UNITED STATES OF AMERICA
BEFORE THE BUREAU OF CONSUMER FINANCIAL PROTECTION

IN THE MATTER OF
Center for Excellence In
Higher Education

RESPONDENT'S PETITION TO SET ASIDE OR MODIFY CIVIL INVESTIGATIVE DEMAND

Pursuant to section 1052(f) of the Consumer Financial Protection Act ("CFPA"), 12 U.S.C. § 5562 and 12 C.F.R. § 1080.6(e), Center For Excellence In Higher Education ("CEHE") hereby respectfully petitions the Bureau of Consumer Financial Protection ("Bureau") to set aside, or in the alternative to modify, the Civil Investigative Demand dated April 15 ("CID"), as amended by Bureau letter dated May 1.

I. Grounds for CEHE's Petition

a. The CID is unreasonably overbroad and unduly burdensome in seeking testimony about every aspect of CEHE's loan programs, other forms of financial assistance, tuition-payment plans to prospective students, and litigation for a period of seven years.

b. While on its face the CID purports to be issued for a proper purpose, the Bureau's conduct suggests that the true purposes of the CID are to harass and humiliate CEHE and its former owner and to exploit the Bureau's investigative process to improperly assist the Colorado's Attorney General's Office.

II. Background

The Institution

CEHE is a private, non-profit organization that operates four institutions of higher education (Stevens-Henager College, CollegeAmerica, California College San Diego, and Independence University, collectively the "Institutions").

The CID

CEHE recently received a CID from the Bureau demanding oral testimony at an investigatory hearing to be conducted by the Bureau on two topics.

The first topic calls for oral testimony about activities of the Institutions related to offering and providing student loans, other forms of financial assistance, or tuition-payment plans to prospective students. The topic is subdivided into the following: (a) policies and procedures related to student loan marketing, underwriting, origination, servicing, or collection; (b) training, supervision, and performance management of personnel with job duties related to advising students how to pay for college; (c) policies, procedures, and practices related to servicing student loans and the sale of student debt to third parties; and (d) policies, procedures, and practices related to furnishing student-borrower information to consumer reporting agencies ("Topic No. 1").

The second topic calls for oral testimony about litigation to which CEHE is a party involving claims related to CEHE's loans to students or other forms of financial assistance to prospective students since January 1, 2012 ("Topic No. 2").

Collaboration between the Bureau and Colorado's Attorney General's Office

Within hours of receiving the CID on April 15, 2019, the Colorado Attorney General's office ("COAG") notified CEHE that it had improperly shared a non-public confidential document that is subject to a judicial sealing order issued by a Colorado State court. COAG said it shared the document after receiving a request from a "government agency." Only after an inquiry by CEHE's counsel in that case did COAG eventually admit that it actually shared multiple sealed documents with the Bureau.

At a recent hearing about COAG's violation of the sealing order, the Colorado State court found that COAG's conduct warranted sanctions. The court ordered COAG to provide: i) a comprehensive log of all verbal communications between COAG and the Bureau; ii) the substance of those communications; and iii) identification of the documents COAG provided to the Bureau. Those items are due by May 31, 2019. Further sanctions may be warranted depending on the nature and content of those communications.

Efforts to Date to Resolve CEHE's Concerns and Objections

Counsel for CEHE and the Bureau first met and conferred by telephone on April 26, 2019. During that conference, counsel for CEHE questioned why there was no time frame associated with Topic No. 1. The Bureau represented that the failure to include a date-range was an inadvertent omission that it would correct after discussing it

internally. It promised to reissue the CID.[1] CEHE's counsel requested that the Bureau reschedule the return date due to a scheduling conflict, and the Bureau agreed.

During the April 26 meet and confer, Bureau counsel denied that the Bureau was participating in a joint investigation regarding CEHE and indicated that only Bureau staff would be present at the hearing.

Respective counsel continued to exchange email communications about rescheduling the hearing. CEHE proposed dates in June. On April 29, 2019, Bureau counsel identified June 11 as a viable date. The following day, Bureau counsel sent a letter identifying a June 11, 2019 hearing date. Regarding the time frame for Topic No. 1, the Bureau's letter stated, "[u]nless otherwise directed, the applicable period for the request is from January 1, 2012 until the date of this CID." *See* Exhibit A – Bureau's May 1, 2019 Letter Amending CID.

