UNITED STATES OF AMERICA
BEFORE THE BUREAU OF CONSUMER FINANCIAL PROTECTION

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IN THE MATTER OF
Credit Acceptance Corporation

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PETITION TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND

June 22, 2020

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INTRODUCTION

Credit Acceptance Corporation ("Credit Acceptance" or the "Company") hereby respectfully petitions the Bureau of Consumer Financial Protection to modify or set aside the civil investigative demand received by the Company on June 1, 2020 (the "CID," attached as Exhibit 1). In support thereof, the Company states as follows.

SUMMARY OF ARGUMENT

This petition presents the simple but fundamental question of whether a CID may request information that lies outside of the Notification of Purpose required by 12 U.S.C. § 5562(c)(2) and 12 C.F.R. § 1080.5. Put even more simply: Will the Bureau live by its legal obligation and oft-stated promise to give fair notice to companies of what it is investigating?

In this case, the CID's Notification of Purpose enumerates four specific topics: (i) providing consumers with titles; (ii) notifying consumers of lawsuits; (iii) furnishing data to credit bureaus; and (iv) Truth-in-Lending Act compliance. However, rather than confining its requests to those four topics, the CID engages in a broad fishing expedition, touching on virtually all aspects of the Company's auto finance business, including dealer oversight, monitoring and corrective action; vehicle sales process and pricing; dealer profitability; GPS Starter Interrupter Devices ("GPS-SID"); vehicle service contracts ("VSC"); and Guaranteed Asset Protection ("GAP"). Each of these topics [redacted], but none falls within a reasonable construction of the CID's Notification of Purpose. Consequently, the CID must be modified to strike each of these requests or clearly confine them to the enumerated topics.

To justify its sweeping requests, Enforcement relies on generic language in the preamble in the Notification of Purpose describing the Bureau's interest in investigating the

Company's business of "originating auto loans" and "servicing loans," as well as a vague reference to seeking information about "false or misleading representations to consumers." This language, however, is so broad that it fails to provide notice to Credit Acceptance of the topics of inquiry, as required under law. If—as Enforcement conjectures—a CID could simply state that the topics being investigated fall under the broad headings of originating or servicing loans (which comprises virtually all of the Company's business) or "false or misleading representations," then it renders the enumeration of specific topics a nullity, and sidesteps the requirement of providing fair notice.

Enforcement's reliance on vague and generalized language outside the enumerated topics in the Notification of Purpose is especially questionable in light of the Company's full cooperation [redacted] and the lack of transparency regarding the shift [redacted] to Enforcement. Indeed, the Bureau's very issuance of the CID is in direct tension with the Bureau's policy, stated by Director Kraninger, to engage through the supervisory process until an institution "demonstrates that process won't work for them." That is clearly not the case here.

To be clear, Credit Acceptance is not challenging the validity of the Notification of Purpose itself. Rather, this petition challenges the requests in the CID that are not reasonably connected to that Notification of Purpose. It is those requests that must be stricken or modified, as they fail to meet the requirement of providing fair notice as to what the Bureau is investigating.

DISCUSSION

I. FACTUAL BACKGROUND.

A. The Company's History of Supervision and Cooperation.

Credit Acceptance is an "indirect" auto finance company, accepting assignment of retail installment sales contracts from vehicle dealerships, which operate independently of the Company. After these contracts are assigned to Credit Acceptance, it services them, collecting monthly payments, providing customer service, and engaging in other typical activities of a servicer. The Company does not lend directly to consumers, nor does it service contracts originated by others, offer vehicle leasing, or own or operate dealerships.

As a "larger participant" in the automobile financing market, the Company is subject to regular Bureau examination, and as a licensed finance company is subject to regular examinations by state supervisors. *See* 12 C.F.R. § 1090.108. Since June 2015, when the Bureau's auto finance larger participant rule was finalized, it has [redacted].

