

UNITED STATES OF AMERICA
BEFORE THE CONSUMER FINANCIAL PROTECTION BUREAU

IN THE MATTER OF
Heartland Campus Solutions, ECSI

PETITION TO SET ASIDE OR MODIFY CIVIL INVESTIGATIVE DEMAND

Venable LLP
Allyson B. Baker
Alexandra Megaris
Erin Zacuto Cass
600 Massachusetts Avenue NW
Washington, DC 20001
(202) 344 – 4708
Counsel for Heartland Campus Solutions, ECSI

CONFIDENTIAL TREATMENT REQUESTED

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), Heartland Campus Solutions, ECSI (“Petitioner” or “ECSI”) respectfully petitions the Consumer Financial Protection Bureau (“Bureau” or “CFPB”) to set aside or, in the alternative, modify the June 9, 2017 Civil Investigative Demand (“CID”), which is attached as Exhibit A.

I. INTRODUCTION

As the United States Court of Appeals for the D.C. Circuit recently held, “the validity of a CID is measured by the purposes stated in the [CID’s] notification of purpose.” *Consumer Fin. Prot. Bureau v. Accrediting Council for Indep. Colls. & Schs.*, 854 F.3d 683, 690 (D.C. Cir. 2017) (hereinafter “*ACICS*”). The CID issued to ECSI is invalid because the Notification of Purpose does not comply with the notification requirements of section 1052 of the CFPA, 12 U.S.C. § 5562(c)(2), as well as its implementing regulation, 12 C.F.R. § 1080.5. This remains true even after the Office of Enforcement reissued its CID following ECSI’s initial objections. The purportedly revised CID still fails to comply with section 1052 of the CFPA and with *ACICS*. In *ACICS*, which was decided on April 21, 2017, the D.C. Circuit declined to enforce a Bureau CID with a Notification of Purpose that was substantially similar – in substance, if not also form – to the flawed language of the CID here. *See ACICS*, 854 F.3d at 690.

Indeed, ECSI has requested – now twice – that Enforcement Counsel modify both the original and reissued CIDs’ Notification of Purpose statements in order to comply with section 1052 and *ACICS*, to no avail. Accordingly, ECSI files this Petition and requests that the Bureau set aside the CID, because, among other flaws, the CID fails to provide ECSI “with fair notice as to the nature of the Bureau’s investigation,” as required by the CFPA. *See ACICS*, 854 F.3d at 690.

CONFIDENTIAL TREATMENT REQUESTED

II. PROCEDURAL HISTORY

On May 18, 2017, the Bureau issued a CID to ECSI (“May 18 CID”) with a Notification of Purpose that stated:

The purpose of this investigation is to determine whether a student loan servicer or other persons have engaged or are engaging in unlawful acts and practices in connection with the servicing of student loans in violation of §1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq., and its implementing Regulation V, 12 C.F.R. Part 1022, or any other Federal consumer financial law. 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 May 18 CID, which contained 17 interrogatories and 17 requests for documents, sought detailed information about ECSI’s structure, products, operations, policies, procedures, websites, and other matters, from January 1, 2015 through May 18, 2017.

Following receipt of the CID, ECSI spoke extensively with the Bureau, explaining that the Notification of Purpose failed to comply with the D.C. Circuit Court’s recent opinion in *ACICS*, which plainly interprets the fair notice requirement of section 1052 of the CFPA. Specifically, the May 18 CID did not adequately state the nature of the conduct constituting the alleged violation that is under investigation or the provision of law applicable to such violation. *See* 12 U.S.C. § 5562(c)(2). ECSI further explained that, as a result of the infirm Notification of Purpose, the relevance of each document request and interrogatory was difficult to determine, as there was no way of ascertaining the intended scope of the investigation. However, to preserve its objections and to comply with its obligations to meet and confer in good faith, ECSI lodged specific objections regarding the burdensome and vague nature of certain requests and interrogatories,

CONFIDENTIAL TREATMENT REQUESTED

without waiving ECSI's threshold objection that the Notification of Purpose did not conform to section 1052 of the CFPA, and that the May 18 CID was thus not lawfully issued.¹

On June 7, the Bureau notified ECSI that it would withdraw the May 18 CID and serve a new CID, which would "request the same or substantially similar information." On June 9, 2017, the Bureau served a new CID ("June 9 CID").² The June 9 CID contains a purportedly revised Notification of Purpose, which simply replaces the phrase "the servicing of student loans" with a list of all of the component tasks involved in a student loan servicing business. As ECSI explained to Enforcement Counsel during the second meet and confer, held on June 19, this purportedly revised Notification of Purpose still provides no notice about the nature of the Bureau's investigation. This is especially true because ECSI is a student loan servicer, and student loan servicing is its primary business activity; merely describing all or nearly all of those business activities does not constitute adequate notice under section 1052. Moreover, the June 9 CID contains the same 17 interrogatories and 17 document requests as the May 18 CID, except for a handful of minor technical changes. These requests also provide no further guidance. Enforcement Counsel has made no meaningful effort to comply with the CFPA and with *ACICS*.

In addition, while, as before, the infirm Notification of Purpose makes it difficult to tie the relevance of each document request and interrogatory to whatever the nature of the investigation may be, ECSI also makes specific objections regarding certain interrogatories and requests. ECSI

¹ ECSI requested a two-week extension of time to file a petition to modify or set aside the May 18 CID while Enforcement Counsel considered ECSI's request for modification. After initially denying the request for an extension, Enforcement Counsel granted ECSI an extension on June 5 (the day before the petition was due and two days before it ultimately rescinded the May 18 CID).

