

**UNITED STATES OF AMERICA
BEFORE THE CONSUMER FINANCIAL PROTECTION BUREAU**

IN THE MATTER OF
J.G. Wentworth, LLC

PETITION TO SET ASIDE CIVIL INVESTIGATIVE DEMAND

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I. INTRODUCTION

J.G. Wentworth, LLC (“J.G. Wentworth”) is the most recognized company in the structured settlement and annuity payment purchasing industry, and strives to be a leader in the areas of customer satisfaction and consumer protection. J.G. Wentworth is fully committed to the Consumer Financial Protection Bureau’s (“CFPB” or the “Bureau”) mission of ensuring effective regulation of markets that are fair and transparent for consumers. These are the keys to empowering consumers to take control of their economic affairs, and J.G. Wentworth does not support or condone the predatory practices that have sometimes been reported in this market. For these reasons J.G. Wentworth has cooperated with the Bureau’s investigation to date and has proposed to work with the Bureau on market reform and consumer protection initiatives outside of the enforcement process. Bureau Staff have not responded to this proposal, and have instead insisted on continuing with an investigation that exceeds the CFPB’s jurisdictional authority and will not have any beneficial result for consumers.

The Bureau lacks jurisdiction over the company’s structured settlement and annuity payment purchasing activities that are the subject of the CID and therefore lacks the authority to further investigate these businesses. Prior to receiving the Civil Investigative Demand (“CID”) that is the subject of this Petition, J.G. Wentworth and its affiliates received and responded to two substantial CIDs for documents and information, and three company employees provided oral testimony during investigative hearings. The documentary and testimonial record developed so far amply demonstrates that there is no basis for CFPB jurisdiction over J.G. Wentworth’s structured settlement and annuity payment purchasing activities. J.G. Wentworth’s business of purchasing structured settlement and annuity payments is not a consumer financial product or service within the CFPB’s Unfair Deceptive and Abusive Acts and Practices (“UDAAP”) jurisdiction and could not possibly give rise to a violation of the Truth in Lending Act (“TILA”).

The conduct that is addressed in the CID is therefore outside the Bureau's enforcement jurisdiction, and the CID should be set aside in its entirety.¹

II. BACKGROUND

J.G. Wentworth provides liquidity to customers by purchasing future streams of income, such as structured settlement and annuity payments.² J.G. Wentworth directly purchases these future fixed payments in exchange for a single up-front cash payment negotiated with each seller.³ Customers most commonly use sale proceeds for a variety of needs, including but not limited to paying current bills or for housing related expenses.⁴ J.G. Wentworth primarily markets two leading brands—J.G. Wentworth and Peachtree⁵—and it currently employs approximately 388 full-time employees.

Structured settlements are a type of contractual agreement used to settle a tort claim whereby the claimant is compensated through a series of payments, rather than one lump payment.⁶ An annuity is an insurance product purchased by or for an individual entitling that person to an ongoing stream of periodic payments.⁷ In its transactions, J.G. Wentworth pays the seller a lump sum in exchange for which the seller assigns to J.G. Wentworth all or a portion of

¹ This petition is timely filed pursuant to the requirements set forth in 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e).

² See JGW-CID-0000024 (J.G. Wentworth presentation entitled "Introduction to Structured Settlements") at JGW-CID-0000025; Parker Testimony (June 9, 2015) 16:19–24.

³ See, e.g., JGW-CID-00000112 (JGW Call Introduction Script); Parker Testimony (June 9, 2015) 21:7–24, 88:5–89:18.

⁴ See JGW-CID-0000024 (J.G. Wentworth presentation entitled "Introduction to Structured Settlements") at JGW-CID-0000027.

⁵ See JGW-CID-00006220 (Presentation entitled Industry Overview) at JGW-CID-00006228–6229.

⁶ See JGW-CID-0000024 (J.G. Wentworth presentation entitled "Introduction to Structured Settlements") at JGW-CID-0000025.

⁷ See JGW-CID-00000116 (J.G. Wentworth Annuity Purchase Program New Rep Training Primer) at JGW-CID-00000117.

his or her rights to payments under the structured settlement or annuity.⁸ The future payments are issued to J.G. Wentworth directly by the third party—typically an insurance company—funding the settlement or annuity.⁹ Critically, when J.G. Wentworth purchases the right to receive future settlement or annuity payments from a customer, no money is lent, no credit is extended, and no money is owed by the customer that must be repaid.¹⁰ The contract that governs every structured settlement and annuity payment purchase effectuates a sale, and nothing more.¹¹ The document is labeled a “Purchase Contract,” and describes the transaction in plain language on the first page: “You... signed a Settlement Agreement that entitles You to receive certain future payments... . Rather than wait for the Settlement Payments to be made to you in the future, You want to sell all or some of those Settlement Payments to Us now for a lump sum.”¹² The remainder of the document is replete with references to a sales transaction: “1. Sale of the Purchased Payments;” “2. Purchase Price;” “You sell, transfer and assign to Us the right to receive the Purchased Payments;” “**You understand that THIS IS A SALE AND NOT A LOAN.**”¹³ In addition, required disclosure statements include the following message in capitalized, bold typeface: “**PLEASE NOTE THAT THIS IS NOT A LOAN, BUT A SALE OF PAYMENT RIGHTS AND THE INTEREST FIGURE IS ONLY PROVIDED AS AN ILLUSTRATION OF THE ECONOMIC IMPACT OF THE SALE.**”¹⁴

⁸ See, e.g., JGW-CID-00000112 (JGW Call Introduction Script); see also Borowski Testimony (June 10, 2015) 70:5–8 (“A customer may change their mind on the size of the deal. They may want to sell less, they might want to sell more.”).

⁹ See, e.g., JGW-CID-00009349 (Sample Transaction File Produced to CFPB) at JGW-CID-00009359-9360 (directing insurance company to send payments directly to J.G. Wentworth); see also Borowski Testimony (June 10, 2015) 91:11–15 (“The customer does not necessarily own the annuity. The insurance company maintains that obligation to pay it out. So we are transferring the customer’s payment rights from them to us.”).

¹⁰ See Borowski Testimony (June 10, 2015) 72:24–73:1 (noting that the only debt paid by J.G. Wentworth on behalf of the customer is child support arrearages).

¹¹ See Borowski Testimony (June 10, 2015) 91:14-15 (noting that in the transaction, J.G. Wentworth “transfer[s] the customer’s payment rights from them to [J.G. Wentworth].”)

¹² Exhibit C, Purchase Contract, at JGW-CID-00009438.

¹³ *Id.* at JGW-CID-00009439 – 9440 (emphasis in original).

¹⁴ Exhibit D, Disclosure Statement, at JGW-CID-00009450 (emphasis in original).

The sale of structured settlement payments is closely regulated by state law. Nearly every state in the country has a statute in place to govern these transactions.¹⁵ Under state law, each structured settlement payment purchasing transaction requires a court order concluding that the transfer is in the best interest of the seller. The state laws also generally require that certain procedural requirements are met, such as required disclosures to the transferor and compliance with statutory “cooling-off” periods. *See, e.g.*, Cal. Ins. Code §§ 10136–10139.3 (setting forth requirements for transfer of structured settlement payments); N.J. Stat. Ann. §§ 2A:16-65–16-69 (same).¹⁶

The sale of structured settlement payments is also regulated under federal law. In the 1982 Periodic Payment Settlement Tax Act, Congress adopted specific tax rules to encourage the use of structured settlements to resolve personal injury cases, and provided that structured settlements are not considered taxable income to settlement beneficiaries. 26 U.S.C. § 104(a)(2). Persons who acquire structured settlement payments are likewise exempt from taxation on the payments provided that certain conditions are met, including that assignment of the payments to the acquirer is approved by a court order and that the court issuing the order determine that the assignment “is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents....” *See* 26 U.S.C. § 5891(b)(2). In addition to tax regulations, the sale of structured settlement payments is also subject to the Federal Trade Commission’s (“FTC”) grant of authority to investigate “unfair or deceptive acts or practices in or affecting commerce,” under the Federal Trade Commission Act. *See* 15 U.S.C. § 45(a)(1).

¹⁵ In the two states that do not have statutes in place, any J.G. Wentworth transactions are governed by another state’s applicable law and approved by a court in a state with a statute in place.

¹⁶ *See also* Borowski Testimony (June 10, 2015) 42:22–43:4 (noting that state statutes govern transaction proceedings).

As an industry leader, J.G. Wentworth takes seriously its responsibility to customers, ensuring that they are treated fairly and fully informed of the details on any transaction.¹⁷ J.G. Wentworth fully complies with the applicable federal and state laws designed to protect sellers of structured settlement and annuity payments. In fact, J.G. Wentworth goes beyond what is required by state structured settlement protection acts. J.G. Wentworth provides a post-funding five-day, no strings rescission period nationwide, even though no state law requires this benefit.¹⁸ Additionally, J.G. Wentworth discloses discount rates for all of its transactions nationwide despite only 6 states requiring such disclosures, and it discloses to an approving court any prior transactions between a seller and J.G. Wentworth, despite only 10 states requiring that it do so.

III. PROCEDURAL HISTORY

On March 18, 2014, the Bureau issued CIDs to JGWPT Holdings, Inc. and J.G. Wentworth, LLC. The Notification of Purpose stated that the Bureau was investigating “whether persons involved in advancing funds in exchange for the rights to future payments from structured settlements or annuities have engaged or are engaging in acts or practices that violate” Sections 1031 and 1036 of the Consumer Financial Protection Act (“CFP Act”) of 2010, 12 U.S.C. §§ 5531, 5536, the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601 *et seq.*, and its implementing regulations, “or any other Federal-consumer financial law.” These CIDs contained 26 interrogatories, 28 document requests, and requested that J.G. Wentworth prepare

¹⁷ See Borowski Testimony (June 10, 2015) (“If . . . we’re not sure . . . the customer understands the transaction just based on them being younger, we may require the customer to obtain [professional advice] even if it isn’t a requirement in their state.”).