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

  [redacted]
- [redacted]

[redacted]

[redacted]

Credit Acceptance's strong record of engagement with the Bureau is not limited to the supervisory context. In 2014, for example, the Company proactively reached out to and met with the leadership of the Bureau's Office of Fair Lending and Equal Opportunity. At this meeting, the Company discussed its planned roll-out of an industry-leading approach to fair lending compliance and monitoring, featuring fixed interest rates, with downward departures permitted only for limited, documented reasons—precisely along the lines that the Bureau was advocating as a best practice. In addition, senior Company officials, including its Chief Legal Officer, have engaged directly with the Bureau in other contexts, including through service on the American Financial Services Association Board of Directors, and have engaged positively with other agencies, such as the Federal Trade Commission, on the issue of GPS-SID devices. In short, the Company's commitment to compliance has been—and remains—exemplary. If, in the words of Director Kraninger, enforcement is to be reserved for "bad actors" who show that the "supervisory process will not work for them," it is clear that the Enforcement inquiry here is contrary to Bureau policy.

B. <u>Enforcement Inquiry: Initial Two CIDs</u>.

[redacted]

[1] [redacted]

[redacted]—Enforcement nonetheless initiated an investigation into the Company. The first CID, issued on April 22, 2019, comprised 17 interrogatories with 50 subparts, 6 requests for written reports with 75 subparts, 20 document requests, and 6 investigational hearing topics with 17 subparts. (Exhibit 4). Much of the focus of this initial CID was Data Furnishing.

Regrettably, Credit Acceptance's experience of receiving broad CIDs along with zero transparency as to the nature or basis for the investigation (or why the supervisory process was being supplanted) is part of a larger and well-documented pattern of overreach by Enforcement, as indicated by numerous recent public comments regarding the Bureau's enforcement process. Among other things, commenters have noted that Enforcement over-relies on "catch-all" or "vague boilerplate" statements in its Notifications of Purpose, regularly issues CIDs that are "unfocused, untargeted" and directed toward "all facets of the Company's operations," and frequently engages in "open-ended . . . fishing expeditions."[2] These numerous comments accurately describe the situation here as well.

Precisely why the Bureau issued a CID to a Company [redacted]—is unknown even now, more than a year into the investigation. However, the April 2019 CID

[2] Comment from Ballard Spahr LLP, Apr. 26, 2018, Docket No. CFPB-2018-0001, at 3; Comment from the National Association of Federally-Insured Credit Unions, Apr. 26, 2018, Docket No. CFPB-2018-0001, at 2; Comment from The Real Estate Services Providers Council, Inc., Apr. 25, 2018, CFPB-2018-0001, at 1.

directly followed a colloquy between the Director and Congresswoman Rashida Tlaib, in which the congresswoman inaccurately implied that Credit Acceptance was subject to a Bureau consent order. *See* Testimony of Director Kathleen L. Kraninger before the Committee on Financial Services, U.S. House of Representatives, March 7, 2019. As noted above, Credit Acceptance has had [redacted] and has never been subject to a Bureau consent order, thus raising the distinct possibility that the investigation may have been premised on a mistaken assumption, and highlighting the critical importance of providing fair notice to the Company of why it was being investigated.

Given its strong and positive engagement with the Bureau, the Company was surprised to receive the April 2019 CID, and asked Enforcement Staff to explain what had prompted the inquiry and to refer any concerns [redacted]. The Staff's refusal to even outline the Bureau's concerns, much less refer the matter [redacted] was disappointing, and in conflict with the Director's statement that under her tenure, the Bureau would rely heavily on the supervisory process, "working confidentially in a back-and-forth process with a financial institution to prevent consumer harm until the institution demonstrates that process won't work for them." Director Kathleen L. Kraninger, Consumer Financial Protection Bureau, Speech at the Bipartisan Policy Center (Apr. 17, 2019). Quite simply, given that the Company had worked cooperatively with the CFPB and fully embraced the supervisory process, the issuance of a CID, and the Enforcement Staff's refusal to explain what had prompted the inquiry were in direct opposition to the Director's stated policy.

