ORAL ARGUMENT NOT YET SCHEDULED

No. 16–5174

United States Court of Appeals for the D.C. Circuit

CONSUMER FINANCIAL PROTECTION BUREAU,

Petitioner-Appellant,

v.

ACCREDITING COUNCIL FOR INDEPENDENT COLLEGES AND SCHOOLS,

Respondent-Appellee.

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT-APPELLEE

On Appeal From A Final Opinion And Order Of The U.S. District Court For The District Of Columbia, Case No. 1:15-cv-01838-RJL
Hon. Richard J. Leon

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CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES PURSUANT TO CIRCUIT RULE 28(a)(1)

A. Parties and *Amici*. All parties and intervenors appearing before the district court and in this Court appear in the Brief of Petitioner-Appellant, with the following exception: the Chamber of Commerce of the United States of America appears in this Court as *amicus curiae* supporting Respondent-Appellee.

B. Ruling Under Review. An accurate reference to the ruling at issue appears in the Brief of Petitioner-Appellant.

C. Related Cases. An accurate statement regarding related cases appears in the Brief of Petitioner-Appellant.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, *amicus curiae* the Chamber of Commerce of the United States of America hereby submits the following corporate disclosure statement:

The Chamber of Commerce of the United States of America ("Chamber") is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

All parties have consented to the filing of this brief.† The Chamber filed its notice of its intent to participate in this case as *amicus curiae* on December 5, 2016.

Pursuant to Circuit Rule 29(d), the Chamber certifies that a separate brief is necessary to provide the perspective of the businesses that the Chamber represents, including companies that may receive civil investigative demands from the Consumer Financial Protection Bureau, regarding the importance to the business community of enforcement of the statutory limits on the Bureau's investigative authority.

† No counsel for a party authored this brief in whole or in part, and no person other than the *amicus curiae*, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(c)(5).

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GLOSSARY

ACICS	Accrediting Council for Independent Colleges and Schools
Bureau or CFPB	Consumer Financial Protection Bureau
CID	Civil Investigative Demand
CFPA	Consumer Financial Protection Act (Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), tit. X)
ECOA	Equal Credit Opportunity Act
TILA	Truth in Lending Act

STATUTES AND REGULATIONS

Pertinent materials are contained in the parties' respective statutory addenda.

INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress granted the Consumer Financial Protection Bureau authority to issue civil investigative demands ("CIDs") to investigate violations of enumerated federal consumer financial laws. The Bureau may not use a CID to investigate matters that do *not* relate to such violations.

But, as the district court correctly held, that is exactly what the Bureau sought to do here when it undertook an investigation into the Accrediting Council for Independent Colleges and Schools' ("ACICS") process for accrediting for-profit colleges. The district court's order refusing to enforce the Bureau's CID should therefore be affirmed.

No one disputes that CIDs are valid investigatory tools for federal agencies to use in fulfilling their statutory responsibilities. As the Bureau itself acknowledges, however, an agency cannot use CIDs to pry into matters "where it clearly lacks authority." CFPB Br. 2 (emphasis omitted). And the Bureau clearly lacks authority to investigate the accreditation of colleges and universities, which is the purpose of the CID challenged in this case.

The CID at issue here purported to seek information relevant to potential violations of the Consumer Financial Protection Act's ("CFPA") prohibition on unfair, deceptive, or abusive acts or practices "in connection with accrediting for-profit colleges." JA 24 (citing 12 U.S.C. §§ 5531, 5536). But the Bureau's regulatory and investigative authority regarding unfair, deceptive, or abusive acts and practices is limited to acts that occur "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." 12 U.S.C. § 5531(a).

The process of accrediting for-profit colleges and universities has no connection to a transaction with a consumer for a consumer financial product or service, the Bureau's contrary protestations notwithstanding. Accreditation is thus outside the Bureau's jurisdiction, and counsel for the Bureau may not save the CID either by rewriting it post hoc or by concocting theories far removed from the core of the Bureau's authority.