After receiving the May 1 letter, counsel for CEHE reminded Bureau counsel that the over-seven-year time frame for the oral testimony was overbroad and rendered the June 11, 2019 return date infeasible. CEHE requested a further meet and confer to discuss relevant issues.

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[1] The Bureau's attorneys dispute that they offered to revisit the time frame during the April 26 meet and confer. They have incorrectly stated that CEHE agreed to a January 1, 2012 time frame to the Topic No. 1 items. CEHE never agreed to any such time frame. The lack of any defined time frame was CEHE's primary objection. Having a time frame that is more than seven years is no more reasonable under the circumstances than having no limitation at all. Topic No. 1 calls for a much wider field of information than Topic No. 2 which seeks testimony related to institutional student loan-related litigation since January 1, 2012. Based on knowledge and belief, there has been just one such lawsuit in which CEHE has been a party during that time frame.

On May 14, counsel for CEHE and the Bureau again conferred telephonically about the CID. On this call, Bureau counsel contended that the parties had agreed to a 2012 investigative start date for Topic No. 1 during the April 26 telephone conference. This contention is simply not true. CEHE has consistently opposed that time period on the basis of being overbroad. Counsel asked Bureau counsel to cite a legal basis to support its desire to investigate back to 2012. Bureau counsel refused to do so.

CEHE expressed concern over the apparent coordinated effort by COAG and the Bureau and, in support, referenced the proceedings in Colorado and COAG's violation of the sealing order. It asked whether the CID was sent at COAG's urging. Without responding to the question, Bureau counsel replied that it had numerous reasons why it could investigate CEHE. And counsel referenced a 2015 New York Times article about the Institution's former owner as justification. They also claimed there were "numerous complaints about your Company." However, Bureau counsel would not provide any specifics to this sweeping claim. To verify the Bureau's claim, CEHE searched the Bureau's public complaint database without finding any such complaints. Bureau counsel refused to answer whether any of the complaints related back to 2012.

III. <u>The Bureau's demand for oral testimony should be set aside or modified because it calls for a time period that is unreasonably overbroad and unduly burdensome.</u>

a. The CID is overbroad based on the request for testimony covering more than 7 years' worth of information.

The baseline attributes of a valid exercise of governmental investigative power have been established in law for almost seventy years. *United States v. Morton Salt Co.,* 338 U.S. 632, 653 (1950) (J. Jackson) ("it is sufficient if the inquiry is within the

authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.") However, even when the agency demonstrates the existence of the *Morton Salt* factors, an agency's subpoena cannot be valid if the party subpoenaed proves the inquiry is unreasonably overbroad or unduly burdensome. *Solis v. Laborer's Int'l Union of N. Am., Local 368*, 775 F. Supp. 2d 1191, 1204 (D. Haw. 2010)(internal citations omitted).

CEHE seeks to set aside or, alternatively, to modify the CID because the timeframe for Topics Nos. 1 and 2 are overbroad and unreasonable. Analyzing whether the CID is unreasonable or overly burdensome requires a fact-specific inquiry. *McLane Co. v. EEOC*, 137 S. Ct. 1159, 1162 (2017); *see also In re Grand Jury Subpoena Duces Tecum, etc.*, 203 F. Supp. 575, 578. (S.D.N.Y. 1961) ("The facts of each case determine whether the period of time covered by the records sought is reasonable. The period of time with which the records deal should bear some relation to the subject of the investigation.")

The CID requires CEHE to designate one or more witnesses to appear at an investigative hearing to answer a broad range of questions. It seeks testimony about its student lending policies, procedures, practices, training, and employee management and supervision, involving every aspect of its student loan programs. The extensive breadth includes topics ranging from marketing to collections to the sale of student borrower's obligations to a third party. All this for over a seven-year period.

