

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



_____)
IN RE CREDIT ACCEPTANCE CORP.)
_____)
2020-MISC-Credit Acceptance)
Corporation-0001)
_____)

**DECISION AND ORDER ON PETITION BY CREDIT ACCEPTANCE CORP.
TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

Credit Acceptance Corp. petitioned the Consumer Financial Protection Bureau for an order to modify or set aside a civil investigative demand. For the reasons set forth below, the Petition is denied and the request for confidential treatment of certain supervisory information and proprietary business information is granted.

FACTUAL BACKGROUND

On June 1, 2020, the Bureau issued a civil investigative demand (CID) to Credit Acceptance Corp. (CAC), seeking documents, written reports, and responses to interrogatories. As explained in the CID’s notification of purpose, the CID was issued as part of an investigation

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 notification of purpose further advised that the investigation also seeks “to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.”

CAC took part in a meet-and-confer with Enforcement staff on June 11 at which it discussed the issue raised in this petition. *See* 12 C.F.R. § 1080.6(c). CAC timely filed this petition to modify or set aside the CID on June 22. *See* 12 U.S.C. § 5562(f); 12 C.F.R. § 1080.6(e).

LEGAL DETERMINATION

I. Petition to Modify or Set Aside the CID

The sole argument in CAC’s petition is that certain of the requests in the CID are not relevant to the stated purpose of the Bureau’s investigation, as CAC understands it, and therefore these requests should be set aside or modified. But CAC’s reading of the notification of purpose is unreasonably narrow and inconsistent with the plain language of the notification. The particular requests in the CID to which CAC objects are all reasonably relevant to the Bureau’s inquiry as described in the notification of purpose. CAC’s petition to modify or set aside the CID is therefore denied.

By statute, Bureau CIDs must 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. This is accomplished in a section of the CID called the “notification of purpose.” 12 C.F.R. § 1080.5. CAC stresses in its petition that it “is not challenging the validity of the Notification of Purpose itself.” Pet. at 2; *see also id.* at 18 (“Here, the issue is not the Notification of Purpose itself ...”).¹ Instead, CAC disputes whether certain of the requests in the CID are reasonably relevant to the investigation as described.

The Bureau has broad authority to seek information which may be relevant to its investigations. “The standard for judging relevancy in an investigatory proceeding is more relaxed than in an adjudicatory one.” *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992). “[W]hen asking whether the documents requested [in an administrative subpoena] are ‘relevant’ to an investigation, the courts construe broadly the term ‘relevant.’” *In re Admin. Subpoena*, 289 F.3d 843, 845 (6th Cir. 2001). “It is well established that a district court must enforce a federal agency’s investigative subpoena if[, among other things,] the information sought is *reasonably relevant*—or, put differently, not plainly incompetent or

¹ Nor could it so challenge the validity of the notification, as the notification here satisfies the statutory requirement. *See CFPB v. Seila Law LLC*, 923 F.3d 680, 685 (9th Cir.) (approving notification of purpose that arguably was worded more broadly than the one here), *vacated on other grounds*, 2020 WL 3492641 (U.S. June 29, 2020); *CFPB v. Heartland Campus Sols., ECSI*, 747 F. App’x 44 (3d Cir. 2018) (same); *see also FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1088 (D.C. Cir. 1992) (enforcing FTC CID that described an investigation into “unfair or deceptive acts or practices ... including but not limited to false or misleading representations made in connection with” seemingly all aspects of the CID recipient’s business).

irrelevant to any lawful purpose of the agency.” *Invention Submission*, 965 F.2d at 1089 (internal citations, quotation marks, and brackets omitted; emphasis added). “[T]he agency’s own appraisal of relevancy must be accepted so long as it is not obviously wrong.” *Id.* (internal quotation marks omitted).