The Bureau is a relatively new agency with a strong incentive to lay claim to as large a regulatory role as possible—and is particularly likely to do so given that its Director "enjoys more unilateral authority than any other officer in any of the three branches of the U.S. Government, other than the President." *PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1, 6 (D.C. Cir. 2016) (petition for rehearing en banc filed Nov. 18, 2016). This Court should enforce the statutory limits on the Bureau's authority and enhance regulatory certainty for businesses by holding that regulation of the college-accreditation

industry should be left to the Department of Education—the regulator with actual, congressionally-granted authority in this field.

ARGUMENT

I. THE BUREAU LACKS AUTHORITY TO INVESTIGATE ACICS' ACCREDITATION OF COLLEGES AND UNIVERSITIES.

The Bureau's brief devotes remarkably little attention to the question at the heart of this case: whether the Bureau has authority to investigate the accreditation of colleges and universities, which is the purpose for which it issued the challenged CID. Instead, the Bureau repeatedly stresses that courts play only a "limited role" in reviewing agency subpoenas and CIDs, CFPB Br. 14; *see also id.* at 2, 12–13, 14, 16, 19, 20, 23 (arguing for deferential standard of review), and briefly posits a hypothetical (and fanciful) fact-pattern that does not establish the Bureau's authority. These efforts are unavailing: it is clear that the Bureau lacked authority to issue this CID.

1. Courts are Obligated To Exercise Independent Review of Agency CIDs. The Supreme Court and this Court have repeatedly held that a court must quash a CID that is clearly outside the authority of the issuing agency. The scope of judicial review may be limited, but it is "neither minor nor ministerial." *FTC v. Texaco, Inc.*,

555 F.2d 862, 872 (D.C. Cir. 1977). The "court's role is not that of a mere rubber stamp, but of an independent reviewing authority called upon to insure the integrity of the proceeding." *FDIC v. Wentz*, 55 F.3d 905, 908 (3d Cir. 1995) (quoting *Wearly v. FTC*, 616 F.2d 662, 665 (3d Cir. 1980)).

A court therefore must satisfy itself that "the inquiry is within the authority of the agency." *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *see also, e.g.*, *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586–87 (D.C. Cir. 2001) ("[A] court must assure itself that the subject matter of the investigation is within the statutory jurisdiction of the subpoena-issuing agency.") (internal quotation marks omitted). If it is not, the agency's inquiry must be quashed, because "an agency literally has no power to act * * * unless and until Congress confers power upon it." *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986).[1]

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[1] Judicial review of the Bureau's CIDs may become particularly vital if the Bureau proceeds with its proposal to bar CID recipients from raising a CID with their congressional representatives or exercising their free speech rights. *See* Amendments Relating to Disclosure of Records and Information, 81 Fed. Reg. 58,310, 58,334–35 (Aug. 24, 2016); Letter from Tom Quaadman, Ctr. for Capital Markets Competitiveness, to Monica Jackson, Office of the Exec. Sec., Consumer Fin. Protection Bureau, Oct. 24, 2016, https://perma.cc/95GE-TSSR.

2. The CID Here Exceeds the Statutory Limits on the CFPB's Authority. Congress granted the Bureau regulatory authority with respect to "the offering and provision of consumer financial products or services under the Federal consumer financial laws." 12 U.S.C. § 5491(a). All of the Bureau's enforcement powers are tied to this core regulatory authority. Thus, the CFPA limits the Bureau's authority to issue CIDs to investigating "violation[s]," 12 U.S.C. § 5562(c)—defined as "act[s] or omission[s] that, if proved, would constitute a violation of any provision of Federal consumer financial law," *id.* § 5561(5).

The only Federal consumer financial law specified in the CID is the CFPA, which prohibits "unfair, deceptive, or abusive act[s] or practice[s]"—but only when they occur "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." *Id.* § 5531(a).[2] The Bureau's brief conveniently omits this important

[2] The Bureau's brief does not invoke any statute other than the CFPA and thus confirms that the CID was not intended to uncover violations of other federal consumer financial laws enforced by the Bureau.

limitation when it discusses the Bureau's authority regarding unfair, deceptive or abusive acts and practices. *See* CFPB Br. 5–6. But in light of this limitation on the Bureau's jurisdiction, the CID here is valid only if the information sought could reveal an unfair, deceptive, or abusive act or practice connected with *a transaction with a consumer for a consumer financial product or service*. Because the Bureau cannot satisfy that standard, the CID was properly quashed by the district court.

