

Fifth Circuit Rejects CFPB Bid to Enforce Civil Investigative Demand

September 7, 2018 | Allen H. Denson

On September 6, 2018, the U.S. Court of Appeals for the Fifth Circuit announced its decision in *CFPB v. Source for Public Data*. For only the second time in the Bureau's 7-year history, a court rejected the CFPB's petition to enforce its Civil Investigative Demand ("CID").

The Bureau's authorizing statute allows it to conduct investigations through CIDs, which compel the production of information, but it also requires that CIDs describe the laws violated and conduct that caused the suspected violations in a "Notification of Purpose." Here, the Bureau's Notification of Purpose essentially stated that the Bureau sought to investigate whether any person who procured or used a consumer report had violated any law enforced by the Bureau. Source for Public Data challenged the CID, primarily arguing that the CID's vague Notification of Purpose rendered it defective.

The Fifth Circuit agreed with Source for Public Data. While the Bureau has broad authority to conduct investigations, the court held that the Bureau "does not have unfettered authority to cast about for potential wrongdoing." CID recipients should know what conduct is under investigation, what laws have potentially been violated, and whether the recipient is a third-party or a "target" of an investigation.

Hudson Cook attorneys Allen Denson and Rebecca Kuehn were proud to represent the National Association of Professional Background Screeners as *Amicus Curiae* in this noteworthy decision.

Decision

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