² The June 9 CID did not contain the signature of the CFPB official authorizing the CID. On June 19, Enforcement Counsel resent the CID with a new cover page containing the signature. This version of the CID was still dated June 9, 2017.

CONFIDENTIAL TREATMENT REQUESTED

further reserves its right to object to all or certain of interrogatories and requests on relevance grounds, subject to a further revision of the June 9 CID's Notification of Purpose.³

III. THE CID IS INVALID BECAUSE IT DOES NOT PROVIDE ECSI WITH FAIR NOTICE OF THE NATURE OF THE BUREAU'S INVESTIGATION AND VIOLATES THE CFPA.

The Bureau's authority to issue CIDs is "created solely by statute." *ACICS*, 854 F.3d at 690 (citing *Peters v. United States*, 853 F.2d 692, 696 (9th Cir. 1988)). While the CFPA affords the Bureau broad enforcement and investigating authority, this power is not without limits. *See id.* at 689 (courts will not enforce a demand that is outside an agency's jurisdiction or where the items requested are too indefinite or broad). And, more specifically, the CFPA requires that each CID "shall 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). This requirement "ensures that the recipient of a CID is provided with fair notice as to the nature of the Bureau's investigation." *ACICS*, 854 F.3d at 690. This is the only specific statutory requirement that the Bureau must follow when it issues a CID. *See* 12 U.S.C. § 5562(c)(2). As the Bureau has acknowledged in its administrative responses to petitions to modify or set aside a CID, including the one issued in *ACICS*, this Notification of Purpose is designed to "inform[] [a party] of the conduct of interest to the Bureau and the potentially applicable provisions of law." Decision and Order on Petition by Accrediting Council for Independent Colleges and Schools to Modify or Set

Aside Civil Investigative Demand, Oct. 8, 2015,

http://files.consumerfinance.gov/f/201510_cfpb_decision-on-petition-by-selling-ACICS-to-set-

³ On June 27, 2017, Enforcement Counsel sent ECSI a letter granting certain modifications that ECSI sought to specific interrogatories and document requests. Enforcement Counsel did not modify the Notification of Purpose, as requested by ECSI.

CONFIDENTIAL TREATMENT REQUESTED

[aside-civil-investigative.pdf](#). The notification requirement is especially significant given that the Bureau has so few limits on its broad investigatory powers: “Because the validity of a CID is measured by the purposes stated in the notification of purpose . . . the adequacy of the notification of purpose is an important statutory requirement.” *ACICS*, 854 F.3d at 690 (citing *Church & Dwight*, 665 F.3d 1312, 1315 (D.C. Cir. 2011)).

The Notification of Purpose in *ACICS*, which the D.C. Circuit Court characterized as “perfunctory” in nature, stated:

The purpose of this investigation is to determine whether any entity or person has engaged or is engaging in unlawful acts and practices in connection with accrediting for-profit colleges, in violation of sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, or any other Federal consumer financial protection law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

Id. at 690. The court noted that “the Bureau’s ability to define the boundary of its investigation does not absolve it from complying with the CFPA” and concluded that the CID was invalid for failing to adequately state the unlawful conduct under investigation or the applicable law. *Id.* Specifically, the court noted that, “a notification of purpose may use broad terms to articulate an investigation’s purpose, . . . but § 5562(c)(2) [section 1052(c)(2)] mandates that the Bureau provide the recipient of the CID with sufficient notice as to the nature of the conduct and the alleged violation under investigation.” *Id.* The *ACICS* notification failed this test because the nature of the investigation was defined only as “unlawful acts and practices in connection with accrediting for-profit colleges,” without any explanation of “what the broad and non-specific term ‘unlawful acts and practices’ mean[t] in [that] investigation.” *Id.*

CONFIDENTIAL TREATMENT REQUESTED

The June 9 CID is invalid for the same reasons discussed by the D.C. Circuit in *ACICS*.⁴

The Bureau's revisions to the May 18 Notification are insufficient to cure its original defects:

The purpose of this investigation is to determine whether a student-loan servicers or other persons, **in connection with servicing of student loans, including processing payments, charging fees, transferring loans, maintaining accounts, and credit reporting**, have engaged ~~or are engaging in unlawful acts and practices in connection with the servicing of student loans~~ **in unfair, deceptive, or abusive acts or practices** in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; or have engaged in conduct that violates the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq., and its implementing Regulation V, 12 C.F.R. Part 1022; ~~or any other Federal consumer financial law~~. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

These revisions⁵ do not provide ECSI with meaningful notice as to the conduct that the Bureau seeks to investigate. Enforcement Counsel simply replaced “the servicing of student loans” with a list of student loan servicing functions. But this replacement comports with neither the letter nor the spirit of section 1052 of *ACICS*. In practical terms, the Notification still “gives no description whatsoever of the conduct the CFPB is interested in investigating.” *ACICS*, 854 F.3d at 691. Indeed, Enforcement Counsel cannot simply try to “elevate[] the form of the court

