Yes.

19 Q Okay. So that's the type of marketing  
20 campaign that I was talking about.

21 A Yeah, yeah. If we send an email or  
22 communication or we were running some type of a  
23 settlement offer, that would then reflect in the  
24 point of sale system; so if the customer came in to  
25 make a payment the employee would only collect up to

1           A     I mean, if it's been a market that they  
2     have had or a store they have had to that back  
3     history, then it may still be in their P&L folder for  
4     that division. If it's a store that they just  
5     started -- I mean, if it's a new hire, they have no  
6     historical view; because all those reports are only  
7     for the stores they've overseen in the time that  
8     they're overseeing them today.

9           Q     At the corporate level is there any  
10    tracking or comparison of profitability of the  
11    individual stores?

12          A     Well, I mean, we -- we obviously have  
13    the -- I mean, the P&Ls kind of roll up from the  
14    individual center P&L and kind of rolling up through  
15    that process. So, I mean, yeah, there's a record of  
16    the store profitability.

17          Q     Okay. I had asked at the DDO level. But  
18    at the corporate level, if you wanted to know what  
19    was the most profitable store last year, then would  
20    that be easy information to obtain?

21          A     I mean, somebody in accounting and finance  
22    would be able to see that. Yes.

23          Q     Okay. Would they be able to say which  
24    store generated the most loans?

25          A     Yeah. I mean, the same thing: loan counts,

1 new customer counts, revenue counts, yes.

2 Q And that just doesn't roll off the tongue,  
3 that term that we were using before. Oh, storefront  
4 inactive reactivations --

5 A Yes.

6 Q -- is that something that would be easy to  
7 pull up on which store had the most storefront  
8 inactive reactivations?

9 A I mean, like I said, it's not -- it's no  
10 longer part of the process in our metrics. I don't  
11 know what the ability would be to pull that in the  
12 data warehouse.

13 Q Okay. Is there somewhere where all of the  
14 metrics are listed?

15 A I mean, I couldn't say there's somewhere  
16 that every single metric is listed. Because some of  
17 those metrics are old -- it's kind of like some of  
18 the old point of sale systems, that they're just no  
19 longer functioning. If we haven't used that in a  
20 year and we just haven't decommissioned it for  
21 whatever reason, we may or may not have the original  
22 when that definition was loaded into that point of  
23 sale.

24 Q All right.

25 A All of the current definitions that we're

1 directly with the RDOs, and they will sort it down to  
2 their market share with the DDOs the same thing. But  
3 then the weekly updates is we do each Monday as the  
4 last week's data refreshes, we do a kind of incentive  
5 report update that's emailed out directly through our  
6 communications team.

7 Q And then the one that you were talking  
8 about a minute ago, that's also through email?

9 A Yes.

10 Q Okay. And who specifically would they come  
11 from, the emails?

12 A It would come from our FP&A team. There's  
13 -- I don't know how many is on the team, but somebody  
14 in the department would share the targets the  
15 beginning of each month for that month's targets.

16 Q Do you know what those emails would be  
17 called?

18 A It's -- I mean, it's normally going to be,  
19 I mean, the month-end kind of incentive targets or  
20 something along that. Like, it's going to tie it  
21 back to those are the targets for the incentive  
22 program for the month. There will be something in  
23 the title similar.

24 Q Okay. You told me that Purpose does not  
25 track the lifetime value of a new customer, correct?

1 like, analytics related to borrower's income?

2 A I'm not sure what is all in the scoring  
3 models or not. I couldn't say for sure whether that  
4 is part of the scoring model or not part of the  
5 scoring model.

6 Q Yeah, and I don't want you to testify about  
7 anything that you don't know --

8 A Yeah.

9 Q -- so thank you for checking me on that.

10 But setting aside the scoring model, do you  
11 know if Purpose tracks whether a borrower's income  
12 has gone up or down between their first and second  
13 loan -- between a first loan and a subsequent loan?

14 A I mean, nothing's that's tracking it. But,  
15 like I said, any time there's an update in the income  
16 you would see whether it had gone up or down. I  
17 mean, you're going to qualify -- each loan is  
18 qualified individually based on the income and any  
19 data entered at that time of qualification. So if  
20 there was an income update, if that went down, they  
21 may qualify for less, or vice versa, if that income  
22 went up they may qualify for more.

23 Q Gotcha, thanks. What are all the different  
24 ways that Purpose communicates with consumers?

25 A Obviously, in person. Phone, email, text;



**Nodler, Gregory (CFPB)**

---

**From:** Stefanie Jackman <stefanie.jackman@gmail.com>  
**Sent:** Friday, February 10, 2023 10:50 PM  
**To:** Nodler, Gregory (CFPB)  
**Cc:** Sarah Reise; Reise, Sarah T.; Jackman, Stefanie H.; Mix, Amy (CFPB)(she/her)  
**Subject:** Re: Purpose Financial

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We received it. We have a work around platform but I have seen those messages go out. Not sure why. Thank you for confirming.

On Fri, Feb 10, 2023, 10:46 PM Nodler, Gregory (CFPB) <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)> wrote:

Sarah and Stefanie,

I just saw an Outlook notification that the attached email I sent to your work address may not yet have gone through. Perhaps your system went down again? Either way, here it is again. Please let us know if you have any questions.

Thanks,

Greg

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---

**From:** Stefanie Jackman <[stefanie.jackman@gmail.com](mailto:stefanie.jackman@gmail.com)>  
**Sent:** Friday, February 10, 2023 12:45 PM  
**To:** Sarah Reise <[sarah.reise@gmail.com](mailto:sarah.reise@gmail.com)>  
**Cc:** Mix, Amy (CFPB)(she/her) <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>; Nodler, Gregory (CFPB) <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>  
**Subject:** Re: Purpose Financial

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Thank you, Sarah. Also, if you want to speak by phone for any reason, my cell phone is 404-683-0613. I echo Sarah in thanking the Bureau for its understanding.

