

Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, D.C. 20552



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IN RE ASCENDIUM EDUCATION )  
SOLUTIONS, INC. )  
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2020-MISC-ASCENDIUM-0001 )  

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**DECISION AND ORDER ON PETITION BY ASCENDIUM EDUCATION SOLUTIONS, INC. TO SET ASIDE OR MODIFY CIVIL INVESTIGATIVE DEMAND**

Ascendum Education Solutions, Inc. (“Ascendum”) petitioned the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) for an order to set aside or modify a civil investigative demand (“CID”). For the reasons set forth below, the petition is denied.

**BACKGROUND**

Ascendum describes itself as a non-profit guaranty agency that serves as a guarantor of federal student loans issued under the Federal Family Education Loan Program (“FFELP”). Ascendum’s Petition to Set Aside or, in the Alternative, Modify the CID (“Pet.”) at 4.<sup>1</sup> Pursuant to Title IV of the Higher Education Act of 1965 (“HEA” or “Title IV”), 20 U.S.C. §§ 1071, *et seq.* FFELP loans are issued by private lenders and guaranteed by non-profit guaranty agencies. 34 C.F.R. § 682.100(b)(1). If an FFELP guaranty agency meets certain requirements, the Department of Education (“DOE”) will reimburse it for “all or part of the amount of default claims it pays to lenders.” *Id.*

On September 14, 2020, the Bureau served a CID on Ascendum. As stated in the CID’s Notification of Purpose, the investigation seeks

to determine whether debt collectors, guaranty agencies, or associated persons, in connection with the collection of student loans, have improperly caused borrowers to incur costs or fees or

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<sup>1</sup> The Bureau has made minor redactions to the Petition and the exhibits attached thereto. The Bureau’s regulations governing investigations provide that a CID petition and the Bureau’s response thereto are part “part of the public records of the Bureau unless the Bureau determines otherwise for good cause shown.” 12 C.F.R. § 1080.6(g). The Bureau generally looks to the standards for withholding material from public disclosure established by the Freedom of Information Act (“FOIA”) to determine whether “good cause” exists. *See In Re Heartland Campus Sols., ECSI*, 2017-MISC-Heartland Campus Solutions, ESCI-001 (Sept. 8, 2017), at 9. Consistent with that standard, the Bureau has determined it is appropriate to make limited redactions to the Petition, as well as to the attached exhibits, to protect information that would be exempt from disclosure under FOIA Exemption 7.

have improperly charged or collected fees in a manner that is unfair, deceptive, or abusive in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536. The purpose of the investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

The CID requests documents, written reports, and responses to interrogatories.

The CID required Ascendium to respond by October 14, 2020. The Bureau's rules require that Ascendium meet with a Bureau investigator and confer regarding compliance. 12 C.F.R. § 1080.6(c). Ascendium's outside counsel met and conferred with counsel for the Bureau's Office of Enforcement on October 13 and October 14, 2020. Ascendium timely filed its Petition to Set Aside or, in the Alternative, Modify the Civil Investigative Demand on October 14, 2020.

### LEGAL DETERMINATION

In its Petition, Ascendium makes four arguments. First, Ascendium argues that it "is neither a covered person or service provider within the meaning of the" Consumer Financial Protection Act ("CFPA") and, therefore, the CID exceeds the scope of the CFPB's authority. Pet. at 10. Second, Ascendium argues that the CFPB ought to refrain from exercising jurisdiction over it "in light of the DOE's oversight responsibility for Title IV loans." Pet. at 13. Third, Ascendium argues that any potential claims the CFPB could bring against it are time-barred. Fourth, Ascendium argues, in the alternative, that the CID should be stayed until the United States District Court for the District of Columbia resolves Ascendium's pending Administrative Procedure Act challenge to DOE's Guaranty Agency Collections Fee Rule. Pet. at 18. I reject these arguments for the reasons set forth below.

