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.

The comment letters received from industry regulators and supervisors focused on several concerns. Several commenters requested clarification of the types of actions for which the Bureau requires notification. The commenters also expressed concerns about the timing of the notice requirement prior to bringing an action, and one of the commenters requested clarification as to the application of the notification requirement to actions involving credit unions.

The comment letter from an individual consumer did not contain any specific comments or suggestions pertaining to the Interim Final Rule.

The comments received by the Bureau are discussed in more detail below in part V of the **SUPPLEMENTARY INFORMATION**.

V. Section-by-Section Summary

Section 1082.1(a) Notice Requirement

Section 1082.1(a) of the Interim Final Rule sets out the timing and process for notice by State Officials under non-emergency circumstances. The section requires State Officials to provide notice no later than ten days prior to initiating an action to enforce Title X of the Dodd-Frank Act or any regulation prescribed thereunder. The section also identifies to whom and how the notice should be sent and sets out an exception to the timing of the notice.

Several commenters asked the Bureau to clarify the types of proceedings subject to notification under this section. Commenters were concerned about lack of clarity in the use of the term ''action.'' The commenters noted that State regulators often pursue various courses of ''action,'' many of which do not rise to the level of a court or administrative proceeding, such as examination findings, confidential memorandums of understanding, licensing actions, and other similar ''actions.'' Commenters also asked the Bureau to clarify when it would consider an action to be one for the enforcement of any provisions of ''the Act or any regulation prescribed thereunder'' pursuant to § 1082.1(a)(1) of the Interim Final Rule. Specifically, the commenters asked whether notice is required when a State Official brings an action: (1) Pursuant to an enumerated Federal consumer financial law, other than Title X, or its implementing regulations, which the Bureau now has jurisdiction to enforce; or (2) pursuant to a State law that is predicated on Federal law, specifically Title X, but does not bring the action directly under Title X.

The Final Rule amends the Interim Final Rule to clarify the types of proceedings subject to the notice requirement. The Final Rule provides that an action requiring notification under this section is any adjudicative proceeding before a court or an administrative or regulatory body to determine whether a violation of any provision of Title X of the Dodd-Frank Act or any regulation prescribed thereunder has occurred.

Initiating an action under this section would include, but not be limited to, the filing of a complaint, motion for relief, or other document which initiates an action in a court or administrative or regulatory body. The Final Rule does not apply, for example, to examination findings or licensing proceedings. With regards to the substance of actions covered, the Final Rule does not apply to actions brought under the enumerated consumer laws, as defined in section 1002(12) of the Dodd-Frank Act, or the laws for which authorities are transferred to the Bureau under subtitles F and H of the Dodd-Frank Act, though some of those enumerated statutes have their own respective notification requirements that must be complied with. Nor would the Final Rule require notification of actions under State laws that are predicated on violations of Title X or regulations issued thereunder.

The Bureau, however, encourages State Officials to consult with the Bureau whenever interpretation of Federal consumer financial law, as defined in section 1002(14) of the Dodd-Frank Act, the regulations promulgated under Federal consumer financial law, or State law predicated on violations of Federal consumer financial law is relevant to a State regulatory or law enforcement matter, even if it is not the type of action for which notification is required. State Officials are also encouraged to consult with the Bureau when in doubt as to whether a particular anticipated activity is covered by this Final Rule. State Officials that wish to consult with the Bureau in this context may contact the Bureau via electronic mail at *Enforcement@cfpb.gov.*

The Bureau was also asked to clarify the application of § 1082.1(a) to covered entities approaching the $10 billion asset threshold relevant to the Bureau's supervisory authority under sections 1025 and 1026 of the Dodd-Frank Act or to those that fall below the threshold at a point in time. Section 1042 of the Dodd-Frank Act and paragraph 1082.1(a) apply to all actions brought by State Officials under Title X of the Dodd-Frank Act or any regulation promulgated thereunder, against any covered person, regardless of whether or not the entity's assets are above or below the threshold amount.

The Bureau also received several comments raising policy concerns. One commenter noted that it would not be prudent to impede a regulator's ability to apply the law in a timely manner simply because of a ten-day advance notice requirement. The Bureau agrees that delaying initiation of an action for the ten calendar day advance notice requirement may not always be in the public interest. The Bureau refers State Officials to § 1082.1(b), which governs *Emergency Actions* and is intended to account for these situations. In addition, under § 1082.1(a)(5), the Bureau may set an alternative deadline for the notice where the State Official demonstrates good cause.