⁴ Notably, despite the clarity of the D.C. Circuit's opinion in *ACICS*, Enforcement Counsel appeared during the May 30 meet and confer to rely on an incorrect reading of section 1052 of the CFPA and of *ACICS* in defense of the original Notification of Purpose. Enforcement Counsel asserted that the *ACICS* opinion was not relevant to the instant CID because the invalid notification provision in that case was “intertwined” with the District Court's concern about whether the Bureau has authority to pursue investigations into the accreditation of for-profit schools -- the underlying issue in *CFPB v. ACICS* in the District Court. See *Consumer Fin. Prot. Bureau v. Accrediting Council for Indep. Colls. & Schs.*, 183 F. Supp. 3d 79 (D.D.C. 2016). But Enforcement Counsel misstates the D.C. Circuit's holding, and its attempt to distinguish *ACICS* fails. Indeed, the D.C. Circuit specifically explained that it was *not* answering that specific authorities question considered by the district court, which was “Did the CFPB have the statutory authority to issue the CID in question?” *Id.* at 687. Rather, the D.C. Circuit held that the CID at issue was invalid because it did not comply with the Notification of Purpose requirement delineated in section 1052 of the CFPA. See *ACICS*, 854 F.3d at 692. ECSI is not conceding or otherwise implying, however, that the Bureau has the authority to pursue this investigation either.

⁵ The interrogatories and document requests contained in the new CID were also only negligibly revised; thus, the specifications themselves do not help elucidate the purpose of the CID or what the Bureau is investigating.

CONFIDENTIAL TREATMENT REQUESTED

decision over its substance,” as it has clearly attempted to do here. *Teva Pharms., USA, Inc. v. United States FDA*, 1999 U.S. Dist. LEXIS 14575 (D.D.C. Aug. 19, 1999). The D.C. Circuit expressly requires the Bureau to provide “fair notice as to the nature of the Bureau’s investigation.” *ACICS*, 854 F.3d at 690-91. “Fair notice” requires a sufficient description of the nature of the conduct that the Bureau seeks to investigate. *Id.* The June 9 CID, like the May 18 CID, does nothing more than give the Office of Enforcement “unfettered authority to cast about for potential wrongdoing” – that is, to engage in behavior that *ACICS* expressly prohibits. *Id.* at 691.

The D.C. Circuit Court’s opinion in *ACICS* is recent, but courts, including the D.C. Circuit, have long recognized the significance of such CID notification provisions in determining the validity of an agency’s administrative subpoena. And in nearly every case in which the D.C. Circuit and other courts enforced administrative subpoenas that require notifications of purpose, the notifications were considerably more precise and specific in providing notice about the nature of the alleged conduct under investigation. For example, in *F.T.C. v. Church & Dwight Co., Inc.*, the stated Resolution (Notification of Purpose) of the underlying CID was to determine whether Church & Dwight “has attempted to acquire, acquired, or maintained a monopoly in the distribution or sale of condoms in the United States, or in any part of that commerce, through potentially exclusionary practices including, but not limited to, conditioning discounts or rebates to retailers on the percentage of shelf or display space dedicated to Trojan brand condoms and other products distributed or sold by Church & Dwight, in violation of Section 5 of the Federal Trade Commission Act...” 665 F.3d 1312, 1314 (D.C. Cir. 2011). Indeed, in *ACICS*, the D.C. Circuit distinguished the CIDs issued in several FTC cases from the CID issued to *ACICS*; that same logic extends here to the June 9 CID. *See ACICS*, 854 F.3d at 692.

CONFIDENTIAL TREATMENT REQUESTED

In fact, Director Cordray, upon learning about the D.C. Circuit's decision in *ACICS*, acknowledged that the CFPB would comply: "We have the court's decision and understand it, and we will make careful efforts to conform to the ruling in our further investigations, whether in this case or any other case." Yuka Hayashi, *Court Denies Consumer Protection Bureau Request to Investigate For-Profit College Accreditor*, Wall Street Journal, Apr. 21, 2017, <https://www.wsj.com/articles/court-denies-consumer-protection-bureau-request-to-investigate-for-profit-college-accreditor-1492815665>. Nevertheless, the June 9 CID reflects no effort, let alone "careful efforts to conform to the ruling" of the D.C. Circuit.

IV. ECSI IS UNABLE TO ASSESS THE RELEVANCE OF THE INDIVIDUAL INTERROGATORIES AND REQUESTS FOR DOCUMENTS, AND THESE REQUESTS ARE OVERLY BROAD AND VAGUE.

As explained during both meet and confer teleconferences, because the Notification of Purpose is invalid, it is impossible to ascertain whether the individual requests are sufficiently related to the investigation's purpose. As the court in *ACICS* explained:

We cannot determine, for example, whether the information sought in the CID is reasonably relevant to the CFPB's investigation without knowing what 'unlawful acts and practices' are under investigation. That is to say, where, as in this case, the Notification of Purpose gives no description whatsoever of the conduct of the CFPB is interested in investigating, we need not and probably cannot accurately determine whether the inquiry is within the authority of the agency and whether the information sought is reasonably relevant.

Id. at 691; *see also In re Sealed Case*, 42 F.3d 1412, 1418 (D.C. Cir. 1994) ("the broad language used to define [an administrative subpoena's] purpose makes it impossible to apply the other prongs of the *Morton Salt* test"). Here, too, and for the same reasons, it is impossible to determine whether any of the information that is sought in the June 9 CID is relevant to the Bureau's

CONFIDENTIAL TREATMENT REQUESTED

investigation. As such, ECSI reserves any relevance objections to the specifications set forth in the CID.

