



compliance, and the hearing was rescheduled for November 16 and 17. CFPB staff and MV Realty conferred several more times before MV Realty ultimately informed the CFPB on November 14 that MV Realty would not appear for the investigational hearing. That same day, MV Realty filed its petition to modify or set aside the CID.

## **II. LEGAL DETERMINATION**

MV Realty argues that the CID should be modified or set aside for three reasons. First, MV Realty contends that the CFPB cannot investigate MV Realty because the CFPB lacks any authority over real estate brokers unless they are engaged in offering a consumer financial product or service (which MV Realty claims it is not). Petition (“Pet.”) at 3-4. Second, MV Realty claims that, because the CFPB lacks authority over MV Realty, the Bankruptcy Code’s automatic stay provision prohibits the CFPB from taking any further action on its CID. *Id.* at 4. Finally, MV Realty argues that the CFPB’s statutory funding mechanism is unconstitutional and therefore the CFPB may not proceed with its investigation. *Id.*

For the reasons set forth below, MV Realty’s petition is denied.

### **A. MV Realty’s petition is untimely.**

As an initial matter, MV Realty’s petition is untimely. The CFPA and the CFPB’s implementing regulations set forth a clear deadline for petitioning to modify or set aside a CID and a clear process for obtaining extensions for filing such petitions. MV Realty ignored both.

Under 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), the deadline for responding to a CID is 20 calendar days from service of the CID or any time before the return date on the CID, whichever is earlier. Here, because the CID was served on August 11, 2023, the petition was due on August 31, 2023. By statute, this deadline can be extended “as may be prescribed in writing, subsequent to service, by any Bureau investigator named in the demand.” 12 U.S.C. § 5562(f)(1).

The CFPB’s rules further specify that “[t]he Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement are authorized to rule upon requests for extensions of time within which to file such petitions.” 12 C.F.R. § 1080.6(e)(2). MV Realty did not seek an extension pursuant to these rules, yet did not file its petition until November 14, 2023—approximately two and a half months after the deadline.

MV Realty’s petition is silent as to its failure to file its petition timely. Accordingly, MV Realty’s petition is denied as untimely.

**B. MV Realty’s petition fails on the merits.**

MV Realty’s petition is also denied on the independent ground that all of its arguments are meritless. MV Realty’s first argument that the CFPB lacks authority over it fails because the CFPB has authority over real estate brokers in some circumstances, including when they offer a consumer financial product or service. The CFPB is entitled to investigate to determine whether MV Realty is subject to its authority under the circumstances present here—particularly given the indications that MV Realty may be extending credit to consumers. MV Realty’s second argument fails because the Bankruptcy Code expressly provides for an exception to the automatic stay for a government agency exercising police or regulatory powers, as the CFPB is in this matter. Finally, MV Realty’s constitutional argument regarding the CFPB’s funding mechanism provides no basis to set aside the CID or to hold it in abeyance.

**1. The CFPB has the authority to investigate MV Realty.**

MV Realty argues that “this CID is outside the CFPB’s jurisdiction” because it is a real estate broker engaged in real estate brokerage activities. Pet. at 5. MV Realty relies on 12 U.S.C. § 5517(b)(1), which provides that—with certain exceptions—the CFPB “may not exercise any . . . authority” under the CFPA “with respect to a person that is licensed or registered as a real

estate broker or real estate agent, in accordance with State law, to the extent that such person” engages in specified real-estate-broker activities. This argument fails for two reasons.

First, petitioner’s argument is foreclosed by § 5517(n)(2). That provision states that “[n]otwithstanding” specified exclusions from the CFPB’s authority—including the exclusion for real estate brokerage activities on which MV Realty relies—“a person ... described in” that exclusion “may be subject to requests from ... the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with” various statutory provisions, including § 5562, which authorizes the CFPB to issue CIDs. *Id.* § 5517(n)(2). Thus, even in those instances where § 5517(b) could potentially divest the CFPB of enforcement authority over an entity engaged in real estate brokerage activities, § 5517(n) makes clear that that entity is still subject to the CFPB’s authority to issue CIDs pursuant to § 5562. The Bureau has issued this CID in accordance with the requirements of § 5562 (and MV Realty does not argue otherwise). MV Realty’s argument thus fails for this reason alone.

