

Carlos Ortiz Analyzes in ARM Compliance Digest: CFPB Denies Petition From Title Lender That Argued CID Was Too Broad

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May 25, 2021

In the May 24, 2021 edition of the *ARM Compliance Digest*, Hinshaw partner Carlos Ortiz discusses the denial by the Consumer Financial Protection Bureau of a petition from an auto title lender to modify or set aside a civil investigative demand looking into the company's debt collection practices, among other areas of the business:

The Consumer Financial Protection Bureau (CFPB) has reinforced its authority to issue broad civil investigative demands (CID.) Earlier this year, it issued a CID to TMX Finance LLC (TMX), seeking documents, various data, written reports, and responses to interrogatories. The subject CID, a type of administrative subpoena, is the first issued by the CFPB under acting director Dave Uejio, who was tapped by President Biden to fill the post in January after Kathleen Kraninger resigned. TMX requested that the CID either be narrowed or set aside, but Director Uejio denied that request. TMX first argued that the CID was invalid because the CID's Notification of Purpose was broad in that it failed to provide the company with fair notice of the nature of the agency's investigation. A CID's Notification of Purpose cannot use such "broad language" that it is impossible for a reviewing court to apply the following three-pronged test, which evaluates 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. See *Consumer Fin. Prot. Bureau v. Accrediting Council for Indep. Colls. & Schs.*, 854 F.3d 683, 691 (D.C. Cir. 2017). Here, Director Uejio reasoned that the agency he oversees informed TMX that the CFPB was investigating conduct in connection with the "extension of credit, servicing of loans, processing of payments, or collection of debt" as potential violations of the Consumer Financial Protection Act, 12 U.S.C. § 5531, and that the notice was sufficient for a court to apply the three-pronged test.

TMX also argued that the subject CID was invalid because the activities it identified constituted the entirety of the company's business. Director Uejio also disagreed with this argument based on case law that held the nothing prohibits the CFPB from investigating the totality of a company's business activities, and that courts

have previously enforced administrative subpoenas regarding conduct that is coextensive with the recipient's business activity. *CFBP v. Heartland Campus Solutions*, 747 Fed. App'x 44, 48 (3d Cir. 2018).

Amongst the other arguments that Director Uejio considered was that TMX should be permitted to supplement its timely objections to the CID with additional factual and legal objections. According to Director Uejio, the CFBP's rules do not provide for such a supplement. He pointed to a rule that states that "any petition" shall be filed "within 20 calendar days after service" of the CID, and any such petition must "set forth all factual and legal objections..." 12 C.F.R. § 1080.6(e). Because TMX did not raise the arguments in its supplement within the time period provided, Director Uejio deemed those arguments to be waived.

This decision exemplifies CFBP's current position that it has broad authority regarding CID's. It is also important to note that it will enforce its rules strictly, especially when it comes to timeliness of objections to CID's.

[Read the full May 24, 2021 edition of the AccountsRecovery.net Compliance Digest.](#)

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