

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: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (“CFPB” or “Bureau”), pursuant to the Consumer Financial Protection Act of 2010, is adopting its Rules Relating to Investigations in order to describe the Bureau’s procedures for investigations pursuant to section 1052 of the Act. The Bureau invites interested members of the public to submit written comments to this interim final rule setting forth those rules.

DATES: This interim final rule is effective on [INSERT DATE OF PUBLICATION].

Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket No. CFPB- 2011-0007, by any of the following methods:

- Electronic: <http://www.regulations.gov>. Follow the instructions for submitting comments.

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- Mail or Hand Delivery/Courier in Lieu of Mail: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, N.W., Washington, D.C. 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1801 L Street, N.W., Washington, D.C. 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, N.W., Washington, D.C. 20036, (202) 435-7275.

SUPPLEMENTARY INFORMATION: This discussion contains the following sections:

- (a) Background
- (b) Section-by-Section Summary
- (c) Procedural Requirements

(a) Background

The Bureau is adopting Rules Relating to Investigations (“Rules”) that implement provisions of the Consumer Financial Protection Act of 2010 (“Act”)¹ that relate to the Bureau’s investigations. Specifically, these Rules will govern investigations undertaken pursuant to section 1052 of the Act, 12 U.S.C. 5562, which authorizes the Bureau to investigate whether persons have engaged in conduct that violates any provision of Federal consumer financial law.

In developing these Rules, the Bureau considered the investigative procedures of other law enforcement agencies. Specifically, the Bureau reviewed the procedures currently used by the Federal Trade Commission (“FTC”), the Securities and Exchange Commission (“SEC”), and the prudential regulators for guidance. In light of the similarities between section 1052 of the 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 Rules describe a number of Bureau policies and procedures that apply in a nonadjudicative setting. Among other things, these Rules set 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.

In particular, the Rules lay out the Bureau’s authority to conduct investigations before instituting judicial or administrative adjudicatory proceedings under Federal consumer financial law. The Rules authorize the Assistant Director of the Division of Enforcement to issue civil investigative demands for documentary material, tangible things, written

¹ The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, Public Law 111-203 (July 21, 2010), Title X, 12 U.S.C. 5481 et seq. Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes these Rules on behalf of the CFPB.

reports or answers to questions, and oral testimony, which may be enforced in district court by either the General Counsel or the Assistant Director of the Division of Enforcement. The Rules also detail the authority of the Bureau's investigators to conduct investigations and hold investigational hearings pursuant to civil investigative demands for oral testimony.

Furthermore, the Rules set forth the rights of persons from whom the Bureau seeks to compel information in an investigation. Specifically, the Rules describe how such persons should be notified of the purpose of the Bureau's investigation. The Rules detail the procedures for filing a petition for an order modifying or setting aside a civil investigative demand, which will be ruled upon by the Bureau Director. They also describe the process for obtaining copies of or access to documents or testimony provided to the Bureau. In addition, the Rules describe a person's right to counsel at investigational hearings.

(b) Section-by-Section Summary

Section 1080.1 Scope.

This section describes the scope of the Rules. It makes clear that these Rules only apply to investigations under section 1052 of the Act.

Section 1080.2 Definitions.

This section defines several terms used throughout the Rules. Many of these definitions also may be found in section 1051 of the Act.

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Section 1080.3 Policy as to private controversies.

This section 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.

Section 1080.4 By whom conducted.

This section explains that Bureau investigators are authorized to conduct investigations pursuant to section 1052 of the Act.

Section 1080.5 Notification of purpose.

This section provides that a person compelled to provide information to the Bureau or 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 implements the requirements for civil investigative demands described in section 1052(c)(2) of the Act.

Section 1080.6 Civil investigative demands.

This section lays out the Bureau's procedures for issuing civil investigative demands. It authorizes the Assistant Director of the Division of Enforcement to issue civil investigative demands for documentary material, tangible things, written reports or answers to questions, and oral testimony. This section details the information that must be included in civil investigative demands and the requirement that responses be made under a sworn certificate. Section 1080.6 also authorizes the Assistant Director of the Division of Enforcement to negotiate and approve the terms of compliance with civil investigative demands and grant extensions for good cause. Finally, this section describes

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the procedures for seeking an order to modify or set aside a civil investigative demand, which will be ruled upon by the Bureau Director.

Section 1080.7 Investigational hearings.

This section describes the procedures for investigational hearings initiated pursuant to a civil investigative demand 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.