Without proper relief, CEHE's witnesses will be required to testify under oath and on the record about this wide-ranging list of subjects for a period spanning over three-

quarters of a decade. 12 C.F.R. § 1080.7(b). Under the Bureau's rules, the witness is not permitted to refuse to answer any question. 12 C.F.R. § 1080.9(b)(1). Nor is there a time limit on how long the hearing can last. Indeed, witness rights to be represented by counsel are significantly limited by these harsh procedural rules. 12 C.F.R. § 1080.9(b)

This is not an instance in which the facts and details regarding the subject matter encompassing Topic No. 1 have remained static or unchanged since January 1, 2012. Instead, CEHE has modified its student loan policies and procedures numerous times since 2012. Revisions have included numerous changes in offered loan terms and the administration of student loans. CEHE has at various times contracted with third parties to service its student loans, while at other times it has done so in-house. Still further, over the course of this period of time many student borrowers and CEHE employees have come and gone. *See* Exhibit B – Juhlin Affidavit.

The CID, as amended by the Bureau's May 1 letter, only gives 40 days for CEHE to identify and prepare responsive witnesses for testimony. Even with preparation, witnesses subject to the Bureau's procedures are provided little protection usually offered in the law. For example, it is entirely left to the discretion of the Bureau's investigator to allow the witness to clarify or correct inaccurate testimony—even if the witness makes an inadvertent or unintentional misstatement or mischaracterization of fact. 12 C.F.R. § 1080.9(b)(4). The Bureau's rules threaten any person that even innocently fails to comply in whole or in part with the CID with a civil contempt order. 12 C.F.R. § 1080.10(b)(2). The stakes at such hearings are not insignificant given the draconian enforcement tactics available to the Bureau.

The combination of the Bureau's rules and its demand for in-person witness testimony about innumerable details of CEHE's lending program, the actions of hundreds of employees, and a multitude of transactions over more than 7 years, exposes CEHE to considerable risk that is completely independent of its compliance with fair lending laws. Further amplifying the risk, the compressed timeframe in which the Bureau seeks to conduct this hearing ensures that witnesses will have insufficient time to prepare. For these reasons, the CID should be set aside, or amended to restrict the temporal scope of Topic No. 1.

b. Topic No. 2 of the CID is overbroad in seeking testimony related to litigation between COAG and CEHE.

COAG initiated an investigation into CEHE's Colorado campuses in June 2012, after it received anonymous complaints. Over the course of two and a half years, the investigation involved extensive subpoenas and twenty civil investigative demand hearings. *See* Exhibit B – Juhlin Aff., ¶¶ 9-12. COAG filed suit against CEHE on December 1, 2014, asserting three claims under the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et. seq*. ("CCPA"), and one claim under the Uniform Consumer Credit Code, C.R.S. § 5-6-101, *et seq*. ("UCCC") ("COAG Litigation").[2]

The case culminated in a four-week bench trial from October 16, 2017 through November 9, 2017, involving 48 witnesses and 366 exhibits. The trial followed a four-day evidentiary hearing on COAG's motion for a preliminary injunction, which was denied.

[2] State of Colorado, *ex rel*. John W. Suthers, Attorney General, and Julie Mead, Administrator, Uniform Consumer Credit Code v. Center for Excellence in Higher Education, Inc., *et al*. Case No: 2014-cv-34530 (Dist. Court of Denver City and County, Colo.).

At that hearing the court commented that he detected "a bias against these type of schools…" Trans., Preliminary Injunction Hr'g, May 8, 2015, 124:4-6.

The COAG Litigation involved five and a half years of investigation and discovery. COAG examined CEHE's business activities over an eleven-year period. During this period, more than 10,000 students enrolled in CEHE's Colorado Campuses. CEHE produced hundreds of thousands of pages of business records, files, and documents, and the parties took more than 50 depositions.

Trial concluded November 9, 2017, and the parties are waiting for the court's opinion. The CID could require witnesses on Topic No. 2 to testify about four causes of action, thousands of documents, and the deposition and trial testimony of 50 or more witnesses.