First, the CID here clearly will *not* shed light on any violation of the CFPA in connection with a transaction with a consumer for a consumer financial product or service. The CID is not addressed to any such transaction; instead, it is directed at the process of accrediting for-profit colleges. The CID is thus clearly beyond the Bureau's authority.

According to its Notification of Purpose,[3] the CID seeks information regarding possible "unlawful acts and practices in

[3] A CID issued by the Bureau is required to contain a Notification of Purpose advising its recipient of "the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." 12 U.S.C. § 5562(c)(2); 12 C.F.R. § 1080.5. This requirement is modeled upon and identical to the same requirement contained in the FTC Act, 15 U.S.C. § 57b-1(c)(2), which, in the case of the FTC, may be satisfied by the Commission's resolution

connection with accrediting for-profit colleges." JA 24. All of the demands in the CID confirm the Bureau's focus on accreditation: the CID asks for the names of all the colleges that ACICS has accredited since 2010, the names of the employees who conducted accreditation reviews on 21 particular schools, and testimony on ACICS' "policies, procedures, and practices relating to the accreditation of" seven other institutions. JA 25–26. Every aspect of the CID is thus directed at the process of accrediting for-profit colleges—as the district court concluded below. JA 10.

But, as the district court also determined, *none* of the laws enforced by the Bureau—including the CFPA—"address[es], regulate[s], or even tangentially implicate[s] the accrediting process of for-profit colleges." JA 11. That is because accreditation does not involve the marketing or sale of any consumer financial product or service to consumers. Indeed, the Bureau conceded at oral argument below (and

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authorizing the investigation, 16 C.F.R. § 2.6. Just as FTC subpoenas and CIDs must be "measured against the scope and purpose of the FTC's investigation, as set forth in the Commission's resolution," *Texaco*, 555 F.2d at 874; *see also FTC v. Church & Dwight Co.*, 747 F. Supp. 2d 3, 4–5 (D.D.C. 2010), so too the propriety of the instant CID must be measured in light of its stated purpose in the Notification of Purpose.

again in its brief in this Court) that as a legal matter, the Bureau "ha[s] no interest in accreditation as such." CFPB Br. 22 n.8. ACICS' accreditation business is thus outside the Bureau's purview, and an improper subject for a CID.

Second, the Bureau attempts to salvage the CID on appeal by emphasizing that the Notification of Purpose refers to unlawful acts and practices "in connection with" accrediting for-profit colleges. It argues that the phrase "in connection with" is "a vague, loose connective" that "expands the scope of the Bureau's investigation" to matters beyond the accreditation process itself. CFPB Br. 17. In other words, because the phrase "in connection with" could encompass unidentified consumer financial products somehow connected to accreditation, the Bureau believes that it can proceed to investigate *anything* connected to the accreditation process.

However, as the district court explained, the CID's specific requests for information make clear that the Bureau is targeting "the accreditation process generally"—*not* potentially unlawful conduct in transactions with consumers for unidentified consumer financial

products and services that in some unexplained way might somehow be connected to the accreditation process. JA 12.

In particular, the Bureau attempts to address the flaws in the CID by positing an elaborate hypothetical as the "possible connection between lending by for-profit colleges and accreditation." CFPB Br. 21. The Bureau argues that a for-profit college fearing the loss of its accreditation "*might* have an incentive to make misrepresentations to (or even collude with) an accrediting agency to retain its status," which would allow the college's students to remain eligible for federal loans. *Id.* (emphasis added). "*If* this were to occur," the Bureau reasons, the college's subsequent representations to prospective students might be actionable under the CFPA as unfair, deceptive, or abusive acts or practices. *Id.* at 21–22 (emphasis added). And finally, *if* the accrediting agency "participated in the [hypothetical] collusion," it could have violated the CFPA by having provided "substantial assistance to the college's deceptive practices." *Id.* at 22.

This elaborate hypothetical cannot save the CID. For one thing, the Bureau's speculations about "collusion" are not tethered to anything in the CID itself. The CID's Notification of Purpose says *nothing* about

investigating whether accrediting agencies colluded with for-profit colleges to allow the colleges to keep their accredited status. Nor do any of the CID's interrogatories or requests for testimony touch on that subject. And, of course, the CID's Notification of Purpose does not focus on potential violations in connection with representations to prospective students by for-profit schools, but rather on potential violations in connection with accreditation.