Nonetheless, the Company responded fully to the April 2019 CID, producing 290,437 documents comprising more than 3 million pages and more than 1,700 gigabytes of

data. Subsequently, on August 30, 2019, Enforcement issued a second CID to the Company, following up on a limited number of issues related to the first CID. The Company responded on September 23, 2019, producing 47 documents.

In October 2019 and March 2020, Enforcement Staff posed follow-up questions to the Company regarding its privilege log and a variety of other topics. The Company complied with each request, producing, among other things, information regarding numerous audits, reviews, evaluations, self-assessments, compliance reports, monitoring reports, and investigations that it had conducted. The Company also consented to Enforcement's request for a telephonic interview of an employee knowledgeable about the Company's information technology systems, and participated in a three-hour telephonic interview on these topics on April 21, 2020.

C. Enforcement Inquiry: Third and Forth CIDs.

Following the April 21, 2020 telephonic interview, Enforcement Staff indicated that they intended to issue another CID, which they implied would be another brief follow-up, designed to "request some of the information in the reports we discussed yesterday, along with some other information." Enforcement Staff also indicated that the new CID would be drafted so as to "reduce the burden on [Credit Acceptance]."

The third CID, issued on May 7, 2020, was not, however, a mere follow-up regarding the topics covered in the telephonic interview; nor did it reflect any apparent effort to lessen the burden placed on the Company. To the contrary, the May 7 CID contained 36 requests comprising 184 subparts covering a broad range of topics, [redacted], including: (1) vehicle

pricing; (2) dealer profitability; (3) VSCs; (4) GAP coverage; (5) collections lawsuits; (6) customer "welcome letters"; (7) payment notices; and (8) GPS-SID devices.

The May 7 CID provided the following "Notification of Purpose Pursuant to 12 C.F.R. § 1080.5":

> The purpose of this investigation is to determine whether auto lenders or associated persons, in connection with originating auto loans (including marketing and selling products ancillary to such loans), collecting debts, or consumer reporting, have: (1) collected amounts consumers did not owe, failed to notify consumers of collections lawsuits filed against them, or made false or misleading representations to consumers in a manner that is unfair, deceptive, or abusive in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; (2) failed to perform the duties of a furnisher of information to consumer reporting agencies in a manner that violates the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., principally § 1681s-2, or Regulation V, principally Subpart E; or (3) failed to follow the requirements for providing disclosures to consumers or used advertisements with prohibited content in a manner that violates Regulation Z, 12 C.F.R. Part 1026, principally Subpart C, implementing the Truth in Lending Act, 15 U.S.C. 1601 et seq.

In addition to its 16 interrogatories, 8 document requests and 12 requests for written reports, the CID included a request for an investigational hearing relating to the Company's privilege log.

Following receipt of the third CID on May 7, 2020, the parties conducted a telephonic meet-and-confer on May 18, 2020, attended by the Company's Chief Legal Officer, its Senior Vice President and Assistant General Counsel for Regulatory Compliance, a vice president in the Company's analytics department, and the Company's outside counsel. During the meet-and-confer, counsel specifically argued that (i) many CID requests were not supported by the Notification of Purpose; and (ii) that the request for investigational hearing was improper.

During this more than 90-minute meet-and-confer, counsel discussed a number of requested modifications to the CID and a variety of technical issues, and proposed a schedule for the production of responsive materials. Counsel also asked Enforcement Staff to explain how certain of the requests in the CID were connected to the Notification of Purpose. Enforcement Staff declined to do so, stating that the meet-and-confer was "not the time or place" for such discussions. The Company subsequently submitted a modification request seeking the removal of the requests that exceeded the Notification of Purpose and the removal of the Investigational Hearing request.

