

BEFORE THE FEDERAL TRADE COMMISSION

WASHINGTON, D.C.

IN RE VEMO EDUCATION, INC.

**Complaint, Request for Investigation,
Injunction, and Other Relief**

I. INTRODUCTION

1. This complaint concerns the marketing and promotion of Income Share Agreements (“ISAs”) by Vemo Education, Inc. (“Vemo”) and its institutional clients. Vemo is a for-profit company that provides ISA-related services to a wide array of postsecondary educational institutions, from universities to short-term, unaccredited vocational programs based across the country.

2. Grappling with the rising cost of college, students often cobble together funding from various sources, including monies available from their families, jobs, scholarships, grants, and student loans. Some students’ parents may also take out student loans, whether Parent PLUS Loans from the federal government or private student loans.

3. ISAs have been presented to some students, either directly or through their schools, as a new financial product for financing higher education expenses. ISAs are often pitched as an alternative to traditional loans.¹ ISAs are agreements in which a fund, sometimes associated with for-profit investors, finances a portion of a student’s education. In exchange, the student agrees to pay a specified percentage of their income after graduation for a period of time — often nearly ten years.

¹ See, e.g., Mitch Daniels, *Here is a powerful alternative to student loans*, THE WASHINGTON POST (Nov. 28, 2019), https://www.washingtonpost.com/opinions/income-share-agreements-are-a-powerful-alternative-to-student-loans/2019/11/27/5290d0ee-0be3-11ea-97ac-a7ccc8dd1ebc_story.html.

4. In order to encourage students to choose ISAs to finance their education, Vemo created “Comparison Tools,” which it makes available through the financial aid offices of its client institutions. This tool purports to allow students to compare the cost of an ISA to the costs of comparator financial products like federal student loans for parents of undergraduate students (“Parent PLUS Loans”) and traditional private student loans.

5. However, as demonstrated below, Vemo’s Comparison Tools systematically make ISAs appear to be more favorable relative to Parent PLUS Loans using several misrepresentations.

- a. First, Vemo’s Comparison Tools use false assumptions about the commencement of repayment for Parent PLUS Loans and inaccurately capitalize interest, which inflates the cost of borrowing for Parent PLUS Loans and makes them seem less desirable in comparison to ISAs.
- b. Second, Vemo’s Comparison Tools use outdated, generalized, and inaccurate information about the starting income of graduates, rather than more updated and specific information for graduates of the schools at which its ISAs are offered. By using outdated salary information reflecting lower starting incomes than more updated and institution-specific information indicates is accurate, Vemo’s Comparison Tools systematically and deceptively understate the repayment costs of an ISA and deceptively make it seem more desirable than other options.
- c. Third, Vemo’s Comparison Tools have misrepresented the manner in which they calculate a consumer’s estimated income growth over the repayment term. This sleight-of-hand makes Vemo’s ISA appear to be less expensive (and more desirable) than would be the case if Vemo calculated income growth in the manner it represented. Changes to Vemo’s methods for estimating income growth (and its representations about those methods) made in the spring of 2020 have altered, but not eliminated, the problem of underestimated ISA repayment costs.

6. These business practices affect students at a growing number of institutions. Vemo’s website touts its work with Purdue University, the University of Utah, Messiah College, Clarkson University, and Norwich University.² In 2019, Inside Higher Education reported that “Vemo has worked with dozens of colleges to set up ISA programs, although only a handful have publicly announced the programs so far.”³ And in addition to two- and four-year colleges, Vemo works with alternative education providers like General Assembly,⁴ whose students are not eligible for federal financial aid. According to Vemo, “[a] growing number of institutions are utilizing ISAs to align student and school success,” with 76 schools offering ISAs in 2019, up from only one in 2016.⁵

7. Participation in ISA programs also appears to be growing. For example, Purdue announced its partnership with Vemo on March 9, 2017, explaining that 160 Boilermakers had received ISAs during the 2016-17 academic year.⁶ By November 22, 2019, Purdue reported entering into its 1,000th ISA contract.⁷

² See *Higher Education*, VEMO EDUCATION, <https://vemoeducation.com/higher-education-income-share-agreements/> (last accessed May 27, 2020).

³ Andrew Kreighbaum, *Lifting the Curtain on Income-Share Agreements*, INSIDE HIGHER ED (Sept. 26, 2019), <https://www.insidehighered.com/news/2019/09/26/two-emerging-players-isas-deliberate-and-different-approaches>.

⁴ *Id.*; see also Michelle Petersen, *One Year In: How General Assembly’s Catalyst Program is Increasing Accessibility*, VEMO EDUCATION (Sept. 18, 2019), <https://vemoeducation.com/blog/2019/09/18/one-year-in-how-general-assemblys-catalyst-program-is-increasing-accessibility/>.

⁵ *Skills Training*, VEMO EDUCATION, <https://vemoeducation.com/for-skills-training-income-share-agreements/> (last accessed May 27, 2020) (It is unclear from Vemo’s website whether these numbers include only Vemo-run ISAs, or all schools offering ISAs, whether or not aligned with Vemo.).

⁶ *Purdue, Vemo Education partnership to help colleges, universities pioneer college funding alternative*, PURDUE UNIVERSITY (Mar. 9, 2017), <https://www.purdue.edu/newsroom/releases/2017/Q1/purdue.-vemo-education-partnership-to-help-colleges,-universities-pioneer-college-funding-alternative.html>.

⁷ *Back a Boiler program tops 1,000th contract for student funding*, PURDUE UNIVERSITY (Nov. 22, 2019), <https://www.purdue.edu/newsroom/releases/2019/Q4/back-a-boiler-program-tops-1,000th-contract-for-student-funding.html>.

8. As explained in more detail below, Vemo’s business practices constitute unfair and deceptive trade practices under the Federal Trade Commission Act (“FTC Act”). The Federal Trade Commission (“FTC”) should investigate Vemo and its clients that participate with it in these misrepresentations, enjoin future violations of the FTC Act, and order redress for consumers harmed by these practices.

II. PARTIES

9. This complaint is lodged by the Student Borrower Protection Center and the National Consumer Law Center, two non-profit public interest organizations dedicated to the protection of consumers, and particularly students and student loan borrowers, from unfair and deceptive acts and practices in the marketing, origination, servicing, and collection of financial products.

10. Vemo is a Delaware for-profit company founded in 2015 and has its principal office in Arlington, Virginia. At all times material to this complaint, Vemo’s course of business, including the acts and practices alleged herein, has been and is in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 45.

III. FACTUAL BACKGROUND

A. Federal Student Aid Provides Important Financial Support for Many Students but Does Not Always Cover the Full Cost of Attending College or Skills-Training Institutions.

1. The cost of college in the United States has exploded in recent years, with tuition for a bachelor’s degree more than tripling in inflation-adjusted terms since the 1970s⁸ and college

⁸ Jaison R. Abel & Richard Deitz, *The Cost of College Continues to Climb*, LIBERTY STREET ECONOMICS (June 3, 2019), <https://libertystreeteconomics.newyorkfed.org/2019/06/the-cost-of-college-continues-to-climb.html>.

costs growing eight times faster than workers' wages from 1989 to 2016.⁹

2. Many students are unable to pay these ever-increasing costs of enrollment without taking out student loans, often from the federal government. As a result, federal student loan volume has skyrocketed, nearly tripling since 2007.¹⁰

3. Currently, undergraduate students can borrow up to a maximum of \$5,500 to \$12,500 in Direct Subsidized Loans and Direct Unsubsidized Loans each academic year.¹¹ Unfortunately, the cost of college has increased so much that these funds, together with grants, scholarships, and work-study aid are sometimes not enough to cover the cost of attendance. In order to remain enrolled, these students need another source of funds.

4. For these students and their families, the federal government offers additional resources, including Parent PLUS Loans. The U.S. Department of Education explains that “[t]he maximum PLUS loan amount [parents] can borrow is the cost of attendance at the school [their] child will attend minus any other financial assistance your child receives.”¹²

5. Other students attend skill-training or vocational programs for which federal student loans are unavailable. These students cannot take out federal loans, and if they cannot pay for their programs out of pocket, they must find an alternative source of funds.

6. For many students who cannot access sufficient (or any) federal student loans, or whose families are unable to support them with Parent PLUS Loans, other financial products like private student loans bridge the gap between federal resources and other aid, and the full cost of attendance.

⁹ Camilo Maldonado, *Price Of College Increasing Almost 8 Times Faster Than Wages*, FORBES (July 24, 2018), <https://www.forbes.com/sites/camilomaldonado/2018/07/24/price-of-college-increasing-almost-8-times-faster-than-wages/#1e0daeef66c1>.

¹⁰ *Federal Student Aid Portfolio Summary*, NATIONAL STUDENT LOAN DATA SYSTEM (NSLDS), <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls>.