The Bureau cannot use its appellate brief to undertake an after-the-fact revision of the CID; the CID must be judged on the justifications given in the CID itself. *See, e.g.*, *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943) ("The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based."); *Nat'l Labor Relations Bd. v. Sw. Reg'l Council of Carpenters*, 826 F.3d 460, 465 (D.C. Cir. 2016) ("We 'may consider only the Board's own reasons, not the rationalizations of counsel.'").

The *Chenery* principle is particularly important because the Bureau now presses a "substantial assistance" theory that would sweep in conduct with only the most attenuated relationship to consumer financial products or services. To ultimately prevail on such a theory,

the Bureau would first need to show that a school's hypothetical statement to a prospective student regarding the school's accreditation somehow constitutes a deceptive or abusive act or practice in connection with a transaction with a consumer for a consumer financial product or service. And even assuming that the Bureau could do so, it would next need to show that by colluding somehow in the school's accreditation, the accrediting agency "knowingly or recklessly" provided "*substantial* assistance" (12 U.S.C. § 5536) (emphasis added) "in connection with" that transaction and violation (*id.* § 5531(a)). In other words, the Bureau now offers an implausible, two-step hypothetical to justify an investigation into conduct that is not encompassed by the CID's Notification of Purpose.

Moreover, even if the Bureau's hypothetical were encompassed within the plain meaning of the Notification of Purpose, the conduct is far removed from any conceivable transaction with a consumer for a consumer financial product or service, and therefore falls outside the CFPB's authority. The Court should not allow the Bureau to use the CFPA's "substantial assistance" provision to concoct implausible scenarios that would authorize the CFPB to conduct investigations far

outside the Bureau's authority. Otherwise, the Bureau's investigatory authority would be limited only by the imagination of its counsel. *See, e.g.*, *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 813 (1997) (explaining that the statutory phrase "relate to" "could not be read to extend to the furthest stretch of its indeterminacy, * * * for really, universally, relations stop nowhere") (brackets and internal quotation marks omitted); *California Div. of Labor Standards Enf't v. Dillingham Const., N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring) ("[A]pplying [a] 'relate to' provision according to its terms [is] a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else.").[4]

The Bureau's argument here has no natural limiting principle. Under its reasoning, the Bureau could issue a CID to investigate any aspect of the accreditation process because accreditation helps a school

[4] Notably, moreover, the CFPB fails to identify *any* consumer financial product or service in its hypothetical. Presumably, its reference to "prospective student borrowers," CFPB Br. 22, is intended to suggest that student loans are the consumer financial product or service at issue, but the Bureau fails to explain how its imagined collusion might constitute substantial assistance to hypothetical misrepresentations that might be made in connection with a transaction with a consumer for a private student loan.

stay in business, which, pursuant to the CFPB's broad view of "substantial assistance," "might" constitute a violation of the CFPA if the school offers private student loans. The CFPB—which lacks any expertise in the area—would thus be entitled to ascertain whether, for example, the school's courses were sufficiently rigorous or its faculty sufficiently qualified to warrant accreditation. That is not what Congress intended when it established the Bureau to "regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws." 12 U.S.C. § 5491(a).

Indeed, pursuant to the Bureau's approach, any business that has a passing connection to another business that might, on occasion, provide a consumer financial product or service would be subject to the Bureau's investigatory powers on the theory that the first company's conduct "might" constitute substantial assistance to the second company's potential deceptive conduct in connection with a consumer financial product or service. For example, the Bureau might issue a CID to a landlord to investigate the terms of its lease with a retailer, who occasionally offers credit to consumers. Under the Bureau's theory, as long as the CID included the magic words "in connection with," the

Bureau could later justify such a CID as possibly leading to the discovery of substantial assistance by the landlord to the retailer's hypothetical violations relating to its extension of credit. It is not hard to think of other such examples where third parties interact with entities that might on occasion offer a consumer financial product or service. The Bureau's approach would thus dramatically expand its authority far beyond what Congress authorized.