Another commenter recommended that the Bureau require uniform interpretations of Federal law among various regulators at the Federal and State levels to discourage State attorneys general and other State regulators from initiating enforcement actions based on interpretations of Federal law that are not supported by the Bureau. The Bureau believes that it can achieve appropriate uniformity through notification and intervention, which are the mechanisms provided in section 1042(b) the Dodd-Frank Act. The Bureau also has authority to intervene in actions as otherwise provided for by law (including the Federal Rules of Civil Procedure), and may file amicus briefs in appropriate circumstances, which may assist in the uniform interpretation of Federal law. The Bureau, however, encourages State Officials and other Federal law enforcement agencies to consult with the Bureau regarding issues related to enforcement of Federal consumer financial law, especially the Dodd-Frank Act's prohibition on unfair, deceptive and abusive acts and practices. The Bureau will make resources available through its Office of Enforcement to provide consultation on such issues as needed, even if the action is not one for which the Bureau requires notification. Government officials that wish to consult with the Bureau in this context may contact the Bureau via electronic mail at *Enforcement@cfpb.gov.*

Other commenters recommended specific changes to § 1082.1(a) of the Interim Final Rule. One commenter recommended that the Bureau include in its Final Rule a requirement that State Officials bringing an action also notify ''other state regulatory officials,'' such as ''state consumer credit commissioners and prudential bank

regulators.'' Another commenter recommended that the Bureau amend § 1082.1(a)(3) to require notification of prudential regulators by electronic mail instead of the current text, which permits notice ''by mail or electronic mail.''

The Bureau declines to adopt these recommendations. First, section 1042(b)(1) of the Dodd-Frank Act limits the recipients of the notice to the Bureau and the prudential regulator, if any. Section 1002(24) of the Dodd-Frank Act defines the term ''prudential regulator'' as certain Federal regulatory agencies. While notification to State regulators may also be appropriate and should be considered by State Officials, such notification is within the discretion of the State Official. Second, the Bureau believes that allowing State Officials to notice the prudential regulator by regular mail, in addition to electronic mail, provides flexibility to State Officials subject to the notice requirement and will promote compliance with this section.

On its own initiative, the Bureau also amended the Final Rule to clarify that the State Official has ten *calendar* days prior to initiating the action to provide notice.

The Bureau adopts § 1082.1(a) of the Interim Final Rule with the changes discussed above.

Section 1082.1(b) Emergency Actions

Section 1082.1(b) of the Interim Final Rule sets out the process for the provision of notice in emergency circumstances. The section lays out the acceptable reasons for not providing notice in accordance with § 1082.1(a), and establishes a deadline to provide notice of no more than 48 hours after the initiation of an action. The section also identifies to whom and how the notice should be sent and provides an exception to the timing of notice.

The Bureau received two comments concerning § 1082.1(b) of the Interim Final Rule. One commenter argued that the emergency exception was too broad and suggested that the Bureau include in the Final Rule specific criteria for the Bureau's determination of when an emergency exception to the ten-day notification requirement is warranted as being ''in the public interest.'' Along similar lines, another commenter recommended that the Bureau remove the ''in the public interest'' language from the Final Rule and suggested that the exception to the ten-day notification requirement should only be permitted when delaying for ten days would cause ''irreparable and imminent harm or similar emergency circumstances.''

The Bureau has made minor technical revisions to the Interim Final Rule.

The Bureau adopts § 1082.1(b) of the Interim Final Rule with the changes discussed above. The Final Rule reflects the Bureau's view that determinations under § 1082.1(b) should be made on a case-by-case basis, taking into account the particular facts and circumstances of each case and that it is not necessary to include in the Final Rule specific criteria for determining when an emergency exception to the ten-day notice requirement is warranted as being ''in the public interest.'' The Bureau encourages State Officials to consult with the Office of Enforcement to determine instances when the emergency exception may apply.

Section 1082.1(c) Contents of Notice

In § 1082.1(c) of the Interim Final rule, the Bureau specifies the information that must be included in the notice provided by State Officials. This section also details certain additional information that must be provided when notice is not given until after an action has been initiated.

