Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

IN RE RENT-A-CENTER,	)
	)
2017-MISC-RENT-A-CENTER-0001	)
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DECISION AND ORDER ON PETITION BY RENT-A-CENTER TO SET ASIDE OR MODIFY CIVIL INVESTIGATIVE DEMAND

Rent-A-Center, Inc. has petitioned the U.S. Consumer Financial Protection Bureau for an order to set aside or modify a civil investigative demand ("CID") issued to it. For the reasons set forth below, the Petition is denied.

FACTUAL BACKGROUND

On July 27, 2017, the Bureau issued a CID to Rent-A-Center, Inc. ("RAC") seeking information about its rent-to-own business including debt sales, debt collections, and credit reporting. The CID's "Notification of Purpose" stated that the CID had been issued:

> to determine whether rent-to-own agreement companies, debt buyers, debt collectors, or other persons in connection with engaging in sales, collections or furnishing information to consumer reporting agencies relating to debts arising from rent-to-own agreements, have engaged or are engaging in unfair, deceptive or abusive acts or practices in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; or have violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq.; or the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., or its implementing regulations.

The Notification of Purpose further advised that a purpose of the investigation was "also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest." The CID required that, by August 28, 2017, RAC produce thirteen categories of documents, provide answers to fifteen interrogatories, and provide one written report.

Pursuant to the Bureau's rules, RAC was required to meet and confer with a Bureau investigator within 10 days of its receipt of the CID. *See* 12 C.F.R. § 1080.6(c). RAC conferred with members of the Bureau's Office of Enforcement ("Enforcement") on August 11, 2017, August 15, 2017, August 17, 2017, and August 18, 2017. During these "meet and confers," RAC asserted that the Bureau lacked enforcement authority over RAC and that this CID's Notification of Purpose did not comply with the notification requirements of section 1052(c)(2) of the Consumer Financial Protection Act ("CFPA"), 12 U.S.C. § 5562(c)(2). RAC further

summarily objected to the interrogatories, requests for documents, and the request for a written report claiming they were overbroad, unduly burdensome, and vague.

In consideration of Enforcement's meet and confer exchanges and other representations by RAC's counsel, Enforcement issued RAC a letter on August 18, 2017 modifying and clarifying certain interrogatories, requests for documents, and the request for a written report. On August 21, 2017, RAC timely filed its Petition to Set Aside or Modify the Civil Investigative Demand.

LEGAL DETERMINATION

In its petition to modify or set aside the CID RAC raises three principal arguments: 1) the Bureau lacks authority to issue any CID to RAC; 2) the Notification of Purpose fails to comply with 12 U.S.C. § 5562(c)(2); and 3) the CID is improper because it is overbroad, unduly burdensome, and vague. None of these arguments warrants setting aside or modifying the CID.

A. 12 U.S.C. § 5562(c) Authorizes the Bureau to Issue This CID to Rent-A-Center.

RAC's principal argument is that it does not offer a "financial product or service" to consumers. While acknowledging that its customers are consumers, Petition at 3-4, RAC contends that 12 U.S.C. § 5481(15)(A)(ii) defines a financial product or service to exclude RAC's business because, as a factual matter, its leases always have had an initial term of less than 90 days and that this statutory definition of a "financial product or service" expressly excludes such leases.[1] All of RAC's arguments that its business is outside the Bureau's enforcement authority, as described by RAC, rest on its express or implicit factual assertions

[1] RAC also contends that, as a factual matter, it qualifies for one or more prongs of the "merchant exclusion," 12 U.S.C. § 5517(a), which excludes certain narrowly defined categories of transactions from the Bureau's authority where the only basis for the Bureau's authority is the Consumer Financial Protection Act. Petition at 12-16. The exclusion applies only to merchants, retailers, or sellers of "any nonfinancial good or service," and it does not apply "to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which" certain authorities are transferred to the Bureau. 12 U.S.C. § 5517(a)(1). RAC's arguments concerning the merchant exclusion therefore also rest on RAC's fact-bound contention that its transactions with consumers never involve a "financial product or service" under 12 U.S.C. § 5481(15)(A). In any event, 12 U.S.C. § 5517(n) provides, *inter alia*, that notwithstanding the "merchant exclusion" persons "subject to or described in" those provisions "may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with" 12 U.S.C. § 5562. *See* 12 U.S.C. § 5517(n)(2). Accordingly, the Bureau has authority to investigate not only RAC's practices but also the conduct of the debt buyers, debt collectors, other credit information furnishers, and others in businesses related to RAC's rent-to-own agreements who may have violated consumer financial protection law or provided substantial assistance for the violations of others. *See* 12 U.S.C. § 5536(a)(3).