Following an exchange of correspondence with the Company, the Bureau withdrew the May 7 CID and issued the fourth CID, on June 1. The June CID, which is the subject of this Petition to Modify or Set Aside, contained all of the same requests as the May 7 CID (except for the Investigational Hearing request), but revised the Notification of Purpose as follows:

> The purpose of this investigation is to determine whether auto lenders or associated persons, in connection with originating auto loans (including marketing and selling products ancillary to such loans), servicing loans, collecting debts (including through repossessing vehicles), or consumer reporting, have: (1) made false or misleading representations to consumers, failed to ensure that borrowers received title to their vehicles, or failed to notify consumers of collections lawsuits filed against them, in a manner that is unfair, deceptive, or abusive in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536; (2) knowingly or recklessly provided substantial assistance to others in such violations, also in violation of §§ 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536; (3) failed to perform the duties of a furnisher of information to consumer reporting agencies in a manner that violates the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., principally § 1681s-2, or Regulation V, principally Subpart E; or (4) failed to follow the requirements for providing disclosures to consumers or used advertisements with prohibited content in a manner that violates Regulation Z, 12 C.F.R. Part 1026, principally Subpart C,

> implementing the Truth in Lending Act, 15 U.S.C. 1601 et seq. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

On June 11, 2020, the parties conducted another meet-and-confer, attended by the same personnel as in the May 2020 meet-and-confer. At the June meet-and-confer, the Company incorporated by reference its previous objections, and explicitly stated that most of the requests were either fully or partially outside the scope of the Notification of Purpose. The Company expressed strong concerns about Enforcement's attempt to re-engineer the Notification of Purpose to justify its overreaching requests, rather than appropriately limiting its requests to the Notification of Purpose that was approved in connection with the opening of this investigation.[3] Enforcement Staff declined to state how the requests were related to the Notification of Purpose, except with respect to Interrogatory 14, which the Staff argued was related to Data Furnishing (a point with which the Company agrees in part).

The Company submitted a modification letter on June 16, 2020, raising the arguments set forth in this petition. (Exhibit 5). Enforcement responded that same day, declining to remove or modify any requests or make any other changes other than to the production schedule. (Exhibit 6).[4] This timely Petition to Modify or Set Aside the Civil Investigative Demand followed.

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[3] As a policy matter, it is particularly troubling that, rather than staying within the confines of the authorized investigation, Enforcement Staff seeks to justify its overreach by simply revising the Notification of Purpose. In doing so, it is unclear whether the Staff complied with the Bureau's internal process for opening investigations, which requires approval of the Notification of Purpose at the *outset* of the investigation.

[4] The Bureau's modification letter disingenuously states that Credit Acceptance did not "raise any concerns relating to burden" in the June meet-and-confer. As noted above, the Company stated at the outset of the call that it was incorporating by reference the points made in the previous meet-and-confer, which had occurred only three weeks earlier, and which involved the exact same requests.

II. THE CID IS NOT SUPPORTED BY THE NOTIFICATION OF PURPOSE AND EXCEEDS THE AUTHORIZED SCOPE OF INVESTIGATION.

Credit Acceptance has a long and consistent history of compliance and cooperation with the Bureau, and therefore files this petition only after having exhausted every effort to reach an amicable resolution with Enforcement Staff. However, such resolution has proved impossible, as Enforcement has continued to press requests for information that are not connected to the Notification of Purpose, thus depriving Credit Acceptance of its fundamental right to know *what conduct is being investigated*—an issue made all the more pertinent by the fact that the Company has had [redacted] in which the Bureau has concluded that the Company [redacted]

The Bureau does not have the "unfettered authority to cast about for potential wrongdoing." *In re Sealed Case (Admin. Subpoena)*, 42 F.3d 1412, 1418 (D.C. Cir. 1994). Rather, to the extent it employs its considerable power to issue a CID (with the corresponding expense and diversion of resources that it places on a recipient), the Bureau is required by statute to inform the recipient of what, *specifically*, the Bureau is investigating, including the nature of the conduct and the particular laws being investigated. Thus, under the Consumer Financial Protection Act ("CFPA"), "[e]ach [CID] shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." 12 U.S.C. § 5562(c)(2); *see also* 12 C.F.R. § 1080.5.