CAC’s petition fails to overcome the high hurdle established in the judicial precedent cited above by showing that the information requested in the CID is “plainly incompetent or irrelevant” to the Bureau’s investigation. For example, two of the interrogatories to which CAC objects (Nos. 6 and 9) concern a sales script and training video that describe an ancillary loan product called Guaranteed Asset Protection. CAC urges that these interrogatories are irrelevant to the Bureau’s investigation and, thus, should be struck entirely. But understanding the representations made to consumers about this product has obvious relevance to an investigation that, by its plain terms, includes possible false or misleading representations made to consumers in the marketing or selling of ancillary loan products. To take another example, CAC objects to the CID’s request (in Document Request 1) for “Customer Approval Sheets,” which are documents provided to consumers at the time of sale. Again, it is clear why such information about communications at or near in time to the origination of a loan could have relevance to an investigation that includes, among other things, possible misrepresentations to consumers in connection with originating loans, as well as compliance with the disclosure requirements in Regulation Z and the Truth in Lending Act.

CAC’s response is, in effect, to rewrite the CID’s notification of purpose to describe an investigation into four discrete topics and nothing else: providing consumers with titles, notifying consumers of lawsuits, data furnishing, and compliance with the Truth in Lending Act. Pet. at 13. But that is not a reasonable reading of the notification of purpose reproduced above, which by its terms describes a broader investigation. Cf. *FTC v. Texaco, Inc.*, 555 F.2d 862, 874 (D.C. Cir. 1977) (en banc) (rejecting CID recipient’s attempt to impose “an erroneous interpretation of the scope of the FTC’s inquiry” and then seek “to limit the investigation to the confines of this distorted interpretation”). The CID, for instance, notes that the Bureau is investigating “whether auto lenders or associated persons, in connection with originating auto loans (including marketing and selling products ancillary to such loans) ... have: 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” CAC cannot simply read this language out of the CID and then claim that the Bureau is asking for irrelevant information.² Moreover, a number of the requests at issue, including some that CAC argues

² As noted, CAC states that it is not challenging the validity of the notification of purpose. Pet. at 2. However, CAC seems to imply that, although the notification of purpose otherwise satisfies the statutory requirement in 12 U.S.C. § 5562(c)(2), its references to originating and servicing loans, and to “false and misleading representations,” do not. Pet. at 15–16. CAC does not explain why this language, read in the context of the rest of the notification of purpose, fails to describe the nature of the conduct under investigation in a manner that is sufficient to satisfy the statute. Moreover, the D.C. Circuit has previously enforced a CID issued by the FTC, which has the same notification of purpose requirement in its statute, that described an investigation focused on “unfair or deceptive acts or practices ... including but not limited to false or

must be struck in full, such as the request for information about the “Customer Approval Sheets” described above, would be reasonably related to the investigation even as CAC (incorrectly) understands it.

Because the requests in the CID are reasonably relevant to the Bureau’s investigation, CAC’s petition to modify the CID is denied.

II. Request for Confidential Treatment

CAC also requests confidential treatment of its petition and attached exhibits to redact certain proprietary business information and confidential supervisory information. That request is granted.

The Bureau’s regulations governing investigations provide that a CID petition and the Bureau’s order in response thereto are “part of the public records of the Bureau unless the Bureau determines otherwise for good cause shown.” 12 C.F.R. § 1080.6(g). In evaluating whether a petitioner has shown “good cause,” the Bureau generally looks to the standards for withholding material from public disclosure established by the Freedom of Information Act (“FOIA”). See *In re Heartland Campus Sols., ESCI*, 2017-MISC-Heartland Campus Solutions, ESCI-001 (Sept. 8, 2017), at 9. Consistent with that standard, it is appropriate to make limited redactions to the Petition, as well as to redact two of the attached exhibits in full and one exhibit in part, in order to protect information that would be exempt from disclosure under Exemptions 4 and 8 of the FOIA.

CONCLUSION

For the foregoing reasons, the petition to modify or set aside the CID is denied. The request for confidential treatment of the petition and exhibits is granted. CAC is directed to comply in full with the CID within 10 days of this Decision and Order.


Kathleen L. Kraninger, Director

August 27, 2020

misleading representations” in connection with the CID recipient’s business. *Invention Submission*, 965 F.2d at 1087–88. More recently, in a case CAC itself cites, the D.C. Circuit reaffirmed that the notification of purpose in *Invention Submission* was sufficient to “inform [the recipient] of the investigation’s purpose.” *CFPB v. Accrediting Council for Indep. Colleges & Sch.*, 854 F.3d 683, 690 (D.C. Cir. 2017).