ORAL ARGUMENT NOT YET SCHEDULED

No. 16-5174

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CONSUMER FINANCIAL PROTECTION BUREAU,
Petitioner - Appellant,

v.

ACCREDITING COUNCIL FOR INDEPENDENT COLLEGES AND SCHOOLS,
Respondent - Appellee.

ON APPEAL OF A FINAL DECISION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
(Case 1:15-cv-01838-RJL)

BRIEF OF APPELLEE ACCREDITING COUNCIL FOR INDEPENDENT COLLEGES AND SCHOOLS

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November 30, 2016

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), Appellee Accrediting Council for Independent Colleges and Schools (ACICS) submits its Certificate as to Parties, Rulings, and Related Cases.

A. Parties and Amici

Except for the following, all parties and Amici Curiae appearing before the District Court and in this Court are listed in the Brief for Appellant:

In addition to the parties appearing as Amicus Curiae before the District Court, ACICS understands that the United States Chamber of Commerce intends to appear as an Amici before this Court in support of ACICS.

B. Ruling Under Review

References to the rulings at issue appear in the Brief for Appellant.

C. Related Cases

This matter has not been previously before this Court or any other court. There are no related cases before this Court or any other court.

RULE 26.1 DISCLOSURE STATEMENT

ACICS submits the following corporate disclosure statement pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1:

ACICS is a national accreditor of academic institutions in the United States. ACICS has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

/s/ Allyson B. Baker
Counsel for Appellee
Accrediting Council for
Independent Colleges and Schools

Dated: November 30, 2016

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GLOSSARY

Term	Definition
ACICS	Appellee Accrediting Council for Independent Colleges and Schools
AOB	Appellant's Opening Brief
Bureau	Appellant Consumer Financial Protection Bureau
CFPA	Consumer Financial Protection Act
CID	Civil Investigative Demand
ED	United States Department of Education
JA	Joint Appendix
UDAAP	Unfair, Deceptive, or Abusive Acts or Practices

STATEMENT OF ISSUES

1. Whether the District Court properly determined that the Bureau lacks authority to investigate "whether any entity or person has engaged or is engaging in unlawful acts or practices in connection with accrediting for-profit colleges."

2. Whether, even if the Bureau had the authority to enforce the civil investigative demand (CID) at issue, this Court should remand the matter to the District Court to make factual findings about the relevance of the information sought by the CID and the burden on ACICS in providing such information, issues that were not addressed below because the District Court denied enforcement of the CID on the threshold legal issue that the Bureau lacked the authority to enforce the CID without reaching ACICS's challenges to the latter two essential elements of a valid CID.

STATUTES AND REGULATIONS

Except for the following pertinent provisions, which are reproduced in the Addendum to this brief, all applicable statutes and regulations are reproduced in the Addendum to the Brief of Appellant: 12 U.S.C. §§ 5481, 5531, 5536, and 5561.

INTRODUCTION

The Bureau did not have the authority to issue its CID to ACICS. The CID's Notification of Purpose stated that the CID was for the purpose of investigating acts and practices "in connection with accrediting for-profit colleges." The Bureau's authority, however, is limited to investigating potential violations of consumer financial laws. The accrediting of for-profit schools has nothing to do with the consumer financial laws. Recognizing the sweeping scope of the Bureau's CID, the District Court appropriately analyzed the Bureau's authority to issue the CID and concluded that the particular CID was outside the Bureau's authority.

The District Court started with the presumption that the Bureau – like any agency – had authority to pursue an investigation. But, the District Court did not blindly defer to the Bureau's interpretation of its own authority, as the Bureau would have it do. The District Court's approach – of presuming that the Bureau had authority to issue the CID but still reviewing the CID – was consistent with the governing legal standard and this Court's precedent.

Now, on appeal, the Bureau seeks to rewrite the standard for judicial review of a CID by asking for even more deference. The Bureau's argument would effectively confine a district court's analysis of an agency's authority to a cursory review of the CID with a rubber stamp. Contrary to the Bureau's contention, a

district court's review of a CID is not circumscribed to an agency's own interpretation (and any further re-interpretation) of its own CID. Indeed, the doctrine of judicial review would cease to exist if district courts "must" adopt entirely an agency's interpretation of statutory provisions that confer investigative authority. Because the District Court correctly concluded that the Bureau lacked authority for this CID, the District Court never even reached the issue of whether the documents sought by the CID are relevant to the investigation (they are not) or whether the CID is unduly burdensome on ACICS (it is). These factual questions must be answered first by the District Court before any rulings on relevance and burden can be reviewed by this Court. As such, if this Court determines that the Bureau had authority for the CID, it should remand to the District Court.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

A. Statutory Background Of The Bureau

Congress established the Bureau to "regulate the offering and provision of consumer financial products or services under the Federal consumer laws." 12 U.S.C. § 5491(a). The Consumer Financial Protection Act (CFPA) establishes the Bureau as an executive agency[1] charged with the power to "prescribe rules or issue

[1] A panel of this Court recently held that the Bureau's single-director structure is unconstitutional and, as a result, the Bureau "now will operate as an executive agency" under the supervision and direction of the President of the United States.

orders or guidelines pursuant to" nineteen consumer financial laws. 12 U.S.C. § 5581(a)(1)(A). The nineteen statutes include eighteen enumerated consumer financial laws, as well as the Bureau's authority to prohibit unfair, deceptive, or abusive acts or practices under 12 U.S.C. § 5531 (UDAAP authority). 12 U.S.C. § 5481(14) (defining "Federal Consumer Financial Law").

To enforce these consumer financial laws, Congress empowered the Bureau to conduct investigations in certain specific circumstances. Specifically, the CFPA states that an investigation "means any inquiry . . . for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation" of a Federal consumer financial law. 12 U.S.C. § 5561(1). The statute further defines "violation" to mean "any act or omission that, if proved, would constitute a violation of any provision of *Federal consumer financial law*." 12 U.S.C. § 5561(5) (emphasis added). To investigate potential violations of Federal consumer financial law, the Bureau may propound CIDs. 12 U.S.C. § 5562(c)(1). The Bureau is required to provide a statement of the purpose of the CID. Specifically:

> Each civil investigative demand shall state the nature of the conduct constituting the alleged violation [of Federal consumer financial law] which is under investigation and the provision of law applicable to such violation.

See PHH Corp., et al. v. CFPB, – F.3d –, No. 15-1177, 2016 WL 5898801, *28 (D.C. Cir. Oct. 11, 2016).

12 U.S.C. § 5562(c)(2). If the recipient of a CID refuses to comply, the Bureau may petition a federal district court for an order requiring compliance. 12 U.S.C. § 5562(b)(2). The district court then has discretion over whether to issue such an order mandating compliance with the CID. 12 U.S.C. § 5562(b)(2) ("the District Court . . . may issue an order . . .").

B. History And Function Of ACICS

ACICS is organized under Section 501(c)(3) of the Internal Revenue Code as a non-profit agency that accredits for-profit educational institutions in the United States. JA081. Since 1956, ACICS has been recognized by the federal government as a national accreditor based on its conclusion that ACICS is a reliable authority concerning the quality of education and training offered by the institutions that it accredits. JA081. Such recognition by the Secretary of Education means that ACICS satisfies the regulatory criteria established by the Department of Education (ED), as set forth in 34 C.F.R. § 602. ACICS is periodically reviewed by the ED for compliance with the applicable regulatory criteria established pursuant to the Higher Education Act of 1965, and was re-recognized most recently in July 2013.[2] JA087.

[2] ACICS is currently undergoing review by the Secretary of Education and has appealed to the Secretary a decision by the Senior Department Official of the ED withdrawing ACICS's status as a recognized accreditor. While the appeal is ongoing, ACICS remains a fully-functioning and recognized accrediting agency.

ACICS consists of a voluntary group of educational organizations affiliated for the purpose of establishing and operating an accrediting agency in the field of post-secondary and higher education. JA082. The scope of ACICS's recognition includes private post-secondary institutions offering degrees, certificates, and diplomas in programs designed to educate students for professional, technical, or occupational careers. JA082. ACICS fulfills its accreditation function through a Council of fifteen Commissioners, which includes individuals representing both non-degree and degree-granting institutions, as well as persons drawn from the public at large. JA082-83.