¹¹ *How much money can I borrow in federal student loans?*, FEDERAL STUDENT AID, <https://studentaid.gov/understand-aid/types/loans#borrowing-limit> (last accessed May 27, 2020).

¹² *See Parent PLUS Loans*, FEDERAL STUDENT AID, <https://studentaid.gov/understand-aid/types/loans/plus/parent> (last accessed May 27, 2020).

7. In recent years, industry groups and the financial aid offices of some schools are promoting ISAs as a financial product to meet these funding shortfalls and as an alternative to Parent PLUS Loans, traditional private student loans, or other options.

B. Income Share Agreements

8. The University of Utah’s marketing website for its Vemo-backed ISA describes the product as “a financial obligation in which a student receives funding for education-related expenses in exchange for paying an agreed upon percentage of income over a defined number of months...”¹³ and, similarly, Purdue University’s marketing website for its Vemo-backed ISA explains that “[i]n general terms, an Income Share Agreement (ISA) is a contractual agreement in which a student receives education funding in exchange for an agreed upon percentage of post-graduation income over a defined number of years.”¹⁴

9. After graduation, ISAs generally provide for a “grace period,” after which borrowers must begin making monthly payments once their income rises above a certain minimum threshold. For example, the University of Utah’s Vemo-run ISA provides a six-month grace period, but borrowers’ accounts “will be placed into a paused status and you will not make payments if you: . . . [a]re employed and earning less than \$1,666.67 monthly (equivalent to an annual earned income of \$20,000).”¹⁵ Purdue’s Vemo-run ISA also sets the minimum income threshold at \$20,000.¹⁶ A Vemo-run ISA associated with the San Diego Workforce Partnership sets the minimum income threshold at \$40,000.¹⁷

¹³ See *Income Share Agreement Frequently Asked Questions*, UNIVERSITY OF UTAH, <https://isa.utah.edu/frequently-asked-questions/> (last accessed May 27, 2020).

¹⁴ See *FAQ about Back a Boiler – ISA Fund*, PURDUE UNIVERSITY, <https://www.purdue.edu/backaboiler/FAQ/index.html> (last accessed May 27, 2020).

¹⁵ See UNIVERSITY OF UTAH, *supra* note 13.

¹⁶ See *Back a Boiler, ISA Sample Contract (Academic Year)*, PURDUE UNIVERSITY, <https://www.purdue.edu/backaboiler/disclosure/contract.html> (last accessed May 27, 2020)

¹⁷ See Abigail Hess, *San Diego’s new income-share program wants to help students go back to school now, pay later*, CNBC (May 17, 2019), <https://www.cnbc.com/2019/05/17/san-diego-launches-isa-program-with-the-help-of-donors-like-google.html>.

10. Borrowers earning above that threshold pay a percentage of their income each month during the repayment period. For example, a student graduating with a degree in Aeronautical & Astronautical Engineering in March of 2021 from Purdue would pay 2.96% of her income for 92 months in exchange for \$10,000 in ISA funding. Thus, if she made \$40,000 per year, her payment would be \$98.67 per month (\$1,184 annually). If she made \$70,000 per year, her payment would be \$172.67 per month (\$2,072 annually).

11. If an ISA borrower's income falls below the specified threshold, the borrower does not owe a monthly payment. However, most ISA contracts provide that the term of the ISA is extended for some or all months under which the borrower's income falls below that threshold.¹⁸

12. Consumer advocates and government officials have raised several concerns about the use of ISAs to fund students' educations, such as terms that can cost borrowers "more than some of the most burdensome, predatory, and costly private student loans,"¹⁹ the potential for ISAs to have "a discriminatory impact on students of color, both in terms of students' reliance on them and their difficulty paying their monthly obligations,"²⁰ and the inclusion of binding arbitration clauses. These concerns are heightened by the fact that ISAs currently operate as though outside traditional consumer protection regulations.²¹ However, this complaint focuses only on the deceptive manner in which Vemo markets and promotes its ISAs.

C. Vemo's Relationships with Education Providers

13. Vemo describes itself as "the leader in income share agreements (ISAs)," explaining that "we design, implement and manage impactful ISA programs for our partners.

¹⁸ See PURDUE UNIVERSITY, *supra* note 16.

¹⁹ Letter from Sen. Elizabeth Warren, Rep. Ayanna Pressley, and Rep. Katie Porter to Sec'y of Educ. Betsy DeVos dated June 4, 2019, available at <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20DeVos%20re%20ISAs.pdf>.

²⁰ *Id.*

²¹ See *College students should beware of income-share agreements, which carry few protections and sometimes high price tags*, DES MOINES REGISTER (Sept. 26, 2019), <https://www.desmoinesregister.com/story/opinion/editorials/2019/09/26/college-students-beware-income-share-offers-could-costly-long-run/2427138001/>

These are supported by a team with deep education and financial expertise, leading edge technology and world class servicing operations.”²²

14. Vemo enters into contractual relationships with universities and other educational service providers to implement and manage ISAs.

15. As part of its service to its institutional clients, Vemo created various “Comparison Tools,” which the institutions then post on their financial aid webpages, to allow their students and prospective students to compare ISAs and several other financing options in determining how to pay for their educations. These Comparison Tools are used to market ISAs to students and prospective students.

D. Vemo’s Comparison Tools Purport to Assist Consumers in Selecting Between Financial Products.

16. Vemo represents that its platform “allows schools to ... offer transparent outcome-based financing options to increase educational outcomes and student success.”²³ Vemo also represents that the ISAs it designs for its institutional clients (and the clients themselves) are “supported by a team with deep education and financial expertise, leading edge technology and world class servicing operations”²⁴

17. Vemo’s institutional clients rely upon Vemo’s representations and in turn represent to their students and prospective students that the institutions’ Vemo-run ISA programs will comport with Vemo’s representations of transparency and expertise. For example, Purdue promises students that it “will conduct the ISA with transparency and openness with a priority on

²² *Enrollment Management Solution Gallery*, VEMO EDUCATION, <http://vemoeducation.com/strategic-enrollment-success-solution/> (last accessed May 27, 2020).

²³ Tim Egan, *CampusLogic and Vemo Education Partnership Empowers Student Financial Success Across Higher Education*, VEMO EDUCATION (June 24, 2019), <https://vemoeducation.com/blog/2019/06/24/campuslogic-and-vemo-education-partnership-empowers-student-financial-success-across-higher-education/>.

²⁴ VEMO EDUCATION, *supra* note 22.

helping students pay for their academic education that best suits their particular needs.”²⁵

18. As Vemo recognizes, “[s]tudents are overwhelmed with the options to finance their education and are often left with no good options to secure their education.”²⁶ To assist students in making financial decisions — and to help its institutional clients meet their obligation to provide financial counseling to students — Vemo provides interactive tools to help students project the cost of using an ISA and several comparator products to finance their educations.

19. Vemo’s institutional clients, relying on Vemo’s representations of transparency and expertise, incorporate these Comparison Tools into their financial aid webpages. For example, Purdue’s Frequently Asked Questions webpage for its ISA encourages students to “[c]lick **Comparison Tool** to see how the Back a Boiler - ISA Fund compares with private student loans and Parent PLUS Loans.”²⁷

20. Purdue’s “FAQ” webpage about its ISA program also suggests that students use the Comparison Tool to help determine whether to enter into an ISA:

Q: How will students know if an ISA is a good option for them?

ISAs are among many options that are available for education funding. Students, parents and/or guardians should research which options work best for their individual situations. Students can visit the **Comparison Tool** to compare an ISA to other funding options.²⁸

21. Students depend on these Comparison Tools to present an honest and accurate comparison between the financing options Vemo presents. Indeed, the honesty and accuracy of the Comparison Tools’ mathematical models are precisely what would make them useful as a source of information as students determine how to finance their educations.

22. Unfortunately, Vemo’s Comparison Tools present a false comparison by

²⁵ PURDUE UNIVERSITY, *supra* note 14.

²⁶ VEMO EDUCATION, *supra* note 2.

²⁷ PURDUE UNIVERSITY, *supra* note 14..

²⁸ *Id.*

systemically inflating the costs of comparator products and underestimating the costs of an ISA. Vemo's distortions have the effect of making its ISAs appear more favorable than they actually are.

E. Vemo's ISA Comparison Tools Misleadingly Promote ISAs by Inaccurately Inflating the Cost of Parent PLUS Loans.

23. Vemo's ISA Comparison Tools artificially inflate the cost of Parent PLUS Loans by misrepresenting their repayment terms in a way that overstates the amount of interest paid.

24. In order to determine the repayment cost for a loan, a prospective borrower or observer needs to correctly identify the relevant starting principal balance, interest rate, repayment term, origination fee level, the presence of any planned deferments and/or grace periods during which interest might accrue, and whether, and how much, interest may be expected to be capitalized into the loan balance.