#### A. The Bureau's Investigation Is Lawful.

Ascendium asserts that it is neither a covered person nor a service provider and therefore that the Bureau has no authority to issue a CID onto it. This argument is unpersuasive. While the Bureau may only bring an enforcement action under 12 U.S.C. § 5531(a) against a "covered person" or "service provider," its *investigative* authority is not so limited. Rather, the Bureau may issue a CID to "any person" that it "has reason to believe . . . may have any information relevant to a violation" of consumer financial protection laws. 12 U.S.C. § 5562(c)(1); *see also Consumer Fin. Prot. Bureau v. Accrediting Council for Indep. Colleges & Sch.*, 854 F.3d 683, 688 (D.C. Cir. 2017) ("Pursuant to its investigative authority, the Bureau may issue CIDs requiring the production of documents and oral testimony from 'any person' that it believes ' . . . may have any information, relevant to a violation' of the laws that the Bureau enforces." (quoting 12 U.S.C. § 5562(c)(1))). Accordingly, at this stage, I need not and do not reach any conclusion as to whether Ascendium is a "covered person" or "service provider" under the CFPA or otherwise subject to the Bureau's enforcement authority.

The CID is proper because it clearly seeks information “relevant to a violation” of consumer financial protection laws. The CID seeks information related to Ascendium’s relationship with private collection agencies and information related to Ascendium’s relationship with loan servicers. Private collection agencies and loan servicers fall squarely within the CFPB’s jurisdiction. *See* 12 U.S.C. § 5481(6) (a “covered person” is “any person that engages in offering a consumer financial product or service”); *id.* § 5481(5)(A) (a “consumer financial product or service” is a financial product or service that “is offered or provided for use by consumers primarily for personal, family, or household purposes”); *id.* § 5481(15)(A)(i) (a “financial product or service” includes “servicing loans”); *id.* § 5481(15)(A)(x) (a “financial product or service” includes “collecting debt”). Thus, I conclude the CID is proper because it seeks information relevant to potential violations of law within the scope of the CFPB’s enforcement authority.

It is also well established that the Bureau is entitled to investigate to determine whether an entity or conduct falls within the scope of its jurisdiction. *See E.E.O.C. v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1076 (9th Cir. 2001) (citing *Okla. Press Publ’g Co. v. Walling*, 327 U.S. 186, 216 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632, 652–53 (1950); *United States v. Powell*, 379 U.S. 48, 57–58 (1964)) (“The principle . . . that courts should not refuse to enforce an administrative subpoena when confronted by a fact-based claim regarding coverage [of] the law . . . has been consistently reaffirmed by the Supreme Court.”). Accordingly, “enforcement of an agency’s investigatory subpoena will be denied only when there is ‘a patent lack of jurisdiction’ in an agency to regulate or investigate.” *F.T.C. v. Ken Roberts Co.*, 276 F.3d 583, 587 (D.C. Cir. 2001); *see also F.T.C. v. Ernstthal*, 607 F.2d 488, 492 (D.C. Cir. 1979) (“We decline to relax the well-established barrier against ruling on the agency’s regulatory jurisdiction in subpoena enforcement proceedings . . . where the absence of jurisdiction is not patent . . .”).

Ascendium has not demonstrated that the Bureau patently lacks jurisdiction over guaranty agencies. To the contrary, the factual assertions in Ascendium’s Petition suggest that it may constitute either a “covered party” or a “service provider” under the CFPA. For example, Ascendium explains that, as a guaranty agency, when a borrower defaults on an FFELP loan, “it acquires [the] defaulted loan[.]” Pet. at 11; *see also* Pet. at 12 (“Ascendium acquires or purchases a loan originated by a covered person for the rehabilitation period. . . .”). Under the CFPA, the Bureau has jurisdiction over “any person that engages in a consumer financial product or service,” 12 U.S.C. § 5481(6)(A), which includes “acquiring, purchasing, selling, brokering, or other extensions of credit,” *id.* § 5481(15)(A). Similarly, in its Petition, Ascendium explains that, after it acquires a loan, it engages in certain “due diligence” activities in order “to provide an opportunity for the borrower to ‘rehabilitate’ the loan.” Pet. at 5. These due diligence activities may constitute a “financial product or service,” as defined by the CFPA, insofar as Ascendium may be engaged in either servicing a loan or collecting a debt. *See* 12 U.S.C. §§ 5481(15)(A)(i); 5481(15)(A)(x).