The core of ACICS's accreditation process involves volunteer evaluators who review and evaluate their peer institutions. JA083. ACICS assembles these teams from among peer institutions and the public, and these volunteers conduct on-site visits of institutions, review those institution's operations, and author a report for each respective institution. JA083. Their deliberations are typically kept confidential. JA083. Ultimately, the Council makes a final accrediting decision in accordance with ACICS's limited function and accrediting standards focusing primarily on the quality of education at the institution. JA083-84; *see also* JA089-90.

The outcome of that administrative appeal does not have relevance to the determination whether the Bureau had legal authority to issue the CID.

II. PROCEDURAL BACKGROUND

A. The Bureau's CID

On August 25, 2015, the Bureau issued a CID to ACICS. The Notification of Purpose of that CID stated that the Bureau was investigating to determine "whether any entity or person has engaged or is engaging in unlawful acts or practices ***in connection with accrediting for-profit colleges***." JA024 (emphasis added). That CID sought three broad categories of information. *First*, the Bureau demanded that ACICS designate and produce a company representative to provide sworn oral testimony during a two-day investigatory hearing broadly concerning ACICS's "policies, procedures, and practices relating to the accreditation of" seven specified institutions. JA026. *Second*, the Bureau demanded disclosure of the identities of "all post-secondary educational institutions that [ACICS] has accredited since January 1, 2010." JA025. *Finally*, the Bureau demanded disclosure of the identities of "all individuals affiliated with [ACICS] who conducted any accreditation reviews since January 1, 2010" of twenty one specific institutions. JA025.

After receiving the CID, ACICS offered to meet with Bureau counsel to explain the accrediting process. JA062-63. The Bureau refused the offer. JA063.

ACICS then timely filed a petition to set aside or modify the CID pursuant to 12 U.S.C. § 5662(f) and the Bureau's Rules, 12 C.F.R. § 1080.6(d). The

Bureau's Director, Richard Cordray, denied ACICS's petition, and also subsequently denied ACICS's request for reconsideration. JA007-08. Two days after denying ACICS's request for reconsideration, the Bureau filed a petition to enforce the CID in the United States District Court for the District of Columbia. JA015.

B. Proceedings Before The District Court

After considering the parties' written submissions and conducting oral argument, the District Court appropriately denied the Bureau's petition to enforce its CID. JA006. The District Court correctly described the governing legal standard as a three-part inquiry, requiring a court presented with a CID to consider "(1) whether the agency has the authority to make the inquiry, (2) whether the information sought is reasonably relevant, and (3) whether the demand is not too indefinite." JA008. If those three elements are met, the District Court concluded it could still not enforce the CID if it is unduly burdensome. JA008. The District Court's decision focused on the first prong of this inquiry, further explaining that it must set aside the Bureau's CID if it determines that the Bureau lacks legal authority to investigate ACICS's actions. JA009 (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) for the proposition that "[a] government investigation . . . may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.").

The District Court concluded that the Bureau lacked the authority to issue the particular CID to ACICS. Among other reasons, the District Court determined that the Bureau's Notification of Purpose and "actual requests belie any notion that [the Bureau's] inquiry is limited" to an inquiry into "potential violations of the consumer financial laws by the schools [ACICS] accredits." JA012. After reaching the conclusion that the Bureau lacked statutory authority to issue the challenged CID, the District Court did not reach the merits of the remaining elements of the *Morton Salt* standard, noting, in a footnote, only that "[e]ven if the CFPB had put forward an investigatory purpose within the scope of its authority, for example, the lending practices of for-profit schools, the requested information may, nevertheless, be beyond reach as not reasonably relevant to that purpose." JA013. The Bureau now appeals from the District Court's ruling.

STANDARD OF REVIEW

This Court has determined that "[w]hether the district court applied the correct standard in deciding an investigative subpoena should be enforced is a question of law" that is reviewed *de novo*. *F.T.C. v. Church & Dwight Co., Inc.*, 665 F.3d 1312, 1315 (D.C. Cir. 2011). The Bureau, however, incorrectly suggests that this Court should review issues not decided by the District Court *de novo*.

This Court has held that "the district court's determination of relevance, a question of fact" is reviewed "for clear error." *Id.*; *see also F.T.C. v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992).

This Court reviews whether the CID imposes an undue burden for abuse of discretion. *Appeal of FTC Line of Bus. Report Litig.*, 595 F.2d 685, 703 (D.C. Cir. 1978); *Cf. Dow Chemical v. Allen*, 672 F.2d 1262, 1267 (7th Cir. 1982) ("Similarly, court assessments of whether disclosure would be burdensome and of what restrictions might be appropriate are decisions within the sound discretion of the trial court and should only be reversed for abuse of discretion, save where they are intimately tied to a misunderstanding of law, in which case the ordinary standard of error applies.") (internal citation omitted).

SUMMARY OF ARGUMENT

I. THE BUREAU HAD NO AUTHORITY TO ISSUE ITS CID

This Court's precedent establishes that in considering whether to enforce an agency's demand for the production of documents and information, the "district court's role is limited 'to determining whether the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.'" AOB at 15-16 *quoting U.S. Int'l Trade Comm'n v. ASAT, Inc.*, 411 F.3d 245, 253 (D.C. Cir. 2005) (internal quotations omitted); JA008 ("In determining whether to enforce a CID, a court must consider (1) whether the

agency has the authority to make the inquiry, (2) whether the information sought is reasonably relevant, and (3) whether the demand is not too indefinite. *See United States v. Morton Salt*, 338 U.S. 632, 652 (1950)"); *see also F.T.C. v. Texaco, Inc.* 555 F.2d 862, 872 (D.C. Cir. 1977) (an agency CID is proper "so long as the investigation was for a lawfully authorized purpose, the documents sought were relevant to the inquiry, and the demand was reasonable"). The issues presented on this appeal are whether the standard applied by the District Court was correct and whether under that rule the CID should be enforced.

Contrary to the Bureau's argument, the District Court applied the correct legal standard. The District Court's analysis commenced where it was supposed to, with the Bureau's Notification of Purpose, which is required for any CID that the Bureau issues, pursuant to 12 C.F.R. § 1080.5. JA010, JA024. Here, the Notification of Purpose for the CID at issue stated that:

> 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.

JA024 (emphasis added).

The District Court also considered the scope of the information demanded in the CID to determine whether the Bureau had legal authority to compel the

production. The CID contained two interrogatories, both of which relate exclusively to the accreditation process of for-profit schools:

1. Identify all post-secondary educational institutions that the Company has accredited since January 1, 2010.

2. Identify all individuals affiliated with the Company who conducted any accreditation reviews since January 1, 2010 of the followings schools: [list of schools]

JA025.

The CID likewise contained a list of topics for oral testimony that all relate solely to the accreditation process of for-profit schools. It sought testimony on "[t]he Company's policies, procedures, and practices relating to the accreditation of [school]." JA026. Reviewing the CID and considering the Bureau's statutory authority, the District Court properly applied the appropriate test and correctly determined that the Bureau did not have the statutory authority to conduct the investigation that the Notification of Purpose described in the CID.

II. THE CID SOUGHT DOCUMENTS AND INFORMATION THAT ARE NOT RELEVANT

The Bureau issued a CID for which it patently lacked jurisdiction. Accordingly, the District Court never reached – indeed, did not have to reach – the second inquiry in the enforcement analysis, which is whether the CID seeks relevant documents and information. All parties agree that this second inquiry is a fact-based one. Thus, if the Court should overturn the District Court's holding on

authority, the appropriate remedy would be to remand the matter to the District Court with instructions to conduct a complete analysis on this relevance issue.

If the Court were to consider that issue as a matter of first impression, notwithstanding the lack of a factual record, it should conclude that the CID seeks irrelevant documents and information and that the CID should not be judicially enforced. The Bureau casts its net very wide; indeed, all of the documents and information that the CID seeks concerns conduct that is entirely outside of the Bureau's investigative authority, even when that authority is broadly construed.