Stefanie

On Fri, Feb 10, 2023 at 12:32 PM Sarah Reise <[sarah.reise@gmail.com](mailto:sarah.reise@gmail.com)> wrote:

Good afternoon Amy and Greg - Per my discussion with Amy earlier, here are my and Stefanie's gmail addresses until our Firm email is back online.

I am in the process of getting a sharefile link set up which I will forward to you in the event you are unable to email the new CID to us at these addresses. We can also receive the document via Fed Ex at our office as well, whichever you prefer.

We will let you know once our email is back online.

Thank you, and we apologize for any inconvenience.

Sarah

----- Forwarded message -----

From: "Nodler, Gregory (CFPB)" <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>

To: Sarah Reise <[Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)>

Cc: "[Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)" <[Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)>, "Mix, Amy (CFPB)(she/her)" <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>, "Yokay, Steven (CFPB)" <[Steven.Yokay@cfpb.gov](mailto:Steven.Yokay@cfpb.gov)>

Bcc:

Date: Fri, 10 Feb 2023 20:00:08 +0000

Subject: RE: Purpose Financial CID

Sarah and Stefanie,

Please see attached third CID we are sending your client Purpose Financial, Inc. Thank you for accepting service via email.

Let us know when would be a good time to meet and confer.

Greg

Greg Nodler

He/Him/His

Senior Litigation Counsel

Consumer Financial Protection Bureau

Tel: 202-435-7619

Mob: 202-329-7671

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**From:** Sarah Reise <[Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)>  
**Sent:** Friday, February 10, 2023 2:26 PM  
**To:** Nodler, Gregory (CFPB) <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>  
**Cc:** [Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com); Mix, Amy (CFPB)(she/her) <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>  
**Subject:** Re: Purpose Financial CID

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Good afternoon, Greg and Amy - We just received access to our email again, and we are happy to accept service via email.

--- [Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov) wrote:

From: "Nodler, Gregory (CFPB)" <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>  
To: "Reise, Sarah T." <[Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)>, "Jackman, Stefanie H." <[Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)>  
CC: "Mix, Amy (CFPB)(she/her)" <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>  
Subject: Purpose Financial CID  
Date: Fri, 10 Feb 2023 13:54:39 +0000

**EXTERNAL SENDER**

Sarah and Stefanie,

Good morning. I'm following up to see if your emails are back up and running, and if you will accept service of a CID for Purpose Financial, Inc. via email.

Thanks,

Greg

**Greg Nodler**

He/Him/His

Senior Litigation Counsel

Consumer Financial Protection Bureau

Tel: 202-435-7619

Mob: 202-329-7671

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**Nodler, Gregory (CFPB)**

---

**From:** Nodler, Gregory (CFPB)  
**Sent:** Monday, February 13, 2023 2:46 PM  
**To:** Stefanie Jackman  
**Cc:** Sarah.Reise@troutman.com; Mix, Amy (CFPB)(she/her)  
**Subject:** RE: Purpose Financial

Stefanie,

That is fine with us. Should we put some time on the calendar to hold it on the 21<sup>st</sup>?

By the way, since the CID is largely data-focused, it would be helpful to have an e-discovery person from the company there to help explain any modification requests based on burden.

Thanks,  
Greg

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---

**From:** Stefanie Jackman <Stefanie.Jackman@troutman.com>  
**Sent:** Monday, February 13, 2023 1:30 PM  
**To:** Nodler, Gregory (CFPB) <Gregory.Nodler@cfpb.gov>  
**Cc:** stefanie.jackman@gmail.com; sarah.reise@gmail.com; Sarah.Reise@troutman.com; Mix, Amy (CFPB)(she/her) <Amy.Mix@cfpb.gov>  
**Subject:** RE: Purpose Financial

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Greg,

Just following up on the below. The end of the 10 day meet and confer period lands on 2/20, i.e., President's Day. Can we agree to push forward and have 2/21 be the last day to confer on the new CID?

--- [Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov) wrote:

From: "Nodler, Gregory (CFPB)" <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>  
To: Stefanie Jackman <[stefanie.jackman@gmail.com](mailto:stefanie.jackman@gmail.com)>  
CC: Sarah Reise <[sarah.reise@gmail.com](mailto:sarah.reise@gmail.com)>, "Reise, Sarah T." <[Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)>, "Jackman, Stefanie H." <[Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)>, "Mix, Amy (CFPB)(she/her)" <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>  
Subject: RE: Purpose Financial  
Date: Sat, 11 Feb 2023 03:50:59 +0000

**EXTERNAL SENDER**

Glad to hear it. Have a good weekend.

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**To:** Nodler, Gregory (CFPB) <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>  
**Cc:** [Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com); Mix, Amy (CFPB)(she/her) <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>  
**Subject:** Re: Purpose Financial CID

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--- [Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov) wrote:

From: "Nodler, Gregory (CFPB)" <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>  
To: "Reise, Sarah T." <[Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)>, "Jackman, Stefanie H." <[Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)>  
CC: "Mix, Amy (CFPB)(she/her)" <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>  
Subject: Purpose Financial CID  
Date: Fri, 10 Feb 2023 13:54:39 +0000

**EXTERNAL SENDER**

Sarah and Stefanie,

Good morning. I'm following up to see if your emails are back up and running, and if you will accept service of a CID for Purpose Financial, Inc. via email.

Thanks,

Greg

Greg Nodler

He/Him/His

Senior Litigation Counsel

Consumer Financial Protection Bureau

Tel: 202-435-7619

Mob: 202-329-7671

[gregory.nodler@cfpb.gov](mailto:gregory.nodler@cfpb.gov)

[consumerfinance.gov](https://consumerfinance.gov)

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

troutman.com



Exhibit A-5

**Stefanie H. Jackman**  
D 404.885.3153  
stefanie.jackman@troutman.com

**Sarah T Reise**  
D 404.885.3803  
sarah.reise@troutman.com

February 24, 2023

**VIA EMAIL**

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

Gregory Nodler  
Amy Mix  
Enforcement Attorneys  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552  
Gregory.Nodler@cfpb.gov

**Re: February 10, 2023 Civil Investigative Demands to Purpose Financial Inc.**

Dear Mr. Nodler and Ms. Mix:

This letter is to follow-up on our telephone calls on February 17 and February 21, 2023 with you and your team about the February 10, 2023 Civil Investigative Demand ("CID") issued to our client, Purpose Financial, Inc. ("Purpose").