¹⁸ See Exhibit C, Purchase Contract, at JGW-CID-00009442; *see also* Borowski Testimony (June 10, 2015) 87:23–88:7 (“There are various cancellation policies required under the Structured Settlement Protection Acts and I believe the majority of them, if not all of them, require that the cancellation is three days after they execute their contract. However, as a company, we disclose to all of our customers in the disclosure that they have five days after, I believe it is the funding of their transaction, to cancel as long as they return the purchase price.”); *id.* at 111:13–113:6 (noting that in the event that someone other than the payment owner transfers payment to J.G. Wentworth, J.G. Wentworth will reverse the stream of payments back to the payment owner and not seek to recover the lump sum payment from the defrauded payment owner); Parker Testimony (June 9, 2015) 128:1–13.

five separate reports. These requests sought extensive and detailed information about the companies' structure, products, operations, policies and procedures, marketing, advertising, and numerous other matters.

On April 10, 2014, J.G. Wentworth and Bureau Staff engaged in a meet and confer pursuant to 12 C.F.R. § 1080.6(c), and the Bureau agreed to modify the CIDs in certain respects. J.G. Wentworth fully complied with the CIDs, as modified, ultimately responding to over twenty interrogatories, providing five written reports, producing over 40,000 pages of responsive documents, concluding production in July 2014. Following these productions of documents and information, pursuant to CIDs issued in April 2015, three J.G. Wentworth employees appeared to provide testimony at investigational hearings in June 2015. Their testimony encompassed a variety of topics, including J.G. Wentworth's transactions, recordkeeping, the various company business lines, training provided to employees, software used by J.G. Wentworth, and the company's policies and practices relating to communicating with customers, pricing transactions, and finalizing transactions.

On September 11, 2015, the Bureau issued another CID, which is the subject of this petition and is attached as Exhibit A. This CID was also issued pursuant to an investigation of "persons involved in advancing funds in exchange for the rights to future payments from structured settlements or annuities." This CID is extremely broad in scope, spanning fourteen document requests, seven interrogatories, and two requests for written reports. For example, one of the document requests seeks full transactional files for the over 100,000 transactions contemplated by J.G. Wentworth during a four-and-a-half year covered time period, and one of the requested reports seeks 47 data elements concerning each of more than 50,000 transactions.

On September 21, 2015, counsel conferred with Bureau Staff concerning the scope of the CID pursuant to 12 C.F.R. § 1080.6(c). During this meeting, Bureau Staff stated that the Bureau understands the nature of J.G. Wentworth's structured settlement and annuity payment purchasing transactions. Furthermore, Bureau Staff stated that certain of the CID requests were directed at developing a theory of remedies.

In a follow up to the Meet and Confer, on September 29, 2015, counsel reiterated the company's commitment to working cooperatively with the Bureau to improve consumer protections surrounding structured settlement and annuity payment purchasing and requested that the Bureau retract the pending CID for want of jurisdiction. During the September 29 conversation, the Bureau Staff acknowledged J.G. Wentworth's longstanding view that the Bureau lacks jurisdiction in this matter and indicated that the Staff disagrees with this view. The Bureau Staff declined however to identify any basis for CFPB jurisdiction, stating, "there is nothing I can tell you about that" when asked to explain the Bureau's jurisdictional authority. The relevant Deputy Enforcement Director then summarily rejected the company's request to set aside the CID and denied the request for an extension of time to file this Petition. The Meet and Confer Certification required by 12 C.F.R. 1080.6(e)(1) is attached as Exhibit B.

IV. THE BUREAU LACKS AUTHORITY TO ISSUE THE CID

Under the CFP Act, 12 U.S.C. §§ 5481 *et seq.*, and its implementing regulations, the Bureau is granted jurisdiction to serve CIDs on persons in order to gather information. 12 U.S.C. §§ 5561(5), 5562(c)(1); 12 C.F.R. § 1080.6. Although this authority is broad, the Bureau's power to seek information is not unlimited; the Bureau may only issue a CID where it "has reason to believe [] a [] person may be in possession, custody, or control of [] documentary material or tangible things, or may have any information, relevant to a violation." 12 U.S.C. § 5562(c)(1). The term "violation" in this section is defined as "any act or omission that, if

proved, would constitute a violation of any provision of Federal consumer financial law.” 12 U.S.C. § 5561(5). And the term “Federal consumer financial law” is defined as “the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H.” *See* 12 U.S.C. § 5481(14). The plain language of these statutory provisions specifically limits the Bureau’s CID authority to those situations where the request is reasonably related to a potential violation of one of the federal consumer protection laws enumerated in the CFP Act.

In this case, the documents, interrogatories, and reports requested in the CID fall outside the Bureau’s jurisdiction because they are not related to any act that, if proved, would constitute a violation of the federal consumer financial laws expressly cited in the CID. 12 U.S.C. § 5561(5). J.G. Wentworth’s business of structured settlement and annuity payment purchasing is not subject to the CFP Act or TILA, the only two federal consumer financial laws expressly relied upon by the Bureau in its CID. Nor can the Bureau rely upon any claimed need to obtain information for the purpose of determining whether it has jurisdiction over J.G. Wentworth’s structured settlement and annuity payment purchasing business.

A. J.G. Wentworth’s Structured Settlement and Annuity Payment Purchasing Activities Could Not Have Violated the CFP Act, and the Bureau Lacks Jurisdiction to Issue the CID on This Basis.

J.G. Wentworth’s purchases of structured settlement and annuity payments are not regulated by the CFP Act. The CFP Act only regulates “covered person[s] or service provider[s]” who are engaged in “unfair, deceptive, or abusive act[s] or practice[s] under Federal law.” 12 U.S.C. §§ 5531(a), 5536(a). A “covered person” is defined as “any person that engages in offering or providing a consumer financial product or service.” 12 U.S.C. § 5481(6)(A). A person who does not engage in the offering or provision of a consumer financial

product or service cannot violate the prohibitions on unfair, deceptive, and abusive acts and practices in the CFP Act. *See* 12 U.S.C. §§ 5531(a), 5536(a). Because J.G. Wentworth does not offer or provide a consumer financial product or service in the purchase of structured settlement or annuity payments, its conduct in these transactions cannot violate the CFP Act.

A financial product or service includes “extending credit and servicing loans...extending or brokering [certain] leases...providing real estate settlement services...engaging in deposit-taking activities...selling, providing, or issuing stored value or payment instruments...providing check cashing [and related] services...providing payments or other financial data processing products...providing financial advisory services...[certain conduct regarding] consumer report information...[and] collecting debt.” *Id.* § 5481(15)(A)(i) – (x). J.G. Wentworth has carefully analyzed these provisions and the authorities interpreting them, and none encompasses the conduct that is the subject of the Bureau’s CIDs. The Bureau Staff has declined to specify which of these provisions it believes applies to J.G. Wentworth’s structured settlement and annuity payment purchasing, and none does.

Because the conduct that is the subject of the Bureau’s CID does not involve the offering or sale of a consumer financial product or service, J.G. Wentworth is not a “covered person” under the CFP Act for these purposes, no “violation” of the CFP Act can have occurred, 12 U.S.C. § 5561(5), and the CFPB is without jurisdiction to issue a CID on this basis. 12 U.S.C. § 5562(c)(1) (the Bureau may only issue a CID where it “has reason to believe [] a [] person may be in possession, custody, or control of [] documentary material or tangible things, or may have any information, relevant to a violation.”).

B. J.G. Wentworth's Activities Could Not Have Violated TILA, and the Bureau Lacks Jurisdiction to Issue the CID on This Basis.

The CID Statement of Purpose also references “the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., or its implementing regulations; or any other Federal-consumer financial law.” As with the CFP Act, the CFPB lacks jurisdiction to issue the CID on this basis because J.G. Wentworth’s structured settlement and annuity payment purchasing is not regulated by TILA. *See* 12 U.S.C. § 5481(14).¹⁹ TILA and Regulation Z only apply to an individual or business that “offers or extends credit,” 12 C.F.R. § 1026.1(c)(1), and structured settlement and annuity payment purchasing is not an extension of credit because the customer incurs no payment obligation.

TILA defines the term “credit” as “the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.” 15 U.S.C. § 1602(e). Critically, when J.G. Wentworth purchases the right to receive future structured settlement or annuity payments from a customer, the customer incurs no future repayment obligations whatsoever. J.G. Wentworth pays the seller a lump sum in exchange for which the seller assigns to J.G. Wentworth all or a portion of his or her rights to payments under the structured settlement or annuity. A third-party, typically an insurance company, is responsible for delivering the assigned payments to J.G. Wentworth. Importantly, J.G. Wentworth has no recourse against the customer if the third party defaults; it must pursue the third-party to secure the purchased payments.²⁰ The contract that forms the basis of every structured settlement or annuity payment

¹⁹ As noted, the term “Federal consumer financial law” means “the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H.”

²⁰ Customers are required by contract to forward any misdirected payments to J.G. Wentworth.

purchase further demonstrates that the transaction is a sale and not an extension of credit. *See supra* p.3.

