



POLICY & ACTION FROM CONSUMER REPORTS

April 19, 2018

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW Washington, DC 20552

RE: Request for Information Regarding Bureau Civil Investigative Demands and Associated Processes [Docket No. CFPB-2018-0001]

Dear Ms. Jackson:

Consumers Union, the advocacy division of Consumer Reports,¹ writes in response to the Consumer Financial Protection Bureau's Request for Information (RFI) on its use of civil investigative demands and their critical role in enabling the agency to achieve its mission and objectives.

As many federal law enforcement agencies have long recognized, the ability to obtain information from an investigatory target is an essential enabling those agencies to fulfill their statutory missions to enforce the law. The CFPB is one of many agencies that obtains its information through civil investigative demands (CIDs).² The CFPB has used its CID authority appropriately and successfully in recent years to uncover evidence of widespread misconduct at large banks, loan servicers, for-profit colleges and other companies subject to CFPB jurisdiction. Without its CID authority, it is not clear that these violations would ever have come to light. This RFI asks whether CIDs are imposing undue burdens on entities who receive CIDs. We urge the CFPB to carefully review any comments received and to consider the many benefits that CIDs provide to consumers, law enforcement, and a fair and even-handed marketplace. It is essential to ensure that CIDs remain an effective tool for enforcing the law and upholding the agency's core mission: to protect consumers from harmful financial practices that violate the law.

The mission of the CFPB is spelled out in the law establishing it: "The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair,

¹ Consumers Union is the advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of financial services, as well as telecommunications, health care, food and product safety, energy, and competition and consumer choice, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 60 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

² See, e.g., 15 U.S.C. § 57b-1, 15 U.S.C. § 1312, 31 U.S.C. § 3733 (2018).

transparent, and competitive.”³ In the nearly seven years since the CFPB opened its doors, action in service of this mission has improved the market for consumer financial products, benefiting both American consumers and responsible providers.

Congress set five specific objectives for the Consumer Financial Protection Bureau. The CFPB is to ensure that “(1) consumers are provided timely and understandable information to make responsible decisions about financial transactions; (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; (4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.”⁴

In working to meet these objectives, the CFPB conducts financial education programs; collects, investigates, and facilitates responses to consumer complaints; researches and publishes information on how markets for consumer financial products are functioning, identifying both risks to consumers as well as the proper functioning of such markets; supervises covered entities, taking appropriate enforcement action to address violations of Federal consumer financial law; and issues rules, orders, and guidance implementing Federal consumer financial law. For consumers, these efforts mean more educated financial decisions, fewer risks in the marketplace, help in getting much-needed resolution to problems, and protections under law that ensure they are treated fairly.

The CFPB was established following the financial crisis a decade ago, when Congress recognized a gap in consumer protection and enforcement that allowed unfair, deceptive, and abusive practices in the financial sector to proliferate. Over the last seven years, the CFPB has taken essential steps to protect consumers in this marketplace.

Since it was launched in 2011, the CFPB has won almost \$12 billion in refunds and relief for an estimated 29 million Americans who were harmed by financial companies, and has helped to resolve nearly one million consumer complaints involving problems with mortgages, credit cards, car loans, bank accounts, debt collection, and a variety of other issues. Additional notable achievements by the CFPB for consumers include:

- Ensuring mortgages are affordable, by adopting rules to prevent the kind of reckless lending practices by banks that led to a record number of Americans losing their homes and triggered the country’s deep recession in 2008;
- Taking on deceptive credit card marketing, by ordering credit card companies to pay back \$3.48 billion to consumers who were defrauded into accepting unnecessary and costly add-on products and services, such as debt protection and credit monitoring;
- Providing prepaid card users with strong protections by adopting rules that require prepaid card issuers to provide better fee disclosures, as well as the same strong protections limiting a consumer’s financial exposure to unauthorized and fraudulent use that come with traditional debit and credit cards;
- Challenging abusive student loan practices, such as by suing Navient, the nation’s largest student loan servicer, for giving borrowers inaccurate information, processing payments incorrectly, and failing to take action to address consumer complaints;

³ Pub. L. 111–203, title X, § 1021, 124 Stat. 1979 (July 21, 2010).

⁴ *Id.*

- Protecting consumers from deceptive reverse mortgage ads that tricked consumers into believing they could not lose their homes with a reverse mortgage; and
- Combating misleading credit score ads and promotions, by holding TransUnion and Equifax accountable for deceiving consumers about the usefulness and cost of the credit scores they marketed.

The CFPB's CID authority, found in 12 U.S.C. section 5562, is modeled closely on the CID authority of the Department of Justice under the Antitrust Civil Process Act of 1962⁵ and that of the Federal Trade Commission under section 20 of the FTC Act.⁶ As with its use in DOJ and FTC investigations, this provision clarifies the CFPB's authority, when it "has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation," to obtain the information it needs to satisfactorily determine whether a violation has been committed. The availability of this authority has enabled the agency to obtain the needed information while minimizing legal uncertainty that would lead to unnecessary litigation or other burden on the entities involved.