One commenter asked the Bureau to clarify the term ''materially different'' as used in § 1082.1(c)(5) of the Interim Final Rule. Under that section, the State Official must update the information provided in the notice if the State Official ''intends to file a complaint, motion for relief, or similar document that is materially different'' than the information initially provided. By way of clarification, material changes are those changes that substantively affect the legal or factual allegations of an action. Material changes would include, among other things, substantive changes in the factual allegations of an action, substantive changes in the citation to a State Official's legal authority to bring such an action, changes in the number of counts charged, changes in legal theories relied upon, and adding additional parties to an action. This list of material changes is not intended to be exhaustive, but is representative of the types of changes that would trigger a supplemental notification requirement under § 1082.1(c)(5). The Bureau encourages State Officials to consult with the Office of Enforcement on a case-by-case basis to determine if changes to documents filed in an action amount to ''material'' changes, requiring further notification.

Another commenter stated that § 1082.1(c) of the Interim Final Rule is inconsistent with section 1042(b) of the Dodd-Frank Act because § 1082.1(c) permits a State Official to provide a complete and unredacted copy of any complaint or action initiating document ''in its form as of the date the notice is provided.'' The commenter stated that section 1042 of the Dodd-Frank Act requires the State Official to provide the complete and ''final'' complaint at the time of initial notification.

Because § 1082.1(b) of the Interim Final Rule requires notification ten days in advance of a State Official filing a complaint or other action initiating document, it is impractical to require the State to provide the Bureau with the ''final'' version of these documents. To the extent the commenter is concerned that the notice will be inaccurate, § 1082.1(c)(5) requires supplemental notice if there are any material changes to the information provided to the Bureau in the initial notification documents.

As discussed below, § 1082.1(c) of the Interim Final Rule was also amended to require State Officials to identify, as part of the notification, any limitations the State Official requires on the disclosure of the substance or fact of the notice to any person or entity outside of the recipient agency. The Bureau also made some minor technical revisions to § 1082.1(c).

The Bureau adopts § 1082.1(c) of the Interim Final Rule with the changes discussed above.

Section 1082.1(d) Bureau Response

Section 1082.1(d) of the Interim Final Rule describes how the Bureau may intervene or otherwise participate in an action initiated by a State Official.

Several commenters suggested changes to this section of the Interim Final Rule. Some commenters recommended that the Bureau revise the Interim Final Rule to provide clear standards for when it would be appropriate for the Bureau to exercise its power to intervene under § 1082.1(d). Further, one commenter suggested that the Interim Final Rule should be amended to specify under which provisions of law the Bureau may legally intervene.

Section 1042(b)(2) of the Dodd-Frank Act authorizes the Bureau to intervene in any action brought by a State Official pursuant to the authority granted to the State under section 1042(a) of the Dodd-Frank Act. The Bureau reserves the right to intervene or otherwise participate in any action where it lawfully may do so, whether under section 1042(b)(2) of the Dodd-Frank Act or under another provision of law (including the Federal Rules of Civil Procedure). As a result, the Bureau declines to amend the Interim Final Rule as recommended and will determine which actions are appropriate for intervention on a case-by-case basis.

The Bureau made some minor technical revisions to § 1082.1(d).

The Bureau adopts § 1082.1(d) of the Interim Final Rule with the changes discussed above.

Section 1082.1(e) Confidentiality and Privilege

Section 1082.1(e) of the Interim Final Rule governs the recipient agencies' treatment of the information provided in the notice. The Interim Final Rule provides that the substance and fact of the notice shall not be disclosed by the Bureau or the prudential regulator prior to the information becoming public and also establishes certain exceptions to this requirement. These exceptions include (1) disclosures required by law, (2) disclosures consented to by the State Official, and (3) disclosures made to another government entity to protect the public interest after consultation with the State Official. In addition, the Interim Final Rule states that the provision of notice shall not be deemed a waiver of any applicable privilege.

One commenter raised two concerns with respect to this section. First, the commenter stated that the Bureau does not have the authority to limit a prudential regulator's ability to disclose such information and asserted that prudential regulators actually have an obligation to alert entities they supervise of such a notification. Second, the commenter asserted that the Bureau has no legal basis for its assertion that information provided by State Officials pursuant to the notification requirement shall not be deemed a waiver of any applicable privilege.