During both meet and confer teleconferences, ECSI has made clear that the threshold issue regarding the Notification of Purpose would first need to be resolved before ECSI could meaningfully engage in a meet and confer on the individual requests. Nevertheless, to preserve its objections, ECSI discussed each CID request and interrogatory (both times), and in good faith set forth specific objections to certain requests on the grounds they are unduly burdensome and/or vague and ambiguous and made specific proposals to modify the requests. On June 27, 2017, Enforcement Counsel notified ECSI that they would modify certain requests, but refused to modify the Notification of Purpose.

ECSI restates certain objections here, and ECSI further reserves its right to make additional objections to the individual requests if and when the Notification of Purpose is modified to comply with applicable laws.

A. Requests for Documents Seeking “All Policies and Procedures.”

Requests for Documents 1, 4, 5, 6, 8, 9, 11, and 12 seek “all policies and procedures” used during the Applicable Period relating to fees charged to or costs paid by consumers; paying off student loans; calculating loan balances; the transfer of student loan servicing to ECSI; the servicing of Perkins Loans; loan forgiveness, income-based repayment plans, forbearance options, and deferments; and the furnishing of consumer information to consume reporting agencies, respectively.

The phrase “policies and procedures” is not defined in the CID and while there arguably is a common understanding of those terms, they are extremely broad and arguably could include informal instructions or guidance communicated to employees via email, messaging applications,

CONFIDENTIAL TREATMENT REQUESTED

etc. Given the two-and-a-half year Applicable Period and the array of subject matters covered by the requests (virtually every aspect of ECSI's business operations), identifying all such documents is burdensome because the scope of the endeavor is undefined. The burden is further compounded by the fact that Requests 1, 2, 5, and 6 were not revised so as to limit the request to ECSI's policies and procedures, but rather still seek all policies and procedures, including those that may not be ECSI policies. Moreover, as ECSI explained, because of its practices with respect to implementation and storage of procedures specifically, it would be very burdensome to produce historical versions of procedures. Accordingly, ECSI requested a modification of Requests 1, 4, 5, 6, 8, 9, 11, and 12 to seek copies of current and historical policies (within the Applicable Period), current versions of procedures, and a precise definition of what the CID seeks when it requests "policies and procedures." Enforcement Counsel has asked ECSI to provide an estimate of time and costs associated with retrieval of these materials before it will agree to modify any of these requests. In the absence of any precise understanding about the nature of the specific materials the Bureau seeks in these requests, it is near-impossible for ECSI to provide this requested estimate of time and costs.

B. Requests for Documents Seeking All Templates.

Requests for Documents 2, 7, 10, 14, and 15 seek all templates of essentially all consumer-facing documents (electronic and hard copy) used or sent by ECSI during the Applicable Period. As explained, it would be very burdensome to provide historical documentation of ECSI's consumer-facing website disclosures or information, such as scripting, available only through ECSI's loan management system, SAL. Accordingly, ECSI requested that these requests be modified to include only current versions of the websites or SAL. Here, too, Enforcement Counsel has declined this modification on grounds that ECSI has not provided an estimate of time and costs

CONFIDENTIAL TREATMENT REQUESTED

associated with production of the requested materials responsive to the unmodified request. But, this, too, is a near-impossible task because the request is too broad in scope for ECSI to even begin to estimate the time and cost of gathering and producing all consumer-facing documents in the absence of any initial effort to narrow these requests.

C. Document Request 16.

The modification to the request made by Enforcement Counsel changes the nature of the request significantly and, indeed, arguably makes it *more burdensome* than the original. Where the original request sought “all regular reports of fees charged and collected related to student loans,” the modified version now seeks “documents sufficient to show the fees charged and collected by Heartland related to student loans.” To the extent reports do not exist to show each fee ECSI has on a loan-by-loan level during the Applicable Period, this arguably would require ECSI to generate and produce records from its loan management system and/or produce communications with individual borrowers. This is unduly burdensome and unfair given the original request’s focus on “regular reports”—and not specific fees charged to individual borrowers.

V. CONCLUSION

For all of the reasons set forth above, ECSI respectfully requests that the CID be set aside, or, in the alternative, modified to comply with all applicable laws.

CONFIDENTIAL TREATMENT REQUESTED

Respectfully submitted,



Dated: June 29, 2017

Allyson B. Baker
Alexandra Megaris
Erin Zacuto Cass
Venable LLP
600 Massachusetts Avenue NW
Washington, DC 20001
(202) 344-4708
Counsel for Petitioner

Enclosures: Certification
Exhibit A (June 9, 2017 CID issued to ECSI)

CONFIDENTIAL TREATMENT REQUESTED

CERTIFICATION

Consistent with 12 C.F.R. § 1080.6(e)(1), counsel for Heartland Campus Solutions, ECSI hereby certifies that they have conferred with counsel for the Bureau, Carolyn Hahn and Kelly Folks, via phone during two telephonic conferences on May 24, 2017, and a telephonic conference on May 30, 2017, from 1:00 PM to 3:00 PM. The parties further conferred via teleconference on June 19, 2017 from 9:30 to 10:15 AM, in a good-faith effort to resolve by agreement the issues raised by this Petition, but have been unable to reach an agreement.