25. Purdue explains that when its Comparison Tool calculates the cost of a Parent PLUS Loan, it "assumes 9 months of enrollment, 6 months of grace, [and] that interest is capitalized for unsubsidized loans after the grace period" ²⁹ When interest is "capitalized," it is added to the principal balance of the loan. As a result, future interest accrues on the combined original principal and capitalized interest, which results in more interest being paid over the life of the loan.

26. The mechanics of capitalization can be illustrated using the figures from Purdue's

²⁹ *Comparison Tool*, PURDUE UNIVERSITY, <https://www.purdue.edu/backaboiler/comparison/index.html> (last accessed May 22, 2020). Although Purdue's Comparison Tool requires students to provide their expected graduation dates, it claims to base its PLUS Loan calculations on the assumption of 9 months of enrollment regardless of whether the student is a junior or a senior. *Compare* Exhibit 1 *with* Exhibit 2. Thus, even if in-school deferment were appropriate for the calculation of PLUS Loans to finance an undergraduate education, Purdue's Comparison Tool would be deceptive because it would *underestimate* the amount to be repaid by juniors, who will have more than the assumed 9 months of enrollment, and thus longer for interest to accrue.

Vemo-constructed Comparison Tool. The Comparison Tool represents that the initial balance of a \$10,000 Parent PLUS Loan would be \$10,442, including the origination fee.³⁰ Vemo's basis for this origination fee amount is unclear because Parent PLUS Loans have never required a 4.42% origination fee, and origination fee rates for the last several years have been lower.³¹ Interest on Parent PLUS Loans is set by Congress and is currently 7.08% for the most recent vintage of loans.³² Applying that rate to Vemo's starting loan balance of \$10,442 results in \$924 in interest accrued during the 15 months before repayment commenced. That interest would be capitalized into the loan's principal for a new balance of \$11,366, which would then accrue interest at a rate of 7.08%. Vemo's model appears to miscalculate the interest accrued and capitalized using its assumed initial loan amount, 15-month in-school deferment and grace period, and interest rate.³³

³⁰ Purdue's "Application and Solicitation Disclosure" represents that the origination fee for a \$10,000 Parent PLUS Loan would be \$447, rather than the \$442 represented by the Comparison Tool. *See Application and Solicitation Disclosure*, PURDUE UNIVERSITY, <https://www.purdue.edu/backaboiler/disclosure/application.html> (last accessed May 27, 2020). Although the difference is small, it is unclear why Purdue represents two different origination fees. Moreover, both of these representations are incorrect as explained *infra* note 31.

³¹ *Federal Interest Rates and Fees*, FEDERAL STUDENT AID, <https://studentaid.gov/understand-aid/types/loans/interest-rates>. For example, PLUS loans disbursed between October 1, 2018 and October 1, 2019 included an origination fee of 4.248%, while those disbursed between October 1, 2019 and October 1, 2020 include an origination fee of 4.236%. *Id.* Thus, Vemo's Comparison Tool misrepresents the cost of a Parent PLUS Loan by overstating the origination fee.

³² *Id.*

³³ Vemo's Comparison Tool represents that a Purdue student graduating in June of 2020 would pay \$15,727 on a PLUS Loan over 120 months after a 15-month deferment and grace period. Given a 7.08% interest rate, paying \$15,727 over 120 months implies a balance of \$11,248 at the start of the repayment period. In turn, entering repayment with a balance of \$11,248 implies that the borrower accrued \$806, not \$924, in interest on top of the starting \$10,442 loan balance. Vemo's calculated interest accrual (\$806) on a \$10,442 starting balance over 15 months would require an interest rate of 6.17%, not the statutory rate of 7.08% for Parent PLUS Loans. For Vemo's calculated \$806 interest accrual to arise from a \$10,442 starting balance at a 7.08% interest rate, the accrual period would need to be 13 months, not 15 months as Vemo (incorrectly) represents. And for a \$806 interest accrual to occur over a period of 15 months at a 7.08% interest rate, the starting loan balance would need to be \$9,102, not \$10,442. Vemo's Comparison Tool does not show its calculations, and it is therefore unclear how Vemo arrived at its figures. Apparent miscalculations aside, this Complaint will regard Vemo's represented

27. In truth and in fact, in-school deferments and post-graduation grace periods do not automatically apply to Parent PLUS Loans.³⁴ As the U.S. Department of Education explains, “[t]he first payment on a Direct PLUS Loan is due within 60 days after the loan is fully disbursed. There is no grace period for Direct PLUS Loans.”³⁵ Thus, Vemo’s built-in assumptions for the Parent PLUS Loan, interest accrued and capitalized before the commencement of repayment that those assumptions would generate, and the higher monthly interest payments the borrower would face going forward due to capitalization are without basis in fact or law. In truth and fact, Parent PLUS borrowers are scheduled to pay off their loan more cheaply, and 15 months earlier, than Vemo’s model represents.

28. Parents who take out PLUS Loans to finance their children’s educations have the *option* to defer payments while their children remain enrolled, as well as an additional six-month deferment after their children graduate, but they must take affirmative action to request it. However, that deferment, if selected, is not the standard or default option for parents. In fact, a Parent PLUS Loan borrower would have to opt into a deferment, and that deferment would not

\$15,727 total cost of repayment for Parent Plus Loans as its relevant representation concerning the cost of Parent PLUS Loans.

³⁴ *Master Promissory Note*, FEDERAL STUDENT AID, <https://studentaid.gov/app/demoEmpnParentPlus.action#!/empnDemo/4> (last accessed May 27, 2020); (“The repayment period for each Direct PLUS Loan made under this MPN begins on the date of the final disbursement for that loan. ...[Y]our first payment on each loan will be due within 60 days of the date of the final disbursement of that loan.”). Purdue has recently made its ISA available to graduate students in certain programs. *See Comparison Tool*, PURDUE UNIVERSITY, <https://www.purdue.edu/backaboiler/comparison/index.html> (last accessed May 27, 2020). Unlike undergraduates, whose parents must take out any PLUS Loans used to finance their educations, these graduate students would be eligible to receive PLUS Loans themselves, and those PLUS Loans would be eligible for in-school deferments.

³⁵ While PLUS Loans are available to graduate and professional students, Purdue’s “Back-A-Boiler” ISA “is available to Purdue’s Sophomore, Junior and Senior level students.” *See Income Share Agreements*, PURDUE UNIVERSITY, <https://www.purdue.edu/dfa/types-of-aid/income-share-agreement/index.html> (last accessed May 27, 2020). Thus, the use of in-school deferment and a post-graduation grace period to calculate its costs is contrary to the terms of Parent PLUS Loans available in connection with these students’ educations.

necessarily be for the nine months assumed by Vemo's Comparison Tool. Vemo's decision to build in a non-adjustable 15-month deferral assumption is particularly unreasonable because it would be simple to include in the Comparison Tool an option for consumers to select whether or not to include a deferment and select the length of any deferment — for example, to account for whether the student was a junior or senior.

29. Overall, Vemo's false assumptions in calculating the cost of a Parent PLUS Loan cause the Comparison Tool to materially misrepresent and inflate its cost. For some prospective borrowers, the Comparison Tool falsely projects the ISA as the less expensive option, when in fact a Parent PLUS Loan is a less expensive financial product.

30. To illustrate, consider an Agricultural Communication major at Purdue, set to graduate in March of 2021, who used the Comparison Tool to estimate the cost of financing \$10,000. Purdue's Comparison Tool represented that the borrower will pay back \$15,727 on a \$10,000 Parent PLUS Loan. *See* Exhibit 3.³⁶ Meanwhile, the Comparison Tool estimated that the same borrower financing \$10,000 through the Back-a-Boiler ISA will repay \$14,967. *See* Exhibit 5. Thus, the Comparison Tool represented the ISA as the less expensive option. In truth and in fact, by correcting the Comparison Tool's method of calculating the cost of a \$10,000 Parent PLUS loan — i.e., eliminating interest accrual during an in-school deferment and grace period and the subsequent capitalization — a Parent PLUS Loan would cost a borrower only \$14,603.³⁷ *See* Exhibit 6. This would make the Parent PLUS Loan, not the ISA, the less expensive financing option.

31. The undersigned organizations have also detected apparent anomalies and inaccuracies in the Comparison Tools' calculations of the repayment costs for private student

³⁶ The University of Utah's Comparison Tool provides the same cost of borrowing \$10,000 through a PLUS Loan. *See* Exhibit 4.

³⁷ Note that in this instance, Purdue's Comparison Tool represents the origination fee for a \$10,000 PLUS loan as \$444, not the \$442 stated above. *See* Exhibit 3. The reason for the selection of this origination fee is not clear.

loans, based on the repayment terms and assumptions — i.e., interest rate, repayment term, and deferment — that the Comparison Tools purport to apply. The FTC is therefore urged to investigate potential misrepresentations in Vemo’s Comparison Tools concerning their comparison between ISAs and private student loans.

