

Banking and Finance Law Daily Wrap Up, TOP STORY—Cordray not buying arguments against CID: Denied, (Oct. 20, 2015)

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By Katalina M. Bianco, J.D.

Consumer Financial Protection Bureau Director Richard Cordray has denied a petition by the Accrediting Council for Independent Colleges and Schools (ACIS) to modify or set aside a civil investigative demand from the bureau's Office of Enforcement. In his decision, Cordray said that the three arguments made by ACIS do not warrant setting aside or modifying the CID.

Background. ACIS is a company that accredits many for-profit colleges. The CFPB issued the CID to ACIS on Aug. 25, 2015. In its petition, ACIS said that the CID was received by ACIS President and Chief Executive Officer Albert C. Gray on Aug. 28, 2015. The CID seeks sworn oral testimony from a company representative to be designated by ACIS. The investigational hearing would be held in Washington, D.C., where ACIS is located. According to Cordray, the topics of proposed testimony are ACIS's policies, practices, and procedures for accrediting certain for-profit colleges. The CID includes requests for a list of colleges that ACIS accredits and the individuals who conducted the accreditation of the colleges covered by the oral testimony request.

Following ACIS's receipt of the CID, CFPB enforcement counsel met via telephone with ACIS counsel on several occasions. These discussions, Cordray said, did not resolve disagreements about ACIS's obligations. The bureau received the petition to set aside or modify the CID on Sept. 14, 2015.

Reasons for denial. Cordray notes that ACIS raises three objections to the CID. First, ACIS argues that the Department of Education is its sole regulator. ACIS says that it is given tax exempt status as a nonprofit organization operated solely for the educational purposes and that ACIS has been recognized since 1956 by the Secretary of Education as a reliable authority on the quality of education and training offered by the colleges it accredits.

Cordray said that to support its position that the DoE is its sole regulator, ACIS relies on a string of cases that hold that Section 496 of the Higher Education Act does not provide for a private right of action against accrediting companies. These cases are not relevant, the director found, because the CFPB is not a private plaintiff and is not seeking to enforce the HEA. The bureau is conducting an investigation to determine whether a person or entity is in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act or any other consumer financial protection law.

Second, ACIS contends that the CFPB is restricted to enforcing actions by "covered persons" and that ACIS is not a "covered person" under the CFPA. Cordray notes that the implication is that ACIS is not subject to the CFPA's prohibition against unfair, deceptive, or abusive acts and practices. However, these contentions do not apply to the scope of the bureau's investigative authority under the CFPA but constitute potential substantive defenses that could be raised to claims the bureau may or may not bring against ACIS.

Finally, ACIS claims that the CID's Notice of Purpose is insufficiently specific and fails to comply with the CFPA and the bureau's regulations that the CID must state the nature of the conduct giving rise to the alleged violation. Cordray answers that the requirement does not "demand a detailed narrative" and that it is "well settled" that the boundaries of an investigation may be fairly general.

ACIS is directed to meet and confer with CFPB enforcement counsel within 10 days of service of the order to decide the dates on which the hearing will take place.

Companies: Accrediting Council for Independent Colleges and Schools

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