III. THE CID IS OVERBROAD AND BURDENSOME

Like the issue of relevance, the District Court never reached the issue of whether the CID was unduly burdensome. Thus, if the Court should overturn the District Court's holding on authority, the appropriate remedy would be to remand to the District Court with instructions to conduct a complete analysis on that burden issue. However, if the Court reviews the burden issue as a matter of first impression, it should conclude that the CID is indefinite and unduly burdensome because the sweeping scope of the CID would unnecessarily harm ACICS's ability to function.

ARGUMENT

I. THE BUREAU LACKS AUTHORITY TO ENFORCE THE CID

A. Judicial Review Of Administrative Subpoenas Is Appropriate And Deference To The Bureau Is Not Limitless

A CID cannot be enforced when "a governmental investigation . . . may be of such sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power" of the agency serving the administrative subpoena or CID. *Morton Salt*, 338 U.S. at 652. "Accordingly, 'there is no doubt that a court asked to enforce a subpoena will refuse to do so if the subpoena exceeds an express statutory limitation on the agency's investigative powers.'" *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001) (quoting *Gen. Fin. Corp. v. FTC*, 700 F.2d 366, 369 (7th Cir. 1983)). Although a district court presumes an agency's interpretation of its own authority is correct, a district court is not supposed to rubber stamp a CID. The District Court here understood and applied this rule.

As a threshold matter, it is necessary for a reviewing court to ensure that "'the subject matter of the investigation is within the statutory jurisdiction of the subpoena-issuing agency.'" *Id.* at 586-87 (quoting *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 386 (D.C. Cir. 1981)).

This Court has previously recognized that "[a]lthough the Supreme Court has circumscribed the district court's authority in proceedings to enforce

administrative subpoenas, the Court has not gone so far as to preclude the district court from examining" whether the agency exceeded its authority. *U.S. Int'l Trade Comm'n*, 411 F.3d at 253. Under those decisions, district courts "may not abdicate their independent responsibility to construe the statutory language." *F.T.C. v. Miller*, 549 F.2d 452, 457 (7th Cir. 1977).

As discussed below, the analysis undertaken by the District Court complied with the governing standard.

B. A District Court May Look To Evidence To Determine The Extent Of The Bureau's Authority

Under this Court's jurisprudence, there is also nothing *per se* improper about the District Court's review of evidence offered by both parties to determine whether the Bureau had authority to issue the CID. The Bureau's challenge to the District Court's analysis fails on this ground as well.

In one of the few appellate opinions to address the issue of an agency's lack of authority to pursue an administrative subpoena, the Fifth Circuit's opinion in *Burlington Northern R.R. Co. v. Office of Inspector General*, provides guidance for this case. 983 F.2d 631 (5th Cir. 1993). *First*, in determining that the Office of the Inspector General lacked the authority to issue the subpoena, the district court made factual findings, which the Fifth Circuit reviewed for clear error. *Id*. at 638-39. *Second*, after determining that the district court's factual findings were not clearly erroneous, the Fifth Circuit analyzed the statutory authority for the

subpoena. *Id*. at 641. *Finally*, following that analysis, it affirmed the district court's order declining to enforce the subpoena. *Id*. at 643.

In *U.S. Int'l Trade Comm'n v. ASAT*, this Court followed the Fifth Circuit. There, this Court looked to the administrative law judge's factual findings, and lack thereof, when reversing the enforcement of the administrative subpoena. 411 F.3d at 256. "The court has explained . . . that although the investigative powers of regulatory agencies are broad, they are not unlimited, and are subject to judicial review to protect against mistaken or arbitrary orders." *Id.* at 253 (quotations omitted) *citing among others Burlington N. R.R. Co*., 983 F.2d at 638. In other words, although administrative agencies receive some amount of deference when they pursue investigations and propound CIDs in furtherance of those efforts, this deference is not boundless. Thus, contrary to the Bureau's claims, there is nothing improper about a district court making factual findings to determine whether an agency patently lacks jurisdiction to propound a CID.

C. The Bureau Lacks Statutory Authority To Conduct Its Investigation

1. The Court Properly Construed The Bureau's Notification Of Purpose

On appeal, the Bureau incorrectly contends that the District Court "misunderstood the scope of the Bureau's investigation" and "ignored the actual scope of the Bureau's investigation." AOB at 16-17. Specifically, the Bureau

argues that the District Court did not appropriately consider the phrase "in connection with" when evaluating the scope of the Bureau's authority in this instance, and "failed to recognize the possible connection between lending by for-profit colleges and accreditation." AOB at 21. After thorough consideration, however, the District Court properly concluded that the Bureau lacked authority to issue a sweeping CID for the stated purpose of investigating potential violations of the consumer financial laws "in connection with accreditation of for-profit schools."

Despite the Bureau's arguments to the contrary, the District Court properly considered and accurately understood the stated purpose of the Bureau's investigation. The District Court squarely addressed this point and explained the importance of the Bureau's Notification of Purpose:

> Although it may be that the CFPB is entitled to learn whether ACICS *is connected in any way* to potential violations of the consumer financial laws by the schools it accredits, the statement of purpose and the CFPB's actual requests belie any notion that its inquiry is limited in this way.

JA012 (emphasis added).

At no point during the proceedings below did the Bureau identify any consumer financial law that it contends addresses, regulates, or even implicates any aspect of the accreditation process or any conduct "in connection with" accreditation. As the District Court noted, "the CFPB does not deny [that] none of

these [consumer financial] laws address, regulate, or even tangentially implicate the accrediting process for for-profit colleges." JA011. Thus, applying this Court's decision in *Ken Roberts*, the District Court concluded that "at first blush, the CID's Notification of Purpose appears to concern a subject matter that is *not* within the statutory jurisdiction of the CFPB." *Id.* (emphasis in original).

The District Court could have ceased the analysis there and properly concluded on this basis alone that the Bureau patently lacked jurisdiction to issue the CID. However, the District Court continued its analysis by reviewing the demands for documents and information. JA012. As it is permitted to do under the relevant legal standard, the District Court considered the breadth of the information the Bureau sought in its CID and concluded that the Bureau was not empowered to target the accreditation process generally because that investigatory inquiry was outside the Bureau's authority. *Id.*; *see U.S. Int'l Trade Comm'n*, 411 F.3d at 253 ("although the investigative powers of regulatory agencies are broad, they are not unlimited, and are subject to judicial review to protect against mistaken or arbitrary orders.").

Specifically, the District Court properly recognized that the Bureau's requests sought broad swaths of information that have no connection to consumer financial laws. The Bureau's demands about ACICS extended to "*all schools* ACICS has accredited since 2012, for a list of *all individuals involved in the*

accreditation of twenty-one enumerated schools, and for representatives to attest to the *overall approach* to accrediting seven enumerated schools." JA012 (emphasis in original). The District Court correctly concluded that these burdensome requests sought information about conduct that no consumer financial law can or does touch.

The statutory and regulatory regime implemented by the ED provides additional relevant context supporting the District Court's conclusion that "at first blush" it appeared that the Bureau lacked authority. JA065-068. The ED's regulations delineate in detail the qualifications and limited function of accrediting agencies like ACICS. *See* 20 U.S.C. § 1099b(a)(1)-(5); 34 C.F.R. § 602.14(a). The ED routinely reviews the performance of accrediting agencies, including evaluating whether the agency reviews academic institutions for compliance with specific criteria. *See* 20 U.S.C. § 1099b(a)(5).[3]

Moreover, it was also proper for the District Court to consider facts in assessing whether the Bureau's investigation falls within the ambit of the Bureau's authority. *See, supra,* section I.B. In particular, in the face of the broad Notification of Purpose and sweeping demands for information in the CID, and the relevant legal authority about ED's oversight role, it was appropriate for the

[3] *See also* Guidelines for Preparing/Reviewing Petitions and Compliance Reports, Department of Education Accreditation Division (January 2012), at 17, located at http://www2.ed.gov/admins/accred/agency-guidelines.doc.

District Court also to take into account the evidence that ACICS, like other accrediting agencies regulated under the Higher Education Act and its implementing rules, does not evaluate debt collection or the provision of any financial product or service by an educational institution that applies for accreditation.[4] JA012.