32. For some Parent PLUS Loan borrowers, Vemo’s Comparison Tool further inflates the cost of a Parent PLUS Loan (as well as private loans) by failing to account for the tax deduction for student loan interest available to borrowers who itemize deductions. Modeling the tax deduction in a simple Comparison Tool may be difficult, as it depends on factors such as the number of dependents and the amount of the borrower’s other deductions. However, failure to identify this for students and parents as a potential consideration in estimating the cost of a Parent PLUS Loan is deceptive.

F. Vemo’s ISA Comparison Tools Misleadingly Promote ISAs by Understating Their Costs.

33. As described above, the amount a borrower repays on an ISA is dependent on their income. Graduates with higher incomes pay more on their ISAs than those with lower incomes. As a result, estimating the cost of repaying an ISA is fundamentally different from estimating the repayment cost of a fixed-interest loan.

34. Vemo’s Comparison Tools estimate the cost of an ISA by estimating first the borrower’s starting income and then estimating their income throughout the repayment period by applying an assumed rate of income growth. The Comparison Tools then apply the borrower’s income-share percentage to these figures to determine the total anticipated repayment.

35. In order to provide a reasonable and accurate estimate of an ISA’s repayment cost, it is critical to use the best available data to estimate the key variables: (a) the borrower’s likely starting income, and (b) expected income growth over the repayment period. Vemo’s Comparison Tools understate the costs of its ISAs by deceptively manipulating both of these variables.

36. First, Vemo’s estimated “starting salary” for many borrowers appears to be derived from outdated and generalized data that, for many students, results in lower starting income figures than more recent, school-specific data suggests.

37. Second, Vemo’s Comparison Tools misrepresent the manner in which they calculate students’ expected income growth, resulting in less income growth — and lower projected ISA payments — than the student would expect to realize if Vemo calculated income growth as it represents to students.

1. Vemo’s Comparison Tools Use Inaccurate and Misleading Estimates of Borrowers’ Starting Income.

38. As explained above, ISA monthly payments are calculated as a percentage of the borrower’s income. Therefore, any estimate of the cost of an ISA depends on a reasonable and accurate estimate of the borrower’s income.

39. Vemo’s Comparison Tools automatically populate the student’s “starting salary” data field based on the major selected by the student. However, for many students, Vemo’s Comparison Tools underestimate the cost of their ISA by assuming a starting income lower than those actually observed for graduates at their schools. These artificially low starting incomes lead to lower modeled payments toward the ISA, thereby misrepresenting its expected costs and in many cases falsely presenting it as the least expensive financing option.

40. Vemo has an obligation to gather and present reasonable and accurate income information in its Comparison Tools. Other publicly accessible data sources provide more recent and accurate data, and Vemo’s choice to use general and outdated information that is more favorable to its ISA — while failing to disclose more recent, accurate, and specific information that reveals the cost of its ISAs are greater than other financial products — is deceptive.

a. Vemo’s Comparison Tool for Purdue University

41. The Comparison Tool that Vemo built for Purdue accomplishes this by

automatically assigning majors a “default” starting income for students in each major eligible for ISA participation. Purdue’s Comparison Tool does not identify the source for its self-populating, “default” starting incomes for the majors eligible for ISA participation. However, as demonstrated below, the “default” starting incomes in Vemo’s Comparison Tool routinely understate students’ expected starting incomes and therefore make ISAs appear less expensive.

42. For students who want to adjust the “default” starting income in the Comparison Tool, Purdue supplies a link for “Income by Major,” which consists primarily of a table derived from income data gathered by the U.S. Census Bureau in its American Community Survey for the years 2013-15.³⁸ The presentation and suggested use of this data is deceptive in several ways.

- a. First, the income data in this table does not appear to match all of the “default” starting incomes used in the Comparison Tool, such that Purdue’s ISA website provides students with internally inconsistent projections of their likely starting incomes and no explanation for the differences.
- b. Second, the table does not provide income data “by major” as its title suggests and as students looking for an estimate of incomes for their majors would expect. Instead, the table presents income data by “Major Category” so that students must make judgment calls to determine what data may be relevant to them.³⁹ Moreover, students who select the correct “Major Category” are presented with a figure that includes data from other majors, making it less helpful in estimating that student’s likely starting income.
- c. Third, the income data is outdated — rather than providing information about

³⁸ *Income by Major*, PURDUE UNIVERSITY, <https://www.purdue.edu/backaboiler/disclosure/income.html> (last accessed May 27, 2020).

³⁹ Purdue’s “Income by Major” page includes a link to the U.S. Census Bureau’s American Community Survey webpage but not to the data upon which it purports to rely or even to education and income data at all. *Id.* Thus, the link is of minimal, if any, help to most Purdue students seeking to determine the applicability and usefulness of the income data Purdue represents to them.

expected income for students graduating in 2020 or 2021, Purdue supplies students with data that is at least five years old.

- d. Fourth, the income data is not specific to Purdue graduates and instead presents income data for borrowers from all types of institutions all across the country.
 - e. Fifth, Purdue’s “Income by Major” webpage represents that “[f]or additional information about possible full-time salary outcomes after graduation for Purdue University students,” potential ISA borrowers should visit the Comparison Tool,⁴⁰ thereby reinforcing the misleading impression that the Comparison Tool is a reliable source for data on likely starting incomes.
43. Vemo’s, and Purdue’s, decision to present students with outdated and generalized Census Bureau data is contrary to representations on their own websites.
- a. Vemo’s website explains that schools should use ISAs to “Signal Value and Commitment to Outcomes.”⁴¹ But by referring students to generalized data across the U.S. population, schools send exactly the opposite message: that the expected financial return on a degree from Purdue is indistinguishable from the value offered by other colleges.
 - b. Purdue’s ISA “Application and Solicitation Disclosure” explicitly recognizes that numerous factors influence students’ expected starting incomes, explaining that “your earned income will depend on many factors, including your occupation, industry, and the area of the country in which you work.”⁴² However, “[f]or additional information about possible income outcomes after graduation,” Purdue directs students to “the separate ‘Earned Income of Employed Workers by

⁴⁰ *Id.*

⁴¹ VEMO EDUCATION, *supra* note 5.

⁴² PURDUE UNIVERSITY, *supra* note 30.

Undergraduate Major’ table at the end of this document.”⁴³ While that table is not included in the online version of Purdue’s ISA “Application and Solicitation Disclosure,” its title nearly matches that of the table found in Purdue’s “Income by Major” webpage displaying U.S. Census Bureau data, the URL for which contains the word “disclosure.”⁴⁴

44. In truth and in fact, the U.S. Department of Education and Purdue’s own website publish data that is both (a) more recent than the Census data used in Vemo’s Comparison Tool for Purdue and (b) specific to Purdue graduates.⁴⁵ These data indicate materially higher starting incomes than either the default starting income figures Vemo chose to use for its Comparison Tool or the U.S. Census Bureau data that Vemo and Purdue chose to present to students. Using more up-to-date, Purdue-specific data results in higher expected repayment costs than those indicated using Vemo’s selected “default” starting income information.

45. To take one example, Vemo’s Comparison Tool for Purdue stated that an Accounting major graduating in February of 2020 would have an “expected starting income” of

⁴³ *Id.*

⁴⁴ See PURDUE UNIVERSITY, *supra* note 38. Although the “Notes” to this table indicate that “additional information about possible full-time salary outcomes after graduation for Purdue University students” is available through the Purdue Center for Career Opportunities, students are unlikely to see the “Notes” due to their location at the bottom of the webpage. Instead, students are more likely to locate their major, or major category, in the table and look no further. Students are also unlikely to consult with the Purdue Center for Career Opportunities because the same “Notes” disclosure also deceptively directs students to the Comparison Tool for the same information — despite the fact that the Comparison Tool does not use or provide Purdue-specific starting income information. Students would have no reason to suspect that the income data used in the Comparison Tool on Purdue’s website is different the income data on any other part of Purdue’s website, including the Purdue Center for Career Opportunities.

⁴⁵ The Century Foundation publicly pointed out this issue last year. Jen Mishory, *Private ISA Student Loans Highlight Consumer Protection Challenges*, THE CENTURY FOUNDATION (Aug. 22, 2019), <https://tcf.org/content/commentary/private-isa-student-loans-highlight-consumer-protection-challenges/>. In the seven months since that publication, Vemo and Purdue have failed to correct the Comparison Tool’s default starting income assumptions or even explain the discrepancy on their ISA website so that prospective ISA borrowers can better assess the potential cost.

