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IN RE ACCREDITING COUNCIL FOR )  
INDEPENDENT COLLEGES AND SCHOOLS )  
2015-MISC-ACICS-0001 )

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## **DECISION AND ORDER ON PETITION BY ACCREDITING COUNCIL FOR INDEPENDENT COLLEGES AND SCHOOLS TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

The Accrediting Council for Independent Colleges and Schools (ACICS), the recipient of a civil investigative demand (CID) from the Consumer Financial Protection Bureau's Office of Enforcement, has petitioned for an order to set aside or modify the CID. For the reasons set forth below, the petition is denied.

### **FACTUAL BACKGROUND**

On August 25, 2015, the Bureau's Office of Enforcement issued a CID to ACICS, a corporation that accredits many for-profit colleges. The CID seeks sworn oral testimony from a company representative, to be designated by ACICS, and seeks to conduct the investigational hearing in Washington, D.C., where ACICS is located. The topics of proposed testimony are ACICS's policies, practices, and procedures for accrediting certain for-profit colleges. The CID also contains two interrogatories seeking a list of colleges that ACICS accredits and the individuals who conducted the accreditation of the colleges covered by the oral testimony request.

Following ACICS's receipt of the CID, Bureau Enforcement counsel met by telephone several times with ACICS's counsel to discuss compliance with the CID. These discussions did not resolve disagreements regarding ACICS's obligations and on September 14, 2015, the Bureau received the petition to set aside or modify the CID.

### **LEGAL DETERMINATION**

ACICS raises three objections to the CID, none of which warrants setting aside or modifying the CID.

First, ACICS claims that the Department of Education is its sole regulator. In support of this argument, ACICS relies on a line of cases that provide that section 496 of the Higher Education Act (HEA), 20 U.S.C. § 1099b, does not provide a private right of action against accrediting companies. Petition at 6-8. These cases do not bear on the question at hand. The Bureau is not a private plaintiff and is not seeking to enforce the HEA. Rather, the Bureau is conducting an investigation to determine whether an entity or person has engaged or is engaging in unlawful acts and practices in violation of sections 1031 and 1036 of the Consumer Financial

Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536, or any other consumer financial protection law. ACICS provides no support for the proposition that the Department of Education's authority to determine compliance with the HEA somehow affects the Bureau's independent authority to determine compliance with the CFPA. As a result, cases construing section 496 of the HEA do not provide a basis for setting aside the CID.

Second, ACICS contends that the "CFPB is restricted to taking enforcement action against 'covered persons,' 'service providers,' and any person who knowingly or recklessly provides substantial assistance to a covered person or service provider." Petition at 8. ACICS argues that it is not a "covered person" or "service provider." The unstated implication of this assertion is that ACICS is not, therefore, subject to the CFPA's prohibition on "engag[ing] in any unfair, deceptive, or abusive act or practice." 12 U.S.C. § 5536(a)(1)(B); *see also id.* § 5531(a). *See* Petition at 8-10. These contentions, however, do not relate to the scope of the Bureau's investigative authority. *See* 12 U.S.C. § 5562(c) (authorizing the Bureau to issue CIDs to "any person"). Rather, they constitute potential substantive defenses that could be raised to claims that the Bureau has yet to assert, and may never assert. As the Bureau has previously explained, fact-based arguments about whether an entity is subject to or has complied with the substantive provisions of the law are not defenses to the enforcement of a CID. *See In re Next Generation Debt Settlement, Inc.*, 2012-MISC-Next Generation Debt Settlement-0001, at 2 (Oct. 5, 2012).<sup>1</sup> Other federal agencies have reached the same conclusion in similar circumstances. *See SEC v. Savage*, 513 F.2d 188, 189 (7th Cir. 1975) (SEC not required to establish that company's commodities future contracts were "securities" within the meaning of the Securities Act before subpoena would be enforced); *EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1076 (9th Cir. 2001) (noting that Supreme Court has "consistently reaffirmed" the principle that "fact-based claim[s] regarding coverage or compliance with the law" will not preclude enforcement of an administrative subpoena). The purpose of an investigation is "to discover and procure evidence, not to prove a pending charge or complaint, but upon which to make one if, in the [Bureau's] judgment, the facts thus discovered should justify doing so." *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 201 (1946); *see also In re PHH Corp.*, 2012-MISC-PHH Corp-001, at 3 (Sept. 20, 2012) (explaining that the purpose of a CID is to close the "substantial information gap between the Bureau and the subject companies and/or individuals" and to make "a more considered evaluation . . . of whether the investigation is worth pursuing further and, if so, to what extent").<sup>2</sup> Indeed, "[i]f parties under investigation could contest substantive issues in an [administrative subpoena] enforcement proceeding, when the agency lacks the information to establish its case, administrative investigations would be foreclosed or at least substantially delayed." *FTC v. Texaco, Inc.*, 555 F.2d 862, 879 (D.C. Cir. 1977). Accordingly, ACICS's arguments regarding potential substantive defenses to certain provisions of the CFPA do not provide a basis for setting aside the CID.

