

**In the United States District Court
for the Eastern District of Pennsylvania**

Consumer Financial Protection Bureau,

Plaintiff,

v.

J.G. Wentworth, LLC,

Respondent.

Case No. 2:16-cv-02773-CDJ

**Consumer Financial Protection Bureau’s
Response to J.G. Wentworth’s Notice of Supplemental Authority**

Respondent J.G. Wentworth, LLC, (JGW) filed a notice of supplemental authority to bring to the Court’s attention the D.C. Circuit’s opinion in *Consumer Financial Protection Bureau v. Accrediting Council for Independent Colleges and Schools (ACICS)*.¹ In *ACICS*, the district court had denied the Bureau’s petition to enforce a CID served on an accreditor of for-profit schools, finding that the Bureau “lacks authority to investigate the process for accrediting” such schools.² The D.C. Circuit affirmed on narrower grounds, identifying a defect with the CID’s Notification of Purpose (Notification); on that basis, the court concluded that the CID could not be enforced.³ While the Notification in the CID sent to JGW does not contain the defect that concerned the *ACICS* court, to avoid any doubt about the purpose of the investigation here, the Bureau has revised the instant CID’s Notification, as described below. Even if the Notification in the original CID suffered from the same defect that

¹ No. 16-5174, 2017 WL 1422488 (D.C. Cir. Apr. 21, 2017); *see also* ECF No. 28.

² *CFPB v. ACICS*, 183 F. Supp. 3d 79, 83(D.D.C. 2016).

³ *ACICS*, 2017 WL 1422488, at *5-6.

existed in *ACICS*, the Notification in the modified CID does not, and it provides no reason to refuse enforcement of the CID.

As mentioned above, the district court in *ACICS* concluded that the Bureau lacks authority to investigate any aspect of the accreditation of for-profit schools.⁴ In its earlier papers in this case, JGW relied on the district court's opinion to argue that the Bureau similarly lacks authority to investigate JGW's conduct.⁵ But the D.C. Circuit in *ACICS* determined that it was not necessary to reach that question, basing its ruling instead on the Bureau's Notification of Purpose, which, the D.C. Circuit found, "fail[ed] to state adequately the unlawful conduct under investigation or the applicable law."⁶ The Court therefore concluded that the CID did not satisfy the CFPA's requirements and could not be enforced.⁷

The CFPA requires that each CID issued by the Bureau "state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation."⁸ While the CID at issue in *ACICS* identified the conduct in question only as "accrediting for-profit colleges," the CID at issue here described the relevant conduct in more detail. Specifically, it stated that the Bureau is investigating conduct involving "advancing funds in exchange for the rights to future payments from structured settlements or annuities." The CID at issue here also identified "sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., or its

⁴ *ACICS*, 183 F. Supp. 3d, at 84.

⁵ ECF No. 13 at 16-18, 20-21; ECF No. 24 at 2.

⁶ *ACICS*, 2017 WL 1422488, at *5.

⁷ *Id.* at *6.

⁸ 12 U.S.C. § 5562(c)(2); *see also* 12 C.F.R. § 1080.5.

implementing regulations; or any other Federal-consumer financial law,” as the laws potentially violated. Taken together, these statements adequately advised JGW of the purpose of the investigation, including both the conduct in question (providing consumers lump-sum payments in exchange for future payments made to it over time) and the laws potentially violated (the specific provisions of the CFPA that cover unfair, deceptive, and abusive acts and practices and the Truth in Lending Act, which covers the disclosure of credit terms).

There can be little doubt that JGW understood the conduct being investigated and the potential violations at issue—much of its opposition is devoted to arguing that the lump-sum advances it provides to consumers cannot be deemed to constitute “credit” under the CFPA or TILA, and that its interactions with consumers cannot be deemed to involve “financial advisory services” under the CFPA.⁹ JGW focuses so much of its argument attempting to dispute these premises (before producing the facts that would prove or disprove them) precisely because the “link between the relevant conduct and the alleged violation”¹⁰ was evident in the CID’s Notification of Purpose.

Nevertheless, while the Bureau believes that the Notification as originally written was adequate to address any concerns raised by the D.C. Circuit’s opinion in *ACICS*, the Bureau has modified the Notification to state:

The purpose of this investigation is to determine whether persons who advance funds in exchange for consumers’ rights to future payments from structured settlements or annuities are extending credit or providing financial-advisory services to consumers. The purpose of this investigation is also to determine whether such persons have committed unfair, deceptive, or abusive acts or practices under §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, by

⁹ ECF No. 13 at 12-19.

¹⁰ *ACICS*, 2017 WL 1422488, at *6.

making deceptive statements or using abusive or unfair methods when offering or providing their products, or violated the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., by failing to make required disclosures. Finally, the purpose of this investigation is to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.¹¹

As modified, there can be no doubt that the Notification meets the requirement of the CFPA. First, it expressly states that the Bureau is investigating whether JGW is extending credit or providing financial-advisory services. It is well established that facts bearing on a determination of an agency's jurisdiction to address particular conduct may appropriately be sought through a CID.¹² If a CID recipient could refuse to respond to a CID seeking such information, it would be able to thwart the agency's ability to determine for itself whether the conduct in question is within its authority to address. Further, the Notification spells out the potential violations at issue and identifies the applicable provisions of law.

Apart from this modification to the Notification, the CID remains the same. While the modification to the Notification moots any argument regarding the import of the D.C. Circuit's opinion in *ACICS*, it does not moot the Bureau's petition. There is no indication that JGW will comply with the CID, even as modified. As described above, JGW contends that the Bureau lacks any authority to investigate it. That issue is now squarely before the Court.

For the reasons expressed here and in the Bureau's prior papers, the Court should require JGW to comply with the CID so that the Bureau can determine whether it has authority over JGW's conduct and whether JGW has violated the law.

¹¹ Ex. 1 (May 15, 2017, Modification Letter).

¹² See ECF No. 18 at 3 & n.10 (collecting cases).

Dated: May 15, 2017

Respectfully submitted,

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