

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CONSUMER FINANCIAL  
PROTECTION BUREAU  
1700 G Street NW  
Washington, D.C. 20552

Petitioner,

v.

ACCREDITING COUNCIL FOR  
INDEPENDENT COLLEGES  
AND SCHOOLS  
750 First Street NE  
Suite 980  
Washington, DC 20002-4223

Respondent.

Case No. 15-cv-1838

**MEMORANDUM IN SUPPORT  
OF PETITION TO ENFORCE CIVIL INVESTIGATIVE DEMAND**

The Consumer Financial Protection Bureau (Bureau) petitions this Court for an order requiring Accrediting Council for Independent Colleges and Schools (ACICS) to comply with the civil investigative demand (CID) issued to it on August 25, 2015. CIDs are a type of investigative administrative subpoena,<sup>1</sup> and proceedings to enforce them are initiated by a petition and an order to show cause.<sup>2</sup> As explained below, the Bureau has authority to issue the CID in question, and the Court has authority to enforce it. Accordingly, the Bureau respectfully requests that this Court direct ACICS to show cause as to why it cannot fully comply with the CID and, thereafter, enter an order enforcing the CID.

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<sup>1</sup> See, e.g., *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1087 (D.C. Cir. 1992); *Morgan Drexen, Inc. v. CFPB*, 979 F. Supp. 2d. 104, 107 (D.D.C. 2013).

<sup>2</sup> See, e.g., *FTC v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980); *Invention Submission Corp.*, 965 F.2d at 1091; *Morgan Drexen*, 979 F. Supp. 2d. at 108.

## JURISDICTION AND VENUE

The Bureau has authority under the Consumer Financial Protection Act of 2010 (CFPA) to issue CIDs and enforce them in district court.<sup>3</sup> When an entity fails to comply with a CID, § 1052 of the CFPA and its enabling regulations authorize the Bureau to petition the district court in “any judicial district in which [that entity] resides, is found, or transacts business” for an order to enforce the CID.<sup>4</sup> Because ACICS is located in and transacts business in the District of Columbia, venue is proper here.

## STATEMENT OF FACTS

On August 25, 2015, the Bureau issued a CID to ACICS via certified mail at 750 First Street NE, Suite 980, Washington, DC 20002-4223.<sup>5</sup> The CID was issued during a nonpublic investigation concerning possible violations of § 1036 of the CFPA or other Federal consumer financial protection laws. The CID required ACICS to answer two interrogatories and to designate a company representative to appear and give oral testimony on September 22 and 23, 2015 in Washington, DC, where the company is located.<sup>6</sup>

Following ACICS’s receipt of the CID, Bureau counsel met by telephone several times with ACICS’s counsel to discuss compliance. These discussions did not resolve disagreements regarding ACICS’s obligations, and on September 14, 2015, ACICS submitted

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<sup>3</sup> 12 U.S.C. § 5562(c)(1).

<sup>4</sup> 12 C.F.R. § 1080.10(b)(1); 12 U.S.C. § 5562(e)(1).

<sup>5</sup> *See* Decl. of Benjamin Konop in Support of Petition to Enforce Civil Investigative Demand (Oct. 29, 2015), filed concurrently herewith (hereinafter, “Konop Decl.”) at 2.

<sup>6</sup> *See Id.* at 1-2.

to the Bureau a petition to set aside or modify the CID (Petition).<sup>7</sup> On October 8, 2015, the Bureau's Director denied the Petition and ordered ACICS to meet and confer with Bureau counsel within 10 days.<sup>8</sup> While Bureau counsel has contacted counsel for ACICS several times to discuss compliance with the CID, counsel for ACICS has responded only by objecting to the CID itself, rather than by discussing a mutually agreeable date for a hearing or ACICS's compliance with the CID's other requirements.<sup>9</sup>

On October 23, 2015, ACICS submitted to the Bureau a motion to reconsider the denial of its Petition.<sup>10</sup> ACICS also sent a letter to Bureau counsel on October 26 restating its arguments as to why it should not be required to comply with the CID.<sup>11</sup> On October 27, the Bureau notified ACICS that neither the CFPA nor Bureau regulations permit motions for reconsideration, and that the Bureau's Director would not address ACICS's motion to reconsider the Petition.<sup>12</sup>

## ARGUMENT

The standards for judicial enforcement of federal-agency investigative process, such as the instant CID, are well settled. The district court's "role in a proceeding to enforce an

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<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*; *see also* Decision and Order on Petition by Accrediting Council for Independent Colleges and Schools to Modify or Set Aside Civil Investigative Demand, No. 2015-MISC-ACICS-0001, at \*3 (Oct. 8, 2015), [http://files.consumerfinance.gov/f/201510\\_cfpb\\_decision-on-petition-by-selling-ACICS-to-set-aside-civil-investigative.pdf](http://files.consumerfinance.gov/f/201510_cfpb_decision-on-petition-by-selling-ACICS-to-set-aside-civil-investigative.pdf).

<sup>9</sup> Konop Decl. at 2-3.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.*

administrative subpoena is a strictly limited one.”<sup>13</sup> To enforce an administrative subpoena, the district court must only determine that the agency is authorized to make such an inquiry, the information sought is reasonably relevant, and the demand is not too indefinite.<sup>14</sup> If the government can show that these criteria are satisfied, the court should enforce the subpoena unless the recipient demonstrates that it is unduly burdensome.<sup>15</sup> The circumstances here warrant enforcement of the CID.

