
IN RE THE SOURCE FOR PUBLIC
DATA, L.P.,

2017-MISC-The Source for Public Data,
L.P.-0001

**DECISION AND ORDER ON PETITION BY THE SOURCE FOR PUBLIC DATA, L.P.,
TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

The Source for Public Data, L.P. (Public Data), 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 January 5, 2017, the Bureau issued a CID to The Source for Public Data, L.P., seeking information about its business, products, services, and operations. The CID's "Notification of Purpose" stated that the CID had been issued:

to determine whether consumer reporting agencies, persons using consumer reports, or other persons have engaged or are engaging in unlawful acts and practices in connection with the provision or use of public records information in violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., Regulation V, 12 C.F.R. Part 1022, or any other federal consumer financial law.

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 Public Data to produce documents and provide answers to interrogatories and a written report by February 16, 2017.

Pursuant to the Bureau's rules, Public Data was required to meet and confer with a Bureau investigator within 10 days of its receipt of the CID. 12 C.F.R. § 1080.6(c). The meet-and-confer took place on January 17, 2017. Public Data timely filed its Petition to Set Aside or Modify the Civil Investigative Demand (Petition) on January 25, 2017.

LEGAL DETERMINATION

Public Data raises three objections to the CID, none of which warrants setting aside or modifying the CID.

First, Public Data argues that the Bureau “lacks jurisdiction” over it because it is neither a consumer reporting agency subject to the Fair Credit Reporting Act (FCRA) nor a covered person or service provider subject to the Consumer Financial Protection Act (CFPA). Petition at 4-11. This argument is misplaced, as it does not relate to the scope of the Bureau’s authority to issue the CID. Under the CFPA, the Bureau has investigative authority to issue CIDs to “any person” who may have information “relevant to a violation” of federal consumer financial law, including violations of FCRA or the CFPA itself. 12 U.S.C. §§ 5562(c)(1), 5481(12)(F), (14). Public Data’s argument does not address the scope of this investigative authority but rather prematurely asserts substantive defenses to claims that the Bureau has yet to assert. As the Bureau has previously explained, such fact-based arguments about whether an entity is subject to or has complied with a law’s substantive provisions are not valid defenses to the enforcement of a CID. See, e.g., *In Re Next Generation Debt Settlement, Inc.*, 2012-MISC-Next Generation Debt Settlement-0001, at 2 (Oct. 5, 2012).¹ Indeed, the Supreme Court has “consistently reaffirmed” that “fact-based claim[s] regarding coverage or compliance with the law” will not preclude enforcement of an administrative subpoena. *EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1076 (9th Cir. 2001) (citing, *inter alia*, *Okla. Press Publ’g Co. v. Walling*, 327 U.S. 186, 216 (1946)). And courts of appeals have regularly permitted agencies to investigate without first establishing that the agency would ultimately have authority to bring an enforcement proceeding. See *FTC v. Ken Roberts Co.*, 276 F.2d 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.”); *SEC v. Savage*, 513 F.2d 188, 189 (7th Cir. 1975) (SEC not required to establish that company’s commodities future contracts were “securities” within the meaning of the Securities Act before administrative subpoena would be enforced). This is because 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 the party is subject to the relevant laws at all. Indeed, “[i]f parties under investigation could contest substantive issues in an [administrative subpoena] enforcement 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).

Second, Public Data contends that the CID’s Notification of Purpose is insufficiently specific and thus fails to comply with the requirement, imposed by statute and the Bureau’s regulations, that a CID 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. Petition at 11-12. As an initial matter, Public Data has waived this objection by failing to raise it with Bureau Enforcement counsel during the meet-and-confer process. The Bureau’s Rules Relating to Investigations provide that, in considering a petition to modify or set aside a CID, the Bureau “will consider only issues raised during the meet and confer process.” 12 C.F.R. § 1080.6(c)(3). Public Data’s failure to raise this objection

¹ Available at http://files.consumerfinance.gov/f/201210_cfpb_2012-MISC-Next-Generation-Debt-Settlement-0001-Order.pdf.

during that process is, by itself, a sufficient basis to reject it. *See In Re CheckSmart Financial Company*, 2014-MISC-Checksmart Financial Company-001, at 2 (Jan. 22, 2014).²

In any event, this objection also fails on the merits. The requirement that a CID state “the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation” does not demand a detailed narrative. On the contrary, it is “well settled that the boundaries of an [agency] investigation may be drawn ‘quite generally.’” *FTC v. O’Connell Assocs., Inc.*, 828 F. Supp. 165, 171 (E.D.N.Y. 1993) (quoting *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992)). The CID’s Notification of Purpose identifies what conduct the Bureau is investigating—namely, “whether consumer reporting agencies, persons using consumer reports, or other persons have engaged or are engaging in unlawful acts and practices in connection with the provision or use of public records information.” It also identifies the relevant substantive laws: the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*; Regulation V, 12 C.F.R. Part 1022; and any other federal consumer financial law. The Bureau has previously found that notifications functionally equivalent to the one in this CID satisfied the requirements of the statute and regulations. *See, e.g., In Re Selling Source, LLC*, 2015-MISC-Selling Source, LLC-0001, at 1-2 (Aug. 6, 2015);³ *In Re CheckSmart Financial Company*, 2014-MISC-Checksmart Financial Company-001, at 2 (Jan. 22, 2014);⁴ *In Re Aspire Financial Inc.*, 2013-MISC-Aspire Financial-001, at 2 (Apr. 16, 2013).⁵ Accordingly, the Notification of Purpose here adequately informed Public Data of the conduct of interest to the Bureau and the potentially applicable provisions of law.

Finally, Public Data objects that the CID is overbroad and “seeks information which is not relevant to any inquiry” because, they claim, several of the demands incorrectly “presuppose that Public Data” is a consumer reporting agency. Petition at 12-13. This argument boils down to the same argument raised before—that the Bureau lacks authority to investigate it because, according to it, it is not a consumer reporting agency. For the reasons explained above, this argument fails. The Bureau need not “answer at the outset of its investigation” whether Public Data is in fact a consumer reporting agency subject to FCRA or otherwise subject to federal consumer financial law, as those questions are just the sort of topic that “the investigation is designed and authorized to illuminate.” *Savage*, 513 F.2d at 189.

CONCLUSION

For the foregoing reasons, Public Data’s petition to set aside or modify the CID is denied. Within 10 calendar days of this Decision and Order, Public Data 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 the

² Available at http://files.consumerfinance.gov/f/201401_cfpb_order_checksart.pdf.

³ Available at http://files.consumerfinance.gov/f/201508_cfpb_decision-on-petition-by-selling-source-llc-to-set-aside-civil-investigative-demand.pdf.

⁴ Available at http://files.consumerfinance.gov/f/201401_cfpb_order_checksart.pdf.

⁵ Available at http://files.consumerfinance.gov/f/201304_CFPB_MISC-Aspire-Financial-0001Order.pdf.

Bureau's Enforcement team about any suggestions for modifying the CID, which may be adopted by the Assistant Director for Enforcement or his Deputy as appropriate.


Richard Cordray, Director

February 14, 2017