Despite the Bureau's protestations that CID recipients and district courts are obligated to defer to the Bureau's interpretation of the scope of its investigative authority, the District Court here properly engaged in neither a "minor nor ministerial" analysis of the Bureau's authority. *Ken Roberts*, 276 F.3d at 587 (citing cases which "amply demonstrate that while the courts' role in subpoena enforcement may be a 'strictly limited' one, it is neither minor nor ministerial."). After appropriately exercising its authority to determine whether the Bureau had the necessary statutory authority to issue a CID demanding the specified information, the District Court correctly denied the Bureau's petition for enforcement.

2. The Bureau's New Post-Hoc Justification Offered On Appeal Also Fails

On appeal, the Bureau now offers a post-hoc explanation concerning the scope of its Notification of Purpose. AOB at 21-22. In any event, the Court

[4] The District Court also considered the Bureau's competing factual arguments. JA106.

should decline to consider any purported justification offered for the first time on appeal. *See, e.g.*, *District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077, 1084 (D.C. Cir. 1984) ("It is well settled that issues and legal theories not asserted at the District Court level ordinarily will not be heard on appeal.").

The Bureau advances a new "in connection with" argument on appeal. In essence, the Bureau appears to use "in connection with" to capture anything that might ever touch ACICS. The District Court was already concerned that the Bureau was making a "big grab." JA111. The Bureau's response to this expression of concern was to go even bigger.

The Bureau's rationale for its purported authority turns out to be a moving target. Specifically, the Bureau asserts, for the first time on appeal, that it is concerned with the possibility that accredited institutions "might have an incentive to make misrepresentations to (or even collude with)" ACICS, which in turn purportedly could lead to "deceptive or abusive" representations to prospective student borrowers by accredited schools. AOB at 21-22. The Bureau further asserts, again for the first time on appeal, that if ACICS "participated in the collusion," then it "could violate the CFPA if it provided substantial assistance to the college's deceptive practices." AOB at 22. This chain of purely speculative hypotheses is precisely the type of overreaching and unchecked jurisdictional expansionism that courts are obligated to refuse to countenance. *Morton Salt*, 338

U.S. at 652; *Ken Roberts*, 276 F.3d at 586 (*quoting Gen. Fin. Corp.*, 700 F.2d at 369); *Burlington Northern R.R. Co.*, 983 F.2d at 641; *U.S. Int'l Trade Comm'n*, 411 F.3d at 253.

Moreover, the Bureau's Notification of Purpose is inconsistent with the Bureau's new argument on appeal. In the CID, the Bureau did not state that it was investigating misrepresentations to students by academic institutions (and whether anyone assisted the schools in making such misrepresentations). Now, the Bureau has made clear that this investigation has a *different* purpose, namely investigating conduct "*in connection with accrediting* for-profit colleges." *See, e.g.*, AOB at 27 ("the Bureau's stated purpose for its investigation is to evaluate conduct *connected* to accreditation, and since the CID seeks information directly relevant to the process that ACICS uses when it accredits schools. . . .") (emphasis added). The Bureau's new attempt to justify its sweeping CID actually moves the CID even further outside the scope of consumer financial laws; the Bureau now has its CID extended to address the core educational function of how schools obtain accreditation under criteria established by the Higher Education Act and ED rules.

The District Court properly recognized the Bureau's attempted justifications as what they were: a moving target intended to expand its authority beyond the consumer finance arena. Indeed, the District Court rejected the Bureau's contention that because the Bureau can investigate for-profit schools it also, *ipso*

facto, has authority to move further along in an imagined chain of causation to investigate "whether any entity has engaged in any unlawful acts relating to the accreditation of those schools." JA011. The District Court's questions during oral argument also reflect its concern about the Bureau's overreach. The District Court specifically asked Bureau counsel "[i]s this a fishing expedition?" and also inquired of Bureau counsel "you're making a kind of a big grab here, aren't you?" JA111. Ultimately, the District Court correctly characterized the Bureau's iterative, post-hoc justification as "a bridge too far." JA011. The Bureau's latest post-hoc justification is an even further reach.

3. The Bureau Cannot Justify Its CID Through An Endless Expansion Of Its "Substantial Assistance" Jurisdiction

The Bureau's newly-concocted rationalization is also an unfounded attempt to expand the reach of the Bureau's "substantial assistance" jurisdiction. If the Bureau is, in fact, investigating whether ACICS provided "substantial assistance" to entities that made misrepresentations to students, then by logical extension there must be a primary violator of the Bureau's UDAAP prohibitions such that ACICS "in some sort associated [itself] with the venture, that [it] participated in it as something that [it] wanted to bring about, that [it] sought by [its] actions to make it succeed. *S.E.C. v. Grendys*, 840 F. Supp. 2d 36, 46 (D.D.C. 2012) (citing *Zoelsch v. Arthur Andersen & Co.*, 824 F.2d 27, 36 (D.C. Cir. 1987). "In other words, the primary violation must be a 'directly or reasonably foreseeable result' of the aider

and abettor's conduct." *Id.* (citing *S.E.C. v. Johnson*, 530 F. Supp. 2d 325, 337 (D.D.C. 2008).

There is no plausible "substantial assistance" theory that can justify the Bureau's CID or even the Bureau's purported curiosity to "investigate just to make sure that such [collusive] practices" are not taking place. AOB at 22. *First*, as a non-profit organization ACICS has no economic motivation to assist schools in alleged deceptive practices that may impact a student's taking out private student loans. *See ABF Capital Mgmt. v. Askin Capital Mgmt., L.P.*, 957 F. Supp. 1308, 1330 (S.D.N.Y. 1997) (explaining that a court may consider whether a party had a "heightened economic motivation" to aid in the primary violation). *Second*, the multi-tiered, volunteer, peer review process of accreditation belies any potential motive that individuals involved in the accrediting process would have sought to make any alleged deception by a for-profit school succeed. *Third*, the alleged practice of deceiving students into taking out student loans cannot be said to be the "direct or foreseeable result" of ACICS's accreditation process, as ACICS has no involvement in any decision to make or fund a student loan. JA084-85. Allowing such attenuated and upstream conduct to constitute substantial assistance would stretch the bounds of aiding and abetting liability beyond any recognizable legal doctrine. *Finally*, allowing the Bureau to sweep in any entity with the slightest relationship to a party that is allegedly engaging in a violation of consumer

financial law would vitiate the CFPA's knowledge or recklessness requirement as to any substantial assistance cause of action. *See, e.g.*, 12 U.S.C. § 5536(a)(3).

Here, too, the Bureau's post-hoc justification also cannot stand. This is especially true, as the Bureau's CID exceeds the authority actually granted to it by Congress, and the CID seeks to extend the agency's domain to enable it to investigate the accreditation process of for-profit schools. The Bureau was never empowered to investigate conduct that is not touched by the consumer financial laws, and it should not be allowed to do so here.

The Court also should not permit the Bureau at this late stage to re-write its CID in order to circumvent its lack of investigatory power. *See F.T.C. v. Miller*, 549 F.2d 452, 456 (7th Cir. 1977) ("the agency cannot, at this late date, recharacterize [an action] in order to circumvent its lack of investigatory power"); *see also* JA126 (responding to Bureau Counsel's comment that its CID could "be reissued with possibly a different statement of purpose," the District Court noted that the Bureau would be "violating the Court's order if [the Bureau] were to reissue" the CID).

D. The Bureau Asks The Court To Hold That The Bureau Is Entitled To Unfettered Deference

Contrary to the Bureau's contention, it is the Bureau – not the District Court – which seeks to re-write the relevant standard for reviewing a CID. The Bureau's argument on appeal would effectively confine a district court's analysis of an

agency's authority to a cursory review of the Notification of Purpose. AOB at 20. The Bureau would further circumscribe a district court's review of a CID by requiring the district court to accept an agency's own interpretation (and any further re-interpretation) of its own CID. *Compare* AOB at 21 (setting forth the Bureau's newly concocted arguments regarding authority) *with* JA017-18 and JA102-128 (absence of those same arguments).