\$49,000. *See* Exhibit 7. Using this as its starting point, the Comparison Tool represented that students financing \$10,000 through the ISA would repay \$15,036. *See* Exhibit 8. The Comparison Tool therefore presented the ISA as a less expensive financing option than a Parent PLUS Loan. But as demonstrated below, more recent and school-specific data indicates that an ISA is likely to be more expensive.

i. The U.S. Department of Education’s College Scorecard

46. The College Scorecard is an online tool and associated dataset provided by the U.S. Department of Education that “highlights key indicators about the cost and value” of various institutions of higher education in the United States, including data on the income of graduates from specific schools and areas of study within those schools.⁴⁶ This dataset, based on program-specific information reported to the Department by Title IV-eligible institutions, was updated to include 2017 income data from the 2015-2016 graduation cohort and includes “earnings after a longer time period” than other datasets.⁴⁷

47. The U.S. Department of Education’s most recent College Scorecard represents that one year after graduation Accounting majors earning a bachelor’s degree at Purdue’s main campus reported a median annual income of \$56,300. *See* Exhibit 9.

48. Using this accurate and up-to-date data to model expected ISA repayment costs makes a material difference. For example, when a student substitutes the College Scorecard’s median starting earnings for Purdue Accounting graduates for the lower figure used by Vemo, Purdue’s Comparison Tool estimates the cost of the same accounting major’s \$10,000 ISA as \$17,276. *See* Exhibit 10. This figure is \$2,240 more than the repayment figure generated using the

⁴⁶ Press Release, U.S. DEPT. OF EDUC, *Education Department Releases College Scorecard to Help Students Choose Best College for Them* (Feb. 13, 2013), available at <https://www.ed.gov/news/press-releases/education-department-releases-college-scorecard-help-students-choose-best-college-them>.

⁴⁷ Jonathan Rothwell, *Understanding the College Scorecard*, THE BROOKINGS INSTITUTION (Sep. 28, 2015), <https://www.brookings.edu/opinions/understanding-the-college-scorecard/>.

falsely understated starting income. This difference is material because \$2,240 is a significant amount of money, and it represents repayment costs approximately 14.9% higher than the ISA repayment cost calculated using the \$49,000 starting income the Comparison Tool provided as a default (\$15,036). The difference is also material because Purdue's Repayment calculator falsely represents the ISA as the less expensive financing option, when in fact using the more accurate College Scorecard income data reveals that a Parent PLUS Loan is projected to be less expensive than the ISA even before adjusting the Comparison Tool's PLUS Loan repayment estimate to eliminate its separate, false assumptions.

iii. Purdue's Own Website

49. Purdue's own website for Accounting majors touts an "average starting salary" for undergraduate Accounting majors and Certificate of Advanced Accountancy students of \$54,492, with an "average bonus" of \$3,448 for those receiving a bonus.⁴⁸ These figures are roughly in line with the \$55,000 median income that Purdue's Center for Career Opportunities reported for Accounting graduates in its May 2018 graduating class.⁴⁹

50. For Accounting majors graduating in June of 2020 who do not expect to receive a bonus, using a starting income of \$54,492 results in total expected ISA repayment costs of \$16,721. *See Exhibit 11.* This repayment cost is \$1,685 more, or 11.2% higher, than the repayment cost projected using the "default" starting income provided by Vemo's Comparison Tool. *See Exhibit 8.* For students who do expect to receive a bonus, the difference is even more stark: using a starting income of \$57,940 results in total expected ISA repayment costs of \$17,779, which is \$2,743 more, or 18.2% higher, than the "default" figure provided by Vemo's Comparison Tool. *See Exhibit 12.*

⁴⁸ *Careers in Accounting*, PURDUE UNIVERSITY, <https://krannert.purdue.edu/undergraduate/majors/accounting/careers.php> (last accessed May 27, 2020).

⁴⁹ *See Purdue University Salary Survey May 2018 Bachelor and Professional Degrees*, PURDUE UNIVERSITY, https://www.cco.purdue.edu/Files/Uploaded/May2018_salary%20report_new.pdf. Additional data available for download at <https://www.cco.purdue.edu/Alumni/AlumniStartingSalaries>.

Again, these differences are material for both of the reasons discussed above — these sums are significant amounts of money for most consumers, and the difference means that Parent PLUS Loan is projected to be less expensive than the ISA.

51. Unless Vemo and Purdue expect ISA borrowers to systematically earn less than the median starting income for their major,⁵⁰ there is no justification for Vemo to use lower default starting income figures in its Comparison Tool while Purdue simultaneously reports to the U.S. Department of Education and advertises to its own students that recent starting salaries for its graduating cohorts were at least 10% higher.⁵¹ The default starting incomes used in Vemo’s Comparison Tools appear to be unsubstantiated. Moreover, by using less accurate information that results in lower estimated costs of repaying an ISA, Vemo and the institutional clients for which it builds its Comparison Tools deceive consumers about the costs and benefits of ISAs.

b. Vemo’s Comparison Tool for the University of Utah

52. The University of Utah’s Comparison tool presents some borrowers with similarly inaccurate starting income figures that skew the estimated cost of its ISA.

53. Rather than differentiating between each major for which an ISA is offered, the University of Utah’s Comparison Tool assigned all majors one of three starting incomes:⁵²

- a. The University of Utah’s Comparison Tool assigned starting incomes of \$42,018 to the following majors (“Group A”): Anthropology; Art; Biology; Chemistry; Communication; Elementary Education; Health Promotion and Education; Health, Society and Policy; International Studies; Kinesiology;

⁵⁰ If Vemo and/or Purdue has reason to believe this, it should disclose that information to potential ISA borrowers.

⁵¹ Even if Vemo and Purdue wanted to provide students with ISA repayment costs across a variety of employment and income projections, it would be a simple matter to program the Comparison Tool to provide ISA repayment costs for the 25th, 50th, and 75th percentile starting incomes for the student’s selected major.

⁵² As discussed below, these “buckets” of starting income have since been updated, but remain inaccurate and deceptive. *See infra* paragraph 56.

Multi-Disciplinary Design; Parks, Recreation, and Tourism; Political Science; Psychology; Sociology; Special Education; and Urban Ecology.

- b. The University of Utah's Comparison Tool assigned starting incomes of \$54,430 to the following majors ("Group B"): Accounting; Business Administration; Economics; Finance; Information Systems; Management; Mathematics; Medical Library Science; Nursing; Operations and Supply Chain; and Physics and Astronomy.
- c. The University of Utah's Comparison Tool assigned starting incomes of \$68,372 to the following majors ("Group C"): Biomedical Engineering; Chemical Engineering; Civil and Environmental Engineering; Computer Engineering; Computer Science; Construction Engineering; Data Science; Electrical Engineering; Games; Materials Science and Engineering; and Mechanical Engineering.

54. Like Purdue's Vemo-built Comparison Tool, the University of Utah's Comparison Tool did not explain the source for its default starting income assumptions. For many of the specific majors included in these broad categories, the estimated starting incomes were significantly below the starting incomes for University of Utah graduates in the U.S. Department of Education's College Scorecard figures. As a result, for students with these majors, the Comparison Tool's estimates provided misleading estimates of the ISA's cost and relative preferability when compared with other financing options.

55. For example, Vemo's Comparison Tool assumed that a Finance major graduating from the University of Utah in May of 2020 could expect a starting income of \$54,430 and that they will consequently pay \$14,580 over the life of a \$10,000 ISA. *See* Exhibit 13, Exhibit 14. This made the ISA seem preferable to a Parent PLUS Loan, which was represented as costing \$15,727. *See* Exhibit 15. However, data from the College Scorecard indicate that median earnings

for recent Finance majors graduating from the University of Utah were \$63,400. *See* Exhibit 16. Using that starting salary, Vemo’s Comparison Tool for the University of Utah estimated that an ISA for \$10,000 would cost the borrower \$16,983. *See* Exhibit 17.⁵³ In turn, this would make the ISA almost 8% *more* costly than the depicted PLUS Loan.

56. In 2020, Vemo’s Comparison Tool for the University of Utah was updated. With the expansion of ISA eligibility to all majors, the University of Utah’s Comparison tool added additional “buckets” for which groups of majors are all assigned the same starting salaries. However, the Comparison Tool still assigns starting incomes for numerous majors that are materially below those reported in the University of Utah’s College Scorecard. For example, the Comparison Tool assigns Computer Science majors a starting income of \$63,357, while the College Scorecard reports a median starting income of \$73,900; the Comparison Tool assigns Chemical Engineering majors a starting income of \$54,750, while the College Scorecard reports a median starting income of \$64,800. *See* Exhibit 18, Exhibit 19, Exhibit 20. These \$10,000-plus differences in starting salary have a significant impact on the projected repayment costs of the University of Utah’s ISA.

