

[Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—D.C. Cir.: CFPB has no authority to investigate college accreditation process, \(Apr. 21, 2017\)](#)

Banking and Finance Law Daily Wrap Up

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By [Richard A. Roth, J.D.](#)

The Consumer Financial Protection Bureau has no authority to look into possible unlawful, deceptive, or abusive acts or practices in connection with the accreditation of for-profit colleges, the U.S. District Court for the District of Columbia has decided. As a result, a civil investigative demand issued by the bureau will not be enforced ([CFPB v. Accrediting Council for Independent Colleges and Schools](#), April 21, 2017, Sentelle, D.).

Students at accredited colleges are eligible for federal student financial aid, and the Accrediting Council for Independent Colleges and Schools was recognized by the Department of Education as a national college accreditor until 2016. In 2015, the bureau issued a CID seeking information on the peer review portion of ACICS's accreditation process. Specifically, the bureau wanted:

- the identity of all post-secondary schools ACICS had accredited since the beginning of 2010;
- the identity of all individuals who conducted accreditation reviews for 21 named schools during that period; and
- an ACICS employee who could testify on how the organization's policies, procedures, and practices related to the accreditation of seven named schools.

Discussions between ACICS and the CFPB failed to work out a compromise, and Bureau Director Richard Cordray refused to withdraw or modify the CID. When ACICS refused to comply, the CFPB filed an enforcement suit.

After deciding that the CFPB did not have the authority to investigate the accreditation process, a U.S. district judge refused to enforce the CID (see [Banking and Finance Law Daily](#), April 22, 2016).

No authority over activity. The appellate court focused its review on the same single question the district court judge decided: "Did the CFPB have the statutory authority to issue the CID in question?" Like the district court judge, the appellate court said the answer was "No."

The bureau has a broad authority to investigate and take action against any "unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial practice or service" (12 U.S.C. §5531(a)). The bureau also has the authority to use CIDs to seek information related to potential violations of UDAAP laws from anyone, the court noted. However, the matter being investigated must be within the bureau's jurisdiction.

In any CID it issues, the bureau must include a statement of purpose. The Notification of Purpose section of this CID said the purpose was to determine whether anyone had engaged in unlawful acts or practices in connection with accrediting for-profit colleges. That notice "fails to state adequately the unlawful conduct under investigation or the applicable law," the court said.

More specifically, the bureau did not explain what unlawful acts or practices were of concern, according to the court. A reviewing court could not determine whether the information being sought was relevant to the bureau's investigation if the court could not determine what was being investigated.

The bureau argued that there was a possible connection between accreditation and student loans, the court continued. However, the bureau did not mention that possibility in the Notification of Purpose. Neither did the

CFPB identify what federal law might be violated by unlawful conduct in accreditations beyond citing the general Dodd-Frank Act sections that vested it with its UDAAP enforcement authority.

If this CID were deemed to give adequate notice, "we would effectively write out of the statute all of the notice requirements that Congress put in," the court concluded.

More specificity. Both the district court judge and the appellate court criticized the bureau's lack of specificity and declined to consider broader issues related to the bureau's authority. This would seem to leave open the possibility that the bureau could draft an enforceable CID by better describing a nexus between accreditation practices and student lending practices and identifying a specific loan-related statute that was implicated.

The case is [No. 16-5174](#).

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Companies: Accrediting Council for Independent Colleges and Schools

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