concerning, first, the initial term of all RAC leases, and, second, the nature of its business. Petition at 3-6.[2]

Under *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950), a court determining whether to enforce a CID considers whether "[(1)] the inquiry is within the authority of the agency, [(2)] the demand is not too indefinite and [(3)] the information sought is reasonably relevant." RAC first argues that this CID is not "within the authority" of the Bureau–in other words that, based on RAC's own factual assertions, the Bureau may never inquire about its conduct. These arguments are unavailing. "The question of the inclusion of a particular person or entity within the coverage of a regulatory statute is generally for initial determination by an agency" by means of that agency's investigation. *SEC v. Wall St. Transcript Corp*., 422 F.2d 1371, 1375 (2d Cir. 1970) (enforcing an SEC administrative subpoena to a publisher who had asserted that it was outside the SEC's statutory jurisdiction). "Indeed, the agency could not fulfill its investigative responsibilities, if . . . it first had to make a finding of liability." *In re Sealed Case (Administrative Subpoena)*, 42 F.3d 1412, 1416 (D.C. Cir. 1994). As a consequence, an agency has broad latitude to investigate whether conduct falls within its authority.

Accordingly, while RAC's arguments raise substantive legal defenses to claims that the Bureau has yet to assert, the Bureau has repeatedly found that such arguments do not serve as a basis for modifying or setting aside a CID. *See, e.g., In Re Synchrony Financial*, 2017-MISC-Synchrony Fiancial-0001 (Sept. 7, 2017) at 4,[3] *In Re Seila Law, LLC*, 2017-MISC-Seila Law, LLC-0001 (Apr. 10, 2017) at 3,[4] *In Re Assurant, Inc.*, 2015-MISC-Assurant-0001(Apr. 10, 2016) at 2,[5] *In Re Next Generation Debt Settlement, Inc.*, 2012-MISC-Next Generation Debt Settlement-0001 (Oct. 5, 2012) at 2.[6] As noted, courts of appeals routinely permit agencies to investigate without first proving that the agency would ultimately have authority to bring an enforcement proceeding. *See FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001) ("[C]ourts of appeals have consistently deferred to agency determinations of their own investigative authority, and have generally refused to entertain challenges to agency authority in proceedings to enforce compulsory process."). The responses to a CID may be highly relevant to determining the merits of the agency's potential claims and the parties' defenses, including whether any party's actions are subject to the Bureau's authority. Indeed, "[i]f parties under investigation could contest substantive issues in an [administrative subpoena] enforcement

[2] RAC has not supported its factual argument with any affidavit, declaration or other evidentiary support even though the Bureau's rule governing petitions expressly requires that petitions substantiate their factual and legal arguments with "all appropriate arguments, affidavits, and other supporting documentation." 12 C.F.R. § 1080.6(e).

[3] *Available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201709_cfpb_synchrony-financial_decision-and-order-on-petition.pdf.

[4] *Available at* https://s3. amazonaws.com/files.consumerfinance.gov/f/ documents/201704_cfpb_Decision-and-Order-on-Seila-Law-LLC-Petition.pdf.

[5] *Available at* https:// s3.amazonnaws.comfiles. consumerfinance.gov/f/documents/201604_cfpb_decision-and-order-on-petition-by-assurant-inc-to-modify-or-set-aside.pdf.

[6] *Available at* http:// files.consumerfinance.gov/f/201210_cfpb_2012-MISC-Next-Generation-Debt-Settlement-0001-Order.pdf.

proceeding, when the agency lacks the information to establish its case, administrative investigations would be foreclosed or at least substantially delayed." *FTC v. Texaco, Inc.*, 555 F.2d 862, 879 (D.C. Cir. 1977).