**Data Incident**

During our calls, we discussed Purpose's desire to work cooperatively with the Bureau in connection with responding to the recent CID. However, we also discussed the fact that Purpose was recently the subject of a ransomware attack on February 7, 2023 which continues to significantly impact Purpose's day-to-day business activities and resources.

Upon discovering the ransomware incident, Purpose immediately retained leading incident response experts to assist in system restoration and investigation of the incident. In order to limit impact, Purpose proactively took down its entire network. As a result, Purpose also ceased originating loans both in branches and online on February 7, 2023.

Purpose is working around the clock to resume operations as quickly, but responsibly, as possible. Purpose is working to bring each of its approximately 700 servers back online after completing thorough testing and, in many cases, restoring information from backups, to ensure that its customer, employee, and company information is protected. Computers located in branches have all been shipped to corporate headquarters to be re-imaged and secured. As

Gregory Nodler  
Amy Mix  
February 24, 2023  
Page 2



such, many of the servers and systems necessary for Purpose to search for documents and collect data needed to respond to the CID remain offline.

Currently, all of Purpose's Information Technology and Operations employees with the knowledge necessary to both assess any challenges in responding to the CID and to collect the requested documents and data for production, are fully engaged in working to safely return to normal business operations while minimizing any impact to customers. As part of that effort, business-critical systems are being prioritized for restoration over other systems, so some systems that contain information necessary to evaluate and respond to the CID could remain offline for some time.

From a customer perspective, Purpose was able to begin limited payment processing on February 09, 2023. Any customers not able to be make payments for any period of time due to this incident have been and will continue to be fully accommodated. Purpose was able to regain origination activity online on late in the day on February 17, 2023. As of February 24, 2023, most of Purpose's 900+ branches will have received a single workstation, but it will still be some time before branches receive the remainder of the workstations. Once set-up and connected to the network, branch-level transactions may begin, though some products or services may be unavailable as further restoration work continues (for example, Western Union services).

### **Initial CID Assessment and Response**

While Purpose has been unable to fully assess the CID and meet and confer on each request, as we discussed on February 21, 2023, we have preliminarily identified certain requests that, as drafted, are likely to require significant modification due to anticipated scope and burden issues. As discussed further below, these issues identified below are not exhaustive and we anticipate that Purpose will need to discuss additional timing and scope modifications related to other CID requests once Purpose is able to fully assess the CID after operations begin to return to normal.

### **Requests for Documents 1, 13, and 17**

These are document requests that are derivative of Written Report 6. Request for Written Report 6 asks Purpose to identify the top two and bottom two branches in each state on a yearly basis (approximately six years) across ten different metrics. Request for Documents 1 asks for all former employee personnel files from the identified branches; Request for Documents 13 seeks the loan file for all loans originated in the identified branches; and Request for Documents 17 seeks all consumer communications related to any loan originated in the identified branches.

As an initial matter, Purpose will not be able to respond to these Document Requests (and any other requests derivative of Written Report 6, such as Written Report 8) until Written Report 6 is completed. Once Written Report 6 is prepared, Purpose will understand the actual scope of the derivative requests.



Gregory Nodler  
Amy Mix  
February 24, 2023  
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Moreover, as Request for Written Report 6 is drafted, Purpose's response could easily identify hundreds of branches. First, there is likely to be significant variation in the branches identified year-over-year, or metric-by-metric, because branches that are poor performers are likely to have either improved or been closed. Further, during this time period there was significant consolidation of the number of branches. Indeed, based on our experience representing another client in a Bureau investigation who has responded to a very similarly structured request, this request is likely to ultimately identify the majority of the company's branches plus a significant number of branches no longer in existence.

Even a relatively minimal number of branches to be identified in Written Report 6 would impose significant burdens on Purpose. Collecting and producing all loan files for loans originated over nearly six years from even 100 branches may be challenging due to the volume of information involved. If a materially larger number of branches are identified, the requests derivative of Written Report 6 will likely become unmanageably large and unreasonably burdensome. Therefore, Purpose anticipates needing to request scope modifications in addition to extensions of time.

For these reasons, Purpose requests that these requests, and any others derivative of Written Report 6, be held in abeyance to be revisited within two weeks after Purpose produces Written Report 6. At that time, Purpose will better understand the potential universe of documents at issue in these requests and be able to engage in further discussions with the Bureau regarding potential modifications.

### **Requests for Documents 7 and 8**

Requests for Documents 7 and 8 seek documents related to evaluations and audits of branches. Over the Applicable Period, a number of branches have closed and have not been in operation for some (or most) of the Applicable Period. Purpose expects that the requested documents will be more difficult to locate for branches that have been closed for a significant period of time. Once Purpose has been able to better evaluate this burden, Purpose may request that the Bureau modify the scope of this request to exclude some branches or to extend the time to produce historical documents for closed branches.

### **Request for Documents 15**

In addition to any other requests that may require the production of email, Request for Documents 15 specifically seeks communications (including email) related to underwriting, origination, servicing, renewal, refinancing, and collection of loans between Purpose's owners, chief executive officer, chief compliance officer, regional managers, and/or district managers. This is likely to require review of a massive amount of email, as the scope of this request covers the company's entire business over the Applicable Period. Any email collection and review process requires a significant amount of time, money and resources. Request for Documents 15 is so broad that it may require a review of hundreds of thousands, and potentially millions, of emails and an extensive privilege review given the population of executives and employees



Gregory Nodler  
Amy Mix  
February 24, 2023  
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identified. Purpose will not be able to scope and reasonably estimate a production schedule or develop any other modification proposal until it has identified custodians and is able to assess the volume of email potentially at issue.