57. However, misleading underestimations of students’ starting incomes are only the first method by which Vemo’s Comparison Tool understates the likely repayment cost of ISAs.

2. Vemo’s Comparison Tools Misleadingly Promote ISAs by Misrepresenting the Manner in which They Calculate Borrowers’ Estimated Income Growth.

58. The cost of an ISA is determined not only by the borrower’s starting income but by their income over the agreement’s entire repayment period. For most borrowers, income is expected to increase over time as they gain experience, earn raises and promotions, and receive

⁵³ Vemo’s Comparison Tool generated this estimate using the income growth methodology described *infra* at paragraph 61. The Comparison Tool used for the University of Utah’s ISA has changed since this estimate was generated, but remains deceptive for the reasons described below.

cost-of-living wage adjustments. As a borrower's income grows, the amount they pay monthly toward their ISA increases as well. And because a borrower's income is expected to grow over time, their monthly ISA payments made in later years are usually larger than those made at the start of repayment. Thus, accounting for income growth is a key component of any estimate of borrowers' ISA repayment costs.

59. However, Vemo's Comparison Tools misrepresent the method by which they calculate projected income growth in a way that deceptively understates that income growth and therefore borrowers' anticipated repayment amount.

a. Vemo's original Comparison Tools misrepresented the method by which they calculated students' estimated income growth.

60. Prior to an update in the Spring of 2020, the Vemo-built Comparison Tools used by the University of Utah and Purdue represented that they estimated the borrowers' future income by applying a constant *rate* of income growth year-to-year. For example, the University of Utah's Comparison Tool represented that its "Income Expectations" are calculated "[a]ssuming that income grows at 4.2% per year on average...." *See* Exhibit 21. And as recently as January of 2020, Purdue's Comparison Tool represented 3.8% income growth for certain majors. *See* Exhibit 22.⁵⁴

61. In truth and in fact, the University of Utah's Vemo-built Comparison Tools did not apply an average 4.2% annual income growth rate. Instead, Vemo simply added a constant *dollar* amount in income growth each year. That constant dollar amount was calculated by multiplying the represented rate of income growth — for example, 4.2% — by the borrower's projected income in their first year after graduation (that is, when their income is smallest). But this is an accurate way to calculate income growth of 4.2% for between year one and year two only. To calculate a

⁵⁴ Purdue's Comparison Tool did not always state an assumed rate of income growth but instead sometimes represented that "salary increases follow the typical patterns of Purdue graduates and non-graduates." Exhibit 23. Purdue did not reveal how it calculated the rate of income growth, which made it impossible for potential ISA borrowers to determine whether the Comparison Tool's estimates are reasonable.

4.2% increase in income from year two to year three, one cannot simply add that same dollar amount. Instead, one must multiply the (increased) year two earning figure by 4.2%. However, Vemo did not design its Comparison Tool to make this calculation.

62. For example, the University of Utah's Comparison Tool assumed a starting salary for an Elementary Education major slated to graduate in December 2019 as \$42,018 and represented that the income growth projections upon which it calculated future ISA payments is "4.2% per year on average." *See* Exhibit 21. The Comparison Tool provided its calculations of income growth, which demonstrate that its representation that the cost of its ISA is calculated using average annual income growth of 4.2% was false.

- a. Moving from year one to year two of repayment, the borrower's income as modeled by the Comparison Tool grew (as represented) at 4.2%, for an increase of \$1,764. *See* Exhibit 24.
- b. Moving from year two to year three of repayment the borrower's income as modeled in the Comparison Tool grew by another \$1,764. However, that dollar figure represents an increase of 4.03% over the borrower's year two earnings. *See* Exhibit 24.
- c. In each successive year, the Comparison Tool added an additional \$1,764 to the previous year's compensation, which resulted in decreasing rates of income growth. In the final year of anticipated repayment under the ISA, the Comparison Tool modeled income growth of only 3.14%. *See* Exhibit 24.
- d. The borrower's average income growth rate, based on the data generated by the Comparison Tool, was 3.57%, not the 4.2% as represented. *See* Exhibit 24.

63. The University of Utah's Comparison Tool, using its flawed income growth

calculations, represented repayment of \$15,230 on a \$10,000 ISA. *See* Exhibit 25. However, when income growth was calculated as represented by the Comparison Tool, the borrower’s estimated repayment climbed to \$15,566. *See* Exhibit 26.

64. Vemo’s years-long failure to develop a Comparison Tool capable of making this simple calculation raises serious questions about the statements through which it markets itself to universities and vocational schools, including its representations that the ISAs it designs, implements, and manages for its institutional clients “are supported by a team with deep education and financial expertise” that employ “leading edge technology.”⁵⁵ Because the University of Utah’s Comparison Tool assigned all majors one of three incomes, it is possible to observe the effect of the income growth misrepresentation on different majors. ISA borrowers in Group A above must make 127 monthly payments — more than ten years’ worth — to satisfy their obligations, while those in Group B must make 98 monthly payments, and those in Group C must make only 79. Because of the difference in repayment periods, Vemo’s misrepresentations concerning its calculation of income growth may have had the most profound effect on those students with the lowest assumed starting incomes — i.e., those in Group A, whose incomes and ISA costs would see more compound growth over the extended repayment period if calculated in accordance with the Comparison Tool’s representations. Thus, while correcting Vemo’s misrepresentation would result in all students being projected to pay more than the Comparison Tool projects, those most affected by the misrepresentation could be students projected to make the least amount of money.

b. Vemo’s Updated Comparison Tools

65. The University of Utah’s Comparison Tool was altered in 2020 as the school expanded its ISA offerings across all majors. Currently, the Comparison Tool represents that it

⁵⁵ *Enrollment Management Solution Gallery*, VEMO EDUCATION, <http://vemoeducation.com/strategic-enrollment-success-solution/> (last accessed May 27, 2020).

reflects the earnings expectations of students by rising class level and thus reflects a blend of graduates and non-graduates – with non-graduates typically earning less than their graduate counterparts – and a blend of those who stay within major and those who change major. This tool also reflects not just full-time workers but the blend of full-time, part-time, and other employment statuses that workers can have. Therefore, the blended earnings below will typically be less than the earnings of graduates who stay in major and are working full time. *See Exhibit 27.*

66. The University of Utah Comparison Tool provides a starting income and presents a graph of projected income growth over time: “[a]ssuming salary increases follow the typical patterns of University of Utah graduates and non-graduates, the figure below illustrates the expected income for the first 20 years after leaving school.” *See Exhibit 28.*

67. For majors from Art History to Finance, the University of Utah’s Comparison Tool applies annual income growth rates of 9.7% (year 1 after graduation); 7.8% (year 2); 5.6% (year 3); 4.5% (year 4); 3.9% (year 5); 3.4% (year 6); 3.1% (year 7); 2.9% (year 8); 2.8% (year 9); 2.6% (year 10); 2.5% (year 11); 2.4% (year 12); 2.3% (year 13); and 2.3% (year 14). *See Exhibit 29, Exhibit 30.* Thus, the Comparison Tool predicts average annual income growth of 4% over 14 years.

68. Several aspects of the University of Utah’s Comparison Tool’s income growth estimates appear deceptive:

- a. First, the Comparison Tool’s application of the same income growth rates to all majors is a dubious assumption — there is no reason to believe, for example, that graduates with Art History degrees experience the same patterns of income growth as their counterparts with Finance or Computer Science degrees. On the contrary, a study by The Hamilton Project concluded that “[i]t is quite apparent that earnings differences across majors grow larger—or fan out—higher up in the earnings distributions.”⁵⁶

⁵⁶ Brad Hershbein and Melissa S. Kearney, *Major Decisions: What Graduates Earn Over Their Lifetimes*, THE HAMILTON PROJECT (Sept. 29, 2014), *available at*

- b. Second, the Comparison Tool’s explanation suggests that expected earnings are higher for those who remain in the same major. But there is no indication that changing majors is common for juniors and seniors, and the Comparison Tool’s assumption will not be true for students who change their major to earn a degree with higher projected earnings — for example, the Art History major (expected starting income of \$31,229) who changes their course of study and receives a degree in Computer Science (expected starting income of \$63,357).
- c. Third, the Comparison Tool underestimates many students’ future earnings by including “not just full-time workers but the blend of full-time, part-time, and other employment statuses that workers can have.” *See Exhibit 27.* The inclusion of part-time and/or underemployed workers is particularly problematic to the extent those workers earn less than the minimum income threshold established by the ISA contract (i.e., the earning level below which borrowers are not required to make payments on their ISAs).
- d. Fourth, the Comparison Tool underestimates graduates’ starting incomes and income-growth projections by “blending” in data from former students who did not graduate and who earn less money. The use of non-graduate incomes in these calculations results in lower income estimates than if only income data from graduates were used. This artificially low estimate works solely to students’ detriment when attempting to estimate repayment costs: non-completers are likely to pay less than the Comparison Tool estimates (such that the Comparison Tool’s portrayal of an ISA as the cheapest option, if correct, would remain true), while completers are likely to pay *more* than the Comparison Tool’s estimate (rendering it harmfully deceptive). The inclusion of non-graduate data is also unjustified for

https://www.hamiltonproject.org/papers/major_decisions_what_graduates_earn_over_their_lifetimes.

two reasons. First, non-completion rates for rising juniors and seniors who have selected a major studying at flagship public universities like the University of Utah — i.e., those eligible for the school’s ISA — are likely to be extremely low. Second, Vemo promotes its ISAs as a way for universities to eliminate the most common reason why students drop out of school: the unavailability of funding.⁵⁷ Thus, the juniors and seniors at the University of Utah who receive ISAs should be among the least likely students to drop out of school before receiving their degrees.