Allyson B. Baker
Alexandra Megaris
Erin Zacuto Cass
Counsel for Petitioner

Exhibit A



Consumer Financial
Protection Bureau

United States of America
Consumer Financial Protection Bureau

Civil Investigative Demand

To **Heartland Campus Solutions, ECSI**
c/o Allyson Baker
Venable LLP
600 Massachusetts Avenue, NW
Washington DC, 20001

This demand is issued pursuant to Section 1052 of the Consumer Financial Protection Act of 2010 and 12 C.F.R. Part 1080 to determine whether there is or has been a violation of any laws enforced by the Bureau of Consumer Financial Protection.

Action Required (choose all that apply)

☐ **Appear and Provide Oral Testimony**

Location of Investigational Hearing	Date and Time of Investigational Hearing
	Bureau Investigators

☒ **Produce Documents and/or Tangible Things, as set forth in the attached document, by the following date** 07/06/2017

☒ **Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date** 07/06/2017

Notification of Purpose Pursuant to 12 C.F.R. § 1080.5

The purpose of this investigation is to determine whether student-loan servicers or other persons, in connection with servicing of student loans, including processing payments, charging fees, transferring loans, maintaining accounts, and credit reporting, have engaged in unfair, deceptive, or abusive acts or practices in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; or have engaged in conduct that violates the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq., and its implementing Regulation V, 12 C.F.R. Part 1022. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

Custodian / Deputy Custodian

Deborah Morris/Naoka Clyburn
Consumer Financial Protection Bureau
1625 Eye Street
Attn: Office of Enforcement
Washington DC, 20006

Bureau Counsel

Carolyn Hahn, Kelly Moore
Email: Carolyn.Hahn@cfpb.gov; Kelly.Moore@cfpb.gov
Tel: 202-435-7250; 202-435-7156

Date Issued

06/09/2017

Signature

Deborah Morris

Digitally signed by Deborah
Morris
Date: 2017.06.09 12:09:30 -04'00'

Name / Title

Deborah Morris/Deputy Enforcement Director

Service

The delivery of this demand to you by any method prescribed by the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5562, is legal service. If you fail to comply with this demand, the Bureau may seek a court order requiring your compliance.

Travel Expenses

Request a travel voucher to claim compensation to which you are entitled as a witness before the Bureau pursuant to Section 1052 of the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5562.

Right to Regulatory Enforcement Fairness

The CFPB is committed to fair regulatory enforcement. If you are a small business under Small Business Administration standards, you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

Paperwork Reduction Act

This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CIVIL INVESTIGATIVE DEMAND FOR
PRODUCTION OF DOCUMENTS, AND ANSWERS TO INTERROGATORIES**

I. Requests.

Interrogatories

1. Please describe the organizational structure of the Company.
2. Identify all Person(s) responsible for managing customer service for student loan servicing, including but not limited to managing the quality assurance and training of your customer service representatives, during the Applicable Period. For each Person, please state:
 - a. the time period(s) during which the Person held the position(s);
 - b. whether the Person is currently employed by the Company; and
 - c. the Person's current position.
3. Identify all Person(s) responsible for managing the Company's handling of consumer complaints related to student loan servicing during the Applicable Period. For each Person, please state:
 - a. the time period(s) during which the Person held the position(s);
 - b. whether the Person is currently employed by the Company; and
 - c. the Person's current position.
4. Identify all Person(s) responsible for managing the transfer of Student Loans onto the Company's Student Loan Servicing Platform during the Applicable Period. For each Person, please state:
 - a. the time period(s) during which the Person held the position(s);
 - b. whether the Person is currently employed by the Company; and
 - c. the Person's current position.
5. Identify all Person(s) responsible for managing the furnishing of consumer information related to student loans to nationwide Credit Reporting Agencies during the Applicable Period. For each Person, please state:
 - a. the time period(s) during which the Person held the position(s);
 - b. whether the Person is currently employed by the Company; and
 - c. the Person's current position.
6. Identify the Person(s) responsible for overseeing your Student Loan Servicing Platform during the Applicable Period. For each Person, please state:
 - a. the time period(s) during which the Person held the position(s);

- b. whether the Person is currently employed by the Company; and
 - c. the Person's current position.
- 7. Describe all payment methods accepted by You that a consumer can use to make a student loan payment without incurring a fee if the payment is made timely.
- 8. For each one-time and reoccurring fee associated with a payment method for student loans accepted by You, provide the following information:
 - a. the amount of the fee;
 - b. the time period during which the fee was charged; and
 - c. how and when you disclose the fee to consumers.
- 9. For any fee charged during the Applicable Period for paying off a student loan, provide the following information:
 - a. the amount of the fee and/or how the fee was calculated;
 - b. the time period during which the fee was charged; and
 - c. how and when you disclose the fee to consumers.
- 10. For any late payment fees charged related to student loans during the Applicable period, provide the following information:
 - d. the amount of the fee;
 - e. the time period during which the fee was charged; and
 - f. how and when you disclose the fee to consumers.
- 11. Describe the types of routine quality assurance reviews conducted with respect to your customer service or call center representatives handling student loans, including, but not limited to, the substance of the reviews, how often such reviews are conducted, how such reviews are documented, and any disciplinary or other adverse actions taken as a result of such reviews.
- 12. Describe any routine recording of customer service calls regarding student loans for quality assurance purposes, including but not limited to, the number and frequency of recordings, any review of the calls performed, and how long the calls are maintained.
- 13. Describe the process for transferring student loans onto the Company's Servicing Platform, SAL, including but not limited to, how consumers are notified when the servicing of their loan has been transferred to you.
- 14. Identify and describe all repayment plans available to student loan borrowers with Perkins Loans, Federal Student Loans, and Private Student Loans. Include a description of how all such repayment plans are communicated to consumers and

any training you provide to your customer service or call center representatives about repayment plans available to your customers.