B. The July 27 CID Complies with 12 U.S.C. § 5562(c)(2).

Second, RAC argues that the CID's Notification of Purpose fails to satisfy the CID requirements applicable to the Bureau under 12 U.S.C. § 5562(c)(2) (a 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."). This argument rests largely on RAC's fact-bound argument that its business is not subject to the Bureau's "enforcement authority," but as explained above, this argument does not serve as a basis to set aside or modify the CID. RAC also relies on the D.C. Circuit's opinion in *CFPB v. Accrediting Council for Independent Colleges & Schools*, 854 F.3d 683 (D.C. Cir. 2017) ("*ACICS*") (holding that the language of a Notification of Purpose in a CID issued to an accreditor of for-profit colleges did not satisfy the notice requirements of 12 U.S.C. § 5562(c)(2)). Petition at 18-19. RAC's reliance on *ACICS* is misplaced, as RAC misapprehends the nature of the defects the *ACICS* court found in the CID under review.[7]

The CID at issue here differs substantially from the CID at issue in *ACICS*. *ACICS* concerned a CID issued to an organization engaged in the accreditation of for-profit colleges. *ACICS*, 854 F.3d at 685. Although the Bureau acknowledged it had no interest in educational accreditation as such, the Bureau argued that it had an interest in investigating the link between the accreditation process and the lending practices of colleges accredited through that process. *Id.* at 691. These lending practices were "consumer financial products or services" as defined by the CFPA, and therefore subject to the prohibition on unfair, deceptive, or abusive acts or practices under §§ 1031 and 1036 of the CFPA. *See id.* at 687-88. The court found that the CID was defective, not because the link between accreditation and these lending practices was beyond the scope of the Bureau's investigative authority, but because that link "[did] not appear on the face of the Notification of Purpose."[8] *Id.*at 691.

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[7] In suggesting the CID violates § 5562(c)(2) because it exceeds the Bureau's authority, RAC quotes from the district court's opinion in the *ACICS* case, *CFPB v. Accrediting Council for Independent Colleges & Schools*, 183 F. Supp. 3d 79 (D.D.C. Cir. 2017). The Court of Appeals, however, expressly avoided reaching "the broad determination of the Bureau's authority to investigate the area of accreditation . . . .," 854 F.3d at 690, and therefore never endorsed the view RAC advances here. As explained above, agencies have broad latitude to investigate whether, as an initial matter, conduct falls within their authority.

[8] It bears noting that RAC refutes its own argument, conceding that the Notification of Purpose at issue here is different from the Notification of Purpose in *ACICS*. As RAC itself explains, while the *ACICS* Notification of Purpose "did not sufficiently inform the recipient, here, the CID and staff pronouncements [in meet and confer exchanges] *clearly express the purpose of the investigation*." Petition at 19 (emphasis added). RAC emphasizes that here, the Notification of Purpose "has made clear the Bureau's intent"—an intent with which RAC disagrees. Petition at 17. The *ACICS* Notification of Purpose was held to not satisfy 12 U.S.C. § 5562(c)(2) because it did "not inform ACICS of the investigation's purpose." 854 F.3d at 690. By contrast, RAC agrees that it was informed of the purpose of the investigation, as required by

According to the *ACICS* court, the Notification of Purpose offered "no description whatsoever of the conduct the CFPB [was] interested in investigating." *Id.* The court concluded that the CID thus failed to provide the notice required under § 5562 of the "nature of the conduct constituting the alleged violation which is under investigation."[9] *See id.* at 690-91 (quoting 12 U.S.C. § 5562(c)(2)).