Under the Bureau's theory, the District Court's only function would be to rubber stamp the CID, which is a step too far. The standard applied by the District Court – which mandates deference (but not blind deference) to the agency – is consistent with the case law and sufficient to protect the Bureau's investigative interests. This Court should not, and need not, craft any new rule here. Rather, the Court can confirm that the District Court – while deferring to the Bureau's investigative powers in the first instance – rightly viewed the CID's Notification of Purpose, the demands in the CID, and relevant evidence and determined that the Bureau did not have authority to issue the CID. The law of this Circuit contemplates – indeed, requires – that any district court undertake such an analysis in determining whether to enforce an administrative subpoena. *Morton Salt*, 338 U.S. at 652; *Ken Roberts*, 276 F.3d at 586 (*quoting Gen. Fin. Corp.*, 700 F.2d at 369).

Moreover, here, the Bureau's request for unfettered power to investigate ACICS should be viewed with skepticism. This Court recently determined that (1) the Bureau was unconstitutionally constituted, and (2) an order of the Bureau "violated bedrock principles of due process." *PHH Corp.*, 2016 WL 5898801 at *5.

II. THE BUREAU'S CID DOES NOT SEEK RELEVANT INFORMATION

The Bureau asks this Court to review the relevance of the requested information *de novo* even though the District Court never rendered an analysis on relevance (relegating the issue to a footnote) because the District Court declined to enforce the CID on the ground that the Bureau lacked authority. JA013, n.4. However, the Bureau also recognizes that the determination of relevance is a fact-driven inquiry. AOB at 27 ("'in light of the broad deference we afford the investigating agency, it is essentially the respondent's burden to show that the information is irrelevant.' *Invention Submission*, 965 F.2d at 1090"). It is a factual analysis and if the Court determines that the Bureau had authority to issue the CID, then the proper remedy is to remand for consideration of the facts by the District Court in the first instance.

Regardless, although the District Court did not render a fulsome analysis of the irrelevance of the information sought by the CID, it did explain that "[a]s ACICS has aptly explained, the accreditation process does not touch the schools'

lending or financial-advisory practices." JA013. The Bureau offered no basis on which to dispute that finding. The District Court's factual finding is also supported by the record. JA081-101. The Bureau's CID seeks irrelevant documents and information or, as the District Court characterized it, the CID is "a big grab." JA111.

The Bureau readily admits that the purpose "for its investigation is to evaluate conduct connected to accreditation." JA027. That conduct, as ACICS has explained, has nothing to do with consumer financial laws. JA011 ("As respondent points out, and the [Bureau] does not deny, none of these [consumer financial] laws address, regulate, or even tangentially implicate the accrediting process of for-profit colleges."). Even if the CID's Notification of Purpose did, in some tenuous way, relate to the requested information, the Bureau's CID seeks information that concerns conduct that the consumer financial laws do not reach. *See E.E.O.C. v. Royal Caribbean Cruises, Ltd.*, 771 F.3d 757, 761-62 (11th Cir. 2014) (agency did not demonstrate that the "broad company-wide information" was relevant to the contested issues).

The Bureau seeks the names of individuals who participate in the accrediting process, even as those individuals have the legitimate expectation that ACICS will maintain their confidences. JA083. This legitimate expectation of confidentiality facilitates the effectiveness of the peer review process, which is a critical aspect of

the accreditation process. JA078 and JA084. The Bureau's CID has caused numerous evaluators to have substantial concerns about continuing to participate in the school evaluation process undertaken by ACICS. JA084.

Moreover, the requirement of relevance is designed to cabin the Bureau's authority and prevent "fishing expeditions." *E.E.O.C. v. United Air Lines, Inc.*, 287 F.3d 643, 653 (7th Cir. 2002). For example, at least one court has refused to enforce an administrative subpoena that was determined to seek materials that were not relevant especially when the subpoena requests has a chilling effect on the First Amendment rights of the specific individuals whose identities were sought, and also threatened those individuals' rights to privacy. *Local 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. The Waterfront Comm'n of New York Harbor*, 512 F. Supp. 781, 785-86 (S.D.N.Y. Apr. 7, 1981).

Likewise, in *Resolution Trust Corporation v. Feffer*, the district court restricted the scope of an administrative subpoena which sought information beyond the scope of the agency's authority and which would have invaded the rights of privacy of individuals. 793 F. Supp. 11, 17 (D.D.C. July 10, 1992). Similarly, this Court refused to permit a fishing expedition into the private personal papers of individuals in *Resolution Trust Corporation v. Walde*, 18 F.3d 943, 950 (1994). Quoting Justice Holmes, this Court reflected that "[a]nyone who respects the spirit as well as the letter of the Fourth Amendment would be loath to believe

that Congress intended to authorize one of its subordinate agencies to sweep all of our traditions into the fire and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of a crime." *Id.* at 949 *quoting Interstate Commerce Comm'n v. Brimson*, 154 U.S. 447, 479 (1894).

Here, too, there is no plausible connection between the identities of the evaluators that the CID has sought and the consumer financial laws that the Bureau enforces. The Bureau's net is cast too wide with too little chance of catching relevant information.

III. ACICS WOULD BE UNDULY BURDENED BY COMPLIANCE WITH THE CID

As with relevance, the District Court never reached the issue of burden because it determined that the Bureau lacked authority to issue the CID in question. JA013. The Bureau likewise concedes that the burden analysis is inherently a factual one. AOB 29-30. Thus, this Court should not, as a matter of first impression, conduct a *de novo* review of whether the CID is burdensome. If it overturns the District Court's decision, the proper remedy is to remand to the District Court for factual findings.

This is true, because "[w]hat is unduly burdensome depends on the particular facts of each case and no hard and fast rule can be applied to resolve the question." *Id.*; *see also E.E.O.C. v. United Air Lines, Inc.*, 287 F.3d at 653 (remanding for district court to make factual findings re relevance and burden).

And, of course, "[t]he burdensome test finds its genesis in the Fourth Amendment, which prescribes that disclosure shall not be unreasonable." *Dow Chemical*, 672 F.2d at 1276.

Because the District Court never reached the issue of burden, we do not know what additional factual record might be developed that further supports the evidence adduced by ACICS. For instance, the Bureau claims that the evidence does not support that compliance with the CID would disrupt ACICS's operations (AOB at 31), but ACICS could and would further explain the accreditation process, the selection of the confidential evaluators, and how and why that process would shut down if ACICS was forced to reveal the identities of its evaluators. The District Court has not yet exercised its discretion on this issue, and so there is nothing for this Court to review.

If the Court nevertheless reviews the issue of burdensomeness, it should conclude that the CID places an unreasonable burden on ACICS and is unduly overbroad because its investigation would effectively shut down ACICS's operations. JA083-84. Here, the CID sought information, the production of which would burden ACICS's operations well beyond the financial impact and time commitment of responding to a broad request. ACICS relies on volunteer evaluators who expect their identity to remain confidential. JA083. These volunteers serve in an academic or administrative capacity at peer institutions or

other institutions of higher education and undergo an extensive and comprehensive application process to participate as an evaluator. *Id.* The integrity of the peer-review process requires these evaluators to express candidly their views of any school being evaluated; and, in turn, evaluators are willing to do so because their views and deliberations are kept confidential. *Id.* at JA083, 84. The CID has chilled the willingness of volunteers to participate in this process. *Id.*

In *Commodity Trend Service, Inc. v. CFTC*, the target of the agency subpoena demonstrated a burden justifying non-enforcement by showing that the issuance of the subpoenas negatively impacted sales, employment positions were eliminated, and that columnists refused to "write articles for fear of government reprisal." 233 F.3d 981, 987 (7th Cir. 2000).

ACICS has asserted that the CID "has already disrupted the accrediting process and had a chilling effect on the likely future participation of its evaluators" because it intrudes on the anonymity and confidentiality of the accreditation process. JA078. "[I]f the Bureau's CID is enforced, then an evaluator's inclination to volunteer his time will diminish, if not disappear altogether." *Id.* The essence of the accreditation process, as ACICS explained, is the reliance on volunteer evaluators who expect their participation to be confidential. Enforcement of the CID would substantially compromise the confidential

assessments and deliberations of ACICS's evaluators; this alone would impose an impermissible burden on ACICS under the governing case law. JA083.

CONCLUSION

For the foregoing reasons, ACICS respectfully requests the Court affirm the District Court in all respects.

Respectfully submitted,

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) because it contains 7,273 words, as determined by the word count function of the Microsoft Word 2010 word processing program, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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/s/ Allyson B. Baker
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ADDENDUM

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(Pub. L. 111–203, title VIII, § 809, July 21, 2010, 124 Stat. 1818.)