### **Preliminary Production Schedule**

During our discussion on February 21, 2023, you requested that Purpose attempt to estimate a rough production schedule based on the information currently available and the current status of the data security incident response. However, at this time, given that the majority of Purpose's corporate systems and critical personnel are unavailable, there are simply too many unknown and unknowable challenges to realistically estimate even a tentative proposed production schedule. Additionally, once systems are restored and personnel are more available, Purpose also anticipates that it will need to devote at least some resources once business is restored to responding to growing backlog of state regulatory requests that have also been delayed due to the recovery efforts described above.

However, Purpose commits to responding to Interrogatories 6 and 7 by March 13, 2023. For the remaining CID requests, assuming that the majority of the necessary systems are restored accordingly to current estimates, Purpose proposes to schedule a subsequent meet and confer on or after March 24, 2023 to provide a proposed production schedule for the remaining CID requests, including a discussion of any requested scope modifications.

Purpose takes its obligation to respond to the CID very seriously and intends to work cooperatively with the Bureau in doing so. This cooperation, however, should not be construed as, and is not intended to be, a waiver of any substantive or procedural rights or privileges. Purpose reserves all rights that it has or may have in the future, including as a result of *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, No. 21-50826 (5th Cir. Oct. 19, 2022).

Moreover, given the urgent need to protect consumer, employee, and company data while also working to investigate this incident, many of Purpose's systems are unavailable. Purpose is similarly unable to divert personnel resources from the efforts to resume normal operations as safely and quickly as possible. Purpose appreciates the Bureau's understanding and consideration during this difficult and unprecedented time.

Gregory Nodler  
Amy Mix  
February 24, 2023  
Page 5



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Sincerely,

A handwritten signature in black ink, appearing to read "Stefanie H Jackman".

Stefanie H Jackman

Sarah T Reise

Enclosure

cc: Steven Yokay (via email)  
Tracy Van Atta (via email)

**From:** [Nodler, Gregory \(CFPB\)](#)  
**To:** [Reise, Sarah T.](#); [Jackman, Stefanie H.](#); [Mix, Amy \(CFPB\)\(she/her\)](#)  
**Subject:** Purpose Status  
**Date:** Wednesday, March 29, 2023 11:34:00 AM

---

Sarah and Stefanie,

I'm writing to follow up on our March 20 meet and confer to discuss a second modification to the February 10 CID. Any idea when we'll have the written request and proposed production schedule? I want to make sure there is enough time for the Bureau to consider changes well before the current deadline for full compliance with the CID (4/13/23).

Thanks,

Greg

**Greg Nodler**

He/Him/His

Senior Litigation Counsel

Consumer Financial Protection Bureau

Tel: 202-435-7619

Mob: 202-329-7671

[gregory.nodler@cfpb.gov](mailto:gregory.nodler@cfpb.gov)

[consumerfinance.gov](https://consumerfinance.gov)

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

troutman.com



Exhibit A-8

**Stefanie H. Jackman**  
D 404.885.3153  
stefanie.jackman@troutman.com

**Sarah T Reise**  
D 404.885.3803  
sarah.reise@troutman.com

April 4, 2022

**VIA EMAIL**

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

Gregory Nodler  
Amy Mix  
Enforcement Attorney  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552  
[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)  
[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)

**Re: February 10, 2023 Civil Investigative Demand to Purpose Financial Inc.**

Dear Mr. Nodler and Ms. Mix:

This letter is to follow-up on our telephone calls on February 21 and March 20, 2023 with you and your team about the February 10, 2023 Civil Investigative Demand (“CID”) issued to our client, Purpose Financial, Inc. (“Purpose”).

**Request to Close this Investigation and Schedule a Supervisory Examination**

As evidenced by its cooperation to date, Purpose takes its obligation to respond to the CID very seriously and hopes to continue to work cooperatively with the Bureau in doing so. Purpose has made significant efforts to build a cooperative relationship with the Bureau as one of its primary regulators. Indeed, Purpose had been engaged in regular, proactive discussions with the Bureau’s Research, Markets, and Regulations Division to propose the testing of customer disclosures for its small dollar customers, and Purpose has offered to provide data to the Bureau voluntarily on multiple occasions.

However, as we previously explained, Bureau’s choice to initiate an investigation instead of conducting a supervisory examination is extremely disappointing to Purpose. As an initial matter, the Statement of Purpose set forth in the Bureau’s CIDs is incredibly broad. Rather than pursue a tailored investigation specific to a targeted concern related to Purpose’s business, the CID



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suggests a wide-ranging and vague investigation of Purpose's *entire* short-term or small-dollar loan business.<sup>1</sup>

Such a broad and generalized review of a company's business practices is typically done through the supervisory process, which is more cost effective for both the Bureau and the company. As we have previously explained, the Bureau has not conducted a full supervisory examination of Purpose since 2012. While the Bureau indicated that it was conducting such an examination in September 2018, Purpose was informed on June 10, 2019 that the Bureau was *not* issuing a report of examination with a rating. Instead, in its letter sent on this date, the Bureau advised that it had conducted only a "consumer compliance targeted review." Purpose responded on September 9, 2019, and consistent with its long-standing goal of developing a strong cooperative relationship with the Bureau, Purpose specifically requested that the Bureau return to conduct an examination in 2020. The Bureau has not yet done so, and as a result, Purpose has not been examined by the Bureau since 2012.

Given this history, Purpose renews its request that the Bureau close this investigation and that it schedule a supervisory examination of Purpose instead—its first in a decade. Given that the Bureau's second CID on its face seeks to investigate all aspects of Purpose's short-term or small-dollar business (at great expense and burden to Purpose), a supervisory examination is the most efficient and effective means for the Bureau to conduct such review.

#### **Modification of the CID**

If the Bureau will not reconsider scheduling a supervisory examination in lieu of this investigation, Purpose requests significant modifications of the CID.

Not only is the CID incredibly broad and wide-ranging in its own right, as a reminder, Purpose was recently the subject of a ransomware attack on February 7, 2023. Due to the challenges created by this event, the Bureau preliminarily modified the CID in a letter dated February 28, 2023. In that letter, the Bureau required Purpose to respond to Interrogatories 1, 6, 7 and 9 by the original return date of March 13, 2023 and extended the production deadlines for the remaining requests to April 13, 2023 pending additional discussions regarding any further requested modifications. Those discussions occurred on March 20, 2023.