Second, as MV Realty itself acknowledges (Pet. at 3), the CFPB *does* have enforcement authority over real estate brokers in some circumstances, and it is well established that an “agency with subpoena powers . . . is entitled to obtain the facts necessary to determine whether” it has authority to bring an enforcement action.<sup>1</sup> *See EEOC v. Sidley Austin Brown & Wood*, 315 F.3d 696, 699 (7th Cir. 2002); *see also SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1052-53 (2d Cir. 1973) (“The [SEC] must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within the Commission’s regulatory authority.”). Thus, the recipient of

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<sup>1</sup> A CID is a “form of administrative subpoena.” *See CFPB v. Accrediting Council for Indep. Colls. & Sch.*, 854 F.3d 683, 688 (D.C. Cir. 2017).

a CID generally may not raise “disagreements over an agency’s authority” to resist complying with a CID. *FTC v. Ken Roberts Co.*, 276 F.3d 583, 584 (D.C. Cir. 2001). Rather, “[u]nless it is patently clear that an agency lacks the jurisdiction that it seeks to assert, an investigative subpoena will be enforced.” *Id.*<sup>2</sup>

Here, it is far from “patently clear” that the CFPB lacks authority to enforce the consumer laws against MV Realty. On the contrary, there is reason to believe the CFPB does have such authority. The CFPB has authority over real estate brokers in two circumstances that are particularly relevant here. First, the CFPA expressly provides that the CFPB “may exercise . . . authority” with respect to real estate brokers engaged in a specified real estate brokerage activity when they are “engaged in an activity of offering or providing any consumer financial product or service,” in which case the CFPB may exercise authority “with respect to that activity.” 12 U.S.C. § 5517(b)(2)(A). Extending credit to consumers for personal, family, or household purposes is a consumer financial product or service over which the CFPB would have authority. *See id.* § 5481(5), (15)(A)(i). Second, the statute provides that the CFPB may exercise authority with respect to real estate brokers engaged in a specified real estate brokerage activity if the broker is “otherwise subject to any enumerated consumer law or any law for which authorities

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<sup>2</sup> *See also, e.g., EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1077 (9th Cir. 2001) (“As long as the evidence sought is relevant, material and there is some ‘plausible’ ground for jurisdiction, or to phrase it another way, unless jurisdiction is ‘plainly lacking,’ the court should enforce the subpoena.”); *SEC v. Savage*, 513 F.2d 188, 189 (7th Cir. 1975) (SEC not required to establish that company’s contracts were “securities” subject to agency’s jurisdiction before subpoena would be enforced); *CFPB v. Harbour Portfolio Advisors, LLC*, No. 16-14183, 2017 WL 631914, at \*3 (E.D. Mich. Feb. 16, 2017) (“Whether Respondents’ transactions *actually* involve ‘credit’ is not at issue, and it would be premature for the Court to decide that question at this stage.”); *CFPB v. Future Income Payments, LLC*, 252 F. Supp. 3d 961, 967 (C.D. Cal. 2017), *order vacated in part*, No. 8:17-CV-00303-JLS-SS, 2018 WL 7502720 (C.D. Cal. Dec. 18, 2018) (enforcing CID because “a fact-intensive inquiry into whether the company’s products qualify as loans under [TILA] . . . cannot . . . prevent enforcement of the CFPB’s administrative subpoena”).

are transferred under subtitle F or H,” in which case the CFPB may exercise authority “with respect to that law.” *Id.* 5517(b)(2)(B). The Truth in Lending Act and Equal Credit Opportunity Act are enumerated consumer laws that the CFPB has authority to enforce against real estate brokers under this provision. *See id.* § 5481(12)(D), (O). Those laws, generally speaking, apply to creditors and credit transactions. *See, e.g.*, 15 U.S.C. § 1638 (TILA); *id.* § 1691 (ECOA).

It appears that MV Realty may extend credit—and therefore be subject to the Bureau’s authority—in offering Home Buyer’s Agreements (HBAs), a product about which the CFPB seeks more information with this CID. According to information currently available to the CFPB, under the HBAs, MV Realty advances consumers lump-sum cash payments between \$300 and \$5,000 in exchange for the exclusive right to act as the listing agent when consumers sell their homes.<sup>3</sup> In substance, MV Realty may be extending credit: It is advancing cash that consumers are then obligated to pay back (and then some) at a later date—either by using MV Realty as the listing agent when the home is sold (thereby allowing MV Realty to deduct a commission from the amount the homeowner receives from the sale) or by paying an early termination fee. Indeed, at least one court has found that MV Realty’s HBAs are a loan product, characterizing them as the “advance and subsequent repayment of an agreed-upon amount plus implicit interest.” *See* Decision and Order Allowing the Commonwealth’s Mot. for a Prelim. Inj., *Commonwealth of Massachusetts v. MV Realty PBC, LLC and MV of Massachusetts, LLC*, Mass. Super. Ct., 2284CV02823-BLS2, at 7 (Suffolk County February 21, 2023). If MV Realty is extending credit within the meaning of the CFPB, TILA, and/or ECOA, then the CFPB would have authority over MV Realty with respect to its HBAs. *See* 12 U.S.C. § 5517(b)(2)(A), (B).