Every federal court to have considered whether purchases of structured settlement or annuity payments are loans or credit has concluded that they are not. Multiple courts have expressly held that the assignment of a structured settlement “was a sale, and not a loan or credit transaction” for purposes of TILA. *See Capela v. J.G. Wentworth, LLC*, 2009 WL 3128003, at *9–11 (E.D.N.Y. Sept. 24, 2009) (holding that structured settlement payment sale was not extension of credit under TILA); *Reed v. Val-Chris Invest., Inc.*, 2011 WL 6028001, at *2–3 (S.D. Cal. Dec. 5, 2011) (same). Indeed, courts accurately describe the purchase of structured settlement and annuity payments as an assignment or sale of rights, rather than as the lending of money. *See, e.g., Symetra Life Ins. Co. v. Rapid Settlements, Ltd.*, 2008 WL 597711, at *1 (E.D. Pa. Mar. 4, 2008) (describing transaction as the “purchase” of “future payment rights”); *Liberty Life Assurance Co. of Boston v. Stone St. Cap., Inc.*, 93 F. Supp. 2d 630, 633–34 (D. Md. 2000) (stating that a sale of structured settlement payments is an assignment of rights); *Settlement Funding, LLC v. Jamestown Life Ins. Co.*, 78 F. Supp. 2d 1349, 1359 (N.D. Ga. 1999) (same); *Singer Asset Finance Co. v. Bachus*, 294 A.D.2d 818, 820 (N.Y. App. Div. 2002) (stating that a structured settlement payment sale “is not a loan but an absolute assignment”).²¹

Where courts discuss structured settlement payment sales in terms commonly used to describe loans, it is to contrast the sale of structured settlement payments with a loan. Nearly all states have a structured settlement protection act that requires, among other things, court approval of assignment of structured settlement payments. Often, courts will evaluate whether an assignment is fair and reasonable by calculating what the effective interest would be *if the*

²¹ For example, one court has noted that although these transactions are sometimes styled as “loans,” in fact, the transaction is for the purchase of a future stream of income. *See Liberty Life Assurance Co. v. Gilbert*, 2006 WL 1211161, at *5 (E.D. Tenn. May 3, 2006).

sale were instead a loan, recognizing expressly or implicitly that the sale is not, in fact, credit at all. See, e.g., *In re Petition of Settlement Funding of New York L.L.C.*, 761 N.Y.S.2d 816, 818 (N.Y. Sup. Ct. 2003).

Given the nature of the transactions and the unanimity of the relevant decisional law, the conduct that is the subject of the Bureau's CID cannot have resulted in a violation of TILA, and the CFPB is without jurisdiction to issue a CID on this basis. 12 U.S.C. § 5562(c)(1).²²

C. The Bureau Has Already Conducted Discovery Sufficient to Determine It Lacks Authority to Issue the CID.

While administrative agencies generally have the authority to conduct preliminary discovery to determine whether activities are within the agency's authority, *Bridgeport Guardians, Inc. v. Delmonte*, 537 F.3d 214, 220 (2d Cir. 2008), the Bureau has already exhausted any such authority. The Bureau has more than enough information regarding J.G. Wentworth's business practices to make a determination as to its jurisdiction given the extensive production of over 40,000 pages of documents in response to earlier CIDs and company employees' participation in three investigational hearings. Indeed, Bureau Staff admitted to a clear understanding of J.G. Wentworth's structured settlement and annuity payment purchasing business during the September 21, 2015 meet and confer, and the Staff's description of its CID request items indicated that the investigation had shifted to quintessential enforcement issues such as customer redress. The Bureau is no longer just developing facts to determine whether it may have jurisdiction.

The Bureau's investigation of J.G. Wentworth is unlike other circumstances in which the CFPB has denied a petition to set aside a CID on jurisdictional grounds.²³ J.G. Wentworth has

²² Nor is there any basis to believe the relevant activities implicate a federal consumer financial law not specifically identified in the Statement of Purpose.

already produced thousands of documents and its personnel have appeared for multiple investigational hearings. Indeed, all of the facts in this Petition are drawn from the existing record, and there is no basis to seek additional information to determine whether J.G. Wentworth has committed a violation of any federal consumer financial law (because it cannot have).²⁴ The bases for this petition are well known by the Bureau.

The existing record is more than sufficient to demonstrate that the Bureau lacks enforcement jurisdiction over these activities, and no continuing need for jurisdictional discovery exists. *See, e.g., Martin v. Great Lakes Indian Fish & Wildlife Comm'n*, 1992 WL 300841, at *6 (W.D. Wis. Oct. 7, 1992), *aff'd sub nom. Reich v. Great Lakes Indian Fish & Wildlife Comm'n*, 4 F.3d 490 (7th Cir. 1993) (deciding agency's jurisdictional authority in subpoena enforcement proceeding where factual record was sufficiently developed already). "[A]n agency literally has no power to act . . . unless and until Congress confers power upon it." *See Louisiana Public Service Comm'n v. F.C.C.*, 476 U.S. 355, 374 (1986). Thus, as is the case here, when Congress has expressly circumscribed an agency's investigative authority to violations of federal consumer financial laws, the agency has no power to conduct an investigation into matters that could not possibly violate a federal consumer financial law. The CID is therefore without any jurisdictional authority and should be set aside.

V. CONCLUSION

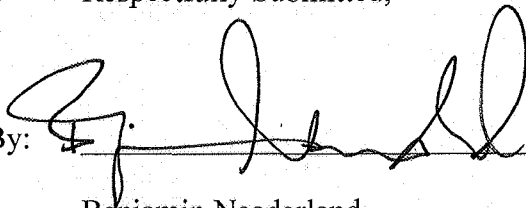
J.G. Wentworth is committed to providing customers with fair and reasonable liquidity options and is eager to work with the Bureau in achieving that end. Given J.G. Wentworth's expressed commitment to working with the CFPB to further the cause of consumer protection with regard to the structured settlement and annuity payment purchasing market, and its

²³ *See, e.g., In re Selling Source, LLC*, 2015-MISC-Selling Source, LLC-0001; *In re Next Generation Debt Settlement, Inc.*, 2012-MISC-Next Generation Debt Settlement-0001.

²⁴ 12 U.S.C. § 5481(14).

extensive cooperation with the Bureau to date, the Bureau's continued issuance of CIDs is not only unnecessary but beyond the scope of its jurisdictional authority. J.G. Wentworth's structured settlement and annuity payment purchasing business are not subject to the Bureau's enforcement jurisdiction. We respectfully request that the CID be set aside and that we engage in further dialogue in the interest of improved consumer protection.

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Counsel for J.G. Wentworth

EXHIBIT A



Consumer Financial Protection Bureau

United States of America
Consumer Financial Protection Bureau

Civil Investigative Demand

To **J.G. Wentworth, LLC**
c/o National Registered Agents, Inc.
160 Greentree Dr., Suite 101
Dover, Delaware 19904

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

Action Required (choose all that apply)

Appear and Provide Oral Testimony

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

Produce Documents and/or Tangible Things, as set forth in the attached document, by the following date 10/09/2015

Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date 10/09/2015

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

The purpose of this investigation is to determine whether persons involved in advancing funds in exchange for the rights to future payments from structured settlements or annuities have engaged or are engaging in acts or practices that violate sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., or its implementing regulations; or any other Federal-consumer financial law, and whether Bureau action to obtain legal or equitable relief would be in the public interest.

Custodian / Deputy Custodian

Jeffrey P. Ehrlich/Reginald Jones
Consumer Financial Protection Bureau

Bureau Counsel

Carment Christopher, Navid Vazire, and Meghan Sherman

Date Issued

09/11/2015

Signature

Jeffrey Paul Ehrlich

Digitally signed by Jeffrey Paul Ehrlich
DN: cn=Jeffrey Paul Ehrlich, o=CFPB, ou=Enforcement,
email=jeff.ehrlich@cfpb.gov, c=US
Date: 2015.09.11 13:18:55 -04'00'

Name / Title

Jeffrey P. Ehrlich / Deputy Enforcement Director

Service

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

Travel Expenses

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

Right to Regulatory Enforcement Fairness

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

Paperwork Reduction Act

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

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

I. Requests.

Requests for Documents

1. All distinct templates used to communicate the cost to the consumer of a Relevant Transaction or Product, regardless of the manner in which it is expressed.
2. All documents reflecting any method for computing the cost to the consumer of a Relevant Transaction or Product.
3. All documents reflecting any method for evaluating the financial benefit to the Company of a Relevant Transaction or Product.
4. All documents, including any advertisements or illustrations provided to consumers, reflecting a comparison of any Product to any other product or service.
5. All documents reflecting any discussions or communications with a consumer about any possible or anticipated purpose of a Relevant Transaction.
6. All documents reflecting any communication or discussion about, or evaluation or analysis of, a consumer's financial circumstances or needs.
7. All internal communications characterizing or describing any Product.
8. All agreements relating to the securitization, sale, or transfer of any of the Company's rights arising from any Completed Transaction.
9. All documents relating to any fee or other payment paid to an insurance company or other payor, including the purpose for any such payment.
10. All documents relating to any cognitive or psychological impairment of any consumer.
11. To the extent not already provided in response to Document Request No. 10, all policies and procedures relating to (a) transactions with cognitively or psychologically impaired individuals or (b) determining or evaluating whether a consumer has any cognitive or psychological impairments.
12. The company's complete file for each Relevant Transaction.
13. All training materials or other documents relating to (a) affidavits addressing the purpose or benefit of a Relevant Transaction, or (b) information to be used in connection with such an affidavit.

14. All databases identified in response to Interrogatory No. 6.

Interrogatories

1. Identify each of the Company's sub-originators.
2. Identify all costs or fees associated with each Product.
3. Identify any deductions or adjustments that may be made from the payments to a consumer for a Product.
4. Identify any lead-generation services, brokers or other third parties the Company uses to identify potential customers.
5. Describe how the company maintains transactional data for Relevant Transactions, including the name and location of any database. For each such database, identify all fields in the database and the number of transactions encompassed by the database.
6. Identify the name and location of each database of current or prospective customers built, created, or maintained by the Company. For each such database, identify all fields in the database and the number of current or prospective customers encompassed by the database.
7. If, for any request, there are documents that would have been responsive but that are now unavailable, identify each document and its last known location or custodian, and explain why the document cannot be produced.