Section 1082.1(e) is promulgated pursuant to the Bureau's exclusive authority, under section 1042(c) of the Dodd-Frank Act, to prescribe regulations implementing the notice requirement. That authority necessarily includes the power to determine how the notice will be provided and how any non-public information contained therein will be treated by those who receive it. The Bureau, however, has revised the Interim Final Rule to emphasize that the restrictions on disclosure emanate from the nature of the information as belonging to the State. That information, including the fact of notice itself, is typically both sensitive and confidential. There is nothing in the Dodd-Frank Act to suggest that Congress intended section 1042(b) to prevent State Officials from keeping the substance and fact of their law enforcement actions confidential vis-à-vis third parties. Accordingly, the Final Rule amends the Interim Final Rule to provide that the substance and fact of the notice shall be subject to any limitations on disclosure required by the State Official pursuant to section 1082.1(c)(viii), subject to certain exceptions. As set forth in section 1082.1(e) of the Interim Final Rule, these exceptions include (1) disclosures required by law, (2) disclosures consented to by the State Official, and (3) disclosures made to another government entity to protect the public interest after consultation with the State Official.

With respect to the commenter's assertion that prudential regulators actually have an obligation to alert entities they supervise if they receive notification of an action by a State Official, the commenter provided no support for this assertion nor is the Bureau aware of any.

With respect to the commenter's privilege concerns, the provision of notification by a State Official to the Bureau pursuant to the Final Rule will not constitute a waiver of any applicable privilege. The disclosure by State Officials of the notification materials required by the Final Rule constitutes a compelled disclosure to the Bureau of information required by law, as opposed to a voluntary disclosure or a disclosure to an adversary that would constitute a waiver of applicable privileges. Moreover, the Bureau's rulemaking authority under sections 1022 and 1042 of the Dodd-Frank Act includes the authority to prescribe rules governing the implications of compliance with the statutory notice mandate. This provision furthers that mandate by encouraging compliance.

Finally, other commenters were concerned about the disclosure of confidential and/or privileged material contained in documentation maintained by the Bureau, including State notification documents provided to the Bureau. One commenter expressed specific concern regarding maintaining confidentiality when sending electronic mail to an anonymous address such as *Enforcement@cfpb.gov.*

Section 1082.1(e) of the Final Rule expressly provides that the State Official may impose limitations on the disclosure of the substance or fact of the notice to any entity outside of the recipient agency, subject to certain exceptions. Further, the Bureau will comply with the confidentiality procedures promulgated in its Interim Final Rule governing the Disclosure of Records and Information, 12 CFR 1070, to the extent applicable, and any future amendments to that Rule. Finally, the Bureau notes that its electronic mail system, which includes the incoming mailbox for *Enforcement@cfpb.gov* and *ExecSec@cfpb.gov,* is a secured web-based electronic mail system and access to these secured accounts is limited to select personnel within the Office of Enforcement and the Office of the Executive Secretary.

The Bureau adopts § 1082.1(e) of the Interim Final Rule with the changes discussed above.

Section 1082.1(f) No Private Right of Action or Defense

Section 1082.1(f) of the Interim Final Rule clarifies that § 1082.1 does not create any right, benefit, or defense which is enforceable against the United States or State Officials enforcing Title X of the Dodd-Frank Act or any regulation prescribed thereunder.

The Bureau received one comment on this section, which stated that to the extent the Interim Final Rule sets out rights enforceable under the Dodd-Frank Act or other statutes, the Interim Final Rule cannot remove those rights. Thus, the commenter recommended that the Bureau delete § 1082.1(f).

The Bureau adopts § 1082.1(f) of the Interim Final Rule without change in the Final Rule. By way of clarification, § 1082.1(f) of the Final Rule does not bar the exercise of any pre-existing rights; it merely makes clear that the Final Rule creates no additional rights.

VI. Section 1022 Analysis

In developing the Final Rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[1] In addition, the Bureau has consulted or offered to consult 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 before and after issuing the Interim Final Rule, including with regard to consistency with any prudential, market, or systemic

[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) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to a rulemaking of this kind that does not establish standards of conduct is unclear and to 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.

objectives administered by such agencies.

The Final Rule implements the Dodd-Frank Act's requirement to provide notice to the Bureau and prudential regulators when a State initiates an action under Title X of the Dodd-Frank Act or a regulation prescribed thereunder. The Final Rule will help ensure more efficient and consistent implementation of the State notification requirement, which will benefit both consumers and covered persons. In particular, the Final Rule provides that the notice shall be subject to any limitations on disclosure imposed by the State Official subject to certain limitations, establishes notification deadlines, including an exception for emergency proceedings, and specifies the content of the notice.

The Final Rule neither imposes any obligations on consumers nor has any direct impact on their access to consumer financial products or services. Further, 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. Finally, the Final Rule does not have a unique impact on rural consumers.