Section 1080.8 Withholding requested material.

This section describes the procedures that apply when persons withhold material responsive to a civil investigative demand. It requires that they assert a privilege by the production date and, if so directed in the civil investigative demand, also 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.

Section 1080.9 Rights of witnesses in investigations.

This section 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 also describes a witness's right to make changes to his or her transcript and the rules for signing the transcript.

Section 1080.9 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

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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 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 authorizes the Bureau investigator to take all necessary action during the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language.

Section 1080.10 Noncompliance with civil investigative demands.

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

Section 1080.11 Disposition.

This section 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. This section further provides that the Bureau may refer investigations to appropriate federal, state, or foreign government agencies as appropriate. It also authorizes the Assistant Director of the Division 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.

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

This section authorizes the Assistant Director of the Division 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. It 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 describes the applicable rules and time limits for such appeals.

Section 1080.13 Custodians.

This section describes the procedures for designating a custodian and deputy custodian for material produced pursuant to a civil investigative demand 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.

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

Section 1080.14 explains that documentary materials and tangible things obtained by the Bureau pursuant to a civil investigative demand are subject to the requirements and procedures relating to disclosure of records and information in part 1070 of this title. This section 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.

(c) Procedural Requirements

(1) Regulatory Requirements

The Rules relate solely to agency procedure and practice and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551 et seq. Although the Rules are exempt from these requirements, the Bureau invites comment on them. Because no notice of proposed rulemaking is required, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2) do not apply.

(2) Section 1022(b)(2) Provisions

The CFPB has conducted an analysis of benefits, costs, and impacts² and consulted with the prudential regulators, the Department of Housing and Urban Development, the Securities and Exchange Commission, the Department of Justice, and the Federal Trade Commission, including with respect to whether the Rules are consistent with any relevant prudential, market, and systemic objectives administered by such agencies.³

The Bureau concludes that, on balance, the Rules are beneficial to consumers and covered persons alike. The Rules do not impose any obligations on consumers or have any direct impact on their access to credit. Conversely, they provide a clear, efficient mechanism for investigating compliance with the Federal consumer financial laws, which

² Section 1022(b)(2)(A) addresses the consideration of the potential benefits and costs of regulation to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services; the impact of proposed rules 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.

³ The President's July 11, 2011, Executive Order 13579 entitled "Regulation and Independent Regulatory Agencies," asks the independent agencies to follow the cost-saving, burden-reducing principles in Executive Order 13563; harmonization and simplification of rules; flexible approaches that reduce costs; and scientific integrity. In the spirit of Executive Order 13563, the CFPB has consulted with the Office of Management and Budget regarding this interim final rule.

benefits consumers because the Rules offer a systematic process for protecting them from unlawful behavior.

The Rules impose certain obligations on covered persons who receive civil investigative demands in Bureau investigations. Specifically, as described above, the Rules set forth the process for complying with or objecting to civil investigative demands for documentary material, tangible things, written reports or answers to questions, and oral testimony. The obligations in the Rules stem from express language in the Act. As such, the Rules do not impose additional burdens on covered person beyond those Congress imposed in the Act. In fact, the Rules implement the statutory requirements and provide clear guidelines to recipients of civil investigative demands, providing a level of clarity and certainty that is beneficial to those obligated under the Act to comply with such demands. Moreover, ensuring compliance with Federal consumer financial law ultimately benefits covered persons by ensuring that scrupulous actors are not competitively disadvantaged in the marketplace.

Furthermore, because section 1052 of the Act and the Rules are largely based on section 20 of the FTC Act and its corresponding regulations, they present an existing, stable model of investigatory procedures that should not impose new compliance costs. The entities subject to the Bureau's jurisdiction are accustomed to complying with these or similar procedures for responding to demands for information or testimony from regulators. Thus, they do not face a significant cost of adjusting to a new procedural landscape for investigations; rather, they benefit from the Bureau's adoption of an existing model.

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The Rules contemplate that the Bureau will exercise its discretion to modify demands or extend the time for compliance for good cause. The Bureau can assess the cost of compliance with a civil investigative demand in a particular circumstance and take appropriate steps to mitigate any unreasonable compliance burden, a process providing flexibility that benefits covered persons.

Further, the Rules have no unique impact on insured depository institutions or insured credit unions with less than \$10 billion in assets described in section 1026(a) of the Act, and do not have a unique impact on rural consumers.