15. Identify each version of the homepage for <https://borrower.ecsi.net/> through which a borrower could log onto and manage her student loan account. For each homepage Identified, provide the following information:
 - a. the Bates number for the homepage;
 - b. the dates the homepage was live;
 - c. the Bates number for all other pages the consumer would have viewed in order to manage her account (including making a payments) through the homepage (i.e., the order flow pages); and
 - d. a description of the order flow pages Identified in your response to subpart (c).
16. Identify all databases used by the Company for maintaining student loan accounts, payment processing of student loan payments, handling customer service calls regarding student loans, and tracking and responding to consumer complaints regarding student loans. For each, provide the following information:
 - a. The database system name, commercial software name (if different from the system name) and version, and operating system or other technology platform;
 - b. The dates during which each database is or was in use;
 - c. The names and descriptions of the data fields contained in the database, including for each field:
 - i. The logical database name;
 - ii. The schema name (or analogous grouping);
 - iii. The table or view name;
 - iv. The field name;
 - v. The data type (e.g., date/time; integer; text);
 - vi. The data size;
 - vii. A narrative description of the field; and
 - viii. A description of the range or set of values which may be entered into the field.
 - d. The timeframe for which information in each data field is stored or maintained;
 - e. A description of any processes used to assure the accuracy of data included in each database, including any internal controls, internal

audits, automatically generated audit trail of activity or data modification, or quality assurance programs performed on the database;

- f. The purposes relating to student loan servicing for which the database is used;
17. If, for any request, there are Documents that would have been responsive but that are now unavailable, Identify each Document and its last known location or custodian, and explain why the Document cannot be produced.

Requests for Documents

1. All policies and procedures regarding fees charged to or costs paid by consumers relating to the Company's servicing of consumers' student loans, including but not limited to convenience fees, late fees, and fees for paying off a loan.
2. Templates of all Documents, including screenshots of webpages, used during the Applicable Period to disclose fees or costs that could be charged to or paid by consumers relating to the Company's servicing of consumers' student loans, including but not limited to convenience fees, late fees, and fees for paying off a loan.
3. Each unique version of Documents the Company uses or has used to train, guide, or advise its call center or customer service representatives in responding to consumer inquiries about student loans, included but not limited to:
 - a. policies and procedures;
 - b. talking points;
 - c. FAQs;
 - d. communication strategies;
 - e. scripts;
 - f. disclosures; and
 - g. guidance materials.
4. All policies and procedures regarding when a consumer makes a payment larger than the stated interest and principle due at the time
5. All policies and procedures regarding calculating loan balances, including handling any discrepancies between balances as reflected electronically and in paper statements.
6. All policies and procedures regarding the transfer of student loan servicing to the Company.
7. Templates of all communications to consumers advising that the Company had become the servicer of one or more of their student loans.

8. All of the Company's policies and procedures regarding the servicing of Perkins Loans.
9. All of the Company's policies and procedures regarding loan forgiveness, income-based repayment plans, forbearance options, and deferments available to consumers.
10. Templates of all communications to consumers advising them of any loan forgiveness, repayment plans, forbearance options, and deferments available to them.
11. All of the Company's policies and procedures regarding the furnishing of consumer information related to student loans to Consumer Reporting Agencies.
12. All of the Company's policies and procedures regarding responses to consumers requesting information, disputing, or complaining about errors related to the information that the Company has reported to the Consumer Reporting Agencies about student loans.
13. All Documents containing, discussing, or analyzing complaints or the Company's responses to consumer complaints relating to the servicing of student loans.
14. Templates of all program descriptions, procedures, instructions, directions or other documents sent to consumers regarding the use of the Company's website for managing their student loan accounts or obtaining information related to their student loans.
15. Templates of all student loan billing statements sent to consumers in paper or electronically.
16. All regular reports of fees charged and collected related to student loans, including any generated internally or by any outside auditor.
17. Each homepage and associated webpages (e.g., the order flow pages(s)) identified in response to Interrogatory 15.

II. Definitions.

- A. **"And"** and **"or"** must be construed both conjunctively and disjunctively.
- B. **"Any"** includes **"all,"** and **"all"** includes **"any."**
- C. **"Company"** or **"you"** or **"your"** means Heartland Campus Solutions ECSI and any successor in interest.

- D. **"CFPB" or "Bureau"** means the Bureau of Consumer Financial Protection.
- E. **"CID"** means the Civil Investigative Demand, including the Requests, Definitions, and Instructions.
- F. **"Complaints"** shall mean consumer complaints regarding the servicing of Federal, Private, and Perkins student loans.
- G. **"Consumer Reporting Agency"** shall have the same definition as in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f).
- H. **"Deputy Enforcement Director"** refers to a Deputy Assistant Director of the Office of Enforcement.
- I. **"Document"** means any written matter of every type and description, including electronically stored information. "Document" includes any non-identical copy (such as a draft or annotated copy) of another document.
- J. **"Each"** includes **"every,"** and **"every"** includes **"each."**
- K. **"Electronically Stored Information,"** or **"ESI,"** means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise) of any electronically created or stored information, including but not limited to e-mail, instant messaging, videoconferencing, SMS, MMS, or other text messaging, and other electronic correspondence (whether active, archived, unsent, or in a sent or deleted-items folder), word-processing files, spreadsheets, databases, unorganized data, document metadata, presentation files, and sound recordings, regardless of how or where the information is stored, including if it is on a mobile device.
- L. **"Enforcement Director"** refers to the Assistant Director of the Office of Enforcement.
- M. **"Federal Student Loans"** means education loans made through the Federal Family Education Loan (FFEL) Program and education loans made directly by the federal government through the William D. Ford Federal Direct Loan (Direct) Program.
- N. **"Identify"** means to provide: (a) for natural persons, their name, title or position, present business affiliation, present business address, e-mail address, and telephone number, or if a present business affiliation or present business address is not known, the last known business address, home address, e-mail address, and telephone number; (b) for businesses or other organizations, the name, address, identities of officers, directors, or managers of the business or organization, and contact persons