A 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 fully 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 imposed by the State Notification Rule that are not discussed in part C of the **SUPPLEMENTARY INFORMATION** to the Interim Final Rule.

VII. Procedural Requirements

1. Administrative Procedure Act

One commenter questioned whether the Interim Final Rule is exempt from the notice-and-comment requirements of section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553. The commenter argued that the Interim Final Rule is not properly characterized as relating solely to agency organization, procedure or practice because it requires the submission of information regarding covered persons to Federal officials and also establishes rules for the treatment of such information, which could result in potential harm to covered persons. The commenter further urged the Bureau to seek comment on similar rulemakings in the future.

The notice-and-comment procedures described in section 553(b) of the APA do not apply to rules of agency organization, procedure, or practice, or when the agency for good cause finds that notice and public comment on the rules being promulgated are impracticable or unnecessary. Both the Interim Final Rule and Final Rule relate to agency organization, procedure, or practice because they establish procedures for State Officials to provide notice to the Bureau; the requirement to provide the notice itself derives from section 1042(b)(1)(A) of the Dodd-Frank Act—not the Bureau's regulations. In any event, for the reasons discussed in the preamble to the Interim Final Rule, the Bureau had good cause for issuing the Interim Final Rule without prior notice and an opportunity for comment. The Bureau nevertheless solicited comment on the Interim Final Rule. Moreover, because the Final Rule merely finalizes the Interim Final Rule, to which it is substantially similar, the Bureau for good cause finds that additional notice and public comment on the Final Rule is unnecessary.

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.* Even if this requirement applied, the Bureau finds there is good cause for the Final Rules to take effect immediately upon publication in the **Federal Register**. The Final Rule is substantially similar to the Interim Final Rule, which became effective on July 29, 2011. Thus, no purpose would be served by delaying the Final Rule's effective date.

2. Regulatory Flexibility Act

Because no notice of proposed rulemaking was required, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2), do not apply.

3. Paperwork Reduction Act

The collection of information requirements contained in this Final Rule have been approved by the Office of Management and Budget (OMB) in accordance with the PRA under OMB control number 3170–0019. The estimated time per response was 30 minutes. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 12 CFR Part 1082

Banks, Banking, Consumer protection, Credit, Credit unions, Federal Reserve System, Investigations, Law enforcement, National banks, Savings associations, State and local governments, Trade practices.

For the reasons set forth in the preamble, the Bureau of Consumer Financial Protection revises part 1082 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1082—STATE OFFICIAL NOTIFICATION RULES

Authority: 12 U.S.C. 5481 *et seq.*

§ 1082.1 Procedures for notifying the Bureau of Consumer Financial Protection when a State Official takes an action to enforce Title X of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010.

(a) *Notice requirement.* (1) Pursuant to 12 U.S.C. 5552(b) and except as provided in paragraph (b) of this section, every State attorney general and State regulator (State Official) shall provide the notice described in paragraph (c) of this section to the Office of Enforcement of the Bureau of Consumer Financial Protection (the Bureau), the office of the Bureau responsible for enforcement of Federal consumer financial law pursuant to Title X of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, as amended, Public Law 111–203 (July 21, 2010), codified at 12 U.S.C. 5481 *et seq.* (the Dodd-Frank Act), and the Office of the Executive Secretary of the Bureau at least ten calendar days prior to initiating any action against any covered person. For purposes of this section, an action requiring notification is any adjudicative proceeding before a court or an administrative or regulatory body to determine whether a violation of any provision of Title X of the Dodd-Frank Act or any regulation prescribed thereunder has occurred. Initiating an action under this section would include but not be limited to the filing of a complaint, motion for relief, or other document which initiates an action or a proceeding.

(2) Notice shall be provided to the Office of Enforcement and the Office of the Executive Secretary, or their successor offices, via electronic mail to *Enforcement@cfpb.gov* and *ExecSec@cfpb.gov*. In the event of technical problems preventing the delivery of notice, the Office of

Enforcement or its successor entity should be contacted.

(3) On the same date that notice is provided to the Office of Enforcement and the Office of the Executive Secretary pursuant to paragraph (a)(1) of this section, a copy of the notice shall be sent to the relevant prudential regulator, if any, or the designee thereof, by mail or electronic mail.

(4) Notice shall be deemed to have been provided as of the date of transmitting or mailing the materials described in paragraph (c) of this section.