Thus, I conclude that the Bureau has a reasonable basis to investigate whether, when, and under what circumstances guaranty agencies like Ascendium fall within its jurisdiction. To the extent Ascendium’s Petition raises factual issues it claims demonstrate that it does not fall within the Bureau’s enforcement jurisdiction, that is not a proper basis for setting aside the CID. *See, e.g.,* ACTIVE Network, LLC, CFPB No. 2020-MISC-ACTIVE Network, LLC-0001, at 5 (Sept.

28, 2020) (“Because the Bureau’s investigation is still ongoing, I do not need to resolve whether [Petitioner] is, in fact, a covered person subject to the CFPA’s prohibitions on unfair, deceptive, and abusive acts and practices.”); Daniel A. Rosen, Inc. d/b/a Credit Repair Cloud, CFPB No. 2020-MISC-Credit Repair Cloud-0001, at 5 (Aug. 13, 2020) (“These fact-based arguments are inappropriate in a petition to set aside a CID. . . . The reason for this is that fact-gathering is the purpose of the CID.”).

**B. The Bureau’s Investigation Is Not Barred by Its Memorandum of Understanding with the Department of Education.**

Ascendium’s argument that the Bureau ought to refrain from its investigation in deference to DOE is also unavailing. Ascendium points to a January 2020 Memorandum of Understanding (“MOU”) between the Bureau and DOE, in which DOE and the Bureau reached certain understandings related to the exercise of their responsibilities for handling student borrower complaints. But the MOU has no relevance to the Bureau’s exercise of its investigative or enforcement authority, as Ascendium admits. *See* Pet. at 15 (acknowledging that “the MOU does not specifically address the CFPB’s investigatory powers”). Indeed, the MOU states, “Nothing in this MOU limits or expands either Parties’ authorities or responsibilities under their respective statutes regardless of loan type or issue type.” In any event, the MOU expressly provides that the Bureau will handle complaints related to the *servicing* of Title IV loans (as opposed to those related the *origination* of Title IV loans, which are directed to DOE), as is more relevant here. Thus, the MOU is not a basis to set aside or modify the CID.

**C. The Bureau’s Investigation Is Not Barred by the Statute of Limitations.**

Ascendium’s argument that the CID must be set aside or modified because any claims would be barred by the applicable statute of limitations, *see* Pet. at 16, rests on a mischaracterization of the purpose of the Bureau’s investigation. Disregarding the CID’s Statement of Purpose, Ascendium characterizes the CID as limited to whether Ascendium unlawfully imposed collection costs within 65 days following default (costs which it refers to as “Pre-65 Collection Costs”).<sup>2</sup> Ascendium then asserts that it has not assessed any so called “Pre-65 Collection Costs” since July 10, 2015. *See id.* Accordingly, Ascendium argues that the Bureau’s investigation could not possibly relate to any claims that are timely under the CFPA’s three-year statute of limitations. *Id.*

Even if the Bureau’s CID was limited to investigating assessment of costs on Pre-65 Accounts, which it is not, Ascendium’s statute of limitations argument would still fail for other reasons. First, Ascendium’s argument is predicated on factual assertions regarding what costs it assessed on defaulted borrowers and when those costs were assessed. The Bureau is not required to accept these assertions as true, but rather is entitled to assess their merit through factual

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<sup>2</sup> An FFELP loan goes into default after 270 days of nonpayment. 20 U.S.C. § 1085(l). Upon default, the guaranty agency pays the lender and “is assigned the defaulted loan.” Pet. at 5. After being assigned the defaulted loan, the guaranty agency is required to provide the borrower an opportunity to rehabilitate the loan. 20 U.S.C § 1078-6(a). In 2019, DOE promulgated the Guaranty Agency Collections Fee Rule (“the Rule”), which prohibits a guaranty agency from assessing costs on a borrower who enters into a rehabilitation agreement or other repayment plan within 60 days of receiving a notice of default letter. *See* 84 Fed. Reg. 49788, 49926.

investigation. As discussed above, “[a] party cannot defeat enforcement of an administrative subpoena by raising fact-bound challenges.” *Consumer Fin. Prot. Bureau v. Future Income Payments, LLC*, 252 F. Supp. 3d 961, 966 (C.D. Cal. 2017), *order vacated in part*, No. 8:17-CV-00303-JLS-SS, 2018 WL 7502720 (C.D. Cal. Dec. 18, 2018).