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<sup>3</sup> *See Homeowners receive cash with the homeowner benefit program!*, MV Realty (Jan. 10, 2023), <https://homeownerbenefit.com/?src=9>.

MV Realty objects that it does not engage in offering or providing a consumer financial product or service and is not subject to any enumerated consumer law.<sup>4</sup> But the CFPB is not required to accept as true MV Realty’s bare assertions that it does not extend credit, or any other assertions concerning the limits or scope of its business conduct; instead, CFPB is entitled to investigate to determine whether MV Realty is extending credit and thus subject to the CFPB’s authority.

And that is precisely what the CFPB is doing here. The CID provides that the “purpose of this investigation is to determine whether,” among other things, certain persons “offered to extend credit, extended credit, or brokered credit.” The CID then states that the CFPB is investigating whether such persons may have violated the CFPA; Regulation Z, which implements the Truth in Lending Act (TILA); and Regulation B, which implements the Equal Credit Opportunity Act (ECOA). In other words, the CID seeks information to determine whether MV Realty is extending credit and thus is engaged in offering or providing a consumer financial product or service and/or is subject to TILA and ECOA.

For these reasons, the CFPB has authority to investigate MV Realty for potential violations of federal consumer financial laws.

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<sup>4</sup> MV Realty asserts that real estate brokering is not a “consumer financial product or service” and that the enumerated consumer laws do not apply to real estate brokers. That misses the point. Even though real estate brokering may not be a “consumer financial product or service,” MV Realty’s HBA may constitute the extension of credit—which is a consumer financial product or service. *See id.* § 5481(5), (15)(A)(i). Likewise, TILA or ECOA may apply to MV Realty because MV Realty may act as a creditor as defined under those laws and their implementing regulations with respect to its HBAs.

**2. The Bankruptcy Code does not prohibit the CFPB from investigating potential violations of federal consumer protection laws.**

MV Realty next contends that the Bankruptcy Code’s automatic stay provision prohibits the CFPB from issuing a CID to it. That is mistaken. While the filing of a bankruptcy petition under Chapter 11 generally “operates as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, or a judicial, administrative, or other action or proceeding against the debtor,” that stay does not apply to the “commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s . . . police and regulatory power”—as MV Realty itself acknowledges. 11 U.S.C. § 362(a)(1), (b)(4); *see also* Pet. at 8-9.

The CFPB’s CID here is an exercise of such power.<sup>5</sup> MV Realty does not appear to dispute that if the CFPB had authority to bring an enforcement action against it, that action would be an exercise of the CFPB’s police and regulatory powers and thus exempt from the automatic stay. That is correct: the CFPB’s investigation seeks “to effectuate a public policy”—the obvious policy against consumer law violations—and that is an exercise of police and regulatory powers. *See In re Kupperstein*, 994 F.3d 673, 677 (1st Cir. 2021). Indeed, the bankruptcy court overseeing a bankruptcy proceeding involving MV Realty recently held that the Bankruptcy Code’s automatic stay does not block state actions to address unfair and deceptive practices and other violations that various states allege MV Realty committed in connection with its HBAs. *See In re MV Realty PBC, LLC, et al.*, No. 23-01211-EPK, Dkt. 238 at 11-13 (Bankr.

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<sup>5</sup> It is not clear that the automatic stay even applies in the first instance to government *investigations*, as opposed to formal actions or proceedings. *See id.* § 362(a)(1) (referring to the “commencement or continuation” of “action[s] or proceeding[s]”). But even if it did, the stay does not apply here because the CFPB’s CID is an exercise of police and regulatory power.



S.D. Fla. February 7, 2024) (denying MV Realty’s request to enjoin several states’ enforcement actions against it and holding that those actions were an exercise of police and regulatory power).

