

CONFIDENTIAL TREATMENT REQUESTED BY ENOVA INTERNATIONAL, INC.**UNITED STATES OF AMERICA
BEFORE THE CONSUMER FINANCIAL PROTECTION BUREAU**

<p>IN THE MATTER OF ENOVA INTERNATIONAL, INC.</p>

**PETITION TO MODIFY THE CIVIL INVESTIGATIVE DEMAND
SERVED ON ENOVA INTERNATIONAL, INC.**

Pursuant to section 1052(f) of the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), Enova International, Inc. (“Enova” or the “Company”) respectfully petitions the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) to modify the Civil Investigative Demand (“CID”) issued to Enova on May 24, 2021, for the reasons provided below.

INTRODUCTION

Enova respectfully requests that the Bureau modify the scope of the CID to conform to the purpose of this investigation – assessing compliance with a Consent Order entered into between Enova and the CFPB on January 25, 2019 (“Consent Order”). As written, the CID is not tethered to that purpose. Instead, the CID – which, including subparts, seeks information concerning some 268 discrete topics – sweeps in information (i) concerning products and corporate entities [REDACTED]; and (ii) dating back to [REDACTED], even though the Consent Order released Enova from liability for conduct before the Consent Order and any action now would be untimely. For the reasons that follow, Enova respectfully requests that the Bureau limit the scope of the CID (i) to the Enova subsidiaries

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offering CashNetUSA products; and (ii) to the time period January 25, 2019 through the date of the CID.

BACKGROUND

This investigation stems from [REDACTED] Enova's compliance with the Consent Order. The Consent Order, in turn, arose from an [REDACTED] [REDACTED] enforcement action that identified certain compliance issues in connection with CashNetUSA – dozens of subsidiaries of Enova that offer payday loans, installment loans, and lines of credit. Neither the Bureau's [REDACTED] nor the investigation that culminated in the Consent Order identified any compliance issues in connection with any of the other products or services offered by the many Enova subsidiaries that do not offer CashNetUSA products. Enova has over one hundred direct and indirect subsidiaries, offering products as varied as international money transfer services, small business lending, and online lending to Brazilian consumers.

One set of subsidiaries offers NetCredit products. NetCredit offers near-prime (not payday) loans and lines of credit. Despite NetCredit's clean slate with the Bureau, Bureau staff confirmed during the meet and confer that the CID was intended to encompass NetCredit's products and operations. These subsidiaries – including NetCredit – are distinct corporate entities that have separate management teams, offer different products and services, have separate procedures and practices, and use different technology platforms and systems.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]. The Office of Enforcement issued a CID to Enova on [REDACTED]. That CID targeted the CashNetUSA compliance issues [REDACTED]. Those issues were ultimately resolved in a Consent Order entered into between Enova and the CFPB on January 25, 2019. That Consent Order concerned two issues: (i) the debiting of customers' bank accounts without authorization through information obtained from lead generators that was used to overwrite account information related to outstanding loans; and (ii) failing to honor loan extensions granted to customers.

Following the Consent Order, the Bureau initiated [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As the Bureau knows, Enova acted swiftly to remediate the issues [REDACTED]
[REDACTED]: among other corrective actions taken by the Company, it has voluntarily provided full redress to the small number of affected customers, voluntarily commissioned an independent audit of its change-management practices, and voluntarily established a new management-level committee responsible for change-management and its potential impact on compliance with consumer protection laws.

Nevertheless, on May 24, 2021, the Bureau issued to the Company a CID containing the following Notification of Purpose:

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The purpose of this investigation is to determine whether short-term or small-dollar lenders or associated persons, in connection with the origination, servicing, and collection of payday loans, installment loans, or lines of credit, debited or attempted to debit consumers' bank accounts without having obtained their express informed consent; failed to honor loan extensions granted to consumers; failed to provide to consumers copies of their authorizations for electronic fund transfers that identified the bank account to be debited; debited the full payment instead of a loan extension fee to consumers granted a loan extension; or made false or misleading representations to consumers, in a manner that: (1) violates the consent order that was entered in File No. 2019-BCFP-0003 on January 25, 2019, which is an order prescribed by the Bureau under Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565; and (2) thereby also violated Section 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A); or (3) was unfair or deceptive in violation of Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536. The investigation also seeks to determine whether the above persons, in connection with the above products or services, failed to follow requirements applicable to preauthorized transfers or failed to retain required evidence of compliance in a manner that violates Regulation E, 12 C.F.R. §§ 1005.10, 1005.13, implementing the Electronic Fund Transfer Act, 15 U.S.C. § 1963, et seq. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

The "Applicable Period for Responsive Materials" seeks information [REDACTED] [REDACTED] acknowledging that the purpose of this investigation, [REDACTED], is to determine Compliance with the Consent Order. Despite that stated purpose, many requests explicitly seek information from other [REDACTED] [REDACTED].

Following receipt of the CID, Enova held two meet and confer discussions with Bureau staff. During those discussions, Enova explained its position that the CID was overbroad because it was not limited in scope to CashNetUSA [REDACTED] [REDACTED], and because it seeks information concerning time periods for which the Bureau released Enova from liability in the Consent Order. On June 11, 2021, Enova submitted a letter to the Bureau requesting modifications to the CID for these and other reasons.

DISCUSSION

The CID is overbroad and, for three reasons, should be modified in scope to concern (i) subsidiaries offering CashNetUSA products, not subsidiaries offering NetCredit or other products; and (ii) the time period after entry of the Consent Order – January 25, 2019 through the date of the CID. First, the Bureau has no basis (nor has it offered any) for investigating NetCredit. Second, the Bureau seeks information concerning conduct and transactions that were covered by the Consent Order and from which Enova was released from liability. Third, the CID’s request for information dating back to, for certain requests, [REDACTED], goes [REDACTED] beyond any applicable limitations period.

I. THE SCOPE OF THE CID SHOULD BE LIMITED TO ENOVA’S CASHNETUSA SUBSIDIARIES.

Simply put, there is no basis for the Bureau to investigate NetCredit or any Enova subsidiaries other than those offering CashNetUSA products. The Bureau does not possess “unfettered authority to cast about for potential wrongdoing,” and so a CID may not be “unreasonably broad.” *CFPB v. Accrediting Council for Indep. Colls. & Sch.*, 854 F.3d 683, 689 (D.C. Cir. 2017). “An administrative subpoena thus may not be so broad as to be in the nature of a fishing expedition.” *Peters v. United States*, 853 F.2d 692, 700 (9th Cir. 1988). The Bureau’s own enforcement policies recognize that “[a] CID should be narrowly tailored to solicit the information necessary for the investigation.” CFPB, *Office of Enforcement, Policies and Procedures Manual*, at 58 (May 2017).

The CID ignores that CashNetUSA and NetCredit are fundamentally different companies that offer different products, have different teams, have different practices and procedures, and use different systems and technologies, and that none of the Bureau’s [REDACTED] investigations have uncovered any basis for investigating NetCredit.

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CashNetUSA and NetCredit offer entirely different products [REDACTED]. CashNetUSA offers payday loans, subprime installment loans, and subprime lines of credit, whereas NetCredit offers near-prime installment loans and lines of credit. *See* Declaration of Gaurav Devasthali ¶ 5 (June 14, 2021) (submitted herewith). This difference is more than a mere technicality. One purpose of this investigation is to determine whether Enova violated the Consent Order by “fail[ing] to honor loan extensions granted to consumers.” It would be impossible for NetCredit to have failed to honor loan extensions, however, because extensions were not available on NetCredit products. *Id.* ¶ 6.

CashNetUSA and NetCredit have separate, dedicated personnel. The companies have separate managers, Strategy & Operations teams, Product Management teams, contact center representatives, and technology teams. *Id.* ¶ 7.

CashNetUSA and NetCredit have separate procedures and practices. For example, [REDACTED]. *Id.* ¶ 9. In addition to loan extensions, the Consent Order concerned the unauthorized debiting of accounts using bank account information acquired from lead generators. It would be impossible for NetCredit to have violated this provision of the Consent Order because [REDACTED]. *Id.* ¶ 8.