with e-mail addresses and telephone numbers, where applicable; and (c) for documents, the title, date, authors, recipients, Bates numbers, if applicable, type of document or some other means of identifying the document, and the present or last known location or custodian.

O. **"Perkins Loans"** refers to loan offered through the Federal Perkins Loan Program.

P. **"Person"** means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

Q. **"Private Student Loans"** means all education loans except Federal Student Loans.

R. **"Student Loan Servicing Platform"** means the Company's Stand-A-Loan (SAL) system used to service its portfolio of student loans.

III. Instructions.

A. **Sharing of Information:** This CID relates to a nonpublic, law-enforcement investigation being conducted by the Bureau. The Bureau may make its files available to other civil and criminal federal, state, or local law-enforcement agencies under 12 C.F.R. §§ 1070.43(b)(1) and 1070.45(a)(5). Information you provide may be used in any civil or criminal proceeding by the Bureau or other agencies. As stated in 12 C.F.R. § 1080.14, information you provide in response to this CID is subject to the requirements and procedures relating to the disclosure of records and information set forth in 12 C.F.R. pt. 1070.

B. **Meet and Confer:** As stated in 12 C.F.R. § 1080.6(c), you must contact Enforcement Attorney Carolyn Hahn at 202-435-7250 as soon as possible to schedule a meeting (telephonic or in person) to discuss your response to the CID. The meeting must be held within **10** calendar days after you receive this CID or before the deadline for filing a petition to modify or set aside the CID, whichever is earlier.

C. **Applicable Period for Responsive Materials:** Unless otherwise directed, the applicable period for the request is from January 1, 2015, until the date of this CID.

D. **Privilege Claims:** If any material responsive to this CID is withheld on the grounds of privilege, you must make the privilege claim no later than the date set for the production of the material. As stated in 12 C.F.R. § 1080.8(a), any such claim must include a schedule of the documents, information, or tangible things withheld that states, for each:

1. its type, specific subject matter, and date;

2. the names, addresses, positions, and organizations of all authors and direct or indirect recipients;
3. the specific grounds for claiming the privilege;
4. the request to which the privileged document, information, or thing is responsive; and
5. its Bates number or range.

In addition, the person who submits the schedule and the attorney stating the grounds for the privilege must sign it. A person withholding material solely based on a claim of privilege must comply with the requirements of 12 C.F. R. § 1080.8 rather than file a petition for an order modifying or setting aside a demand under 12 C.F.R. § 1080.6(e). Please follow the enclosed Document Submission Standards for further instructions about producing redacted privileged documents.

E. Document Retention: Until you are notified otherwise, you are required to retain all documents and other tangible things that you used or relied on in responding to this CID. In addition, you must retain, and suspend any procedures that may result in the destruction of, documents, information, or tangible things that are in any way relevant to the investigation, as described in the CID's Notification of Purpose. You are required to prevent the destruction of relevant material irrespective of whether you believe such material is protected from future disclosure or discovery by privilege or otherwise. *See* 18 U.S.C. §§ 1505, 1519.

F. Modification Requests: If you believe that the scope of the search or response required by this CID can be narrowed consistent with the Bureau's need for documents or information, you are encouraged to discuss such possible modifications, including modifications of the requirements of these instructions, with Enforcement Attorney Carolyn Hahn at 202-435-7250. Modifications must be agreed to in writing by the Enforcement Director or a Deputy Enforcement Director. 12 C.F.R. § 1080.6(d).

G. Petition for Order Modifying or Setting Aside Demand: Under 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), you may petition the Bureau for an order modifying or setting aside this CID. To file a petition, you must send it by e-mail to the Bureau's Executive Secretary at ExecSec@cfpb.gov, copying the Enforcement Director at Enforcement@cfpb.gov, within 20 calendar days of service of the CID or, if the return date is less than 20 calendar days after service, before the return date. The subject line of the e-mail must say "Petition to Modify or Set Aside Civil Investigative Demand." If a request for confidential treatment is filed, you must file a redacted public petition in addition to the unredacted petition. All requests for confidential treatment must be supported by a showing of good cause in light of applicable statutes, rules, Bureau orders, court orders, or other relevant authority.

H. **Certification:** The person to whom the CID is directed or, if it is directed to an entity, any person having knowledge of the facts and circumstances relating to the production, must certify that the response to this CID is true and complete. This certification must be made on the form declaration included with this CID.

I. **Scope of Search:** This CID covers materials and information in your possession, custody, or control, including but not limited to documents in the possession, custody, or control of your attorneys, accountants, other agents or consultants, directors, officers, and employees.

J. **Document Production:** The Bureau encourages the electronic production of all material responsive to this CID; please follow the enclosed Document Submission Standards.