Despite significant progress, this event continues to significantly impact Purpose's day-to-day business activities and resources. Purpose's IT and data teams continue to work to safely bring remaining systems and environments back online. Therefore, as we discussed during our March 20 call and detailed further below, Purpose's ability to respond to certain CID requests for data

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<sup>1</sup> Purpose also understands that the Bureau has issued similarly broad CIDs to other participants in the small dollar lending industry, which further suggests that the Bureau may not be investigating any specific concern related to Purpose and instead is targeting an entire industry.

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and other information remains limited, and will continue to be limited until all systems are fully restored.

With this backdrop in mind, Purpose has continued to assess the CID.

### **I. Requests for Which No Modification is Requested**

Purpose still intends to respond to the following requests on the current deadline of April 13, 2023:

- Interrogatories 2-5 and 8;
- Requests for Documents 11, 19, 21, and 23.

### **II. Modification Requests**

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

#### **A. Scope Modification to Exclude Email**

We understand that a significant number of the requests in the CID seek the production of email. Specifically, Document Requests 3, 4, 7, 8, 10, 14, 15, and 16 seek email, either as drafted or as indicated during our discussions.

As we discussed, Purpose estimates that it has somewhere between 40 and 80 terabytes of email. While we understand that the Bureau would consider limiting custodians and the use of email search terms to narrow the burden of collection and review, even with these limitations, email collection and review is a time-consuming process given the amounts of data involved. In counsel's experience, even targeted email reviews and productions can cost over \$300,000. More likely, given the number of custodians and centers and the breadth of topics covered by eight topics that request email, the cost for an email collection, review and production could easily approach \$500,000.

The cost of such a production is simply too burdensome for Purpose to incur. Moreover, email is unlikely to yield much beyond the substantive documents Purpose proposes to produce, such as minutes, reports, agendas, etc. For these reasons, Purpose requests that emails be excluded from the scope of the CID (including Document Requests 15 and 16 in their entirety, since the only potentially responsive documents would likely be email).

#### **B. Scope Modification to Exclude Written Report Requests**

The eight written reports requested by the CID represent the **largest** data request Purpose has **ever** received. Never before has Purpose been requested to produce data covering such a long period of time relating to its entire short-term or small-dollar loan business.



Notwithstanding the unprecedented scope of these Requests, Purpose initially hoped that it would be able to respond to at least some of the written report request if the scope was modified to include only data kept in its current data warehouse, Snowflake.<sup>2</sup> However, given the ongoing response to resume normal operation following the data security incidence, Purpose's data/IT team, who would normally assist with preparing responses to the written reports remains fully utilized and unavailable. It could be weeks or months until the Company's data team becomes available.

Under the circumstances, Purpose planned to have a member of its compliance team step in to assist with pulling these reports. This would have required Purpose to invest in new hardware. However, in addition to limitations in this employee's experience and ability to create data reports of the breadth and complexity as those requested in the CID, Purpose recently learned that this team member will be leaving the country for a significant period time on personal leave. As such, she will have limited availability to perform her normal duties and may not have the sufficient internet bandwidth to query Purpose's system remotely.

Given the unprecedented scope of the CID's eight Request for Written Reports and Purpose's current resource and personnel restraints, Purpose is unable to respond to these Requests and asks that the CID be modified to exclude these requests.<sup>3</sup>

However, Purpose recognizes that Document Requests 1, 13, and 17 seek former employee personnel files, loan files, and consumer communications from centers identified in Written Report 6. In addition to the overarching issues discussed above, as Request for Written Report 6 is drafted, Purpose's response could easily identify hundreds of centers. In lieu of responding to Written Report 6, Purpose is open to further collaboration with the Bureau to identify an alternative reasonable sampling method to identify a subset of centers, former employee personnel files, loan files, and consumer communications, as it does with its state regulators each year.

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<sup>2</sup> Purpose has employed nine different legacy systems across its business. Over time, these systems have been consolidated into a single point of sale system, FUSE, with a single data warehouse/repository known as Snowflake. As part of this consolidation process, most loan data has been transferred and retained in Snowflake. However, there is a possibility that a small population of very aged accounts may not be accessible, as often occurs with large-scale system migrations. Identifying any such lost accounts in the first instance will be very challenging, given the small volume of data likely at issue compared to the scope of the data requested by the CID. Moreover, in order to attempt to recover any such data, assuming the relevant legacy system remained accessible at all, it would take an enormous amount of effort and resources to attempt to do so. Personnel familiar with the legacy systems may no longer be employed by Purpose, there may no longer be a user interface to the system, and the data integrity would be unknown since the systems have been archived and not maintained.

<sup>3</sup> The burdens imposed by the CID's requests for email and its unprecedented data requests are even more concerning given the serious constitutional questions raised by *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, No. 21-50826 (5th Cir. Oct. 19, 2022), which are now pending on appeal before the United States Supreme Court.

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The remainder of this Modification Proposal, including a proposed production schedule, assumes that the Bureau agrees to modify the scope of the CID to exclude email and the Requests for Written Report.

### **C. Document Request 2**

Document Request 2 seeks the Personnel File (as defined) for 12 executive- or management-level employees. First, as discussed above, the documents comprising a Personnel File are located in four to five different systems and the Personnel Files must be manually compiled. Given the work required to collect and produce these documents, Purpose requests that the scope be modified to exclude non-managerial or non-executive employees that have the same names (as set forth in Footnote 1 of the CID). Second, Purpose also requires additional time to collect and compile responsive documents from each applicable system. Therefore, Purpose proposes to respond to this Request on May 12, 2023.