Finally, CashNetUSA and NetCredit use different technology platforms and systems. *Id.* ¶¶ 10-11. The architecture, databases, and deployments are all separate. [REDACTED]

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expeditions undertaken merely to satisfy its ‘official curiosity.’”). The Bureau does not have “unfettered authority to cast about for potential wrongdoing” in connection with NetCredit where Enova’s practices [REDACTED] investigated before and no issues related to NetCredit have been identified. *See CFPB v. Accrediting Council for Indep. Colls. & Sch.*, 854 F.3d 683, 689 (D.C. Cir. 2017). Under these circumstances, the CID, as it relates to NetCredit, is “in the nature of a fishing expedition,” *Peters v. United States*, 853 F.2d 692, 700 (9th Cir. 1988), and the scope should be modified to include only those Enova entities that offer CashNetUSA products.

II. THE BUREAU RELEASED AND DISCHARGED ENOVA FOR THE SAME CONDUCT THE BUREAU NOW SEEKS TO INVESTIGATE FOR A SECOND TIME.

The purpose of this and every other CID issued by the Bureau is “to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.” *See* CID, Notification of Purpose. But the Bureau has no claims concerning practices and time periods for which it released and discharged Enova from liability in the Consent Order. The Consent Order contains a release and discharge provision, which provides that:

The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section V of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.

Consent Order ¶ 69.

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There can be no doubt that the Company’s practices concerning honoring loan extension requests and use of lead-generator-acquired bank account information are subject to the release, as those practices are described in detail in the Consent Order. *Id.* ¶¶ 9-33. The Bureau also appears to have taken the position that every other issue it seeks to investigate constitutes a violation of the Consent Order’s prohibition on “[d]ebiting or attempting to debit any consumer’s bank account without having obtained the consumer’s express informed consent.” *Id.* ¶ 34(i). For example, Interrogatory [REDACTED]

[REDACTED]
[REDACTED] Similarly, the catch-all Interrogatory [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Though Enova strongly disagrees that all of the [REDACTED] the Bureau has identified constitute violations of the Consent Order, the Bureau need not resolve that issue to grant Enova’s petition. At a minimum, claims concerning conduct the Bureau now seeks to investigate are ones the Bureau certainly “might have asserted based on the practices described in Section V of [the] Consent Order.” Consent Order ¶ 69. There can also be little doubt that the Bureau had full knowledge of Enova’s business practices at the time it entered into the Consent Order. Prior to the Consent Order, [REDACTED]
[REDACTED] and the Office of Enforcement completed a [REDACTED] thorough examination of Enova’s business practices.

Under these circumstances, the release precludes the imposition of liability on Enova for conduct that occurred before the date of the Consent Order. The Consent Order is “a formal

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adjudication on the merits which is entitled to res judicata effect.” *CFPB v. Ocwen Fin. Corp.*, 2021 U.S. Dist. LEXIS 73304, at *24 (S.D. Fla. Mar. 4, 2021); *accord Navajo Nation v. Wells Fargo & Co.*, 344 F. Supp. 3d 1292, 1302-1304 (D. N.M. 2018) (consent order released defendant from liability for violations prior to the date of the order). Thus, for time periods prior to the Consent Order, the information sought by the Bureau is irrelevant to the CID’s stated purpose of “determin[ing] whether Bureau action to obtain legal or equitable relief would be in the public interest.” Enova requests that the Bureau modify the scope of the CID to concern the time period January 25, 2019–May 24, 2021.

III. THE TIME PERIOD OF THE INFORMATION SOUGHT IS OVERBROAD BECAUSE IT EXTENDS BEYOND ANY STATUTES OF LIMITATIONS.

[REDACTED]

[REDACTED] the bulk of the CID’s requests [REDACTED]

[REDACTED] seek information from [REDACTED] ago. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. These requests, and dozens of others, seek data and information outside an enforceable timeframe.