Requests for Written Reports

1. For each Completed Transaction and Rejected Transaction, report:
 - a. The Company's unique internal identifier;
 - b. The Company's unique internal identifier for any other Relevant Transaction with the consumer. If there are multiple other Relevant Transactions, separate the identifiers with the pipe symbol; i.e.: identifier 1 | identifier 2 | etc.;
 - c. Whether the transaction is a Completed Transaction or a Rejected Transaction;
 - d. The consumer's name;

- e. The consumer's date of birth;
- f. The consumer's address;
- g. The consumer's address at the time of the transaction in question;
- h. The consumer's primary telephone number;
- i. Any other contact information for the consumer (including email address, other telephone numbers, or other physical addresses);
- j. Any cognitive or psychological impairment of the consumer;
- k. The cause (e.g., lead paint exposure) and nature of the injury or disability sustained by the consumer that resulted in the underlying structured settlement or annuity, if applicable;
- l. The date of the application;
- m. The date of execution;
- n. Any court that considered the Completed Transaction or Rejected Transaction in any way, along with the docket number for any such action, in the following format: (court 1, docket number 1) | (court 2, docket number 2) | etc.;
- o. The date the Company was due to pay the consumer under the applicable contract;
- p. The date on which the Company was due to receive the first payment under the applicable contract;
- q. The date on which the Company paid the consumer, if applicable;
- r. The date on which the Company received the first payment, if applicable;
- s. The amount due to be paid by the Company to the consumer under the applicable contract;
- t. The gross purchase price;
- u. The net purchase price;
- v. The amount of any mortality adjustment;
- w. The amount of any holdback;
- x. The amount of the holdback eventually released to the consumer;
- y. The date on which the holdback was released;
- z. The amount of any legal fees;

- aa. The amount of any broker fees;
- bb. The amount and identity of any other fee, cost, deduction, or adjustment associated with the transaction. List each item in the following format:
(amount 1, identity 1) | (amount 2, identity 2) | etc.;
- cc. The identity of the payor;
- dd. The amount paid by the Company to any insurer or payor, the identity of the insurer or payor, and the date of any such payment, in the following format:
(amount 1, identity 1, date 1) | (amount 1, identity 1, date 1) | etc.;
- ee. The payment period (e.g., monthly);
- ff. The payment period of the original structured settlement or annuity (e.g., monthly);
- gg. The number of periodic payments the Company was due to receive under the applicable contract;
- hh. The amount of each periodic payment the consumer was due to receive under the original structured settlement or annuity, and the number of such payments. If the amount varied then list, in chronological order, each amount together with the number of periods that amount was due, in the following format: (amount 1, # of periods) | (amount 2, # of periods) | etc.;
- ii. The amount of each periodic payment the Company was due to receive under the applicable contract. If the amount varied then list, in chronological order, each amount together with the number of periods that amount was due, in the following format: (amount 1, # of periods) | (amount 2, # of periods) | etc.;
- jj. The present value, at the time of the transaction, of the payments due to be received by the Company;
- kk. The discount rate;
- ll. The effective interest rate;
- mm. Any effective interest rate or other measure of the cost of the transaction disclosed in writing to the consumer;
- nn. Whether the consumer obtained independent representation, e.g., per a Statement of Professional Representation;
- oo. The identity of any attorney who represented the consumer in connection with the transaction;
- pp. Whether the consumer waived the right to obtain independent financial advice in connection with the transaction;

- qq. The identity of any person who provided independent financial advice to the consumer in connection with the transaction;
- rr. The identity of any attorney who represented the Company in connection with the transaction;
- ss. In the case of a Completed Transaction, the identity of any person who has obtained any right originally belonging to the Company under the contract;
- tt. Whether the payor has made all anticipated payments;
- uu. Whether the consumer transferred periodic payments under the structured settlement or annuity to any other party, and if so, the identity of each such transferee and the date of each such transfer, in the following format: (transferee 1, date 1) | (transferee 2, date 2) | etc.

Written Report No. 1 must be produced in comma-separated value (CSV) format. All dates must be reported in the following format: YYYYMMDD. Each Transaction constitutes one record, and each item (a) through (uu) constitutes a field within each record.

2. For each application that did not lead to a Completed Transaction or Rejected Transaction, report:

- a. The Company's unique internal identifier;
- b. The consumer's name;
- c. The consumer's date of birth;
- d. The consumer's address;
- e. The consumer's primary telephone number;
- f. Any other contact information for the consumer (including email address, other telephone numbers);
- g. The date of the application;
- h. All reasons that no Transaction occurred, including all reasons the Application was denied by the Company;
- i. The Company's unique internal identifier for any other Relevant Transaction with the consumer (separate multiple identifiers with the pipe symbol).

Written Report No. 2 must be produced in comma-separated value (CSV) format. All dates must be reported in the following format: YYYYMMDD. Each Transaction constitutes one record, and each item (a) through (i) constitutes a field within each record.

II. Definitions.

- A. **“Advertisement”** means any statement, illustration, depiction, or promotional material, whether in English or another language, that is designed to effect a sale or create interest in goods or services, regardless of where it appears.
- B. **“CID”** means the Civil Investigative Demand, including the Requests, Definitions, and Instructions.
- C. **“CFPB”** or **“Bureau”** means the Bureau of Consumer Financial Protection.
- D. **“Company”** or **“you”** or **“your”** means J.G. Wentworth, LLC, its parent companies, wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, fictitious names, successors, predecessors, and affiliates, and all principals, directors, officers, owners, employees, agents, representatives, consultants, attorneys, accountants, independent contractors, and other persons working for or on behalf of the foregoing, and any successor in interest.
- E. **“Completed Transaction”** means a consummated transaction involving a Product.
- F. **“Deputy Enforcement Director”** refers to a Deputy Assistant Director of the Office of Enforcement.
- G. **“Document”** means any writing, recording, or image in any form, and any electronically stored information. “Document” includes any non-identical copy (such as a draft or annotated copy) of another document.
- H. **“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.

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

J. **“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.

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

L. **“Product”** means Structured Settlement or Annuity as defined by the Company in response to Interrogatory No. 7 in the Civil Investigative Demand issued March 17, 2014.

M. **“Rejected Transaction”** means a transaction involving a Product which a court declined to approve.

N. **“Relevant Transaction”** means a potential transaction with a specific individual involving a specific Product, or a Completed Transaction, or a Rejected Transaction.

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 Carmen Christopher at 202-754-0329 as soon as possible to schedule a meeting (telephonic or in person) to discuss your response to the CID. The meeting must be held within **10** calendar days after you receive this CID or before the deadline for filing a petition to modify or set aside the CID, whichever is earlier.

C. **Applicable Period for Responsive Materials:** Unless otherwise directed,

the applicable period for the request is from **January 1, 2011**, until the date of full and complete compliance with this CID.

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

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

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

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

F. Modification Requests: If you believe that the scope of the search or response required by this CID can be narrowed consistent with the Bureau's need for documents or information, you are encouraged to discuss such possible modifications, including modifications of the requirements of these instructions, with Enforcement Attorney Carmen Christopher at 202-754-0329. Modifications must be agreed to in writing by the Enforcement Director or a Deputy Enforcement Director. 12 C.F.R. § 1080.6(d).

G. Petition for Order Modifying or Setting Aside Demand: Under 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), you may petition the Bureau for an order modifying or setting aside this CID. To file a petition, you must send it by e-mail to the Bureau's Executive Secretary at ExecSec@cfpb.gov, copying the Enforcement Director

at Enforcement@cfpb.gov, within 20 calendar days of service of the CID or, if the return date is less than 20 calendar days after service, before the return date. The subject line of the e-mail must say "Petition to Modify or Set Aside Civil Investigative Demand." If a request for confidential treatment is filed, you must file a redacted public petition in addition to the unredacted petition. All requests for confidential treatment must be supported by a showing of good cause in light of applicable statutes, rules, Bureau orders, court orders, or other relevant authority.

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

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

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

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

Consumer Financial Protection Bureau
1700 G Street, NW
ATTN: Reginald Jones, SEFL, Office of Enforcement, Room 4058
Washington, DC 20552

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

Consumer Financial Protection Bureau
1625 Eye Street NW
ATTN: Reginald Jones, SEFL, Office of Enforcement, Room 4058
Washington, DC 20006

Please provide your intended method of production and any tracking numbers by e-mail or telephone to Enforcement Attorney Carmen Christopher at carmen.christopher@cfpb.gov or 202-754-0329.

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

L. **Sensitive Personally Identifiable Information:** If any material called for

by these requests contains sensitive personally identifiable information, sensitive health information of any individual, or Suspicious Activities Reports, please contact Enforcement Attorney Carmen Christopher at 202-754-0329 before sending those materials to discuss ways to protect the information during production. You must encrypt electronic copies of such materials with encryption software acceptable to the Bureau. When submitting encrypted material, you must provide the encryption key, certificate, or passcode in a separate communication.

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

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

N. 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.

O. 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.

Civil Investigative Demand Document Submission Standards

CFPB Office of Enforcement

CID Document Submission Standards

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

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A. Transmittal Instructions

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

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

B. Delivery Formats

1) General ESI Standards

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

All productions must follow the specifications outlined below:

De-duplication

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

Bates Numbering Documents

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

Document Retention / Preservation of Metadata

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

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

2) Native and Image Production

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

a) Metadata File

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

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

TABLE 1: DAT FILE DELIMITERS

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

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

TABLE 2: DAT FILE FIELDS

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

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

b) Document Text

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

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

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

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

iii) The text should be delivered in the following method: As multi-page ASCII text

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

c) Linked Native Files

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

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

d) Images

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

e) Image Cross Reference File

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

TABLE 3: IMAGE CROSS REFERENCE FILE FIELDS

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

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

SAMPLE:

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

3) PDF File Production

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

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

4) Transactional Data

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

- SQL Backup file
- MS Access
- XML
- CSV

- TSV
- Excel (with prior approval)

5) Audio/Video/Electronic Phone Records

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

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

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

TABLE 4: AUDIO METADATA FIELDS

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

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

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

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

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

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

Types of video files accepted include:

- MPG
- AVI
- WMV
- MOV
- FLV

C. Production of Partially Privileged Documents

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

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

CONSUMER FINANCIAL PROTECTION BUREAU
Washington, D.C. 20552

Notice to Persons Supplying Information

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

A. False Statements; Perjury

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

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

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

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

B. The Fifth Amendment; Your Right to Counsel

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

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

C. Effect of Not Supplying Information

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

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

D. Privacy Act Statement

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

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

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

CERTIFICATE OF COMPLIANCE WITH RFPA

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

**Jeffrey Paul
Ehrlich**

Jeffrey P. Ehrlich
Consumer Financial Protection Bureau
Deputy Director, Office of Enforcement

Digitally signed by Jeffrey Paul Ehrlich
DN: cn=Jeffrey Paul Ehrlich, o=CFPB,
ou=Enforcement,
email=jeff.ehrlich@cfpb.gov, c=US
Date: 2015.09.11 13:18:15 -04'00'

CERTIFICATE OF COMPLIANCE – DOCUMENTS

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

1. I have made a diligent inquiry of all persons who likely have possession of responsive documents and information, and I have confirmed that a diligent search has been made of all of the locations and files that likely contained responsive documents and information in the possession, custody, or control of J.G. Wentworth, LLC.
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated September 11, 2015 that are within the possession, custody, or control of J.G. Wentworth, LLC have been submitted to the Bureau custodian or deputy custodian identified in this Civil Investigative Demand.
3. If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.