§ 5469. Rulemaking

The Board of Governors, the Supervisory Agencies, and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out their respective authorities and duties granted under this subchapter and prevent evasions thereof.

(Pub. L. 111–203, title VIII, § 810, July 21, 2010, 124 Stat. 1820.)

§ 5470. Other authority

Unless otherwise provided by its terms, this subchapter does not divest any appropriate financial regulator, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 5464 of this title shall supersede any less stringent requirements established under other authority to the extent of any conflict.

(Pub. L. 111–203, title VIII, § 811, July 21, 2010, 124 Stat. 1821.)

§ 5471. Consultation

(a) CFTC

The Commodity Futures Trading Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A), and 2(h)(4)(B) of title 7, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any rule or rule amendment of a derivatives clearing organization for which a stay of certification has been issued under section 745(b)(3)[1] of the Wall Street Transparency and Accountability Act of 2010; and

(3) prior to exercising its rulemaking authorities under section 728 of the Wall Street Transparency and Accountability Act of 2010 [7 U.S.C. 24a].

(b) SEC

The Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 78c–3(a)(2)(C), 78c–3(a)(3)(A), 78c–3(a)(3)(C), 78c–3(a)(4)(A), and 78c–3(a)(4)(B) of title 15, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any proposed rule change of a clearing agency for which an extension of the time for review has been designated under section 78s(b)(2) of title 15; and

(3) prior to exercising its rulemaking authorities under section 78m(n) of title 15, as added by section 763(i) of the Wall Street Transparency and Accountability Act of 2010.

(Pub. L. 111–203, title VIII, § 812, July 21, 2010, 124 Stat. 1821.)

REFERENCES IN TEXT

The Wall Street Transparency and Accountability Act of 2010, referred to in subsecs. (a) and (b), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641. Section 728 of the Act amended the act of Sept. 21, 1922, ch. 369, to add a new section 21 which is classified to section 24a of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 15, Commerce and Trade, and Tables.

Section 745(b)(3) of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (a)(2), probably means section 5c(c)(3) of the Commodity Exchange Act, which is classified to section 7a–2(c)(3) of Title 7, Agriculture. Section 745(b) of the Wall Street Transparency and Accountability Act of 2010, which is section 745(b) of Pub. L. 111–203, added subsec. (c) of section 7a–2 of Title 7 and struck out former subsec. (c) of that section. Section 7a–2(c)(3) of Title 7 relates to stays of the certification for rules. Section 745(b) of Pub. L. 111–203 does not contain a par. (3).

[1] See References in Text note below.

§ 5472. Common framework for designated clearing entity risk management

The Commodity Futures Trading Commission and the Commission shall coordinate with the Board of Governors to jointly develop risk management supervision programs for designated clearing entities. Not later than 1 year after July 21, 2010, the Commodity Futures Trading Commission, the Commission, and the Board of Governors shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives recommendations[1] for—

(1) improving consistency in the designated clearing entity oversight programs of the Commission and the Commodity Futures Trading Commission;

(2) promoting robust risk management by designated clearing entities;

(3) promoting robust risk management oversight by regulators of designated clearing entities; and

(4) improving regulators' ability to monitor the potential effects of designated clearing entity risk management on the stability of the financial system of the United States.

(Pub. L. 111–203, title VIII, § 813, July 21, 2010, 124 Stat. 1821.)

SUBCHAPTER V—BUREAU OF CONSUMER FINANCIAL PROTECTION

§ 5481. Definitions

Except as otherwise provided in this title,[1] for purposes of this title,[1] the following definitions shall apply:

(1) Affiliate

The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) Bureau

The term ''Bureau'' means the Bureau of Consumer Financial Protection.

(3) Business of insurance

The term ''business of insurance'' means the writing of insurance or the reinsuring of risks

[1] So in original. Probably should be preceded by ''with''.

[1] See References in Text note below.

by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) Consumer

The term ''consumer'' means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) Consumer financial product or service

The term ''consumer financial product or service'' means any financial product or service that is described in one or more categories under—

(A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) Covered person

The term ''covered person'' means—

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) Credit

The term ''credit'' means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(8) Deposit-taking activity

The term ''deposit-taking activity'' means—

(A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;

(B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or

(C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(9) Designated transfer date

The term ''designated transfer date'' means the date established under section 5582 of this title.

(10) Director

The term ''Director'' means the Director of the Bureau.

(11) Electronic conduit services

The term ''electronic conduit services''—

(A) means the provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network; and

(B) does not include a person that provides electronic conduit services if, when providing such services, the person—

(i) selects or modifies the content of the electronic data;

(ii) transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such financial data is differentiated from other types of data of the same form that such person transmits, routes, or stores, or with respect to which, provides connections; or

(iii) is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.

(12) Enumerated consumer laws

Except as otherwise specifically provided in section 5519 of this title, subtitle G or subtitle H, the term ''enumerated consumer laws'' means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act [15 U.S.C. 1693*o*–2];

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners[2] Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)[(b)]–(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809) except for section 505 [15 U.S.C. 6805] as it applies to section 501(b) [15 U.S.C. 6801(b)];

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8) [12 U.S.C. 5538]; and

(R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

(13) Fair lending

The term ''fair lending'' means fair, equitable, and nondiscriminatory access to credit for consumers.

[2] So in original. Probably should be ''Homeowners''.

(14) Federal consumer financial law

The term ''Federal consumer financial law'' means the provisions of this title,[1] the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title,[1] an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(15) Financial product or service

(A) In general

The term ''financial product or service'' means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau;

(iii) providing real estate settlement services, except such services excluded under subparagraph (C), or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause—

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—

(I) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(II) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services (other than services relating to securities provided by a person regulated by the Commission or a person regulated by a State securities Commission, but only to the extent that such person acts in a regulated capacity) to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person;

(bb) provides the information described in item (aa) to an affiliate of such person; or

(cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in section 5517(a)(2)(A) of this title;

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title,[1] if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.

(B) Rule of construction

(i) In general

For purposes of subparagraph (A)(xi)(II), and subject to clause (ii) of this subparagraph, the following activities provided to a covered person shall not, for purposes of this title,[1] be considered incidental or complementary to a financial activity permissible for a financial holding company to engage in under any provision of a Federal law or regulation applicable to a financial holding company:

(I) Providing information products or services to a covered person for identity authentication.

(II) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(III) Providing document retrieval or delivery services.

(IV) Providing public records information retrieval.

(V) Providing information products or services for anti-money laundering activities.

(ii) Limitation

Nothing in clause (i) may be construed as modifying or limiting the authority of the Bureau to exercise any—

(I) examination or enforcement powers authority under this title[1] with respect to a covered person or service provider engaging in an activity described in subparagraph (A)(ix); or

(II) powers authorized by this title[1] to prescribe rules, issue orders, or take other actions under any enumerated consumer law or law for which the authorities are transferred under subtitle F or H.

(C) Exclusions

The term ''financial product or service'' does not include—

(i) the business of insurance; or

(ii) electronic conduit services.

(16) Foreign exchange

The term ''foreign exchange'' means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(17) Insured credit union

The term ''insured credit union'' has the same meaning as in section 1752 of this title.

(18) Payment instrument

The term ''payment instrument'' means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(19) Person

The term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(20) Person regulated by the Commodity Futures Trading Commission

The term ''person regulated by the Commodity Futures Trading Commission'' means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(21) Person regulated by the Commission

The term ''person regulated by the Commission'' means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];

(B) an investment adviser that is registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.];

(C) an investment company that is required to be registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(22) Person regulated by a State insurance regulator

The term ''person regulated by a State insurance regulator'' means any person that is engaged in the business of insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(23) Person that performs income tax preparation activities for consumers

The term ''person that performs income tax preparation activities for consumers'' means—

(A) any tax return preparer (as defined in section 7701(a)(36) of title 26), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of title 26), but only to the extent that the person acts in such capacity.