All productions sent by U.S. Postal Service should be addressed to:

Consumer Financial Protection Bureau
1700 G Street, NW
ATTN: Naoka Clyburn, SEFL, Office of Enforcement, Seat 3029
Washington, DC 20552

All productions sent by FedEx, UPS, or other courier should be addressed to:

Consumer Financial Protection Bureau
1625 Eye Street NW
ATTN: Naoka Clyburn, SEFL, Office of Enforcement, Seat 3029
Washington, DC 20006

Please provide your intended method of production and any tracking numbers by e-mail or telephone to Enforcement Attorney Carolyn Hahn at Carolyn.hahn@cfpb.gov or 202-435-7250.

K. **Document Identification:** Documents that may be responsive to more than one request of this CID need not be submitted more than once. All documents responsive to this CID must be accompanied by an index that identifies: (i) the name of each custodian of each responsive document; (ii) the corresponding Bates number or range used to identify that person's documents; and (iii) the request or requests to which each document responds.

L. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information, sensitive health information of any individual, or Suspicious Activities Reports, please contact Enforcement Attorney Carolyn Hahn at 202-435-7250 before sending those materials to discuss ways to protect the information during production. You must encrypt electronic

copies of such materials with encryption software acceptable to the Bureau. When submitting encrypted material, you must provide the encryption key, certificate, or passcode in a separate communication.

For purposes of this CID, sensitive personally identifiable information includes an individual's Social Security number alone or an individual's name, address, or phone number *in combination with* one or more of the following: date of birth, Social Security number, driver's-license number or other state-identification number, or a foreign country equivalent, passport number, financial-account number, credit-card number, or debit-card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

M. Information Identification: Each request for a written report or interrogatory in this CID must be answered separately and fully in writing under oath. All information submitted must clearly and precisely identify the request or requests to which it is responsive.

N. Submission of Documents in lieu of Reports or Answers: Documents in existence before your receipt of this CID that contain the information requested in any interrogatory may be submitted as part of or in lieu of an answer to the interrogatory. If you submit documents as part of or in lieu of an answer, you must clearly indicate the specific request to which the documents are responsive, and you must clearly identify the specific portion of the documents that are responsive, including page, paragraph, and line numbers, as applicable.

O. Declaration Certifying Records of Regularly Conducted Business Activity: Attached is a Declaration Certifying Records of Regularly Conducted Business Activity, which may limit the need to subpoena you to testify at future proceedings to establish the admissibility of documents produced in response to this CID. Please execute this Declaration and provide it with your response.

P. All references to "**year**" or "**annual**" refer to the calendar year. Where information is requested "for each year," provide it separately for each year; where yearly data is not available, provide responsive information for the calendar year to date, unless otherwise instructed.

Q. Duty to Estimate: If you are unable to answer any interrogatory fully, supply such information as is available. Explain why such answer is incomplete, the efforts you made to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there

is no reasonable way to make an estimate, provide an explanation.

CERTIFICATE OF COMPLIANCE – DOCUMENTS

I, _____, pursuant to 28 U.S.C. § 1746, declare that:

1. I have confirmed that a diligent inquiry has been made of all persons who likely have possession of responsive documents and information, and I have confirmed that a diligent search has been made of all of the locations and files that likely contained responsive documents and information in the possession, custody, or control of **[CID recipient¹]**.
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated **[date of CID]** that are within the possession, custody, or control of **[CID recipient]** have been submitted to the Bureau custodian or deputy custodian identified in this Civil Investigative Demand.
3. If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.

I certify under penalty of perjury that the foregoing is true and correct. Executed on

_____.

Signature

¹ [Delete before sending] The CID recipient name listed here should match the CID recipient name on the CID Form.

**CERTIFICATE OF COMPLIANCE – INTERROGATORY ANSWERS AND
REPORTS**

I, _____, pursuant to 28 U.S.C. §
1746, declare that:

1. I have confirmed that, in preparation of all answers and reports in response to the enclosed Civil Investigative Demand, a diligent inquiry has been made of all persons who likely have possession of responsive documents and information, and I have confirmed that a diligent search has been made of all of the locations and files that likely contained responsive documents and information within the possession, custody, control, or knowledge of **[CID recipient²]**.
2. Based on the information identified through the search described in paragraph 1 above, all answers and reports prepared in response to the enclosed required by the Civil Investigative Demand dated **[date of CID]** are true, correct, and complete.
3. If an interrogatory or a portion of an interrogatory has not been fully answered or a report or a portion of a report has not been completed, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.

I certify under penalty of perjury that the foregoing is true and correct. Executed on

_____.

Signature

² [Delete before sending] The CID recipient name listed here should match the CID recipient name on the CID Form.

DECLARATION CERTIFYING RECORDS OF
REGULARLY CONDUCTED BUSINESS ACTIVITY
Pursuant to 28 U.S.C. § 1746

I, _____, pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by _____ as _____
and by reason of my position am authorized and qualified to certify the authenticity of the records produced by [identify CID recipient] and submitted with this Declaration.
2. The documents produced and submitted with this Declaration by [recipient] are true copies of records of regularly conducted activity that were:
 - a. made at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person with knowledge of those matters;
 - b. kept in the course of the regularly conducted business activity; and
 - c. made by the regularly conducted business activity as a regular practice.

I certify under penalty of perjury that the foregoing is true and correct. Executed on _____, 2017.

Signature