Instead, MV Realty essentially repeats its first argument, contending that the CFPB has no relevant “police or regulatory power” here because it lacks authority over real estate brokers. Pet. at 9. That argument again fails. As explained above, the CFPB has authority to investigate whether entities are violating the federal consumer financial laws, and it is exercising that authority here. Beyond that, the Supreme Court has expressly rejected the argument that, for the police-and-regulatory exception to the automatic stay to apply, “a court must first determine whether the proposed exercise of police or regulatory power is legitimate.” *Bd. of Governors of the Fed. Rsrv. Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 40 (1991). Thus, the Bankruptcy Code does not prohibit the CFPB from continuing its investigation.

**3. MV Realty’s constitutional challenge to the CFPB’s statutory funding mechanism provides no basis to set aside the CID or to hold this petition in abeyance.**

Finally, MV Realty contends that the CFPB “cannot enforce the CID because [the CFPB’s] funding mechanism violated the U.S. Constitution’s appropriations clause.” Pet. at 9. In the alternative, MV Realty argues that the CID should be “held in abeyance until the Supreme Court” has decided the constitutionality of the CFPB’s statutory funding mechanism in *CFPB v. Community Financial Services Ass’n of Am., Ltd.*, No. 22-448 (argued Oct. 3, 2023). Pet. at 9.

The CFPB has repeatedly taken the position that the administrative process for petitioning to modify or set aside a CID is not the proper forum for raising and adjudicating challenges to the constitutionality of the CFPB’s statute. *See, e.g., Nat’l Credit Sys., Inc.*, 2022-MISC-Nat’l Credit Sys., Inc-0001, 2022 WL 20184376, at \*2-3 (Dec. 20, 2022); *Crystal G. Moroney*, 2021-MISC-Law Offices of Crystal Moroney, P.C. (Crystal G. Moroney)-0001, 2021

WL 11536921, at \*4-5 (Dec. 13, 2021); *In re Law Offices of Crystal Moroney, P.C.*, 2019-MISC-Law Offices of Crystal Moroney, P.C.-0001, 2020 WL 13798611, at \*2-3 (Feb. 10, 2020); *In re Eq. Acceptance Corp.*, 2019-MISC-Eq. Acceptance Corp.-0001, 2019 WL 13369649, at \*2 (Dec. 26, 2019); *In re Kern-Fuller and Sutter*, 2019-MISC-Candy Kern-Fuller and Howard E. Sutter III-0001, 2019 WL 13369650, at \*2 (Apr. 25, 2019); *In re Nexus Servs., Inc.*, 2017-MISC-Nexus Servs., Inc. and Libre by Nexus, Inc.-0001, 2017 WL 11805317, at \*2 (Oct. 11, 2017); *see also, e.g., United Space All., LLC v. Solis*, 824 F. Supp. 2d 68, 97 n.10 (D.D.C. 2011) (“[G]overnment agencies may not entertain a constitutional challenge to authorizing statutes.”). I therefore decline to set aside the CID on constitutional grounds. In any event, the CFPB (along with numerous federal courts) has explained elsewhere why its statutory funding mechanism is constitutional. *See generally* Brief for Petitioner, *CFPB v. CFSA*, No. 22-448 (argued Oct. 3, 2023); *see also, e.g., CFPB v. Law Offices of Crystal Moroney, P.C.*, 63 F.4th 174, 181-84 (2d Cir. 2023). If the CFPB determines at a later date that it is necessary to seek a court order compelling MV Realty’s compliance with this CID, *see* 12 U.S.C. § 5562(e), MV Realty can raise its constitutional arguments as a defense to that proceeding in district court.

I likewise deny MV Realty’s alternative request to hold this petition, and this investigation, in abeyance pending the Supreme Court’s decision in *CFSA*. The CFPB will continue to carry out the important duties Congress charged it with performing, including investigating possible violations of federal consumer financial law.

### III. CONCLUSION

For the foregoing reasons, the petition to set aside the CID is **DENIED**. MV Realty is directed to comply in full with the CID within 21 days from the date this Order is served by email on counsel for MV Realty. MV Realty is welcome to engage in discussions with CFPB

staff about another date for compliance that may be acceptable to the Assistant Director or Deputy Assistant Director of the Office of Enforcement.

**IT IS SO ORDERED.**

Dated: February 20, 2024

*Rohit Chopra*

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Rohit Chopra  
Director