The COAG Litigation is based upon two consumer protection statutes that have a purpose very similar to that of the CFPA. The same student lending, marketing, and admissions processes are used at each CEHE campus. Requiring CEHE to provide testimony on Topics Nos. 1 and 2 would put CEHE in the inevitable position of providing additional testimony under oath. At a minimum, witnesses will be required to review all of the trial and deposition testimony.

c. *The CID is overbroad and unduly burdensome because it calls for disclosure of Personally Identifiable Information that CEHE is obligated to protect under federal law.*

The Institutions that CEHE operates are required to comply with the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g and 34 C.F.R. Part 99) ("FERPA"). They are also subject to the Gramm-Leach-Bliley Act Safeguards Rule (15 U.S.C. §§ 6801-6809) and 12 C.F.R. §§ 6801 – 6809) ("GLBA"). Both laws require covered

entities to protect against the unauthorized disclosure of personally identifiable information ("PII"). However, FERPA deals with PII that is sourced in education records, whereas GLBA protects personally identifiable financial information. Compare 34 C.F.R. § 99.3 and 15 C.F.R. § 6809(5). Although covered entities are permitted to disclose GLBA protected PII to the Bureau under 15 C.F.R. § 6802(e)(5), there is no analogous provision in statute or regulation for CEHE's obligations under FERPA.

FERPA provides a limited exception to its default requirement that institutions obtain prior written consent from affected individuals before the disclosure of PII contained in their education records. *See* 34 C.F.R. § 99.31(9). An institution must make a reasonable effort to notify the affected individuals prior to disclosing the protected information. Alternatively, the subpoena must have been issued for a law enforcement purpose, and the issuing agency must order that the existence or contents of the subpoena and the information furnished cannot be disclosed.

The protections of 34 C.F.R. § 99.31(9)(ii)(B) are not available to CEHE because the Bureau did not take sufficient steps in issuing the CID to provide any assurances about the redisclosure of information furnished during the hearing. Similarly, CEHE can not avail itself of the protections afforded by 34 C.F.R. § 99.31(9)(ii) because there is no practical way for CEHE to provide reasonable notice to affected individuals before the request to disclose specific information will be made. Consequently, CEHE will be forced into making the choice between violating the Bureau's rules by withholding information at the hearing or violating its duty to protect student PII under FERPA. Because such violations could lead to sanctions enforced by the Department of Education, including the

loss of participation in federal student aid programs, 20 U.S.C. § 1232g(b)(1), CEHE must obtain relief from the current CID.

d. The CID is overbroad and burdensome because it seeks information about conduct which, if assumed arguendo constituted a violation of law, the Bureau would have no legal remedy to address due to applicable statute of limitations.

The scope of the time period for Topic No. 1 vastly exceeds the applicable statute of limitations for the various statutes the Bureau enforces. CEHE's student loan origination and collection practices are the primary focus of Topic No. 1. The federal consumer laws most likely applicable to those practices have either a one or two-year statute of limitations. A one-year statute of limitation applies to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k(d), and the Truth in Lending Act, 15 U.S.C. § 1640(e). A two-year statute of limitation applies to the Equal Credit Opportunity Act, 15 U.S.C. § 1691e(f), and the Fair Credit Reporting Act, 15 U.S.C. § 1681p. The extent to which the CID far exceeds applicable statutes of limitations raises questions about whether the Bureau's investigatory power is being properly exercised where the information sought is unrelated to any matter properly under inquiry or for which it can obtain any remedy at law. *See Carvel v. Lefkowitz*, 431 N.Y.S. 2.d 609, 614 (N.Y. Sup. Ct 1979).

If confronted with such a question, the Bureau is likely to argue that, notwithstanding the fact that any claims for violations of law it may discover may be time barred long ago, the CID is not overbroad because even the collection of stale facts could lead to the discovery of more recent violations of law. *See, e.g. Consumer Fin. Prot. Bureau v. Harbour Portfolio Advisor, LLC*, 2017 U.S. Dist. LEXIS 21576 *14-15 (E.D. Mich. 2017). Notwithstanding predictable axiomatic arguments regarding the supposed relevancy of facts years older than the applicable statute of limitations, the first principle

that must apply is "that the disclosure sought shall not be unreasonable." *Oklahoma Press Publishing Co.* 327 U.S. 186, 208 (1946). In this case, because of the numerous substantive changes to CEHE's loan program since 2012, there is little continuity to lend credence to the contention that activity from several years ago reasonably relates to CEHE's recent conduct. And, as the calendar pages turn, the likelihood only increases that the only purpose served by the collection of stale information is the accumulation of "brownie points for a thorough and complete investigation." *Carvel* at p. 13.

e. The COAG Litigation may preclude a CFPB enforcement action against CEHE upon a final judgment being entered.