I certify under penalty of perjury that the foregoing is true and correct. Executed on _____, 2015.

Signature

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

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

1. In preparing all answers and reports in response to the enclosed Civil Investigative Demand, I have made a diligent inquiry of all persons who likely have possession of responsive documents and information, and I have confirmed that a diligent search has been made of all of the locations and files that likely contained responsive documents and information within the possession, custody, control, or knowledge of J.G. Wentworth, LLC.
2. Based on the information identified through the search described in paragraph 1 above, all answers and reports prepared in response to the enclosed required by the Civil Investigative Demand dated September 11, 2015 are true, correct, and complete.
3. If an interrogatory or a portion of an interrogatory has not been fully answered or a report or a portion of a report has not been completed, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.

I certify under penalty of perjury that the foregoing is true and correct. Executed on
_____, 2015.

Signature

**DECLARATION CERTIFYING RECORDS OF
REGULARLY CONDUCTED BUSINESS ACTIVITY**

Pursuant to 28 U.S.C. § 1746

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

1. I am employed by _____ as _____ and by reason of my position am authorized and qualified to certify the authenticity of the records produced by J.G. Wentworth, LLC and submitted with this Declaration.
2. The documents produced and submitted with this Declaration by J.G. Wentworth, LLC 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 _____, 2015.

Signature

§ 1081.405 Decision of the Director.

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

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

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

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

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

§ 1081.406 Reconsideration.

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

§ 1081.407 Effective date; stays pending judicial review.

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

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

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

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

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

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

Dated: June 4, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1080

[Docket No.: CFPB-2011-0007]

RIN 3170-AA03

Rules Relating to Investigations

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

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

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

I. Background

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

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

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

II. Summary of the Final Rule

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

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

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

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

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

III. Legal Authority

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

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

IV. Overview of Public Comments on the Interim Final Rule

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

the real estate finance industry, and other financial institutions.

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

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

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

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

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

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

V. General Comments

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

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

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

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

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

VI. Section-by-Section Summary

Section 1080.1 Scope

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

Section 1080.2 Definitions

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

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

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

Section 1080.3 Policy as to Private Controversies

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

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

Section 1080.4 Initiating and Conducting Investigations

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

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

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

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

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

Section 1080.5 Notification of Purpose

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

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

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

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

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

Section 1080.6 Civil Investigative Demands

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

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

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

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

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

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

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

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

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

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

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

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

Section 1080.7 Investigational Hearings

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

transcript is provided to the designated custodian.

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

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

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

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

Section 1080.8 Withholding Requested Material

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

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

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

Section 1080.9 Rights of Witnesses in Investigations

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

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

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

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

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

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

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

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

Section 1080.10 Noncompliance With Civil Investigative Demands

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

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

Section 1080.11 Disposition

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

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

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

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

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

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

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

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

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

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

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

Section 1080.13 Custodians

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

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

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

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

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

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

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

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

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

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

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

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

VII. Section 1022(b)(2) Provisions

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

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

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

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

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

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

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

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

A commenter asserted that disfavoring extensions of petitions to

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

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

VIII. Procedural Requirements

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

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

List of Subjects in 12 CFR Part 1080

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

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

PART 1080—RULES RELATING TO INVESTIGATIONS

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

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

§ 1080.1 Scope.

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

§ 1080.2 Definitions.

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

Bureau means the Bureau of Consumer Financial Protection.

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

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

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

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

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

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

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

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

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

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

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

§ 1080.3 Policy as to private controversies.

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

§ 1080.4 Initiating and conducting investigations.

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

§ 1080.5 Notification of purpose.

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

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

§ 1080.6 Civil investigative demands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cause shown, may extend the time prescribed for compliance.

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

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

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

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

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

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

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

§ 1080.7 Investigational hearings.

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

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

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

§ 1080.8 Withholding requested material.

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

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

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

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

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

(i) The disclosure was inadvertent;

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

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

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

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

(i) The waiver is intentional;

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

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

§ 1080.9 Rights of witnesses in investigations.

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

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

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

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

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

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

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

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

§ 1080.10 Noncompliance with civil investigative demands.

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

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

and the General Counsel of the Bureau are authorized to:

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

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

§ 1080.11 Disposition.

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

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

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

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

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

§ 1080.13 Custodians.

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

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

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

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

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

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

Dated: June 4, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1082

[Docket No. CFPB-2011-0005]

RIN 3170-AA02

State Official Notification Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background

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

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

II. Summary of the Final Rule

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

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

III. Legal Authority

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

IV. Overview of Comments Received

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

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

EXHIBIT B

MEET AND CONFER STATEMENT

Counsel for the petitioner J.G. Wentworth, LLC (“J.G. Wentworth”) has conferred with counsel for the Consumer Financial Protection Bureau (the “CFPB or “Bureau”) pursuant to 12 C.F.R. § 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.

On September 21, 2015, between 3:00 pm and 5:00 pm eastern time, Franca Harris Gutierrez, Benjamin Neaderland, and Laura Schwalbe, counsel for J.G. Wentworth, conferred by telephone with Carmen Christopher, Navid Vazire and Meghan Sherman, counsel for the Bureau, concerning the scope of the CID pursuant to 12 C.F.R. § 1080.6(c) and (e)(1), and the CID has not yet been modified.

On September 29, 2015, between 12:00 pm and 12:30 pm eastern time, Matthew Martens, Benjamin Neaderland, and Bradford Hardin, counsel for J.G. Wentworth, conferred by telephone with Navid Vazire and Meghan Sherman, counsel for the CFPB, pursuant to 12 C.F.R. §§ 1080.6(c) and (e)(1). During this conference, counsel for J.G. Wentworth stated that the Bureau lacked jurisdiction to issue the Civil Investigative Demand (“CID”), and that J.G. Wentworth planned to petition for an order to set aside the demand. The parties were unable to resolve by agreement the issues raised by the petition. Mr. Vazire later contacted Benjamin Neaderland on September 29, 2015, to report that Jeffrey Ehrlich, Deputy Enforcement Director, had rejected J.G. Wentworth’s request to set aside the CID.

Date: October 1, 2015

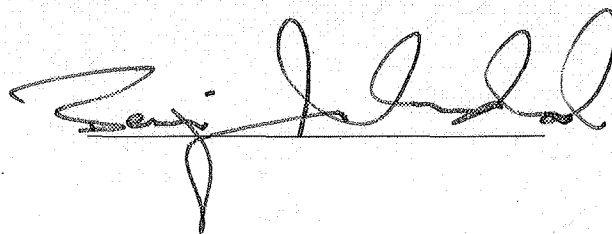
A handwritten signature in black ink, appearing to read "Benjamin Neaderland", written over a horizontal line.

EXHIBIT C

PURCHASE CONTRACT

This is a Purchase Contract ("Contract") for the sale of structured settlement payments between
 [REDACTED] (You, Your), and J.G. Wentworth Originations, LLC (We, Us, Our)
 3993 Howard Hughes Parkway, Suite 250, Las Vegas, NV 89169-6754.

BACKGROUND

- A. In connection with the resolution of a personal injury claim, You or someone acting for You, signed a Settlement Agreement that entitles You to receive certain future payments ("Settlement Payments"), according to a set schedule.
- B. Those Settlement Payments are being paid to You from an annuity policy ("Annuity Policy") purchased by the Person responsible for making the Settlement Payments to You ("Obligor").
- C. Rather than wait for the Settlement Payments to be made to You in the future, You want to sell all or some of those Settlement Payments ("Purchased Payments") to Us now for a lump sum.
- D. THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH YOU SHOULD READ CAREFULLY, AS IT WILL HAVE A SUBSTANTIAL IMPACT ON HOW DISPUTES BETWEEN YOU AND US ARE RESOLVED.**

DEFINED WORDS

Certain words used in this Contract have specific meanings, shown below.

Affiliate	An entity controlled by, controlling, or under common control with, another entity.
Annuity Policy	The policy purchased by the Obligor to ensure that the Settlement Payments are made to You as required by the Settlement Agreement.
Closing Documents	Any documents necessary to carry out the purchase of the Purchased Payments, other than the "Contract or Contract Documents" as defined below.
Contract or Contract Documents	Collectively, only this Contract and the Disclosure Statement.
Contract Date	The date Your signature at the end of this Contract is notarized. However, if You happen to sign this Contract before the number of days stated at the end of Your Disclosure Statement for waiting has passed, You will have no obligation under Your Contract until that time has passed.
Court Order	A legally binding ruling issued by a judge or properly empowered administrative officer, approving the sale of the Purchased Payments to Us ("Court Approval").
Disclosure Statement	The document which identifies for You, the Purchased Payments, expenses, Purchase Price and various other disclosures.
Encumbrance	Any claim, right, lien, policy loan, or restriction. In addition, this includes any limits on rights of ownership (such as the use, voting, transfer, receipt of income, etc.).
Funding Date	The date We pay You the Net Purchase Price.
Issuer	The insurance company that issued the Annuity Policy.