The longest relevant limitations period is the three-year period under the Consumer Financial Protection Act, which begins after the Bureau “discovered” the conduct at issue. 12 U.S.C. § 5564(g)(1). Under the Electronic Fund Transfer Act, the statute of limitations is one year. 12 U.S.C. § 1639o(a)(5). Because of the limitations bar, only conduct from May 24, 2018 to May 24, 2021 is potentially actionable, and the Bureau should modify the time periods for each request accordingly.

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The Bureau cannot credibly contend that it did not “discover[.]” the conduct at issue until recently, such that it should be permitted to investigate conduct [REDACTED] beyond the limitations periods. There can be no doubt that it discovered any compliance issues which could constitute “Consent Order Violation[s]” [REDACTED] in the issuance of a CID to Enova on [REDACTED] and the January 25, 2019 Consent Order. In any event, the Bureau need not determine the precise date it actually “discovered” the conduct it now seeks to investigate, as the Bureau’s exercise of reasonable diligence during the [REDACTED] [REDACTED] investigation would have uncovered any alleged conduct and placed the Bureau on constructive notice sufficient for accrual of the statute of limitations. *See CFPB v. NDG Fin. Corp.*, No. 15-5211, 2016 U.S. Dist. LEXIS 177756, at *58 (S.D.N.Y. Dec. 2, 2016) (“The date of discovery is the date when the plaintiff obtains actual knowledge of the facts giving rise to the action or notice of the facts, which in the exercise of reasonable diligence, would have led to actual knowledge.”).

Though it is true that in some cases information from outside the limitations period may be reasonably “relevant to conduct for which liability can be imposed,” that is not the case here. *CFPB v. Future Income Payments, LLC*, 252 F. Supp. 3d 961, 969 (C.D. Cal 2017). Here, the Bureau is investigating Enova’s compliance with the Consent Order. Conduct that preceded the Consent Order is irrelevant to compliance with the Consent Order.

Thus, even if the Bureau does not agree to modify the CID to limit the time period from the Consent Order forward, the Bureau should modify the CID to concern the May 24, 2018–May 24, 2021 time period concerning which the Bureau could bring potentially actionable claims.

CONCLUSION

For these reasons, Enova respectfully requests that the Bureau modify the CID to limit the scope of the CID to the Enova subsidiaries offering CashNetUSA products during the time period January 25, 2019–May 24, 2021 or, alternatively, the time period May 24, 2018–May 24, 2021.

Dated: June 14, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June 2021, pursuant to 12 C.F.R. 1080.6(e), I caused the foregoing Petition to Modify the Civil Investigative Demand Served on Enova International, Inc. to be served via email upon the Executive Secretary of the Bureau and the Assistant Director for the Office of Enforcement.

Dated: June 14, 2021

/s/ Levi W. Swank
Levi W. Swank

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CERTIFICATION

Pursuant to 12 C.F.R. 1080.6(e)(1), I certify that I have conferred with counsel for the Consumer Financial Protection Bureau pursuant to 12 C.F.R. 1080.6(c), in a good faith effort to resolve by agreement all issues raised in this petition, but have been unable to reach such an agreement.

The conferences took place telephonically on June 3 and June 8, 2021. The participants of the June 3 conferral were Sean Rahilly, Ticole Miller, Cynthia Hayward, and Gaurav Devasthali from Enova; outside counsel Tony Alexis and Levi Swank from Goodwin, and [REDACTED] from the Consumer Financial Protection Bureau, as well as certain of [REDACTED] colleagues. The participants of the June 8 conferral were Ticole Miller, Dan Kirsche, and Gaurav Devasthali from Enova; outside counsel Tony Alexis and Levi Swank from Goodwin, and [REDACTED] from the Consumer Financial Protection Bureau, as well as certain of [REDACTED] colleagues.

All known matters in controversy remaining unresolved are set forth in the accompanying petition. On June 11, 2021, Enova requested by letter certain additional modifications to the CID. Based on the meet and confer, Enova is optimistic that those issues will be resolved through the conferral process.

Dated: June 14, 2021

/s/ Levi W. Swank
Levi W. Swank