CEHE acknowledges the final judgment on the merits remains pending in the COAG Litigation. But the potential that the court's ruling will have preclusive effect against the Bureau is enough to justify a delay in the Bureau's investigation or a significant narrowing of the CID's scope.

Policy considerations underlying the preclusive effect of prior litigation, such as avoiding unnecessary burdens of time and expense, are as relevant to the administrative process as to the judicial process. *Painters Dist. Council No. 38, etc. v. Edgewood Contracting Co.*, 416 F.2d 1081, 1084 (citing *Old Dutch Farms, Inc. v. Milk Drivers and Dairy Employees Local Union Number 584*, 281 F. Supp. 971, 974 (E.D.N.Y. 1968). As Justice Thurgood Marshall cautioned in *Oklahoma Press Pub. Co. v. Walling*, "[o]fficious examination can be expensive. So much so that it eats up men's substance. It can be time consuming, clogging the process of business. It can become persecution when carried beyond reason." 327 U.S. 186, 213 (1946).

The CID duplicates the issues already investigated by the COAG. Continued investigation carries beyond reason the need for the broad scope sought by the Bureau. Indeed, further investigation will amount to persecution. It was precisely for this reason that CEHE sought to engage Bureau counsel in a meaningful discussion as to the scope of the CID during multiple meet and confers. Rather than consider CEHE's suggestion that the Bureau first examine CEHE's current and recent practices, Bureau counsel insisted instead on its unreasonable broad timeframe, dismissing CEHE's suggestion out of hand.

Recently ordered discovery in the COAG Litigation may reveal a sufficient representative nexus between COAG and the Bureau. If that is the case, a ruling in favor of CEHE would have preclusive effect (*e.g.* collateral estoppel)—further underscoring the overly broad nature of the CID. In fact, such a ruling appears likely given the court's prior rulings. The court's order denying COAG's request for a preliminary injunction is instructive of the broad scope of the issues in the COAG Litigation and CEHE's probability of success on the merits. The court ruled:

> EduPlan loans help students who may otherwise be unable to attend CollegeAmerica pay for tuition. No credit check is required for EduPlan loans. The terms of the EduPlan loans are clearly disclosed. The loan amount, interest rate, and total payments are clearly provided. CollegeAmerica monitors its financial planners' interaction with prospective students to ensure that they are following the College's rules and procedures. There is no evidence of the College providing any false or misleading information about EduPlan loans. Further, CollegeAmerica's statements that EduPlan helps make college 'affordable' is not misleading . . . Without EduPlan, many students would not be able to pay tuition; therefore, the loans do help students to afford college.

Order Denying Preliminary Injunction, July 16, 2015 at 8.

IV. **Serious questions about the Bureau's involvement with the COAG undermine the CID's validity**.

Although the CID purports on its face to be issued for a proper purpose, the Bureau's conduct suggests the true purpose of the CID is to harass and humiliate CEHE and its former owner. The CID also seems to reflect an impermissible desire to exploit the CFPA by relitigating claims on behalf of Colorado's Attorney General.

Upon information and belief, the Bureau and COAG have had extensive communications about CEHE. The issuance of the CID following the recent improper disclosure of sealed court documents to the Bureau strongly suggests that the Bureau and COAG are collaborating to target CEHE. According to documents filed by COAG in court, the Bureau requested sealed documents.

Pursuant to the recent order of the Denver County Court, COAG must disclose the extent and substance of its communications with the Bureau. To do so, COAG must provide a log of such communications showing: a) the identity of the people involved in the communication; b) the date of the communications; and c) the substance of the communications. The log is due no later than May 31, 2019.

COAG's decision to violate the court's order by providing information to the Bureau raises substantial questions about the Bureau's role in that transaction and propriety of the concurrently issued CID. Until those questions are investigated and resolved in the Colorado proceeding, it is premature to require compliance with the CID. Given Bureau counsels' representation that it has received numerous complaints about CEHE, the apparent lack of any such complaints in the Bureau's public complaint database further undermines the basis for issuing the CID.