Obligor	The Person who is obligated to make payments to You under the Settlement Agreement.
Party	One of You or Us. Parties means both You and Us.
Person	Any natural person or legal entity.
Purchased Payments	Only those certain payments that We are purchasing from You under this Contract.
Purchase Price:	
Gross Purchase Price	The amount shown as the "gross amount payable to the seller (You)" on the Disclosure Statement. This is the sum We have agreed to pay You <i>before</i> any deductions as set forth in the Contract Documents.
Net Purchase Price	The amount shown as the "net amount payable to the seller (You)" on the Disclosure Statement. This is the sum We have agreed to pay You <i>after</i> any deductions as set forth in the Contract Documents.
Settlement Agreement	The agreement that You and the Obligor signed to resolve Your personal injury claim.
Settlement Payments	All of the payments that the Obligor has agreed to make to You in the Settlement Agreement.
We, Our, or Us	J.G. Wentworth Originations, LLC, along with any of its successors, assigns, and designees. Some of the Contract Documents or Closing Documents may refer to Us as the purchaser.
You or Your	The Person named on this Contract's first page. Some of the Contract Documents or Closing Documents may refer to You as the seller.

You and We agree as follows:

1. **SALE OF THE PURCHASED PAYMENTS**

- A. Upon the signing of this Contract and subject to certain conditions including Court Approval, You sell, transfer and assign to Us the right to receive the Purchased Payments specifically identified in the Disclosure Statement.
- B. We will pay You the Net Purchase Price as agreed to in the Contract Documents, subject to certain conditions, including meeting Our underwriting requirements, Court Approval and satisfactory completion of the Closing Documents. We will do this in exchange for You:
- selling the Purchased Payments to Us;
 - changing the beneficiary of the Annuity Policy to Your estate and not changing it again until We have been paid all of the Purchased Payments;
 - having any current beneficiaries waive their rights to the Purchased Payments; and
 - fulfilling Your promises under this Contract.
- C. If We are buying only a portion of Your payments, this will have no effect upon Your rights in the unsold portion. You will continue to receive the unsold portion unless You have already sold or encumbered that portion. However, sometimes the Issuer, the Obligor or the court may require Us to receive the entire amount of Your payment. If so, We will then forward the portion of the payment still due to You and You hereby agree to this payment servicing arrangement.

2. **PURCHASE PRICE**

- A. The Gross and Net Purchase Prices are shown on the Disclosure Statement and are fair and acceptable to You and Us.

- B. We will pay You the Net Purchase Price in the manner You designate for Us.
- C. Before we pay You, You agree that We will adjust for the following amounts, *if applicable*:
- **Purchased Payments Owed to Us** – The Issuer may have already paid You some of the Purchased Payments before We have paid You for them. If that happens, We will deduct the amount of those Purchased Payments.
 - **Holdbacks** – Due to possible delays in the Issuer beginning to make the Purchased Payments to Us instead of You, We will hold back an amount equal to any Purchased Payments that the Issuer owes Us post Court Approval, that are due within 90 days of the Funding Date. If We subsequently receive those particular Purchased Payments directly, We will return the amount of any related holdback to You.
 - **Payment of Debts Owed** – If You owe any past due child support, bankruptcy payoffs or taxes, or have any judgments or liens against You or Your assets, We may pay those amounts and deduct them from the amount We pay You, and You hereby provide Us with specific authority to take such action. We will provide You with notice of the amounts that We are going to pay, prior to actual payment.
- D. If any Purchased Payments are mistakenly sent to You after We have paid You for them, You will immediately contact Us. If We then determine that any deductions or holdbacks as set forth above are not enough to reimburse Us, We will advise You of the amount You owe Us. You agree to immediately send that amount to Us by bank or certified check.

3. YOUR REPRESENTATIONS AND WARRANTIES

You represent and warrant to Us the following:

- A. **You understand that THIS IS A SALE AND NOT A LOAN.**
- B. The Annuity Policy is in full force, You are the sole and undisputed recipient of the right to the Purchased Payments, have the right to sell them free and clear of any Encumbrances and have not previously sold any of the Purchased Payments to any other Person.
- C. You understand that Court Approval is required for this purchase; and You agree to fully cooperate with Us to obtain that approval.
- D. You gave Us all requested information and signed all documents necessary to complete the purchase. Every statement made by You in the Contract Documents and Closing Documents is true and complete.
- E. No law, divorce decree or other legal obstacle:
- requires You to keep the Purchased Payments for the benefit of a current or former spouse, dependent children, or other person; or
 - legally prevents You from contracting with Us, selling the Purchased Payments or changing the Annuity Policy's beneficiary.
- F. Either:
- You have never filed for bankruptcy, will not do so before the Funding Date and there are no lawsuits or efforts by any of Your creditors to put You into bankruptcy or take any of the Purchased Payments; or
 - If You filed for bankruptcy, the Purchased Payments were not subject to the claims of Your creditors. You will give Us a copy of any of Your bankruptcy documents that We request including evidence of a final bankruptcy payoff or case closing, if any.
- G. We can rely on Your representations, warranties, and promises in this Contract. These representations, warranties, and promises are for Our benefit and the benefit of any future owners of the Purchased Payments. You understand that Our reliance on any intentional misrepresentation by You may result in Our enforcing Our rights against You in court.

- H. You had enough time to consider the sale of the Purchased Payments, understand the terms of the Contract Documents and Closing Documents (including the arbitration provision), are of legal contracting age and sound mind, not under the influence of drugs or alcohol, and freely and voluntarily, enter into this Contract and agree to all of its terms.
- I. You were advised by Us to obtain independent legal advice and professional tax advice about the sale of the Purchased Payments and to have those advisors review the terms and legal, tax and other effects of this Contract with You prior to Your execution of this Contract. You have also explored all appropriate financial options before entering into this transaction.
- J. We did not provide tax, financial, or legal advice to You about this Contract and have advised You that We may not refer You to any specific attorney for such purpose.
- K. If You are married, Your spouse understands all of the terms and conditions of this Contract including, but not limited to the fact that, after the Funding Date, You (and Your spouse) will not receive the same amount of money on the same payment schedule as You would have received under the Annuity Policy. Your spouse has been provided with all information relating to the transaction and has had every opportunity to review the terms of the transaction and to seek any advice relating thereto. Your Spouse also understands that he or she will be giving up any property or contract rights that he or she may have in the Purchased Payments.
- L. We may sell, transfer, or assign Our right to the Purchased Payments in a sale, securitization, or other financing transaction (resale). Any resale would involve disclosing certain information about You (including Your personal information) to the parties to a resale.
- M. Any future owner of the right to the Purchased Payments will have all of the same rights We have, including the right to the duties You owe Us under this Contract. This includes the right to make a claim against You for violating any of the representations, warranties, or promises You made in this Contract.

4. **YOUR PROMISES TO US**

Before and after the Funding Date:

- A. You will tell us right away if Your address or telephone number changes and do everything necessary, including completing and signing all documents to:
- sell the right to the Purchased Payments to Us;
 - change the beneficiary as required by this Contract; and
 - correct any documentation errors in the Contract Documents or Closing Documents.
- B. You will also tell Us if any of the following occurs:
- a violation of this Contract; or
 - anything that could negatively affect the Annuity Policy, the Purchased Payments, or this Contract.
- C. You will not:
- agree to sell the Purchased Payments to any Person other than Us;
 - change the Annuity Policy's beneficiary to any Person other than Your estate until We have collected all of the Purchased Payments; or
 - withdraw cash from, borrow against, or change the Annuity Policy.
- D. You will give Us information necessary to update Your representations, warranties, and promises in this Contract. You will also update any documents and information so they will be true and complete on the Funding Date.

- E. We are now, and will continue in the future, to rely on the representations and warranties You have given Us. We will confirm the accuracy of Your representations and warranties. You must cooperate with this confirmation and provide complete access to any information We believe necessary.
- F. You agree that updating representations, warranties, promises, documents and other information will not cure a breach of any representation or warranty made by You that was not true and complete.
- G. You agree that Our obligation to You under this Contract is strictly limited to the requirement to pay You what We owe You under the terms of this Contract, after receipt and approval of the Closing Documents, final underwriting approval and Court Approval. Under no circumstances will We be liable for any consequential damages.
- H. You hereby appoint Us and any of Our designees, with full power of substitution as your Attorney in Fact to act in Your name and place for the purpose of assigning and transferring ownership of any and all right, title and interest that You have in the Purchased Payments and for Us to obtain all benefits contemplated by this transaction. You also give Us full authority to act in any way proper and necessary to exercise this Attorney in Fact appointment including, but not limited to: (1) negotiating, endorsing and executing checks, drafts and other instruments in Your name; and (2) instituting, maintaining, compromising, settling and terminating any litigation or other proceedings related to the Purchased Payments. This power of attorney is coupled with an interest and shall survive death or disability.

5. CANCELLATION BY US

We may cancel this Contract before the Funding Date if:

- A. You breach any representation, warranty, or promise in any Contract Documents or Closing Documents.
- B. The petition for the Court Order is contested, opposed, or not approved.
- C. We are sued or threatened with a lawsuit or an arbitration about this Contract or the Annuity Policy.
- D. There is any threatened, pending, or final action, or change in law or rule challenging the legality of, or negatively affecting this transaction.
- E. You file for, or are forced into bankruptcy.
- F. You die.
- G. Final approval has not been given by Our underwriting department.
- H. The Purchase Contract is not signed by You and received back by Us by March 29, 2014.
- I. A major rating agency downgrades the Issuer's credit rating.
- J. The Issuer is, or becomes insolvent, or under regulatory supervision.
- K. With respect to A through J above, to the extent permitted by applicable law, the arbitration provision in Section 9 of this Contract shall survive the termination, cancellation or rescission of this Contract.