LIST OF SUBJECTS IN 12 CFR PART 1080

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

ISSUANCE: For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1080 to Chapter X in Title 12 of the Code of Federal Regulations to read as set forth below.

Title 12—Banks and Banking

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

Part 1080—Rules Relating To Investigations

- Sec.
- 1080.1 Scope.
- 1080.2 Definitions.
- 1080.3 Policy as to private controversies.
- 1080.4 By whom conducted.
- 1080.5 Notification of purpose.
- 1080.6 Civil investigative demands.

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- 1080.7 Investigational hearings.
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- 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. No. 111-203, Title X.

§1080.1 Scope.

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

§1080.2 Definitions.

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

“Act” means the Consumer Financial Protection Act of 2010, as amended, Public Law 111-203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.*

“Assistant Director of the Division of Enforcement” means the head of the Division of Enforcement or any Bureau employee to whom the Assistant Director of the Division of Enforcement has delegated authority to act under this part.

“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.

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“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.

“Division of Enforcement” means the division of the Bureau responsible for enforcement of Federal consumer financial law.

“Documentary material” means the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium, including electronically-stored information.

“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.

“General Counsel” means the General Counsel of the Bureau or any Bureau employee to whom the General Counsel has delegated authority to act under this part.

“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.

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§ 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 By whom conducted.

Bureau investigations are conducted by Bureau investigators designated and duly authorized under section 1052 of the Act, 12 U.S.C. 5562, to conduct such investigations.

§ 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 Assistant Director of the Division of Enforcement may 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.

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(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.

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(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

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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) Compliance. The Assistant Director of the Division of Enforcement is 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.

(d) 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 Division of Enforcement within twenty (20) days after service of the civil investigative demand, or, if

the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other 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 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 conference between counsel, and the names of all parties participating in each such conference.

(2) Extensions of time. The Assistant Director of the Division of Enforcement is authorized to rule upon requests for extensions of time within which to file such petitions. Requests for extension of time are disfavored.

(3) Disposition. The Director has the authority to rule upon a petition for an order modifying or setting aside a civil investigative demand.

(e) 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.

(f) Public disclosure. All such petitions and the responses thereto are part of the public records of the Bureau unless the Bureau determines otherwise for good cause shown.

§ 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 §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 §1080.6(d).

(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 if:

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

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(iii) The holder promptly took reasonable steps to rectify the error, including notifying a Bureau investigator of the claim 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 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

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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 in form or substance that the witness desires to make 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 unless the witness cannot be found, is ill, waives in writing his or her right to signature, or refuses to sign. If the transcript is not signed by the witness within thirty (30) days of 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 for which an objection pursuant to paragraph (b) (2) of this section may properly be made. If the witness refuses to answer a question, counsel may briefly state on the record if he or she has advised the witness not to answer the question and the legal grounds for such refusal.

(2) Where it is claimed that a witness is privileged to refuse to answer a question or to produce other evidence, the witness or counsel for the witness shall object on the record to the question or requirement and may state briefly and precisely the ground therefor.

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The witness and his or her counsel shall not otherwise object to or refuse to answer any question, and they shall not otherwise interrupt the oral examination.

(3) Any objections made under the rules in this part will be treated as continuing objections and preserved throughout the further course of the hearing without the necessity for repeating them as to any similar line of inquiry. Cumulative objections are unnecessary. Repetition of the grounds for any objection will not be allowed.

(4) 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. 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.

(5) 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.

(6) 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

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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 suspension or disbarment of the attorney from further practice before the Bureau or exclusion 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 Assistant Director of the Division of Enforcement and the General Counsel 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 Division of Enforcement is authorized to close Bureau investigations.

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

(a) The Assistant Director of the Division of Enforcement is hereby authorized 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 granting immunity under 18 U.S.C. 6004.

(b) The Bureau retains the right to review the exercise of any of the functions delegated under paragraph (a) of this section. Appeals to the Bureau from an order requiring a witness to testify or provide other information will be entertained by the Bureau only upon a showing that a substantial question is involved, the determination of which is essential to serve the interests of justice. Such appeals shall be made on the record and shall be in the form of a brief not to exceed fifteen (15) pages in length and shall be filed within five (5) days after notice of the complained of action. The appeal shall not operate to suspend the hearing unless otherwise determined by the Bureau investigator conducting the hearing or ordered by the Bureau.

§ 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 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 and tangible things the Bureau receives 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: July 22, 2011

Sam Valverde

Deputy Executive Secretary, Department of the Treasury.