Congress limited the Bureau's authority to investigating acts and practices related to consumer finance transactions. And Congress imposed numerous carefully circumscribed limitations on the Bureau's authority to regulate various categories of entities. *See, e.g.*, 12 U.S.C. § 5519 (generally prohibiting the Bureau from asserting any authority over motor vehicle dealers). The Bureau may not ignore those statutory limitations in issuing a CID any more than it may do so in exercising its other authorities. Nor does post hoc invocation of a "substantial assistance" theory somehow nullify those limitations. The Bureau's effort to justify this CID on that basis must therefore be rejected.

Third, unable to demonstrate that the subject matter of the CID falls within its statutory jurisdiction, the Bureau seeks refuge in the

standard of review, arguing that the governing standard requires that "doubt as to the agency's authority * * * be resolved in the agency's favor." CFPB Br. 20. But that argument is of no help to the Bureau, because there is *no* doubt about the Bureau's lack of authority here.

The Bureau has utterly failed to identify *any* set of facts that this CID—as written—might uncover that would allow the Bureau to bring an enforcement action against ACICS for an unfair, deceptive, or abusive act or practice connected to a transaction with a consumer for a consumer financial product or service. Thus, if any case is covered by *Morton Salt*'s admonition that investigative inquiries must be "within the authority of the agency," 338 U.S. at 652, this one surely is. This Court should affirm the district court's judgment and refuse to enforce the CID.

II. THE BUREAU'S CIVIL INVESTIGATIVE DEMANDS IMPOSE SUBSTANTIAL AND UNWARRANTED BURDENS ON BUSINESSES.

It is vital to the business community that courts police the limits imposed by Congress and refuse to enforce CIDs that are unrelated to any matter properly within a regulatory agency's jurisdiction. Left unchecked, the Bureau's use of CIDs will create significant

uncertainty—both for industries regulated by the Bureau and for other businesses that might receive CIDs as part of sweeping Bureau investigations.

Companies large and small benefit from regulatory certainty. When the legal rules of the road are unclear, businesses may decide to avoid the risk of facing unauthorized CIDs or enforcement actions by taking actions that hurt consumers—such as tightening product availability, eliminating features, or exiting particular product categories. *See, e.g.*, *AT&T Inc. v. FCC*, 452 F.3d 830, 836 (D.C. Cir. 2006) (noting that "regulatory uncertainty . . . may discourage investment and innovation"). Thus, the regulatory uncertainty caused by the Bureau overreaching through CIDs like this one is likely to lead to higher prices for consumers and reduced choice in consumer financial products. *See id.*

The regulatory uncertainty caused by the Bureau's actions is particularly acute when the Bureau uses CIDs to infringe on the jurisdiction of another agency. Basic principles of good government require that the Bureau be limited to its congressionally-assigned role, and not duplicate or interfere with the regulatory efforts of another

agency to whom Congress expressly has granted authority. Knowing which agencies may regulate a market segment is a key element of regulatory certainty for companies. The intrusion of an unauthorized regulator serves only to disrupt companies' settled expectations and require them to reevaluate their regulatory compliance programs.

Here, the Bureau's CID clearly invades the jurisdiction properly assigned to another federal agency. Accrediting entities are already closely regulated by the Department of Education, which determines whether or not to "nationally recognize" accrediting agencies (34 C.F.R. § 600.2) based on, among other things, whether their "standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted." *Id.* § 602.13. If an accrediting agency is not nationally recognized, students at the schools it accredits may not receive federal student aid. *See id.* §§ 600.1, 600.2.

By using its investigative power to pry into whether accrediting agencies such as ACICS are abiding by the law, the Bureau is invading the province of the Department of Education. Indeed, the Department of Education has *already* taken action against ACICS: in September 2016, the Department terminated recognition of ACICS (the decision is under

appeal).[5] There is no justification for the Bureau's effort to subject ACICS and other accrediting agencies to a second, unnecessary (and possibly inconsistent) layer of regulation. The Court should therefore reject the Bureau's petition in this matter and leave the task of regulating the college accreditation industry to the Department of Education.

Policing statutory limits is particularly important here, because the Bureau appears to be making a habit of intruding on the province of other regulators.