6. CANCELLATION BY YOU

- A. **(1) YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION AT ANY TIME WITHIN FIVE (5) BUSINESS DAYS AFTER THE DATE YOU RECEIVE PAYMENT HEREUNDER FROM US. IN ORDER FOR THE CANCELLATION TO BE EFFECTIVE, YOU MUST SEND A NOTICE POSTMARKED AT ANY TIME WITHIN FIVE BUSINESS DAYS AFTER YOU RECEIVE PAYMENT HEREUNDER FROM US (This is the rescission period).**
- (2) YOUR NOTICE IS TO BE SENT EITHER BY CERTIFIED OR REGISTERED MAIL (RETURN RECEIPT REQUESTED) OR FEDEX OR ANOTHER MAJOR OVERNIGHT DELIVERY SERVICE. THE**

07/12/12

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NOTICE MUST INCLUDE A BANK OR CERTIFIED CHECK MADE PAYABLE TO US, IN THE FULL AMOUNT RECEIVED BY YOU. YOUR NOTICE MUST BE SENT TO:

**J.G. Wentworth Originations, LLC
Attention: Manager of Operations
3993 Howard Hughes Parkway, Suite 250
Las Vegas, NV 89169-6754**

- B. GEORGIA RESIDENTS: YOU MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO 5:00 P.M. OF THE TWENTY-FIRST DAY FOLLOWING RECEIPT OF THE ENCLOSED "NOTICE OF CANCELLATION RIGHTS" FORM, OR AT THE HEARING ON THE APPLICATION FOR AUTHORIZATION OF A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS, OR AT ANY TIME WITHIN FIVE (5) BUSINESS DAYS AFTER YOU RECEIVE PAYMENT HEREUNDER FROM US, WHICHEVER EVENT OCCURS LAST (This is the Georgia rescission period). IN ORDER FOR THE CANCELLATION TO BE EFFECTIVE, YOU MUST SIGN THE ENCLOSED "NOTICE OF CANCELLATION RIGHTS" FORM AND MAIL OR DELIVER IT TO US AS SPECIFIED IN THAT NOTICE AND YOU MUST RETURN ALL AMOUNTS (PURCHASE PRICE OR OTHERWISE) RECEIVED BY YOU ACCORDING TO THE REQUIREMENTS OF 6 (A) (2) ABOVE.**
- C. WEST VIRGINIA RESIDENTS: IN ORDER FOR YOUR CANCELLATION TO BE EFFECTIVE, YOUR NOTICE CAN BE SUBMITTED VIA PHONE, MAIL, OR FACSIMILE. ANY AMOUNTS ADVANCED BY US IN CONTEMPLATION OF THE TRANSFER SHALL BE IMMEDIATELY REFUNDED TO US. IF YOU DISMISS YOUR ACTION AFTER APPOINTMENT OF A GUARDIAN AD LITEM, OR RESCIND YOUR TRANSFER AGREEMENT (PURCHASE CONTRACT) WITHIN THE RESCISSION PERIOD IN 6(A) (1) ABOVE, YOU SHALL BE RESPONSIBLE FOR THE FILING FEE AND ANY GUARDIAN AD LITEM FEES.**
- D. With respect to A through C above, to the extent permitted by applicable law, the arbitration provision in Section 9 of this Contract shall survive the termination, cancellation or rescission of this Contract.**

7. NOTICES

- A. All notices about this Contract must be in writing.
- B. All notices must be sent either by: (1) certified or registered mail (return receipt requested); or (2) FedEx or another major overnight delivery service with a delivery tracking system and are considered given when delivered as follows: If to You: to the most recent address for You listed in Our files. If to Us: to the address listed in Section 6(A) (2) of this Contract.

8. EVENTS OF DEFAULT

You will be in default if You:

- A. fail to comply with any terms or conditions of this Contract; or
- B. breach any of Your representations, warranties and promises in this Contract.

If You are in default, even if You have not rejected the arbitration provision (see Section 9 of this Contract), We have the right to enforce Our rights against You in court to make You perform Your promises or to get money from You. If We sue You in court in connection with a Claim that is subject to arbitration under the arbitration provision in Section 9 of this Contract, and You have not rejected the arbitration provision, You will have the option of remaining in court or seeking to compel arbitration of that Claim under the terms of the arbitration provision.

9. ARBITRATION PROVISION

To the extent permitted by applicable law, You and We agree to the following arbitration provision.

YOU HAVE THE RIGHT TO REJECT THIS ARBITRATION PROVISION AS SET FORTH BELOW. If You do not reject this arbitration provision and a Claim is arbitrated, You will not have the right to: (1) have a court or a jury decide the Claim; (2) engage in information gathering (discovery) to the same extent as in court; (3) participate in a class action in court or in arbitration; or (4) join or consolidate a Claim with claims of any other person. The right to appeal is more limited in arbitration than in court and other rights in court may be unavailable or limited in arbitration.

Claims Subject to Arbitration. A "Claim" subject to arbitration is any claim, dispute or controversy between You and Us (other than an Excluded Claim or Proceeding as set forth below), whether preexisting, present or future, which arises out of, or relates to the Contract, the negotiations related thereto, the breach thereof or any other transaction conducted with us in connection with the Contract. "Claim" has the broadest possible meaning and includes initial claims, counterclaims, cross-claims, third-party claims and federal, state, local and administrative claims. It includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity and includes claims for money damages and injunctive or declaratory relief. Upon the demand of You or Us, Claim(s) will be resolved by individual (not class or class-wide) binding arbitration in accordance with the terms specified in this arbitration provision.

Special Definitions. Solely for purposes of this arbitration provision, in addition to the meanings set forth in this Contract: (1) "We," "Us" and "Our" also (a) refer to Our employees, officers, directors, parents, controlling persons, subsidiaries and affiliates and (b) apply to third parties if You assert a Claim against such third parties in connection with a Claim you assert against Us; and (2) "You" or "Your" also refer to Your current or former spouse(s), children, heirs, estate, executors, successors, assigns, representatives and beneficiaries.

Excluded Claim or Proceeding. Notwithstanding the foregoing, "Claim" does not include any dispute or controversy about the validity, enforceability, coverage or scope of this arbitration provision or any part thereof (including, without limitation, the "Class Action Waiver" set forth below and/or this sentence); all such disputes or controversies are for a court and not an arbitrator to decide. However, any dispute or controversy that concerns the validity or enforceability of the Contract as a whole is for the arbitrator, not a court, to decide. In addition, We will not require You to arbitrate any individual action brought by You in small claims court or Your state's equivalent court, unless such action is transferred, removed, or appealed to a different court.

Federal Arbitration Act. Notwithstanding any other provision in this Contract, You and We agree that this Contract evidences a transaction involving interstate commerce and that the Federal Arbitration Act (Title 9 of the United States Code) ("FAA") shall govern its interpretation and enforcement and proceedings pursuant thereto. To the extent state law is applicable under the FAA, the law of the state of Your domicile (where You regularly reside on the Contract Date) shall apply.

Class Action Waiver. Notwithstanding any other provision of this Contract, if a Claim is arbitrated, neither You nor We will have the right: (a) to participate in a class action, private attorney general action or other representative action in court or in arbitration, either as a class representative or class member; or (b) to join or consolidate Claims with claims of any other Persons. No arbitrator shall have authority to conduct any arbitration in violation of this provision (provided, however, that the Class Action Waiver does not apply to any lawsuit or administrative proceeding filed against us by a state or federal government agency even when such agency is seeking relief on behalf of a class of borrowers including You. This means that We will not have the right to compel arbitration of any claim brought by such an agency). The Class Action Waiver is nonseverable from this arbitration provision. If the Class Action Waiver is limited, voided or found unenforceable, then this arbitration provision (except for this sentence) shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver.

Arbitration Procedures. If You or We seek to arbitrate a Claim, the Party seeking arbitration must notify the other Party in writing. This notice can be given after the beginning of a lawsuit and can be given in papers filed in the lawsuit, such as a motion to compel arbitration. Otherwise, Your notice must be sent to Us at the address specified in Section 6 (A) (2) of this Contract and Our notice must be sent to the most recent address for You in our files. Any arbitration hearing that You attend will take place in a venue of Your domicile. If a Party files a lawsuit in court asserting Claim(s) that are subject to arbitration, and the other Party files a motion to compel arbitration with the court, which is granted, it will be the responsibility of the Party prosecuting the Claim(s) to select an arbitration administrator in accordance with the paragraph below and commence the arbitration proceeding in accordance with the administrator's rules and procedures.

The arbitration will be administered by the American Arbitration Association ("AAA"), 1633 Broadway, 10th Floor, New York, NY 10019, www.adr.org, 1-800-778-7879 or JAMS, 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com, 1-800-352-5267. The rules and forms of the AAA and JAMS may be obtained by writing to these organizations at the addresses listed above. If the AAA and JAMS are unable or unwilling to serve as administrator, the Parties may agree upon another administrator or, if they are unable to agree, a court shall determine the administrator. No company may serve as administrator, without the consent of all Parties, if it adopts or has in place any formal or informal policy that is inconsistent with and purports to override the terms of this arbitration provision. In the event of a conflict between the provisions of this arbitration provision, on the one hand, and other provisions of this Contract or any applicable rules of the AAA or JAMS or other administrator used, on the other hand, the provisions of this arbitration provision shall control.

A single arbitrator will be appointed by the administrator and must be a practicing attorney with ten or more years of experience or a retired judge. The arbitrator will not be bound by judicial rules of procedure and evidence that would apply in a court, or by state or local laws that relate to arbitration proceedings. The arbitrator will honor statutes of limitation and claims of privilege recognized under applicable law. In determining liability or awarding damages or other relief, the arbitrator will follow this Contract and the applicable substantive law, consistent with the FAA and this Contract, that would apply if the matter had been brought in court. At Your written request, we will pay all filing, hearing and/or other fees charged by the administrator and arbitrator to You for Claim(s) asserted by You in arbitration after You have paid an amount equivalent to the fee, if any, for filing such Claim(s) in state or federal court (whichever is less) in the judicial district in which You reside. (If You have already paid a filing fee for asserting the Claim(s) in court, You will not be required to pay that amount again). In addition, the administrator may have a procedure whereby You can seek a waiver of fees charged to You by the administrator and arbitrator. We will always pay any fees or expenses that We are required to pay by law or the administrator's rules or that We are required to pay for this arbitration provision to be enforced. The arbitrator will have the authority to award attorneys' and expert witness fees and costs to the extent permitted by this Contract, the administrator's rules or applicable law. The arbitrator will always award You reasonable attorneys' and expert witness fees and costs (a) if and to the extent You prevail on Claims you assert against Us in an arbitration commenced by You and (b) to the extent required under applicable law for this arbitration provision to be enforced. The arbitrator shall write a brief explanation of the grounds for the decision. A judgment on the award may be entered by any court having jurisdiction.