(24) Prudential regulator

The term ''prudential regulator'' means—

(A) in the case of an insured depository institution or depository institution holding company (as defined in section 1813 of this title), or subsidiary of such institution or company, the appropriate Federal banking agency, as that term is defined in section 1813 of this title; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(25) Related person

The term ''related person''—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 1841 of this title), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(26) Service provider

(A) In general

The term ''service provider'' means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) Exceptions

The term ''service provider'' does not include a person solely by virtue of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) Rule of construction

A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(27) State

The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 479a–1(a) of title 25.

(28) Stored value

(A) In general

The term ''stored value'' means funds or monetary value represented in any elec-

tronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(B) Exclusion

Notwithstanding subparagraph (A), the term ''stored value'' does not include a special purpose card or certificate, which shall be defined for purposes of this paragraph as funds or monetary value represented in any electronic format, whether or not specially encrypted, that is—

(i) issued by a merchant, retailer, or other seller of nonfinancial goods or services;

(ii) redeemable only for transactions with the merchant, retailer, or seller of nonfinancial goods or services or with an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services;

(iii) issued in a specified amount that, except in the case of a card or product used solely for telephone services, may not be increased or reloaded;

(iv) purchased on a prepaid basis in exchange for payment; and

(v) honored upon presentation to such merchant, retailer, or seller of nonfinancial goods or services or an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services, only for any nonfinancial goods or services.

(29) Transmitting or exchanging funds

The term ''transmitting or exchanging funds'' means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

(Pub. L. 111–203, title X, §1002, July 21, 2010, 124 Stat. 1955.)

REFERENCES IN TEXT

This title, where footnoted in text, is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Subtitle G, referred to in par. (12), is subtitle G (§§1071–1079A) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2056. For complete classification of subtitle G to the Code, see Tables.

Subtitle H, referred to in pars. (12) and (15)(B)(ii)(II), is subtitle H (§§1081–1100H) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2080. For complete classification of subtitle H to the Code, see Tables.

The Alternative Mortgage Transaction Parity Act of 1982, referred to in par. (12)(A), is title VIII of Pub. L. 97–320, Oct. 15, 1982, 96 Stat. 1545, which is classified generally to chapter 39 (§3801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of this title and Tables.

The Consumer Leasing Act of 1976, referred to in par. (12)(B), is Pub. L. 94–240, Mar. 23, 1976, 90 Stat. 257. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 1601 of Title 15, Commerce and Trade, and Tables.

The Electronic Fund Transfer Act, referred to in par. (12)(C), is title IX of Pub. L. 90–321, as added by Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, which is classified generally to subchapter VI (§1693 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Equal Credit Opportunity Act, referred to in par. (12)(D), is title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1521, which is classified generally to subchapter IV (§1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Fair Credit Billing Act, referred to in par. (12)(E), is title III of Pub. L. 93–495, Oct. 28, 1974, 88 Stat. 1511, which enacted sections 1666 to 1666i and 1666j of Title 15, Commerce and Trade, amended sections 1601, 1602, 1610, 1631, 1632, and 1637 of Title 15, and enacted provisions set out as a note under section 1666 of Title 15. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 1601 of Title 15 and Tables.

The Fair Credit Reporting Act, referred to in par. (12)(F), is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Homeowners Protection Act of 1998, referred to in par. (12)(G), is Pub. L. 105–216, July 29, 1998, 112 Stat. 897, which is classified principally to chapter 49 (§4901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of this title and Tables.

The Fair Debt Collection Practices Act, referred to in par. (12)(H), is title VIII of Pub. L. 90–321, as added by Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, which is classified generally to subchapter V (§1692 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Home Mortgage Disclosure Act of 1975, referred to in par. (12)(K), is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

The Home Ownership and Equity Protection Act of 1994, referred to in par. (12)(L), is subtitle B (§§151–158) of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2190, which enacted sections 1639 and 1648 of Title 15, Commerce and Trade, amended sections 1602, 1604, 1610, 1640, 1641, and 1647 of Title 15, and enacted provisions set out as notes under sections 1601 and 1602 of Title 15. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 1601 of Title 15 and Tables.

The Real Estate Settlement Procedures Act of 1974, referred to in par. (12)(M), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

The S.A.F.E. Mortgage Licensing Act of 2008, referred to in par. (12)(N), is title V of div. A of Pub. L. 110–289,

July 30, 2008, 122 Stat. 2810, also known as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§ 5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

The Truth in Lending Act, referred to in par. (12)(O), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Truth in Savings Act, referred to in par. (12)(P), is subtitle F (§§ 261–274) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2334, which is classified generally to chapter 44 (§ 4301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4301 of this title and Tables.

Section 626 of the Omnibus Appropriations Act, 2009, referred to in par. (12)(Q), is section 626 of div. D of Pub. L. 111–8. Subsecs. (a) and (b) of section 626 are classified to section 5538 of this title, and subsec. (c) of section 626 amended section 1639 of Title 15, Commerce and Trade.

The Interstate Land Sales Full Disclosure Act, referred to in par. (12)(R), is title XIV of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 590, which is classified generally to chapter 42 (§ 1701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 15 and Tables.

Subtitle F, referred to in pars. (14) and (15)(B)(ii)(II), is subtitle F (§§ 1061–1067) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2035, which is classified generally to part F (§ 5581 et seq.) of this subchapter. For complete classification of subtitle F to the Code, see Tables.

The Federal Trade Commission Act, referred to in par. (14), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Commodity Exchange Act, referred to in par. (20), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Exchange Act of 1934, referred to in par. (21)(A), (D) to (F), and (K), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in par. (21)(B), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§ 80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Investment Company Act of 1940, referred to in par. (21)(C), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Pub. L. 111–203, title XIV, § 1400(b), July 21, 2010, 124 Stat. 2136, provided that: ''Subtitles A, B, C, and E [subtitles A (§§ 1401–1406), B (§§ 1411–1422), C (§§ 1431–1433), and E (§§ 1461–1465) of title XIV of Pub. L. 111–203, enacting sections 1638a, 1639b to 1639d, 1639f, and 1639g of Title 15, Commerce and Trade, amending section 2605 of this title, sections 1602, 1607, 1638, 1639 to 1639d, and 1640 of Title 15, and enacting provisions set out as notes under sections 1601 and 1639b to 1639d of Title 15] and sections 1471 [enacting section 1639h of Title 15], 1472 [enacting section 1639e of Title 15 and amending section 1604 of Title 15], 1475 [amending section 2603 of this title], and 1476 [not classified to the Code], and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 1002 [12 U.S.C. 5481], and come under the purview of the Bureau of Consumer Financial Protection for purposes of title X [see Short Title note set out under section 5301 of this title], including the transfer of functions and personnel under subtitle F of title X [§§ 1061–1067, enacting part F of this subchapter] and the savings provisions of such subtitle.''

PART A—BUREAU OF CONSUMER FINANCIAL PROTECTION

§ 5491. Establishment of the Bureau of Consumer Financial Protection

(a) Bureau established

There is established in the Federal Reserve System, an independent bureau to be known as the ''Bureau of Consumer Financial Protection'', which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Bureau shall be considered an Executive agency, as defined in section 105 of title 5. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Bureau.

(b) Director and Deputy Director

(1) In general

There is established the position of the Director, who shall serve as the head of the Bureau.

(2) Appointment

Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) Qualification

The President shall nominate the Director from among individuals who are citizens of the United States.

(4) Compensation

The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5.

(5) Deputy Director

There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) Term

(1) In general

The Director shall serve for a term of 5 years.

(2) Expiration of term

An individual may serve as Director after the expiration of the term for which ap-

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

(f) Definitions

For purposes of this section, the following definitions shall apply:

(1) Motor vehicle

The term ''motor vehicle'' means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) Motor vehicle dealer

The term ''motor vehicle dealer'' means any person or resident in the United States, or any territory of the United States, who—

(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and

(B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.

(Pub. L. 111–203, title X, § 1029, July 21, 2010, 124 Stat. 2004.)

REFERENCES IN TEXT

This title, referred to in subsec. (c), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Subtitle F, referred to in subsec. (c), is subtitle F (§§ 1061–1067) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2035, which is classified generally to part F (§ 5581 et seq.) of this subchapter. For complete classification of subtitle F to the Code, see Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1029A of Pub. L. 111–203, set out as a note under section 5511 of this title.