The courts have emphasized that rather than being a mere technicality, the Notification of Purpose serves an "important" purpose, inasmuch as it provides the recipient of the CID with "sufficient notice as to the nature of the conduct and the alleged violation under investigation." *Consumer Fin. Protec. Bureau v. Accrediting Council for Indep. Colls. & Sch.*, 854 F.3d 683, 690 (D.C. Cir. 2017) ("*ACICS*"). And thus while some degree of generality is

permitted in framing the Notification of Purpose, overly broad language fails to meet this statutory requirement. *Id.*

The Bureau's own rules are consistent with this statutory and judicial mandate. Indeed, following the ruling by the D.C. Circuit in *ACICS* and another similarly unfavorable ruling by the Fifth Circuit in *Consumer Financial Protection Bureau v. Source for Public Data, L.P.*, 903 F.3d 456 (5th Cir. 2018), the Bureau, in April 2019, updated its policies regarding CIDs "to ensure they provide more information about the potentially wrongful conduct under investigation" and "the potentially applicable provisions of law that may have been violated." Press Release, *CFPB Announces Policy Change Regarding Bureau Civil Investigative Demands*, Consumer Financial Protection Bureau (Apr. 23, 2019).

The CID under review here complies with neither the updated Bureau policy nor the underlying statutory requirement of fair notice. In particular, the CID specifically identifies four—and only four—subjects of investigation:

(1) Providing Consumers with Titles: Whether the Company has "failed to ensure that borrowers received title to their vehicles."

(2) Notifying Consumers of Lawsuits: Whether the Company has "failed to notify consumers of collections lawsuits filed against them."

(3) Data Furnishing: Whether the Company has "failed to perform the duties of a furnisher of information to consumer reporting agencies"

(4) Truth-in-Lending Act Compliance: Whether the Company has "failed to follow the requirements for providing disclosures to consumers or used advertisements with prohibited content in a manner that violates Regulation Z."

However, of the 36 requests contained in the CID, only 5 clearly fall within the scope of the Notification of Purpose,[5] and many have no connection whatsoever to the

[5] These requests are Interrogatory 1, Written Reports 1, 2, and 10, and Document Request 6.

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Notification.[6] For example, the CID requests information regarding VSC and GAP coverage, both of which fall within the general category of ancillary products, which is not among the four enumerated topics in the Notification of Purpose. Similarly, the CID requests information on the distinct subjects of vehicle pricing, dealer monitoring, dealer profitability, and GPS-SID devices, none of which is part of the Notification of Purpose.[7]

Moreover, as to many other requests in the CID, there is only a peripheral connection to the Notification of Purpose. These requests should be modified so as to correspond to the four topics enumerated in the Notification of Purpose. For example, Interrogatory 7 requests *all* lawsuits filed against the Company during a defined period; however, only those lawsuits relating to one of these four topics are relevant. Likewise, Request for Written Report 7 requests information regarding *all* consumer complaints. This request, like many others, is valid only insofar as those complaints pertain to Providing Consumers with Titles, Notifying Consumers of Lawsuits, Data Furnishing, and Truth-in-Lending Act Compliance.

As noted above, at the meet-and-confer, Enforcement Staff declined to explain the connection between their requests and the Notification of Purpose, with the exception of Interrogatory 14, which was described as being related to Data Furnishing. As to all other requests at issue in this petition, Enforcement Staff appear to be relying solely on (i) the

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[6] The complete list of CID requests that fall entirely outside or partially outside of the Notification of Purpose is set forth in the Company's June 11, 2020 correspondence at pages 4-5, and is also incorporated into the formal modification request at pages 18-19 of this petition.

[7] The overbreadth of the CID is compounded by the fact that Enforcement appears to have made no meaningful effort to avoid asking for information that has already been obtained or topics that had already been covered in recent Bureau examinations.

"originating" and "servicing" language in the preamble of the Notification of Purpose and (ii) the statement regarding "false or misleading representations to consumer."

The "originating" and "servicing" language in the Notification of Purpose, however, does not describe the "nature of the conduct" being investigated with *any* particularity, much less that required under 12 U.S.C. § 5562(c)(2). Rather, it describes the *type of business* being investigated, which is then limited by the four topics described above, which in turn describe the *conduct* being investigated.[8] The Company's business consists almost entirely of originating and servicing loans. Therefore the "originating" and "servicing" language—which is contained in the preamble to the Notification of Purpose—does not meaningfully inform the Company as to *what* is under investigation. Indeed, if "originating" and "servicing" were *independently* sufficient to support CID requests, then there would be no need to specify the four topics of investigation.