Second, the CFPA’s statute of limitations is not tied to the date of a violation, but rather begins to run upon the Bureau’s “discovery” of the violation. 12 U.S.C. § 5564(g)(1). Since the statute of limitations begins to run on the date of discovery of a violation, it is not possible during an investigation to make blanket statements as to whether particular conduct falls outside the statute of limitations.

Third, the Bureau is not limited to only gathering information from within the limitations period. Rather, the Bureau may seek information if it is relevant to potential actionable conduct. Thus, the CID is valid so long as the information may be relevant to understanding the full context of other timely violations. *See Consumer Fin. Prot. Bureau v. Harbour Portfolio Advisors, LLC*, No. 16-14183, 2017 WL 631914, at \*5 (E.D. Mich. Feb. 16, 2017) (“The relevant inquiry is not whether all the information sought is actionable. Instead, the issue is relevant to conduct for which liability can be imposed.”); *Future Income Payments, LLC*, 252 F. Supp. 3d at 969 (“[E]ven assuming that the only actionable conduct occurred within the past three years, the CFPB may properly demand information for an additional two years because this information is reasonably relevant to conduct occurring within the statute of limitations period.”); *see also NLRB v. Line*, 50 F.3d 311, 314-15 (5th Cir. 1995) (affirming enforcement of subpoena seeking five years of information where applicable statute of limitations was six months).


#### **D. A Stay Is Not Warranted.**

Finally, Ascendium fails to establish any basis for an indefinite stay of the CID. Ascendium argues that the CID should be stayed pending final resolution of a lawsuit it filed, in which it is challenging the validity of DOE’s Guaranty Agency Collections Fee Rule under the Administrative Procedure Act. *See Complaint, Ascendium Ed. Sols., Inc. v. DeVos, et al.*, No. 19-CV-3831-CJN (D.D.C. Dec. 27, 2019). Ascendium fails to cite any case law for the proposition that the Bureau must stay its investigation pending the resolution of a lawsuit against another Federal agency. Instead, it points only to caselaw governing whether a district court should stay enforcement of a CID pending appeal. *See Pet.* at 18–20 (citing *Consumer Fin. Prot. Bureau v. Great Plains Lending, LLC*, 2014 U.S. Dist. LEXIS 89022, \*62). I am not persuaded that the factors that would guide the judicial stay inquiry apply in the administrative context and particularly as they concern a stay pending the resolution of a third-party lawsuit. Even so, in the judicial context, stays pending resolution of other litigation are discretionary and disfavored. *See Belize Soc. Dev. Ltd. v. Gov’t of Belize*, 668 F.3d 724, 731 (D.C. Cir. 2012). “[O]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.” *Id.* at 232 (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)). The Bureau has repeatedly denied petitions to stay a CID while other litigation works its way through the courts. *See Equitable Acceptance Corp., FedChex Recovery, LLC*, CFPB No. 2019-MISC-FedChex Recovery LLC-001 (Jan. 26, 2020); CFPB No.

2019-MISC-Equitable Acceptance Corp.-001 (Dec. 26, 2019). Consistent with this precedent, I exercise my discretion to deny a stay here.

### CONCLUSION

For the foregoing reasons, I deny Ascendium's Petition. Ascendium is directed to comply with the CID dated September 14, 2020, and to provide responses to the Interrogatories and produce documents responsive to the Requests for Written Reports and the Requests for Documents within ten business days of the date of this Order. This date may be extended as provided by Bureau rule 1080.6(d). 12 C.F.R. § 1080.6(d).

  
Kathleen L. Kraninger, Director

December 16, 2020