- e. Fifth, the Comparison Tool makes it impossible for students to determine the amounts by which the projected income for their major is understated — for the reasons described above — by concealing the methodology in which it incorporates income data from populations — such as non-graduates and part-time workers — who systemically earn less than the cohort that most ISA borrowers seek to join: graduates who work full-time. For example, the Comparison Tool “reflects a blend” of graduates and non-graduates, as well as full- and part-time workers. But the “blend” could be an average, a median, a weighted average (which could itself be calculated using different methodologies or data sets and could vary by major or degree),⁵⁸ or the result of some other function. With no explanation, students cannot understand, much less correct for, the ways in which the inclusion of non-graduates

⁵⁷ Vemo advertises its ISAs to universities as a way to “[i]mprove [r]etention,” asking “Why do students stop out and drop out? Identify retention inhibitors and provide targeted solutions that keep students in school.” VEMO EDUCATION, <https://vemoeducation.com/> (last accessed May 27, 2020). Educators report that when students drop out of college “overwhelmingly, the primary reason is financial.” See, e.g., Josh Moody, *How to Avoid Dropping Out of College*, U.S. NEWS & WORLD REPORT (Mar. 20, 2019), available at <https://www.usnews.com/education/best-colleges/articles/2019-03-20/dropping-out-of-college-why-students-do-so-and-how-to-avoid-it>.

⁵⁸ Data from the Federal Reserve Bank of New York indicates significantly differing unemployment and under-employment rates for various majors. See Fed. Reserve Bank of N.Y., *The Labor Market for Recent College Graduates* (Feb. 6, 2019), https://www.newyorkfed.org/research/college-labor-market/college-labor-market_compare-majors.html.

and part-time workers affect the estimates provided by the University of Utah's Comparison Tool.

69. Purdue's Comparison Tool currently states that it assumes "salary increases follow the typical patterns of Purdue graduates and non-graduates." *See* Exhibit 31. However, unlike the University of Utah Comparison Tool, the Purdue version continues to calculate income growth by adding the same fixed sum to the previous year's income. For example, an Agricultural Communication major graduating in June 2021 is projected to have a starting annual income of \$34,452 and experience an increase of \$1,728 (5%) the next year, \$1,716 (4.7%) the following year, and \$1,728 (4.6%) the following year, with annual increases in those two absolute dollar amounts (and decreasing percentages) thereafter. *See* Exhibit 32. It appears that Purdue's Comparison Tool calculates projected income growth for all majors in the same manner — i.e., by assuming 5% growth from year 1 to year 2, and then adding the same (or very similar) dollar figure each year thereafter.

70. Purdue's application of the same income growth projection model to all majors and its unexplained inclusion of non-graduate income data to model annual income growth in its Comparison Tool is deceptive for the same reason(s) described above with respect to the University of Utah's Comparison Tool.

3. Vemo's misrepresentations to students about the costs of an ISA undermine the very basis upon which it promotes ISAs to prospective institutional clients like Purdue and the University of Utah.

71. Vemo promotes its ISAs to prospective institutional clients like Purdue and the University of Utah as a way to signal the "value" of their educational programs, representing that "[i]nstitutions are using ISA programs to signal valuable outcomes that differentiate their programs and increase enrollment."⁵⁹ The "signal" works as follows: with conventional federal and private

⁵⁹ VEMO EDUCATION, *supra* note 2.

student loans, the university or vocational training school receives its tuition money up front and therefore has no direct, continuing financial interest in graduates' financial success. Conversely, where the school offers an ISA, students only repay the school in an amount based on their post-graduation financial success — linking the school's financial interests more closely with those of its students. By funding a portion of students' educations through an ISA, schools are therefore (implicitly) representing to students that the school believes the student will achieve financial success during the repayment term — and taking on a financial risk if they do not. Thus, Vemo argues that schools should offer ISAs to “Signal Value and Commitment to Outcomes.”⁶⁰

72. Vemo deceives borrowers through the use of Comparison Tools that promote ISAs to students over other financial products by systematically *understating* the monetary value of those schools' programs — the very value that ISAs supposedly “signal” — by artificially deflating projected starting salaries and misrepresenting income growth calculations.

G. The Combined Effects of Vemo's Misrepresentations Are Material to Students' Financial Decision-Making Processes.

1. Vemo's original Comparison Tool

73. As demonstrated above, each one of Vemo's misrepresentations is deceptive, and several are independently capable of changing the projected relative cost of an ISA and Parent PLUS Loan. However, the combined effects of Vemo's misrepresentations are even more misleading. To illustrate, we will re-visit the example of a Finance major graduating from the University of Utah in May of 2020 using the Comparison Tool as it existed prior to Vemo's changes in the spring of 2020.⁶¹

74. For this prospective ISA borrower, Utah's Comparison Tool represented that the ISA would cost \$14,580 over 98 months at a 2.8% annual share based on a starting income of \$54,430 and a 4.2% annual income growth rate. *See* Exhibit 14, Exhibit 33. Meanwhile, the

⁶⁰ VEMO EDUCATION, *supra* note 5.

⁶¹ *See supra* paragraphs 66 to 68.

Comparison Tool represented that a \$10,000 Parent PLUS Loan would cost \$15,727 based on Vemo's faulty assumptions. *See* Exhibit 15.

75. First, correcting Vemo's assumptions about in-school deferment, grace period, and capitalization reveals that the projected cost for the Parent PLUS Loan is \$14,603.⁶² *See* Exhibit 6.

76. Second, correcting Vemo's starting salary input and income growth calculations increases the projected cost of the ISA. Data from the College Scorecard indicate that recent Finance graduates from the University of Utah have a median income of \$63,400. *See* Exhibit 16. Using that starting income in Utah's Comparison Tool, the price of the ISA rises to \$16,983. *See* Exhibit 17. Additionally, if Vemo's represented average annual income growth rate of 4.2% is correctly applied, the ISA's cost rises to \$17,187. *See* Exhibit 34.

77. Accordingly, the combined effect of Vemo's misrepresentations created the misleading perception that Utah's ISA was likely to be \$1,147 (7%) less expensive than a Parent PLUS Loan, when in truth and in fact the ISA projects to be \$2,584 (18%) *more* expensive.

2. Vemo's updated Comparison Tool

78. Vemo's updated Comparison Tool for Purdue also improperly represents an ISA as a less expensive option than a Parent PLUS Loan in some circumstances. For example, a Mechanical Engineering major graduating in May 2021 who receives an ISA for \$10,000 would be required to pay back 2.96% of income for 92 months.

79. Vemo's Comparison Tool assumes that this student will have a starting income of \$56,623. Exhibit 35. Using that starting income in Purdue's Comparison Tool projects repayment costs for the ISA of \$15,001. Exhibit 36. This is \$726, or 4.8%, less than the Comparison Tool's flawed projected repayment cost for a Parent PLUS Loan (\$15,727).

80. However, the repayment cost for a Parent PLUS Loan for which no in-school

⁶² This figure uses Vemo's represented origination fee of \$442, which appears to be incorrect for the reasons explained *supra* note 30.

deferment is taken is actually \$14,601 for the reasons explained above.⁶³

81. Further, the College Scorecard states that the median annual salary for a new Mechanical Engineering graduate from Purdue is \$69,200. Exhibit 37.⁶⁴ Using this starting income in Purdue's Comparison Tool results in ISA repayment costs of \$18,332. Exhibit 38.

82. Accordingly, even without correcting for the deception in the Purdue Comparison Tool's income growth model, the combined effect of Vemo's misrepresentations is to create the misleading perception that its ISA is likely to be \$726 (4.8%) less expensive than a Parent PLUS Loan, when in truth and in fact the ISA projects to be \$3,731 (25.6%) *more* expensive.