For example, in another recent case, the Bureau issued a CID to J.G. Wentworth, a company that purchases the rights to streams of payment (such as from a structured settlement or annuity) from consumers in exchange for lump sum payments. Congress chose to subject that industry to a series of incentives implemented through the tax code and to the enforcement authorities of the states and the FTC. The Bureau, as here, nonetheless purported to rely on its authority to investigate unfair, deceptive, or abusive acts and practices in issuing

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[5] *See* Letter from Emma Vadehra, Chief of Staff, Dep't of Educ., to Roger J. Williams, Interim President, ACICS, Sept. 22, 2016, http://blog.ed.gov/files/2016/06/ACICS.pdf.

the CID. *See* CID at 1, *CFPB v. J.G. Wentworth, LLC*, No. 2:16-cv-02773-CDJ (E.D. Pa. June 7, 2016), ECF No. 1 Ex. B. When the company protested that it did not sell any consumer financial product or service, the Bureau responded that the company *might* be providing credit to consumers, or providing consumers "financial advisory services" by discussing the benefits of its product with them (another limitless principle that would substantially expand the Bureau's investigatory authority). *See* Response of CFPB at 8–12, *Wentworth*, No. 2:16-cv-02773-CDJ (E.D. Pa. Aug. 31, 2016), ECF No. 18.[6] The same reasoning, of course, could apply to numerous other companies that are not properly subject to the authority of the Bureau.

Similarly, the Bureau recently issued CIDs to three companies that provide services in connection with land installment contracts—sometimes called "agreements for deeds"—between real estate sellers and buyers. These rent-to-own transactions have been found by the FTC (which does have relevant jurisdiction, along with state regulators) not to constitute loans or extensions of credit covered by federal laws such

[6] As of the time of this filing, the district court has not ruled on the Bureau's petition to enforce the CID against J.G. Wentworth.

as the Truth in Lending Act ("TILA") or the Equal Credit Opportunity Act ("ECOA"). *See* Combined Pet. to Set Aside or Modify CIDs at 15–16, *In re Nat'l Asset Advisors LLC & Nat'l Asset Mortg. LLC*, Oct. 2, 2016, http://bit.ly/2g3BJpo. But the Bureau is nonetheless petitioning to have the CIDs enforced, asserting in its petition briefing that TILA and ECOA apply to agreement-for-deed transactions. *See* Mem. in Support of Pet. to Enforce CIDs at 8, *CFPB v. Harbour Portfolio Advisors, LLC*, No. 2:16-cv-14183-NGE-EAS (E.D. Mich. Nov. 29, 2016), ECF No. 1-1.

By asserting a virtually unbounded investigative authority here and elsewhere, the Bureau has invaded the authority of other regulators. Companies now must wonder whether conduct deemed appropriate by their congressionally designated regulator(s) will subsequently be subjected to the Bureau's second-guessing, even where the Bureau lacks enforcement authority. The resulting regulatory uncertainty benefits no one, except perhaps the Bureau itself as it seeks to exercise authority over matters far beyond its congressional mandate.

The Bureau may contend that companies are adequately protected against investigatory overreach by the promise of subsequent judicial

review of the Bureau's enforcement actions. But the prospect of judicial review is cold comfort to a business served with a CID from the Bureau. Complying with a CID is itself a burdensome and expensive exercise that companies should not have to undergo where an agency lacks the requisite authority to issue the CID. Companies also often settle enforcement actions because of the financial and other costs of litigating against a regulator, regardless of an agency's lack of authority. Thus, the only meaningful protection for companies against investigatory overreach is to enforce clear limits on the Bureau's authority to issue CIDs in the first place.

CONCLUSION

The district court's judgment should be affirmed.

Dated: December 7, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(4)(G) and 32(g)(1), I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(b)(5) and 32(a)(7)(B) because it contains 4,248 words, excluding the parts exempted by Fed. R. App. P. 32(f) and Cir. R. 32(e)(1). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief was prepared in 14-point Century Schoolbook font using Microsoft Word.

Dated: December 7, 2016

/s/ *Andrew J. Pincus*
Andrew J. Pincus

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(d) and Cir. R. 25(a), that on December 7, 2016, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

Dated: December 7, 2016

/s/ *Andrew J. Pincus*
Andrew J. Pincus