(5) The Office of Enforcement, or its successor entity, in consultation with a State Official, may provide, for good cause shown, an alternative deadline for the notice described in paragraph (a)(1) of this section.

(b) *Emergency actions.* (1) Pursuant to 12 U.S.C. 5552(b), in the event that a State Official initiates or intends to initiate an action and, in order to protect the public interest or prevent irreparable and imminent harm, is unable to provide timely notice as described in paragraph (a) of this section, the State Official shall provide the notice described in paragraph (c) of this section as soon as is practicable and not later than 48 hours after initiation of the action.

(2) Notice shall be provided in accordance with the procedures set forth in paragraphs (a)(2) through (4) of this section.

(3) The Office of Enforcement, or its successor entity, in consultation with a State Official, may provide, for good cause shown, an alternative deadline for the notice described in paragraph (b)(1) of this section.

(c) *Contents of notice.* (1) Pursuant to 12 U.S.C. 5552(b), the notice required under paragraphs (a) and (b) of this section shall include a written description of the anticipated action, including:

(i) The court or body in which the action is to be initiated;

(ii) The identity of the parties to the action;

(iii) The nature of the action to be initiated;

(iv) The anticipated date of initiating the action;

(v) The alleged facts underlying the action;

(vi) A contact name, electronic mail address, and phone number of an individual involved with the matter in the office of the State Official with whom the Bureau may consult;

(vii) A determination as to whether there may be a need to coordinate the prosecution of the action so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency; and

(viii) A statement by the State Official setting forth any limitations on the disclosure of the substance or fact of the notice to any person or entity outside of the recipient agency.

(2) The notice required under paragraphs (a) and (b) of this section shall further include a complete and unredacted copy of any complaint, motion for relief, or similar document that is the subject of the notice, in its form as of the date the notice is provided. To the extent the complaint, motion for relief, or similar document contains the information described in paragraph (c)(1) of this section, provision of the complaint, motion for relief, or similar document shall be deemed sufficient notice of that information.

(3) In the event that notice is provided after the initiation of an action, the written description shall also include the following, in addition to the information described in paragraph (c)(1) of this section:

(i) A brief description of any proceeding that occurred as a result of the initiation of the action, including any orders issued by a court or other body;

(ii) Any case number, matter number, or designation assigned to the action; and

(iii) Information on scheduled court or other administrative or regulatory proceedings.

(4) In the event that notice is provided after the initiation of an action, in addition to the requirements set forth in paragraph (c)(3) of this section, the notice shall further include a complete, unredacted copy of any document filed by any party in relation to the action and any orders issued by the court or other body.

(5) If the State Official, after providing the notice described in paragraphs (c)(1) and (c)(2) of this section, intends to file a complaint, motion for relief, or similar document that is materially different from the document included with the notice, the State Official shall provide a copy of that document prior to filing, in accordance with the method described in paragraph (a)(2) of this section.

(d) *Bureau response.* In any action described in paragraphs (a) and (b) of this section, the Bureau may:

(1) Intervene in the action as a party;

(2) Upon intervening,

(i) Remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) Be heard on all matters arising in the action;

(3) Appeal any order or judgment, to the same extent as any other party in the proceeding may; and

(4) Otherwise participate in the action as appropriate.

(e) *Confidentiality and privilege.* (1) The information described in paragraph (c) of this section, including the complaint, motion for relief, or other document, as well as the fact that notice has been provided, shall be subject to any limitations on disclosure imposed by the State Official pursuant to paragraph (c)(1)(viii) of this section; provided, however, that the recipient may disclose such information:

(i) As required by law;

(ii) When the information is or becomes publicly available;

(iii) With the consent of the State Official; or

(iv) To another State or Federal government entity when necessary to protect the public interest, after consultation with the State Official who provided the notice.

(2) Provision of notice by a State Official and disclosure of information pursuant to paragraph (e)(1) of this section shall not be deemed a waiver of any applicable privilege.

(f) *No private right of action or defense.* The requirements set forth in this section are not intended to, do not, and may not be relied upon to create any right, benefit, or defense, substantive or procedural, enforceable at law by a party against the United States or any State enforcing the provisions of the Dodd-Frank Act or any regulation prescribed thereunder.

Dated: June 4, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–14062 Filed 6–28–12; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1071

[Docket No.: CFPB–2012–0020]

RIN 3170–AA27

Equal Access to Justice Act Implementation Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Equal Access to Justice Act (EAJA or the Act) requires agencies