Third, ACICS contends that the CID's Notification of Purpose is insufficiently specific and thus fails to comply with the requirement, imposed by the CFPA and the Bureau's

<sup>1</sup> Available at [http://files.consumerfinance.gov/f/201210\\_cfpb\\_2012-MISC-Next-Generation-Debt-Settlement-0001-Order.pdf](http://files.consumerfinance.gov/f/201210_cfpb_2012-MISC-Next-Generation-Debt-Settlement-0001-Order.pdf).

<sup>2</sup> Available at [http://files.consumerfinance.gov/f/201209\\_cfpb\\_setaside\\_phhcorp\\_0001.pdf](http://files.consumerfinance.gov/f/201209_cfpb_setaside_phhcorp_0001.pdf).



regulations, that a CID must state “the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation,” 12 U.S.C. § 5562(c)(2); *see also* 12 C.F.R. § 1080.5. Petition at 10-12. This requirement, however, does not demand a detailed narrative, and it is “well settled that the boundaries of an [agency] investigation may be drawn ‘quite generally.’” *FTC v. O’Connell Assocs., Inc.*, 828 F. Supp. 165, 171 (E.D.N.Y. 1993) (quoting *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992)). The CID’s Notification of Purpose identifies what conduct the Bureau is investigating: “whether any entity or person has engaged or is engaging in unlawful acts and practices in connection with accrediting for-profit colleges.” It also identifies the relevant provisions of law: “Sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5531, 5536, or any other Federal consumer financial law.” The Bureau has previously found that notifications functionally equivalent to the one in this CID satisfied the requirements of the statute and regulations. *See, e.g., In re Selling Source, LLC*, 2015-MISC-Selling Source, LLC-001, at 1-2 (Aug. 6, 2015);<sup>3</sup> *In re CheckSmart Financial Co.*, 2014-MISC-Checksmart Financial Company-001, at 2 (Jan. 22, 2014);<sup>4</sup> *In re Aspire Financial Inc.*, 2013-MISCAspire Financial-001, at 2 (Apr. 16, 2013);<sup>5</sup> *In re PHH Corp.*, at 5-6. Accordingly, the Notification of Purpose here adequately informed ACICS of the conduct of interest to the Bureau and the potentially applicable provisions of law.

## CONCLUSION

The petition by ACICS to modify or set aside the CID is denied. ACICS is directed to meet and confer with Bureau Enforcement counsel within 10 days of service of this order to decide upon the dates on which the hearing will take place.



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Richard Cordray, Director

October 8, 2015

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<sup>3</sup> Available at [http://files.consumerfinance.gov/f/201508\\_cfpb\\_decision-on-petition-by-selling-source-llc-to-set-aside-civil-investigative-demand.pdf](http://files.consumerfinance.gov/f/201508_cfpb_decision-on-petition-by-selling-source-llc-to-set-aside-civil-investigative-demand.pdf).

<sup>4</sup> Available at [http://files.consumerfinance.gov/f/201401\\_cfpb\\_order\\_checksart.pdf](http://files.consumerfinance.gov/f/201401_cfpb_order_checksart.pdf).

<sup>5</sup> Available at [http://files.consumerfinance.gov/f/201304\\_CFPB\\_MISC-Aspire-Financial-0001Order.pdf](http://files.consumerfinance.gov/f/201304_CFPB_MISC-Aspire-Financial-0001Order.pdf).