Additionally, Purpose proposes to exclude materials from Jessica Rustin's Personnel File predating her roles as Chief Executive Officer and Chief Operating Officer. Ms. Rustin became the CEO of Purpose effective January 1, 2022, and prior to that she was the COO effective July 1, 2021. Prior to becoming COO and then CEO, Ms. Rustin was the General Counsel for Purpose. As such, her performance reviews and other information in her Personnel file may include discussion of legal advice and related matters that are privileged. Additionally, the CID does not otherwise seek personnel information related to any other in-house counsel employed by Purpose. Therefore, Purpose proposes to limit the production of Ms. Rustin's Personnel File to the time period during which she has been the COO or CEO.

Finally, Purpose notes that the CID misspells James Ovendon's name. As specified in the Investigational Hearing transcript, the correct spelling is Mr. Ovendenn. Purpose will produce the Personnel File for Mr. Ovenden.

### **D. Document Requests 3 and 4**

Requests for Documents 3 and 4 seek documents related to the creation and setting of performance goals and the communication of same to department heads, managers and employees. First, with respect to Request for Documents 3, Purpose requests that the scope be modified to exclude drafts and other "workpapers" used to create the final performance goals for regions, district and Centers. These informal and draft documents are not centrally or systematically saved or stored, and therefore, attempting to locate these documents would require significant manual effort that is likely to be of limited success.

Second, with respect to the final performance goals, evaluations and audits of branches, Purpose requests additional time to produce these documents. The same personnel responsible for gathering documents in response to Document Requests 3 and 4 will also be working to help Purpose respond to Document Request 5. Therefore, Purpose proposes to produce documents

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from 2020-2023 on April 13, 2023, but requests an additional 30 days, until May 12, 2023, to produce the remaining documents.

#### **E. Document Request 5 and 6**

Document Request 5 seeks all documents reflecting growth reviews, performance reports, etc. regarding the financial performance of Purpose's Centers. Purpose seeks an extension of time to respond to this Request. Document Request 6 seeks documents reflecting the results of growth reviews, performance or monitoring reports, or audits related to financial performance. First, as discussed above, Purpose requests that email be excluded from the scope of the CID and therefore, Document Request 6 should be limited to formal documentation related to growth reviews, performance reports, etc.

With respect to timing, as noted above, the same personnel responsible for collecting documents in response to Document Requests 3 and 4 will assist Purpose with this Request. Additionally, the documents related to Center financial performance are voluminous. Therefore, Purpose proposes to respond to Document Request 5 and 6 on a rolling basis. Purpose will produce any external audits and corporate-level documents on May 12, 2023, and the center-level audits will be produced on June 12, 2023.

#### **F. Document Request 7**

Document Request 7 seeks the production of documents reflecting the results of evaluations, summaries or reports of Center visits conducted by an owner or board member of the Company, the Company's CEO or CCO, representatives of the Company's compliance or operations department, or a district or regional manager.

With respect to formal reports, documents from January 1, 2018 through the date of the CID are available, although Purpose needs additional time to collect them due to the volume of documents at issue and the fact that the documents must be manually collected. The collection process will take additional time because documents pre-dating 2020 are maintained on retired system, called Teammate; while Purpose still has access to Teammate, pulling data from this system is a process that will require additional time. Therefore, Purpose proposes to produce these documents on June 12, 2023. Purpose notes for the Bureau that Teammate only includes records from January 1, 2018; as such, records from 2017 are not retrievable and, therefore, are unavailable.

#### **G. Document Request 8**

Document Request 8 seeks the production of all documents reflecting any evaluation or discussion regarding the results of a Center evaluation, summary, or report, such as documents that decision making processes based on the results of Center Business Reviews or other evaluations.

The same individuals responsible for gathering documents in response to Document Request 7 will assist with the response to this Request. Additionally, to the extent there are Performance Improvement Plans responsive to this Request, Purpose must conduct a manual review to try to identify such documents. Therefore, Purpose requests additional time to respond to this request. Given the proposed deadline to respond to Request 7 and the work required, Purposes proposes to respond to Document Request 8 on July 14, 2023.

#### **H. Document Request 9**

Document Request 9 seeks the production of audits related to loan origination, servicing and collections, and certain documents involving follow ups to audits. Purpose requires additional time to complete the manual collection and review to ensure all responsive audit reports are identified for production. Therefore, Purposes proposes to respond to Document Request 9 on May 12, 2023.

#### **I. Document Request 10**

Document Request 10 seeks the production of all documents reflecting agendas, recorded minutes, handwritten notes, etc. circulated before, during, or after meetings involving at least one of the Company's owners or Board Members (or a representative thereof), the CEO or the CCO regarding financial performance or compliance. First, Purpose requests that the scope be modified to exclude drafts, handwritten notes, and other "informal" documents, and instead limit this Request to final agendas, minutes, etc. of meetings. Handwritten notes, drafts, and similar documents are not centrally or systematically saved or stored, and therefore, attempting to locate these documents would require significant manual effort involving a significant number of personnel that is likely to be of limited success. Additionally, draft documents may not actually reflect what is discussed during meetings.

Second, assuming the scope of this Request is modified, Purpose proposes a rolling production schedule. Purpose proposes to produce minutes and materials related to Board meetings and certain regular committee meetings on May 12, 2023. Purpose requests an additional 30 days, until June 12, 2013, to search for and produce responsive documents related to other meetings. In addition to the time required to manually search for these documents, Purpose must also review documents for privilege.

#### **J. Document Requests 12 and 18**

Document Request 12 seeks the production of all documents reflecting Purpose's underwriting processes, including the use of automated models, and Request 18 seeks documents related to the development, implementation, inputs, use and analysis of any credit-scoring or underwriting modes.

As drafted, these Requests potentially seek the production of every document created by several full-time employees whose sole responsibility is the development and implementation of



Purpose's underwriting and credit scoring models. These employees have indicated that it could take a year or more for them to search for and collect for production all such documents, while still performing their daily job responsibilities. Accordingly, as drafted, these Requests impose an impossible burden on Purpose.

To mitigate these burdens, Purpose proposes to limit these requests to final iterations of underwriting criteria and processes that have been implemented by the Company. Even as modified, Purpose will need additional time to collect these documents because a manual review is required to ensure that Purpose identifies and produces documents that reflect all incremental changes to its underwriting and credit scoring models. Moreover, it will take additional time for Purpose to search for and locate previous iterations of the requested models that were created and implemented by employees who are no longer with the Company.