The *ACICS* court also found that CID defective for a second and related reason. In addition to identifying the conduct at issue, a CID issued by the Bureau must identify "the provision of law applicable to such violation." *Id.* at 691 (quoting 12 U.S.C. § 5562(c)(2)). The *ACICS* court found that the citation in that CID to §§ 1031 and 1036 of the CFPA was insufficient because it stood "broadly alone," with no mention of a relationship to consumer financial products or services as defined by the CFPA. *ACICS*, 854 F.3d at 691 (citing *F.T.C. v. Carter*, 636 F.2d 781, 788 (D.C. Cir. 1980) (explaining that a citation to unfair and deceptive practices under Section 5 of the Federal Trade Commission Act "standing broadly alone" would not provide adequate notice, but that a citation to Section 5 would be sufficient where it was "defined by its relationship" to other language identifying the purpose of the investigation)). This was the case "especially considering the Bureau's failure to adequately state" the conduct under investigation. *Id*.

The CID served on RAC does not suffer from the defects identified by the court in *ACICS*. First, while the *ACICS* court found that the CID in question there failed to identify the Bureau's interest in the investigation, that is not the case here. The Notification of Purpose in the CID issued to RAC specifically identifies the nature of the conduct at issue as "whether rent-to-own agreement companies, debt buyers, debt collectors, or other persons in connection with engaging in sales, collections or furnishing information to consumer reporting agencies relating to debts arising from rent-to-own agreements, have engaged or are engaging in unfair, deceptive or abusive acts or practices," violations of the Fair Credit Reporting Act ("FCRA"), or violations of the Fair Debt Collection Practices Act ("FDCPA"). This CID therefore provides notice of the "nature of the conduct constituting the alleged violation which is under investigation." 12 U.S.C. § 5562(c)(2).

The second defect the *ACICS* court found, regarding identification of the applicable provision of law, is also not present here. RAC concedes that debt collection and credit reporting

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12 U.S.C. § 5562(c)(2). Rather, RAC believes that the clearly expressed purpose of the investigation is beyond the Bureau's authority, which is a separate issue and an erroneous argument for the reasons already explained.

[9] Because the court ruled on this narrower ground it declined to address the Bureau's asserted interest in the link between educational accreditation and student lending. *See ACICS*, 854 F.3d at 691. However, the Bureau's CID authority is not limited to those entities over which it has direct enforcement or regulatory authority. As the court noted in *ACICS*, the Bureau's authority to require the production of documents and oral testimony extends to "'*any person*' that it believes may be in possession of 'any documentary material or tangible things, or may have any information, relevant to a violation' of the laws that the Bureau enforces." *Id.* at 688 (quoting 12 U.S.C. § 5562(c)(1)) (emphasis added).

fall squarely within the Bureau's authority under the FDCPA, 15 U.S.C. §§ 1692-1692p, the FCRA, 15 U.S.C. § 1681-1681x, and the FCRA's implementing regulation, Regulation V, 12 C.F.R. Part 1022. Petition at 18. As noted above, the CID also expressly identifies the Bureau's interest in investigating unfair, deceptive, or abusive acts or practices in connection with debt resulting from rent-to own-agreements, debt sales, the conduct of debt buyers, debt collection, and related credit reporting. CID at 1. The identification of these statutory provisions and the related regulations in the context of the identified conduct therefore satisfies the requirement of 12 U.S.C. § 5562(c)(2) that the Bureau identify "the provision of law" applicable to the violations at issue.

C. Rent-A-Center Fails to Demonstrate That Individual Requests Are Overbroad, Unduly Burdensome or Impermissibly Vague.

RAC generally contends that this CID is overly broad, unduly burdensome, and impermissibly vague. RAC makes passing references to words used in Document Request 12, Interrogatories 6, 7, and 8, and the Written Report Request to support its arguments concerning the form of the requests.