The much more natural (and only logical) reading is that the "originating" and "servicing" language only sets the stage, which is then narrowed, and defined by, the specifically enumerated topics. Under 12 U.S.C. § 5562, the specifically enumerated topics in the Notification of Purpose are not intended to serve as mere *examples* of what the Bureau may investigate. Rather, they define the *universe* of what the Bureau may investigate in a particular CID. In contrast, under Enforcement's flawed interpretation, once a CID states *some* specific subject of investigation, such as Truth-in-Lending compliance, such specific subject is the

[8] In its internal Enforcement manual, the Bureau provides several examples of appropriate Notifications of Purpose, as well as a template, under which the Notification of Purpose should state: "The purpose of this investigation is to determine whether [category of entity] or other unnamed persons have engaged or are engaging in [describe conduct] in violation of [insert list of relevant laws]." CFPB, "Policies and Procedures Manual, Office of Enforcement," p. 69 (May 2017). Based on this template, the "origination" and "servicing" language corresponds to the "category of entity," while Providing Consumers with Titles, Notifying Consumers of Lawsuits, Data Furnishing, and Truth-in-Lending Act Compliance are the "conduct" being investigated.

proverbial camel's nose under the tent that allows it to investigate entirely unrelated subjects, such as GPS-SID devices or vehicle service contracts. This is not the case.

Nor does the "false or misleading representations to consumers" language add any meaningful specificity to the CID. This language was likewise in the third CID's Notification of Purpose, and its location has simply been shifted to the beginning of the first section in the fourth CID. But as in the third CID, this language does not state the "nature of the conduct" under investigation, but instead is the sort of "perfunctory" statement, such as "unlawful acts and practices," that does not meet the requirements of 12 U.S.C. § 5562(c)(2). *See ACICS*, 854 F.3d at 690.[9]

In response, Enforcement cites legal precedents which it regards as helpful, but which are either irrelevant or provide only limited support for Enforcement's positions. For example, the *Seila Law* case, with which the Director is undoubtedly familiar, is principally concerned with the constitutionality of the Bureau's structure, contains only a cursory analysis of what it means for a CID to provide fair notice, and does not acknowledge or attempt to distinguish the *ACICS* or *Source for Public Data* decisions.

Nor should the Director place undue reliance on *CFPB v. Heartland Campus Solutions, ECSI*, 747 F. App'x 44 (3d Cir. 2018), which involved a CID issued during the tenure of Director Cordray, prior to the CFPB's revisions of its own standards for fairness in notifications. In the *Heartland Campus* matter, a divided panel upheld a CID's Notification of Purpose that enumerated five activities as to which the Bureau was investigating "unfair,

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[9] To further illustrate the essentially unlimited nature of the "originating" and "servicing" language in the preamble, and generic "false or misleading" language, when the Company asked what aspects of the business were beyond the scope of the Notification of Purpose, the Enforcement Staff could only point to "investor reporting"—a subject clearly outside of the Bureau's jurisdiction.

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deceptive, or abusive acts or practices." In concluding that the Notification of Purpose was appropriate, the panel concluded that it is permissible to use broad terminology, but *also* observed that the five enumerated subjects define what is "under investigation." *Id*. at 49.[10] The same is true here. Credit Acceptance is not challenging the *Notification of Purpose itself*, but only those requests that exceed the Notification. General language regarding "originating" and "servicing" is not *per se* objectionable in a Notification of Purpose, but neither does it provide sufficient notice of the topics under investigation.