Severability and Survival. If any part of this arbitration provision, other than the Class Action Waiver, is deemed or found to be unenforceable for any reason, the remainder shall be enforceable. To the extent permitted by applicable law, this arbitration provision shall survive the termination, cancellation or rescission of this Contract.

Effect of Arbitration Award. The arbitrator's award shall be final and binding on all Parties, except for any right of appeal provided by the FAA. However, if the amount of the Claim exceeds \$50,000 or involves a request for injunctive or declaratory relief that could foreseeably involve a cost or benefit to either Party exceeding \$50,000, any Party can, within 30 days after the entry of the award by the arbitrator, appeal the award to a three-arbitrator panel administered by the administrator. The panel shall reconsider anew any aspect of the initial award requested by the appealing Party. The decision of the panel shall be by majority vote. Reference in this arbitration provision to "the arbitrator" shall mean the panel if an appeal of the arbitrator's decision has been taken. The costs of such an appeal will be borne in accordance with the above paragraph titled "Arbitration Procedures." Any final decision of the appeal panel is subject to judicial review only as provided under the FAA.

Right to Reject Arbitration Provision. You may reject this arbitration provision by sending Us written notice of Your decision so that We receive it at the address listed below within forty-five (45) days of the Contract Date. Such notice must be sent by certified or registered mail (return receipt requested) or by FedEx or another major overnight delivery service with a delivery tracking system; must include a statement that You wish to reject the arbitration provision along with Your name, address, Account I.D. number and Your signature; and must be delivered to Us at the address specified in Section 6 (A) (2) of this Contract. This is the sole and only method by which You can reject this arbitration provision. Upon receipt of a rejection notice, We will reimburse You for the standard cost of a certified or registered letter or overnight delivery. Rejection of this arbitration provision will not affect any other terms of this Contract and will not result in any adverse consequence to You. You agree that Our business records will be final and conclusive with respect to whether You rejected this arbitration provision in a timely and proper fashion. **This arbitration provision will apply to You and Us unless you reject it by providing proper and timely notice as stated herein.**

10. MISCELLANEOUS

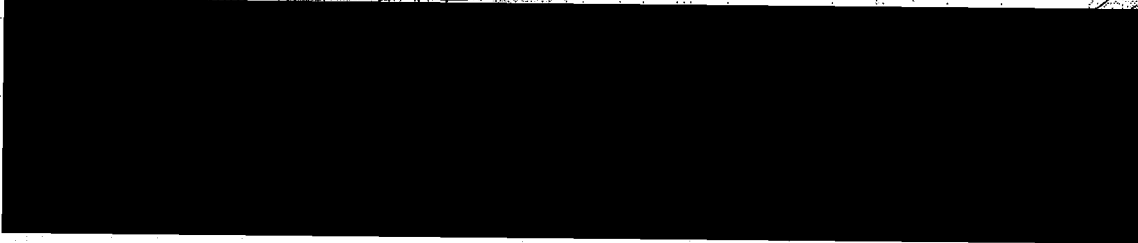
- A. You give Us permission to conduct background checks on You, including obtaining information from the credit bureaus, in order to verify Your legal residence, contact information, and any other information We deem necessary for this transaction. We can also search records for UCC filings, bankruptcy filings, judgments, liens and child support obligations against You.
- B. This Contract is the entire agreement between You and Us.
- C. If there is more than one of Us or You, this Contract applies to all of those people together, and to each of them on their own.
- D. Both Parties must agree in writing to any change to this Contract or waiver of its terms.
- E. Except as set forth in the arbitration provision in Section 9 of this Contract, if a court undoes any part of this Contract, the rest of the Contract remains valid.
- F. You cannot voluntarily or involuntarily sell, assign, or transfer this Contract, or any of Your rights or duties under this Contract. Any such action taken by You in violation of this section shall be void and of no effect.
- G. Except as otherwise required by applicable law, the law of the state of Your domicile (where You regularly reside on the Contract Date) will govern this Contract and disputes under this Contract shall be determined in Your domicile State (where You regularly reside on the Contract Date).
- H. This Contract also holds responsible Your heirs, and executors. This Contract benefits only You and Us, and no one else. However, if properly assigned by Us, this Contract will bind and benefit Our successors and assigns.
- I. Failure to enforce any provision of this Contract is not a waiver of that provision.
- J. The Parties may sign this Contract in one or more counterparts. Each counterpart will be considered an original. All counterparts will form one Contract. A facsimile, pdf or other electronic copy of the signed Contract or any counterpart will be considered an original and treated as such in any court [or arbitration] proceeding.
- K. We have investigated the proposed transfer of the Purchased Payments and, in light of information available to Us, have identified no violation of any applicable state or federal law.
- L. You will not receive an IRS Form 1099 from Us.
- M. Titles and headings in this Contract are for convenience only. Do not use them to interpret this Contract.
- N. Except as otherwise set forth in this Contract (including the arbitration provision in Section 9 of this Contract), You and We will pay our respective costs and expenses in carrying out this Contract.
- O. You give Us permission to request from our Affiliates information and documentation You have previously provided to them which we deem necessary for this transaction, including, bankruptcy filings, judgments, settling documents, annuity documents, liens, child support obligations, divorce documents.

You and We, intending to be legally bound, have signed this Contract as of the Contract Date below, and agree to all of its terms and conditions, including the arbitration provision.

By signing below, You also acknowledge that You were advised by Us in writing, that You should obtain independent legal advice and professional tax advice about the sale of the Purchased Payments and to have those advisors review with You, the terms and legal, tax and other effects of this Contract.

Sworn to and subscribed before me this 10th day of February, 2014 (Contract

SELLER:



SIGN HERE

Sworn to and subscribed before me this ___ day of _____, 20__

SELLER'S SPOUSE (if applicable)



Notary

Spouse

US: J.G. Wentworth Originations, LLC

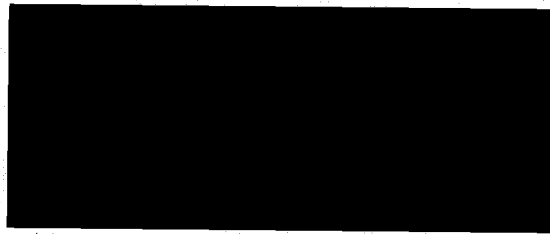


EXHIBIT D

February 11, 2014

The aggregate amount of the Purchased Payments is \$480,700.00.

The discounted present value of the aggregate Purchased Payments at the federal interest rate of 2.40% is \$369,670.12. The discounted present value is the calculation of the current value of the transferred structured settlement payments (Purchased Payments) under federal standards for valuing annuities.

The gross amount payable to seller (You) is \$230,000.00.

No other expenses are incurred by You.

The net amount payable to the seller (You) is \$230,000.00.

The net amount that You will receive from us in exchange for Your future structured settlement payments represents 62.20% of the estimated current value of the payments based upon the discounted value using the applicable federal rate.

Based on the net amount that You will receive in payment from Us and the amounts and timing of the structured settlement payments that You are selling to Us, this is the equivalent of interest payments to Us at a rate of 7.56% per year. PLEASE NOTE THAT THIS IS NOT A LOAN, BUT A SALE OF PAYMENT RIGHTS AND THE INTEREST FIGURE IS ONLY PROVIDED AS AN ILLUSTRATION OF THE ECONOMIC IMPACT OF THE SALE.

Please be advised there are no penalties or liquidated damages payable by You in the event of any breach of the transfer agreement (Purchase Contract) by You.

By signing below, You are confirming receipt of this Disclosure Statement at least 10 days prior to You first incurring an obligation with respect to the transfer agreement (Purchase Contract).

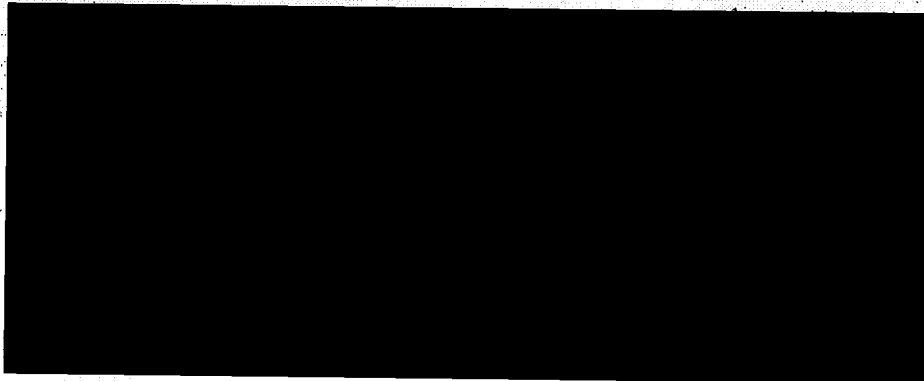
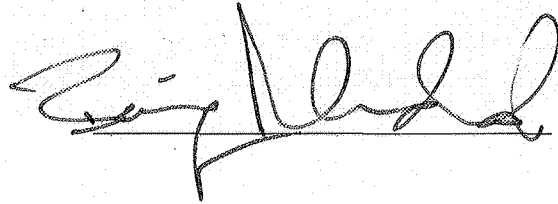


EXHIBIT E

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2015, pursuant to 12 C.F.R. § 1080.6(e), I caused the foregoing Petition to Set Aside or Modify the Civil Investigative Demand to be served via email upon the Executive Secretary of the Bureau and the Assistant Director for the Office of Enforcement.

Date: October 1, 2015

A handwritten signature in black ink, appearing to read "Craig M. [unclear]", written over a horizontal line.