"[C]ourts have refused to modify investigative subpoenas unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business." *Texaco*, 555 F.2d at 882. A petitioner therefore "must undertake a good-faith effort to show 'the exact nature and extent of the hardship' imposed, and state specifically how compliance will harm its business." *In re Great Plains Lending, LLC*, 2013-MISC-Great Plains Lending-0001, at 8[10] (quoting *In re PHH Corp.*, 2012-MISC-PHH Corp-0001 (Sept. 20, 2012), at 6).[11] The Bureau has held that a petitioner asserting claims of overbreadth and undue burden must "prove[] the inquiry is unreasonable because it is overbroad or unduly burdensome." *In re Great Plains Lending, LLC*, 2013-MISC-Great Plains Lending-0001 (Sept. 26, 2013), at 8 (citing *FDIC v. Garner*, 126 F.3d 1138, 1143 (9th Cir. 1997)). *See also, e.g.*, *In re Heartland Campus Solutions, ECSI*, 2017-MISC-Heartland Campus Solutions, ECSI-0001 (Sept. 8, 2017), at 6,[12] *In Re Synchrony Financial*, 2017-MISC-Synchrony Fiancial-0001 (Sept. 7, 2017), at 5, *In re Assurant, Inc.*, 2015-MISC-Assurant-0001 (Apr. 25, 2016), at 5.

This Petition's only specific contention with respect to the purported burden of the production is the assertion that the request for certain information in a written report "would require significant and extensive manual review and data entry to create—from scratch—new data reports . . . ." Petition at 22. As the Bureau has previously held, "the need to analyze data or create reports does not by itself present an articulation of hardship and it provides no tangible showing of meaningful harm to . . . [a] business." *In re UniRush, LLC*, 2015-MISC-UniRush-0001 (Sept. 20, 2012), at 3 (citing *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513 (4th Cir. 1996) ("A subpoena is not unduly burdensome merely because it requires the

[10] *Available at* http:// files.consumerfinance.gov/f/201309_cfpb_decision-on-petition_great-plains-lending-to-set-aside-civil-investigative-demands.pdf.

[11] *In re PHH Corp.*is available at http://www.consumerfinance.gov/f/201209_cfpb_setaside_phhcorp_0001.pdf.

[12] *Available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201709_cfpb_heartland-campus-solutions_decision-and-order-on-petition.pdf.

production of a large number of documents.")).[13] In the absence of a more specific explanation, RAC has failed to make an adequate factual showing of undue burden.

RAC's overbreadth argument is based principally on the previously-rejected contention that the Bureau lacks authority to investigate RAC's transactions and is therefore without merit.[14]

RAC objects generally that words and phrases such as "concerns," "any aspect," "how the database interacts with other systems," and "any weaknesses" are "indefinite" and "uncertain," effectively arguing that such terms are impermissibly vague. Such a general objection is insufficient. "The party objecting to discovery as vague or ambiguous has the burden of showing such vagueness or ambiguity." *Deakins v. T.S. Pack*, CA No. 1:10–1396, 2012 WL 242859 at *12 (S.D. W.Va. Jan. 25, 2012) (citations omitted). The objecting party "should exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in interrogatories," and include a reasonable clarifying definition if necessary. *Id.* Here, RAC has not attempted to articulate how the CID's uses of these common words and phrases are vague.

The Bureau has long held that "[a] petition to quash, however, is a mechanism for raising specific objections to the CID, substantiated by factual information and legal argument, for resolution by the Director." *In Re PHH Corp.* at 8. The Petition's list of conclusory form objections here falls short of that standard. The CID provided a description of the nature of the Bureau's investigation sufficient for RAC to make a good-faith effort at demonstrating the nature of the claimed burden, overbreadth, or vagueness, including by making an estimate of the time and cost of compliance. In the absence of any such estimate or any other basis to support RAC's objections, they do not provide a basis for setting aside or modifying the CID.

CONCLUSION

For the foregoing reasons, RAC's petition to set aside or modify the CID is denied. Within ten calendar days of this Decision and Order, RAC is directed to produce all responsive documents, items, and information within its possession, custody, or control that are covered by the CID. The company is welcome to engage in further discussions with Enforcement about any suggestions for further modifying the CID, which may be adopted by the Assistant Director for Enforcement or his Deputy as appropriate.

Richard Cordray, Director

October 12, 2017

[13] *In re UniRush, LLC* is available at http:// files.consumerfinance.gov/f/201512_cfpb_decision-on-petition-by-unirush-llc-to-modify-or-set-aside-civil-invest.pdf.

[14] RAC also argues in passing that the deadline for its response is burdensome and overbroad. To the extent this objection is merely one of timing it should be resolved through discussions with Enforcement.