Moreover, to the extent that the Director were to be even partially persuaded by the majority opinion in *Heartland Campus*, rather than the eloquent dissent from Judge Rendell and the contrary authority presented by *ASICS* and *Source for Public Data*, it is well worth considering the negative policy ramifications of what Enforcement is arguing for. Is the Director really going to permit the agency to rely on a vague indication of what is being investigated, such as "false and misleading representations?" Does the Director really want a Bureau in which Enforcement acts as though the enumerated topics of investigation, are mere examples and do not meaningfully limit what Enforcement may investigate? Does the Director support having a Bureau in which companies are denied fair notice of why they are being investigated? As Justice Rendell aptly stated in dissent in *Heartland Campus*, Enforcement's approach would:

> In essence say "the purpose of this investigation is to determine whether anyone who works for you, in connection with doing anything related to your business, has engaged in unfair or deceptive acts or practice or violated any provision of the FCRA." Surely this cannot be the law.[11]

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[10] The decisions of *Doe v. United States*, 253 F.3d 256 (6th Cir. 2001), and *In re Administrative Subpoena*, 289 F.3d 969 (6th Cir. 2001), are not CFPB cases and relate to subpoenas that do not require a Notification of Purpose.

[11] *Heartland Campus Sols.*, 747 F. App'x at 51 (Rendell, J., dissenting).

CONCLUSION

A civil investigative demand is one of the most powerful tools available to the Bureau of Consumer Financial Protection. But with that power comes the responsibility to employ this tool appropriately—and to give recipients fair and sufficiently specific notice of the conduct under investigation. Strictly complying with this requirement is particularly appropriate where, as is the case here, the CID recipient is also subject to the Bureau's supervisory authority and thus may rightfully seek to understand why, [redacted], Enforcement Staff nonetheless believes that a violation of law may have occurred.

The requirement of fair notification is a fundamental right, not merely a technical one. Where a CID is procedurally inappropriate or exceeds the authorized scope of an investigation, it is the duty of the Director to modify or strike it, in order to ensure compliance with the law. This issue is not something that can—or should—be cured simply by expanding or re-writing the Notification of Purpose yet again. Here, the issue is not the Notification of Purpose itself, but rather Enforcement's overreach in seeking information that exceeds the authorized purpose of the investigation. By limiting the CID to what was *actually authorized*, the Director can send an important message to her staff and the public that the Bureau will hold itself accountable to its own rules, and will scrupulously adhere to limits on its own authority.

* * *

For the foregoing reasons, Credit Acceptance Corporation respectfully requests:

(1) That the following be stricken in their entirety: Interrogatories 2, 6, 8, 9, 10, 12, 13, and 16, Written Reports 4, 5, and 6, and Document Requests 1, 8.

(2) That the following requests be modified to conform to the four topics enumerated in the Notification of Purpose (Providing Consumers with Titles, Notifying Consumers of Lawsuits, Data Furnishing, and Truth-in-Lending Act Compliance): Interrogatories 3, 4, 5, 7, 11, 14, and 15, Written Reports 3, 4, 7, 8, 9, 11, and 12, and Document Requests 2, 3, 5, and 7.

*** * ***

Respectfully submitted this 22nd day of June, 2020.

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MEET-AND-CONFER STATEMENT

In conformity with 12 C.F.R. § 1080.6(c), the undersigned counsel hereby represent that they conferred with counsel for the Bureau in a good faith effort to resolve the issues raised by this Petition to Modify or Set Aside Civil Investigative Demand and were unable to reach an agreement. A telephonic meet-and-confer took place on June 11, 2020, from 11:00 a.m. to approximately 12:10 p.m., attended by the Company's outside counsel (Anand S. Raman, Patrick G. Rideout, Lucy E. Morris, and Darren M. Welch), Credit Acceptance Chief Legal Officer Charles A. Pearce, Credit Acceptance Senior Vice President and Assistant General Counsel for Regulatory Compliance Erin J. Kerber, Credit Acceptance Vice President Sonia Gueorguieva, and Enforcement counsel and staff members Nina Schichor, Vanessa Buchko, Cheryl Goodwin, and Nicole Kelly. During the meet-and-confer, counsel for the Petitioner raised the issues addressed in this Petition to Modify or Set Aside Civil Investigative Demand.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 22nd day of June, 2020, I served this Petition to Modify or Set Aside Civil Investigative Demand on the following via electronic delivery:

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