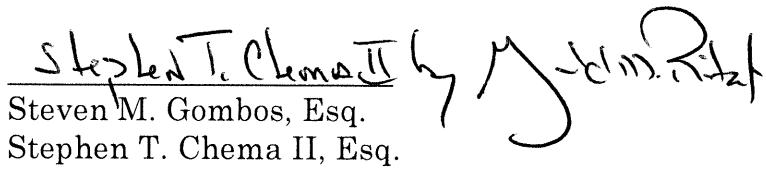
Courts have frequently held that evidentiary hearings and/or discovery are appropriate in advance of compliance with an agency investigation or summons where non-frivolous allegations of bad-faith or improper purpose are asserted. *See, e.g.*, *SEC v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118 (3rd Cir. 1981) (finding that "non-frivolous allegations of senatorial interference do constitute sufficient grounds for further proceedings, including discovery"); *United States v. Fensterwald*, 553 F.2d 231, 232-33 (D.C. Cir. 1977) (finding limited discovery appropriate where a taxpayer—who served as counsel in several high-profile cases involving embarrassing revelations about members of the Executive Branch—asserted unproven allegations challenging the good faith of the Internal Revenue Service in conducting a special audit); *United States v. Church of Scientology*, 520 F.2d 818, 824-25 (9th Cir. 1975) (finding that "thin" allegations of bad faith entitled a church to an evidentiary hearing to determine whether discovery into agency's purpose in issuing a summons was appropriate).

In the instant case, a Colorado State court has already concluded that sufficient allegations of impropriety exist in COAG's communications and disclosures to the Bureau. The court concluded they were sufficient to warrant discovery into the matter. Once COAG complies with the court's order, additional revelations may further confirm the CID is tainted because it was not issued for a proper purpose or because it relied on improperly obtained documents, or both. In the interest of transparency and the maintenance of propriety of the Bureau's actions, the Bureau should rescind the CID until COAG's submissions in response to the court order have been made and analyzed.

V. Conclusion

For the reasons set forth above, the Bureau should set aside the CID. Alternatively, the Bureau should modify the scope of the CID to establish a reasonable timeframe to not exceed three (3) years.

Respectfully submitted,



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Counsel to Petitioner
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STATEMENT IN CONFORMITY WITH 12 C.F.R. § 1080(e)

The undersigned counsel hereby represent that they conferred with counsel for the Bureau in a good faith effort to reach an agreement to resolve CEHE's objections to the CID but have been unable to reach such an agreement.

The good faith efforts referenced above included two separate telephone conferences between counsel for both parties, the first occurring between attorneys Ben Konop and John Thompson representing the Bureau and Steven Gombos and Stephen Chema on CEHE's behalf at 12:00 p.m., April 26, 2019. The April 26 meet and confer was followed by a second telephone conference between attorney Konop and Steven Gombos and Stephen Chema on May 14, 2019 at approximately 5:15 p.m. Although communications between the parties' representatives resulted in the modification of the original CID to change the original return date and to rectify the omission of a timeframe for Topic No. 1, the parties were unable to resolve the impasse related to objections stated in CEHE's petition to which this statement is attached.

Stephen T. Chema II by John M. Pitt

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May 1, 2019

Via Email

Steven M. Gombos, Esquire
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Re: Civil Investigative Demand served on the Center for Excellence in Higher Education on April 12, 2019

Dear Mr. Gombos:

This letter modifies the terms for compliance with the civil investigative demand (CID) issued to the Center for Excellence in Higher Eduction (CEHE) by the Bureau of Consumer Financial Protection (Bureau), as permitted by 12 C.F.R. § 1080.6(d). This letter sets forth the only modifications to the CID. The Bureau's willingness to approve these modifications is based, in part, on CEHE's representations described or referenced below. The production of information and documents in accordance with the modifications described below constitutes compliance with the CID.

Date of Hearing

The CID as issued on April 12, 2019 required a representative of CEHE to appear and provide testimony on May 21, 2019 at 10:00 a.m. at the U.S. Attorney's Office in Salt Lake City, UT. **The Bureau agrees to modify the date of the hearing to June 11, 2019.**

Modification to Instructions

CEHE pointed out the inadvertent omission of an instruction pertaining to the "Applicable Period for Responsive Materials." The Bureau modifies the CID to add the following Instruction:

> "**Applicable Period for Responsive Materials**." Unless otherwise directed, the applicable period for the request is from January 1, 2012 until the date of this CID.