First, the CID is within the Bureau’s authority. Courts have found that “as a general proposition, agencies should remain free to determine, in the first instance, the scope of their own jurisdiction when issuing investigational subpoenas,”<sup>16</sup> and enforcement of a CID should be “denied only when there is a ‘patent lack of jurisdiction’ in an agency to regulate or investigate.”<sup>17</sup> The Bureau is empowered under § 1031 of the CFPA to take action to prevent “unfair, deceptive, or abusive act[s] or practice[s] . . . in connection with any transaction with a consumer for a consumer financial product or service.”<sup>18</sup> Further, § 1036 of the CFPA prohibits certain entities from committing unfair, deceptive, or abusive acts or practices and prohibits any other person from “knowingly or recklessly provid[ing] substantial assistance to” an entity engaged in such acts or practices.<sup>19</sup>

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<sup>13</sup> *FTC v. Texaco, Inc.*, 555 F.2d 862, 871-72 (D.C. Cir. 1977).

<sup>14</sup> *See, e.g., United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Texaco*, 555 F.2d at 872; *CFTC v. Ekasala*, 62 F. Supp. 3d 88, 93 (D.D.C. 2014).

<sup>15</sup> *See, e.g., Texaco*, 555 F.2d at 882; *Invention Submission Corp.*, 965 F.2d at 1089-90.

<sup>16</sup> *FTC v. KenRoberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001).

<sup>17</sup> *KenRoberts Co.*, 276 F.3d at 587 (quoting *CAB v. Deutsche Lufthansa Aktiengesellschaft*, 591 F.2d 951, 952 (D.C. Cir. 1979)).

<sup>18</sup> 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

<sup>19</sup> 12 U.S.C. § 5536(a).

The CID issued to ACICS relates to a Bureau investigation 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 these laws. The Bureau has investigated for-profit colleges for deceptive practices tied to their private student-lending activities.<sup>20</sup>

The CFPA broadly authorizes the Bureau to issue a CID to “any person” whom the Bureau “has reason to believe . . . may be in possession, custody, or control of . . . any information, relevant to a violation.”<sup>21</sup> The CID must simply “state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.”<sup>22</sup> The CID issued to ACICS contained a Notification of Purpose apprising the company that the CID related to the Bureau’s investigation of entities or persons who may have engaged in unlawful acts and practices in connection with accrediting for-profit colleges, in violation of the CFPA. This scope is plainly within the Bureau’s authority.

Second, the CID seeks reasonably relevant information. Information sought by an agency is reasonably relevant if it is “not plainly incompetent or irrelevant to any lawful purpose of the agency.”<sup>23</sup> Moreover, courts defer to an “agency’s own appraisal of relevancy . . . so long as it is not ‘obviously wrong.’”<sup>24</sup> Because of the “broad deference afforded”<sup>25</sup> to agencies “both in their interpretation of the scope of their authority to issue a [CID] for

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<sup>20</sup> See, e.g., Compl., *CFPB v. Corinthian Colleges, Inc.*, No 1:14-cv-07194 (N.D. Ill. Sept. 16, 2014).

<sup>21</sup> 12 U.S.C. § 5562(c).

<sup>22</sup> 12 U.S.C. § 5562(c)(2); accord 12 C.F.R. § 1080.5.

<sup>23</sup> *Invention Submission Corp.*, 965 F.2d at 1089 (internal citations and quotation marks omitted).

<sup>24</sup> *Id.* (quoting *Texaco*, 555 F.2d at 877 n.32).

<sup>25</sup> *CFTC v. Ekasala*, 62 F. Supp. 3d 88, 93 (D.D.C. 2014).

targeted records and their estimation of the relevance of such records,”<sup>26</sup> it is essentially ACICS’s “burden to show that the information is irrelevant.”<sup>27</sup> Here, the CID meets the applicable standard. ACICS is an accreditor of for-profit colleges, and the Bureau has reason to believe that in that capacity the company has information relevant to the Bureau’s investigation.

Finally, the CID is not too indefinite, overly broad, or unduly burdensome. Under the CFPRA, a demand for answers to interrogatories must “propound with definiteness and certainty . . . the questions to be answered.”<sup>28</sup> The CID issued to ACICS clearly identified the desired information and topics of oral testimony and provided a Notification of Purpose apprising ACICS of the intent of the Bureau’s investigation. Moreover, the burden of showing that a “request is unduly burdensome is on the subpoenaed party” and is “not easily met.”<sup>29</sup> To meet this burden, “[c]ourts have required a showing that compliance ‘threatens to unduly disrupt or seriously hinder normal operations of a business.’”<sup>30</sup> In this case, the CID has requested responses to two interrogatories and testimony of a corporate representative over two days in Washington, DC, where ACICS is located. These straightforward, narrowly tailored requests would not “seriously hinder” ACICS’s operations.

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<sup>26</sup> *US v. Capitol Supply, Inc.*, 27 F. Supp. 3d 91, 99 (D.D.C. 2014).

<sup>27</sup> *Ekasala*, 62 F. Supp. 3d at 93.

<sup>28</sup> *See* 12 U.S.C. § 5562(c)(5).

<sup>29</sup> *Ekasala*, 62 F. Supp. 3d at 94.

<sup>30</sup> *Id.* (quoting *Texaco, Inc.*, 555 F.2d at 882).

## CONCLUSION

For the foregoing reasons, this Court should grant the Bureau's petition and order ACICS to show cause as to why it cannot comply with the CID. Because the Bureau has the authority to issue the CID, because the CID was properly issued and not too indefinite, because the CID seeks information that is relevant to a Bureau investigation, and because the CID is not overly broad or unduly burdensome, the Court should, after giving ACICS an opportunity to be heard, order ACICS to comply with the CID within 10 days of the Court's order, or at such later date as may be established by the Bureau.

Dated: October 29, 2015

Respectfully submitted,

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