The CFPB issued CIDs over the course of several months to obtain compelling evidence of systematic failures at Navient, the nation's largest servicer of both federal and private education loans. According to its SEC filings, Navient received CIDs from the CFPB and state attorneys general between December 2013 through August 2015 regarding its loan servicing practices.⁷ The resulting CFPB complaint charged Navient and its affiliated debt collection arm, Pioneer Credit Recovery, with failing or misleading borrowers at every stage of repayment: incorrectly applying payments; steering borrowers into interest-accruing forbearances instead of affordable alternative repayment plans; frustrating borrowers' attempts to renew affordable repayment plans; and harming borrowers' credit histories, among other things.⁸

The Wells Fargo "fake account scandal" is another key example of the effectiveness of the CID authority in enabling the CFPB to stop harmful financial misconduct and obtain redress for harmed consumers. The CFPB's probe into Wells Fargo's sale practices uncovered a massive scheme to sign existing customers up for additional banking and credit card accounts without their knowledge or consent -- resulting in \$185 million in fines, with restitution back to harmed consumers.⁹ In its consent order with the bank, announced in September 2016, the CFPB

⁵ 15 U.S.C. §§ 1311-1314.

⁶ 15 U.S.C. § 57b-1 (added 1980).

⁷ Supplement to the Remarketing Prospectus for SLM Student Loan Trust 2005-8 (filed Jan. 19, 2017), *available at* https://www.sec.gov/Archives/edgar/data/1338038/000091412117000069/sl36487583-ex99_1.htm (notifying SEC and investors of litigation that could affect value of student loan-backed securities).

⁸ Complaint at 1-5, Consumer Fin. Protection Bureau v. Navient Corp., Case No. 17-cv-00101 (filed M.D. Penn. Jan. 18, 2017), *available at* https://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf.

⁹ See Consent Order, Consumer Fin. Protection Bureau v. Wells Fargo Bank, N.A. (filed Sept. 8, 2016), *available at* https://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf (setting \$100 million fine to be paid to CFPB); Press Release, Consumer Financial Protection Bureau Fines Wells Fargo \$100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts (Sept. 8, 2016), *available at* <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100->

revealed that Wells Fargo's misconduct caused more than two million unauthorized accounts to be opened, with many of the customers incurring unexpected fees on those unauthorized accounts.¹⁰

The CFPB's investigative activities also uncovered an illegal predatory lending scheme at Corinthian Colleges, a massive for-profit college chain that aggressively marketed its career training programs to students and encouraged them to take out expensive private loans to pay for tuition.¹¹ According to its SEC filings, Corinthian tried repeatedly to set aside CIDs that the CFPB issued in 2012 and 2013.¹² However, the agency's persistence was crucial in uncovering widespread predatory lending and illegal debt collection practices at the company. The agency uncovered internal communications in which Corinthian employees described their target student demographic as having "low self-esteem," and "minimal understanding of basic financial concepts," among other things - indicating their interest in recruiting students from vulnerable populations.¹³ The CFPB brought suit against Corinthian in September 2014, and a few months later announced a \$480 million settlement negotiated in cooperation with the Department of Education to provide debt relief to harmed students.¹⁴

As far as we are aware, the CFPB has used its CID authority in an appropriately measured way. And as with the DOJ and FTC authority, there are processes available to entities who receive a CID, to work with the CFPB to further tailor a request more precisely to the relevant and useful information in its possession, custody, or control, or to petition the court to narrow the scope of a CID or to disallow it in its entirety. We believe these are sufficient procedural safeguards against inappropriate use.

Conclusion

The Bureau has stated that it has begun this call for evidence in order to "ensure the Bureau is fulfilling its proper and appropriate functions to best protect consumers." As this process moves forward, we urge the Bureau to keep its mission foremost in view: of implementing and enforcing Federal consumer financial law "for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."

[million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/](#) (announcing additional \$85 million to be paid to state and local agencies).

¹⁰ See Consent Order, *supra* note 9, at 5-7.

¹¹ Complaint at 3-4, Consumer Fin. Protection Bureau v. Corinthian Colleges, Inc., Case No. 14-cv-07194 (filed N.D. Ill. Sept. 16, 2014), available at https://files.consumerfinance.gov/f/201409_cfpb_complaint_corinthian.pdf.

¹² Form 8-K at 16-17, Corinthian Colleges, Inc. (Aug. 12, 2014), available at https://www.sec.gov/Archives/edgar/data/1066134/000110465914060150/a14-18886_18k.htm.

¹³ Complaint at 2-3, Consumer Fin. Protection Bureau v. Corinthian Colleges, Inc., Case No. 14-cv-07194 (filed N.D. Ill. Sept. 16, 2014), available at https://files.consumerfinance.gov/f/201409_cfpb_complaint_corinthian.pdf.

¹⁴ Agreement at 1, ECMC Group, Inc.'s purchase of certain Corinthian Colleges, Inc. assets (Feb. 2, 2015), available at https://files.consumerfinance.gov/f/201502_cfpb_bulletin_cfpb-ecmc-agreement.pdf (letter from CEO of ECMC to CFPB Director Cordray, confirming debt relief as condition for sale of Corinthian campuses to ECMC).

We look forward to working with you to ensure that any changes are carefully considered and advance the important mission of the CFPB.

Sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne Martindale'.

Suzanne Martindale
Senior Attorney
Consumers Union

A handwritten signature in blue ink, appearing to read 'George P. Slover'.

George P. Slover
Senior Policy Counsel
Consumers Union