PART C—SPECIFIC BUREAU AUTHORITIES

§ 5531. Prohibiting unfair, deceptive, or abusive acts or practices

(a) In general

The Bureau may take any action authorized under part E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) Rulemaking

The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) Unfairness

(1) In general

The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) Consideration of public policies

In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(d) Abusive

The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(e) Consultation

In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

(f) Consideration of seasonal income

The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income of the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

(Pub. L. 111–203, title X, § 1031, July 21, 2010, 124 Stat. 2005.)

EFFECTIVE DATE

Pub. L. 111–203, title X, § 1037, July 21, 2010, 124 Stat. 2011, provided that: ''This subtitle [subtitle C (§§ 1031–1037), enacting this part] shall take effect on the designated transfer date.''

[The term ''designated transfer date'' is defined in section 5481(9) of this title as the date established under section 5582 of this title.]

§ 5532. Disclosures

(a) In general

The Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

(b) Model disclosures

(1) In general

Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.

(2) Format

A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) Consumer testing

Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) Basis for rulemaking

In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) Safe harbor

Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) Trial disclosure programs

(1) In general

The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) Safe harbor

The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) Public disclosure

The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) Combined mortgage loan disclosure

Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act [15 U.S.C. 1601 et seq.] and sections 2603 and 2604 of this title, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

(Pub. L. 111–203, title X, § 1032, July 21, 2010, 124 Stat. 2006.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (f), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1037 of Pub. L. 111–203, set out as a note under section 5531 of this title.

§ 5533. Consumer rights to access information

(a) In general

Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered per-

(Pub. L. 111–203, title X, § 1034, July 21, 2010, 124 Stat. 2008.)

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1037 of Pub. L. 111–203, set out as a note under section 5531 of this title.

§ 5535. Private Education Loan Ombudsman

(a) Establishment

The Secretary, in consultation with the Director, shall designate a Private Education Loan Ombudsman (in this section referred to as the ''Ombudsman'') within the Bureau, to provide timely assistance to borrowers of private education loans.

(b) Public information

The Secretary and the Director shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.

(c) Functions of Ombudsman

The Ombudsman designated under this subsection shall—

(1) in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of understanding with the student loan ombudsman established under section 1018(f) of title 20, to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the Director, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) Annual reports

(1) In general

The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) Submission

The report required by paragraph (1) shall be submitted on the same date annually to the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) Definitions

For purposes of this section, the terms ''private education loan'' and ''institution of higher education'' have the same meanings as in section 1650 of title 15.

(Pub. L. 111–203, title X, § 1035, July 21, 2010, 124 Stat. 2009.)

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1037 of Pub. L. 111–203, set out as a note under section 5531 of this title.

§ 5536. Prohibited acts

(a) In general

It shall be unlawful for—

(1) any covered person or service provider—

(A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or

(B) to engage in any unfair, deceptive, or abusive act or practice;

(2) any covered person or service provider to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of section 5531 of this title, or any rule or order issued thereunder, and notwithstanding any provision of this title,[1] the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

(b) Exception

No person shall be held to have violated subsection (a)(1) solely by virtue of providing or selling time or space to a covered person or service provider placing an advertisement.

(Pub. L. 111–203, title X, § 1036, July 21, 2010, 124 Stat. 2010.)

REFERENCES IN TEXT

This title, where footnoted in subsec. (a)(3), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as

[1] See References in Text note below.

the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1037 of Pub. L. 111–203, set out as a note under section 5531 of this title.

§ 5537. Senior investor protections

(a) Definitions

As used in this section—

(1) the term ''eligible entity'' means—

(A) a securities commission (or any agency or office performing like functions) of a State that the Office determines has adopted rules on the appropriate use of designations in the offer or sale of securities or the provision of investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) the insurance commission (or any agency or office performing like functions) of any State that the Office determines has—

(i) adopted rules on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) adopted rules with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); or

(C) a consumer protection agency of any State, if—

(i) the securities commission (or any agency or office performing like functions) of the State is eligible under subparagraph (A); or

(ii) the insurance commission (or any agency or office performing like functions) of the State is eligible under subparagraph (B);

(2) the term ''financial product'' means a security, an insurance product (including an insurance product that pays a return, whether fixed or variable), a bank product, and a loan product;

(3) the term ''misleading designation''—

(A) means a certification, professional designation, or other purported credential that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include a certification, professional designation, license, or other credential that—

(i) was issued by or obtained from an academic institution having regional accreditation;

(ii) meets the standards for certifications and professional designations outlined by the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto) or by the Model Regulations on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, adopted by the National Association of Insurance Commissioners (or any successor thereto); or

(iii) was issued by or obtained from a State;

(4) the term ''misleading or fraudulent marketing'' means the use of a misleading designation by a person that sells to or advises a senior in connection with the sale of a financial product;

(5) the term ''NASAA'' means the North American Securities Administrators Association;

(6) the term ''Office'' means the Office of Financial Literacy of the Bureau;

(7) the term ''senior'' means any individual who has attained the age of 62 years or older; and

(8) the term ''State'' has the same meaning as in section 78c(a) of title 15.

(b) Grants to States for enhanced protection of seniors from being misled by false designations

The Office shall establish a program under which the Office may make grants to States or eligible entities—

(1) to hire staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement officers, in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of salespersons and advisers who target seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers in connection with the sale and marketing of financial products;

(5) to provide educational materials and training to seniors to increase awareness and understanding of misleading or fraudulent marketing;

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

(7) to enhance provisions of State law to provide protection for seniors against misleading or fraudulent marketing.

(c) Applications

A State or eligible entity desiring a grant under this section shall submit an application to

State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) Emergency action

If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) Contents of notice

The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) Bureau response

In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) Regulations

The Bureau shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) Preservation of State authority

(1) State claims

No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) State securities regulators

No provision of this title[1] shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) State insurance regulators

No provision of this title[1] shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

(Pub. L. 111–203, title X, § 1042, July 21, 2010, 124 Stat. 2012.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a), (b)(1)(A), and (d)(2), (3), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1048 of Pub. L. 111–203, set out as a note under section 5551 of this title.

§ 5553. Preservation of existing contracts

This title,[1] and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before July 21, 2010, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

(Pub. L. 111–203, title X, § 1043, July 21, 2010, 124 Stat. 2014.)

REFERENCES IN TEXT

This title, referred to in text, is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1048 of Pub. L. 111–203, set out as a note under section 5551 of this title.

PART E—ENFORCEMENT POWERS

§ 5561. Definitions

For purposes of this part, the following definitions shall apply:

(1) Bureau investigation

The term ''Bureau investigation'' means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation, as defined in this section.

(2) Bureau investigator

The term ''Bureau investigator'' means any attorney or investigator employed by the Bu-

[1] See References in Text note below.

reau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

(3) Custodian

The term ''custodian'' means the custodian or any deputy custodian designated by the Bureau.

(4) Documentary material

The term ''documentary material'' includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(5) Violation

The term ''violation'' means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

(Pub. L. 111–203, title X, § 1051, July 21, 2010, 124 Stat. 2018.)

EFFECTIVE DATE

Pub. L. 111–203, title X, § 1058, July 21, 2010, 124 Stat. 2035, provided that: ''This subtitle [subtitle E (§§ 1051–1058), enacting this part] shall become effective on the designated transfer date.''

[The term ''designated transfer date'' is defined in section 5481(9) of this title as the date established under section 5582 of this title.]

§ 5562. Investigations and administrative discovery

(a) Joint investigations

(1) In general

The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.[1]

(2) Fair lending

The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) Subpoenas

(1) In general

The Bureau or a Bureau investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.[1]

(2) Failure to obey

In the case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Bureau or a Bureau investigator and after notice to such person, may issue an order requiring such person to appear and give testimony or to appear and produce documents or other material.

(3) Contempt

Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(c) Demands

(1) In general

Whenever the Bureau has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) Requirements

Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) Production of documents

Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) Production of things

Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) Demand for written reports or answers

Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

[1] See References in Text note below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 30, 2016, I electronically filed Brief of Appellee Accrediting Council for Independent Colleges and Schools with the Clerk of the Court of the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I certify that counsel for Appellant in the case (listed below) are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. In addition, pursuant to this Court's Rule 31, eight paper copies of this Brief will be filed with the Clerk of this Court.

/s/ Allyson B. Baker
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