Purpose proposes to produce the current versions of the requested models and criteria by May 12, 2023. Purposes proposes to produce historical documents by August 17, 2023.

#### **K. Document Request 14**

Document Request 14 seeks the production of documents reflecting the terms of, eligibility for, results of, or discussions regarding the creation of each incentive or bonus program offered by the Company to collections employees, Center-level employees, district managers, and regional managers.

With respect to the final bonus or incentive plans, Purpose proposes to produce these documents on June 12, 2023. The additional time is needed because the employee who maintains these documents is currently engaged in conducting performance reviews company-wide. She will be unable to divert any time to the collection of the requested documents until she completes her oversight of the reviews for the Company's 2,700 employees by the end of April. In May, Purpose can begin to search for and collect responsive documents for production on June 12, 2023.

#### **L. Document Request 20**

Document Request 20 seeks the production of all call recordings between Purpose and its customers, and notes from such calls. With respect to notes from calls, there is no systemic connection between account/call notes and call recordings. However, the notes for all accounts will be produced in response to Request for Written Report 4, discussed below.

With respect to call recordings, pursuant to Purpose's call retention policy, Purpose only has call recordings for approximately 24 months. Purpose will produce all call recordings in its possession. However, Purpose requests additional time to produce the recordings. Purpose's service provider who retains call recordings has advised that it can only produce the recordings to Purpose on discs. Purpose will need to provide this physical media to its counsel and the files will need to be processed for production pursuant to the CID's production specifications. Therefore, Purpose proposes to produce these recordings on June 12, 2023.

During our call, you requested that Purpose identify the metadata associated with each call recording and name of Purpose's call recording vendor/system. The systems storing the call are called Noble and Five9. The metadata available is the generated call ID, an agent ID to identify the employee who made the outbound call or answered an inbound call, the date of the call, and the area code and telephone number associated with the call.

### **M. Document Request 22**

Document Request 22 seeks the production of all documents reflecting posts by Company employees on the Achievers platform. As we discussed, Purpose was researching to determine if the Achievers platform posts could be exported. Purpose still has not resolved this issue. Therefore, Purpose requires additional time to determine whether Purpose is able to produce these documents and, if so, on what timeframe.

### **N. Document Request 23**

Document Request 23 requests a dictionary file that identifies the specific requested information for each Center. Purpose has multiple iterations of these documents as Centers open, close, consolidate, change products, change locations, etc. To reduce the burden of researching and seeking all iterations of these documents, Purpose proposes to produce one version effective as of December of each year during the Applicable Period. To the extent the Bureau has questions regarding year-over-year changes, Purpose would be able to supplement its production and provide iterative versions. To the extent this scope modification is approved, Purpose will produce the proposed documents on the current deadline of April 13, 2023.

## **Conclusion**

In summary, assuming that the Bureau does not close this investigation and schedule a supervisory examination, Purpose proposes to respond to the CID as follows (and note the schedule below assumes the approval of all scope modifications, including with respect to the exclusion of emails and written reports):

- April 13, 2023:
  - Interrogatories 2-5 and 8
  - Document Request 3-4 (final documents from 2020-2023); 11; 19; 21; and 23.
- May 12, 2023
  - Document Requests 2, 3-4 (remaining pre-2020 final documents); 5 (external audits; corporate audits; partial Center audits); 9; 10 (regular committee/Board meetings); 12 (current documents); and 18 (current documents).



Gregory Nodler  
April 4, 2022  
Page 10



- June 12, 2023
  - Document Request 5 (remaining Center audits); 7 (documents for period 2020-2023); 10 (other meetings); 14; and 20.
- July 14, 2023
  - Document Request 8.
- August 14, 2023
  - Document Request 12 (historical documents); and 18 (historical documents).

Purpose is continuing to assess whether any documents are available for production in response to Document Request 22, and if so, on what timeframe.

Purpose takes its obligation to respond to the CID very seriously and hopes to continue to work cooperatively with the Bureau in doing so. This cooperation, however, should not be construed as, and is not intended to be, a waiver of any substantive or procedural rights or privileges. Purpose reserves all rights that it has or may have in the future, including as a result of *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, No. 21-50826 (5th Cir. Oct. 19, 2022).

Purpose appreciates the Bureau's understanding and consideration, particularly as it relates to the unprecedented data incident to which the Company is continuing to respond. If the Bureau has any questions or if we can provide any additional information related to these proposes, please do not hesitate to contact us.

Sincerely,

/s/ Stefanie H. Jackman

Stefanie H Jackman

Sarah T Reise

Enclosure

cc: John Thompson (via email)  
Steven Yokay (via email)  
Tracy Van Atta (via email)

**From:** [Jackman, Stefanie H.](#)  
**To:** [Nodler, Gregory \(CFPB\)](#); [Reise, Sarah T.](#)  
**Cc:** [Mix, Amy \(CFPB\)\(she/her\)](#); [Yokay, Steven \(CFPB\)](#)  
**Subject:** RE: Purpose Financial, Inc. CID dated February 10, 2023  
**Date:** Monday, April 17, 2023 3:55:02 PM  
**Attachments:** [4\\_14\\_23 Tolling Agreement.pdf](#)

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Greg,

Thank you for the response. We understand the Bureau's position. However, given the significant cost and burden on Purpose on continuing to comply and the serious constitutional questions before the Supreme Court in the *CFSA* appeal, at this time, Purpose declining to make any further productions in response to the CID, pending the outcome of that appeal.

Attached please find the countersigned tolling agreement.