Nature of the Modifications

To assist in construing any terms of this letter, the definitions set forth in the CID are incorporated by reference. This letter does not change the Company's responsibilities described in the Document Retention instruction in the CID. Further, nothing in this letter precludes the Bureau from issuing additional CIDs or seeking discovery from the Company.

If you have any questions regarding the terms outlined above, contact Enforcement Attorney Benjamin Konop at 202-435-7265.

Sincerely,

Jeffrey Paul Ehrlich

Digitally signed by Jeffrey Paul Ehrlich
Date: 2019.05.01 16:36:46 -04'00'

Jeffrey Paul Ehrlich
Deputy Enforcement Director

UNITED STATES OF AMERICA
BEFORE THE BUREAU OF CONSUMER FINANCIAL PROTECTION

IN THE MATTER OF
Center For Excellence In
Higher Education

AFFIDAVIT OF ERIC JUHLIN

I, Eric Juhlin, being duly sworn under oath, state as follows:

1. I am over eighteen years of age and reside in Utah. I hold the position of Chief Executive Officer for Center for Excellence in Higher Education, Inc. d/b/a Stevens-Henager College, CollegeAmerica, California College San Diego, and Independence University ("CEHE"). I have been so employed since May 2010. I have primary day-to-day responsibility for each of the colleges CEHE operates.

2. I either have direct personal knowledge of the facts presented in this declaration based on my participation, involvement, or awareness for the related events and occurrences or have conducted sufficient inquiry to determine the balance of facts presented in this declaration. If called as a witness I could competently testify to these facts as a representative of CEHE.

3. This declaration is offered in support of CEHE's Petition to Set Aside the Consumer Financial Protection Bureau's (the "Bureau") Civil Investigative

Demand dated April 15, 2019 and amended by the Bureau's letter dated May 1 (the "CID").

4. The CID seeks oral testimony related to institutional student loan programs offered by postsecondary institutions operated by CEHE: Stevens-Henager College, CollegeAmerica, California College San Diego, and Independence University (collectively the "Institutions") for the time period beginning January 1, 2012 through the date of the CID.

5. Since January 1, 2012, CEHE revised its written policies and procedures related to Institutions' loan program approximately [4] times. In general, the reasons for such policy changes related to structural changes in the administration process. For example, during the applicable period, the loan programs were managed on a decentralized basis at each campus for a period of time, then for another period of years, management of several key functions were delegated by contract to a third party, before those functions were again brought in-house to be managed centrally.

6. The loan program evolved in numerous other ways since January 1, 2012; for example, there have been changes made to the loan program's interest rate, the duration of the loan, and in all of the informational documents and loan disclosures that reflect the program's basic terms.

7. As a result, to fully catalog the components and changes to the loan program since January 1, 2012 would require the identification and review of an expansive amount of documentation.

8. Additionally, CEHE estimates that as many as 200 to 400 employees may have had some role related to the loan program related to topics appearing on the CID: marketing, underwriting, origination, servicing, and collection, and in the training, supervision, and management functions related to those processes.

9. The CID also seeks testimony related to litigation involving the loan program for the same time frame: January 1, 2012 through May 1, 2019. During that time, CEHE has been a party to one significant piece of litigation. The Colorado Attorney General brought suit against CEHE in the District Court of Denver City and County in 2014.

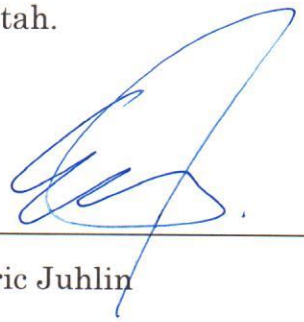
10. That case, which remains ongoing, involved five-and-a-half years of investigation and discovery into CEHE's operations at three Colorado campuses, including the administration of the loan program.

11. In responding to the Attorney General's requests in discovery, CEHE produced hundreds of thousands of pages of business records, files, and documentation. Over 50 depositions were taken in the case, and the Colorado Attorney General took testimony at an additional 20 civil investigative hearings.

12. The case went to trial before Judge Ross B.H. Buchanan from October 16, 2017 through November 9, 2017. During this four-week bench trial, 48 witnesses were examined, and 366 exhibits were admitted into evidence.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct to the best of my knowledge.

Executed on May 21, 2019, at Salt Lake City, Utah.



Eric Juhlin