Stefanie

**Stefanie H. Jackman**

Partner

**troutman pepper**

Direct: 404.885.3153

[stefanie.jackman@troutman.com](mailto:stefanie.jackman@troutman.com)

Pronouns: she, her, hers

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**From:** Nodler, Gregory (CFPB) <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>  
**Sent:** Friday, April 14, 2023 5:55 PM  
**To:** Reise, Sarah T. <[Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)>; Jackman, Stefanie H. <[Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)>  
**Cc:** Mix, Amy (CFPB)(she/her) <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>; Yokay, Steven (CFPB) <[Steven.Yokay@cfpb.gov](mailto:Steven.Yokay@cfpb.gov)>  
**Subject:** RE: Purpose Financial, Inc. CID dated February 10, 2023

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Sarah,

After consideration, the Bureau remains unable to grant your request to stay its investigation of Purpose Financial, Inc.

The due dates described in the April 12, 2023 modification to the CID sent on February 10, 2023 remain as follows:

April 13, 2023:

- Interrogatories 2-5 and 8
- Document Requests 3-4 (non-email documents created during or after 2020); 11 (non-email); 19; 21 (non-email); 23

April 20, 2023:

- Emails responsive to Document Requests 3, 4, 6- 8, 10, 11, 14- 18, and 21;
- Written Reports 1-8

May 12, 2023

- Document Requests 1; 2; 3-4 (pre-2020 documents); 5-6 (corporate-level and externally created); 7 (documents created during or after 2020); 8 (except for PIPs); 9; 10 (regular committee and Board meetings); 12 (current documents); 13; 14 (final bonus/incentive plans and results); 17; 18 (current documents); 22

June 12, 2023

- Document Requests 5-6 (branch level); 7 (pre-2020); 10 (other meetings); 14 (creation documents); 20

July 14, 2023

- Document Request 8 (PIPs)

August 14, 2023

- Document Request 12 (historical documents); 18 (historical documents).

As stated in the April 12, 2023 modification letter, the Bureau remains open to limiting email production by custodian and search terms to limit the burden imposed on Purpose, and to further modifying Requests for Written Reports 1-8 based on specifically described inabilities to access the requested data. Let me know if the April 13, 2023 production was made or if it is on the way.

A signed copy of the tolling agreement with today's date on it is attached. If you still wish to do so, please send me a copy with your signature.

Thanks,  
Greg

**Greg Nodler**

Senior Litigation Counsel  
Consumer Financial Protection Bureau  
Tel: 202-435-7619  
Mob: 202-329-7671

[gregory.nodler@cfpb.gov](mailto:gregory.nodler@cfpb.gov)

[consumerfinance.gov](https://consumerfinance.gov)

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**From:** Reise, Sarah T. <[Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)>  
**Sent:** Thursday, April 13, 2023 4:17 PM  
**To:** Nodler, Gregory (CFPB) <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>; Jackman, Stefanie H. <[Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)>  
**Cc:** Mix, Amy (CFPB)(she/her) <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>; Yokay, Steven (CFPB) <[Steven.Yokay@cfpb.gov](mailto:Steven.Yokay@cfpb.gov)>  
**Subject:** RE: Purpose Financial, Inc. CID dated February 10, 2023

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Greg and Amy,

We appreciate the Bureau's consideration of Purpose's modification requests and the attempt to accommodate some of the burdens and challenges presented by the Civil Investigative Demands and the Bureau's ongoing investigation.

However, given the significant burdens and the serious challenges Purpose is still navigating, as articulated in its letters dated February 24 and April 4, 2023, and given the pending appeal before the United States Supreme Court of the Fifth Circuit's decision in *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, No. 21-50826 (5th Cir. Oct. 19, 2022), Purpose respectfully believes that a stay of this investigation is in the best interests of both parties. The *CFSA* appeal will determine whether the Bureau's funding mechanism is unconstitutional, and similarly, whether action taken by the Bureau using allegedly unconstitutionally appropriated funds are similarly unconstitutional. And recently, the Second Circuit issued a decision disagreeing with the Fifth Circuit in *Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C.*, Case No. 20-3471 (2d Cir. Mar. 23, 2023). As a result of the Second Circuit's decision, there is now a split of authority on this critical constitutional issue that will be decided during the Supreme Court's next term.

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

Given that the Supreme Court has granted the Bureau's petition for certiorari and it will issue a decision during its next term, a stay will not unreasonably delay this investigation. Additionally, Purpose is willing to enter into a tolling agreement for the duration of any stay, further minimizing the risk of any prejudice to the Bureau. A proposed draft, which is similar to a tolling agreement proposed by the Bureau in another recent matter, is attached for consideration.

Accordingly, Purpose respectfully requests that the Bureau stay this investigation pending the resolution of the pending appeal in *CFSA v. CFPB*. Can you please let us know the Bureau's position after consideration?

Thank you,

Sarah

**Sarah T. Reise**

Counsel

**troutman pepper**

Direct: 404.885.3803 | Mobile: 404.697.7117

[sarah.reise@troutman.com](mailto:sarah.reise@troutman.com)

Pronouns: she, her, hers

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**From:** Nodler, Gregory (CFPB) <[Gregory.Nodler@cfpb.gov](mailto:Gregory.Nodler@cfpb.gov)>

**Sent:** Wednesday, April 12, 2023 12:10 PM

**To:** Jackman, Stefanie H. <[Stefanie.Jackman@troutman.com](mailto:Stefanie.Jackman@troutman.com)>; Reise, Sarah T. <[Sarah.Reise@troutman.com](mailto:Sarah.Reise@troutman.com)>

**Cc:** Mix, Amy (CFPB)(she/her) <[Amy.Mix@cfpb.gov](mailto:Amy.Mix@cfpb.gov)>; Yokay, Steven (CFPB) <[Steven.Yokay@cfpb.gov](mailto:Steven.Yokay@cfpb.gov)>

**Subject:** Second Modification to CID sent to Purpose Financial on February 10, 2023

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Stefanie and Sarah,

See attached second modification to the CID sent to Purpose Financial on February 10, 2023.

Please let me know if you have questions or wish to discuss.

Thanks,

Greg

**Greg Nodler**

Senior Litigation Counsel

Consumer Financial Protection Bureau

Tel: 202-435-7619

Mob: 202-329-7671

[gregory.nodler@cfpb.gov](mailto:gregory.nodler@cfpb.gov)

[consumerfinance.gov](http://consumerfinance.gov)

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