**IV. VEMO'S MISREPRESENTATIONS IN PROMOTING INCOME SHARE
AGREEMENTS THROUGH COMPARISON TOOLS CONSTITUTE
DECEPTIVE PRACTICES UNDER SECTION 5 OF THE FEDERAL TRADE
COMMISSION ACT**

83. The FTC Act provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful." 15 U.S.C. § 45. The FTC will make a finding of deception if there has been a "representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."⁶⁵ Vemo's Comparison Tools satisfy each of the requirements.

84. First, there must be a representation, omission, or practice that is likely to mislead the consumer.⁶⁶ "When representations or sales practices are targeted to a specific audience, the Commission determines the effect of the practice on a reasonable member of that group."⁶⁷ ISAs like those offered at the University of Utah and Purdue are primarily marketed to undergraduate

⁶³ Note that this reflects Purdue's use of a \$442 origination fee. *See* Exhibit 36.

⁶⁴ *See supra* paragraphs 47 and 48.

⁶⁵ Fed. Trade Commission, FTC Policy Statement on Deception (1983), *available at* <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> [*hereinafter* FTC Deception Policy].

⁶⁶ *Id.*

⁶⁷ *Id.*

students, including those in their late teens and early twenties who have not had significant experience with financial products, much less the complex comparison shopping involved in selecting between ISAs and other options to finance their educations. The relevant inquiry for this factor is not whether the act or practice actually misled the consumer but rather whether it is likely to mislead.⁶⁸

85. Here, each of the misrepresentations within the Comparison Tools is likely to mislead consumers:

- a. **The Costs of a Parent PLUS Loan.** Consumers have no reason to suspect that the manner in which the Comparison Tools calculate the cost of a Parent PLUS Loan is incorrect, particularly where the data is presented through a school's financial aid office — ostensibly experts in federal student loans. Accordingly, consumers are likely to be deceived by Vemo's representation of the repayment cost on Parent PLUS Loans.
- b. **The Borrower's Expected Starting Income.** The Comparison Tools automatically populate a "starting salary" based on each borrower's major that, for many students, is significantly lower than the up-to-date, school-specific income data reported by the school to the U.S. Department of Education and in some cases advertised on the school's own website. In addition to being false projections, the Comparison Tool's default starting income assumptions, and therefore the ISA cost estimates based upon them, are unsubstantiated.⁶⁹ Again,

⁶⁸ *Id.*

⁶⁹ "Apart from disseminating false advertisements, businesses may be also liable under Section 5 for making representations without a reasonable basis." *F.T.C. v. DeVry Educ. Grp., Inc.*, CV-16-00579-MWF-SSX, 2016 WL 6821112, at *4 (C.D. Cal. May 9, 2016). *See also F.T.C. v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1067 (C.D. Cal. 2012) (holding that an infomercial of an investment coaching program guaranteeing that consumers would quickly earn back the cost of the program by making savvy business decisions was unsubstantiated). "For an advertiser to have had a 'reasonable basis' for a representation, it must have had some

students and parents have no reason to question that the data supplied through their school's financial aid office is outdated or inaccurate. Nor should students be expected or required to perform additional research to confirm whether or not their schools (and their schools' vetted and selected ISA providers) are providing them with the best information available to make crucial financial decisions.

- c. **The Calculation of Expected Income Growth.** Students have no reason to question whether Vemo's Comparison Tools calculated expected income growth as it represents. Moreover, even students who suspected Vemo's misrepresentations may lack the computational skills — or confidence in their own calculations in the face of Vemo's represented expertise and presentation of Vemo's calculations through their school's financial aid office — to confirm and quantify the misrepresentation. Following Vemo's changes to the Comparison Tools in the spring of 2020, the income growth projections underrepresented graduates' income growth prospects while also failing to disclose the amount by which they were doing so.

86. Second, the act or practice must be considered from the perspective of a reasonable consumer.⁷⁰ “The test is whether the consumer's interpretation or reaction is reasonable.”⁷¹ The FTC will look at the totality of the act or practice and ask questions such as “how clear is the representation? How conspicuous is any qualifying information? How important is the omitted information? Do other sources for the omitted information exist? How familiar is the public with the product or service?”⁷² Here, each of Vemo's misrepresentations is clear and involves either the

recognizable substantiation for the representation prior to making it in an advertisement.” *F.T.C. v. Direct Mktg. Concepts, Inc.*, 569 F.Supp.2d 285, 298 (D. Mass. 2008).

⁷⁰ FTC Deception Policy, *supra* note 67.

⁷¹ *Id.*

⁷² *Id.*

inputs for and methodology of its calculations in the Comparison Tools.

87. Finally, the representation, omission, or practice must be material.⁷³ Essentially, the information must be important to consumers. The relevant question is whether consumers would have chosen another product if the deception had not occurred.⁷⁴ Express claims will be presumed material.⁷⁵ Information has been found material where it concerns the cost of a product or service.⁷⁶ Indeed, for financial products like ISAs, cost is one of the most significant factors in consumer decision-making.

88. Vemo's Comparison Tools make specific, clear, and express representations intended for use in the student's financial decision-making process, specifically to allow students to compare the repayment costs of various education-financing options. As specific, express representations, they are deemed material. However, these express representations are material for additional independent reasons:

- a. First, the cost of a product — including financial products like ISAs and the alternatives presented in Vemo's Comparison Tools — is a material consideration for consumers.
- b. Second, Vemo's institutional clients explain that the Comparison Tools' results are valuable and important. For example, Purdue states that its Comparison Tool “allow[s] you to see how that funding would compare to a Federal Parent PLUS Loan and a Private Student Loan,” and “strongly urge[s] [students] to learn about the program and make comparisons to determine if this is a better option for you.”⁷⁷ Similarly, the University of Utah encourages students to use its Comparison Tool

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ PURDUE UNIVERSITY DIVISION OF FINANCIAL AID, *supra* note 35.

“to see how an ISA compares to other loan options”⁷⁸ and to “study this website and the comparison tool to determine what type of financial aid is best for them.”⁷⁹

The information presented by these Comparison Tools are therefore material to students.

- c. Third, the Comparison Tools are only relevant to students’ decision-making process if they (a) use accurate and up-to-date data as inputs for their calculations, and (b) calculate the cost of the various options in accordance with the relevant loan terms and their own representations. Conversely, a “comparison” based on either inaccurate data or faulty calculations is completely irrelevant to a borrower comparing financial products. A “comparison” that uses both inaccurate inputs and flawed calculations is doubly problematic. Accordingly, Vemo’s selection of inaccurate default “starting salary” data, nondisclosure and concealment of more accurate data, and miscalculation of the costs of a Parent PLUS Loan and students’ projected income growth are material.

89. As Vemo co-founder and CEO Tonio DeSorrento said, “strong consumer protections are needed,” and “[p]eople should be looking out for students so that they’re not taken advantage of.”⁸⁰ The undersigned organizations agree on that point. The harms of Vemo’s practices are within the scope of the FTC’s authority to enforce Section 5 of the FTC Act and Vemo should face FTC action for these violations.

V. VEMO’S MISREPRESENTATIONS CONSTITUTE CONSUMER HARM

90. Vemo’s Comparison Tools influence students to enter into multi-year obligations — in some instances more than a decade — that are often projected to be (and may in truth and in

⁷⁸ *Income Share Agreement Comparison Tool*, UNIVERSITY OF UTAH, <https://isa.utah.edu/comparison-tool/> (last accessed May 27, 2020).

⁷⁹ UNIVERSITY OF UTAH, *supra* note 13.

⁸⁰ *See Kreighbaum, supra* note 3.

fact prove to be) more expensive than represented and from which students have no reasonable way to extricate themselves.

91. Students who take out traditional student loans — whether federal or private — can pay less in interest by repaying their loans faster. For example, a student who takes out a traditional student loan and experiences financial success following graduation may pay down extra principal each month, thereby reducing the length of their loan and the total amount of interest that accrues and must be repaid.

92. Traditional student loan borrowers with good repayment histories may be able to refinance high-interest private student loans — Vemo’s Comparison Tools set the default private loan interest rate at 9% to 9.5% — into lower-interest loans, which will result in lower repayment costs over time than those estimated by the Comparison Tools.⁸¹

93. Conversely, an ISA borrower is locked into their ISA until they have either made the requisite monthly payments or paid the full amount of the “payment cap” designated in the agreement — an amount that is not discounted for early repayment. For example, sample disclosures for Purdue’s Vemo-run ISA explains that “[y]ou may extinguish your ISA before the Payment Term ends by paying: Payment Cap – payments already made + any outstanding fees.”⁸² Purdue’s “Sample Contract” provides a similar, though slightly longer explanation, and defines “Payment Cap” as “the maximum amount you will pay under this ISA, not including fees and collection costs.”⁸³

94. Purdue’s ISA includes a \$25,000 “Payment Cap” for an ISA providing \$10,000 in

⁸¹ Student loan borrowers exploring this option must proceed with caution, as some refinanced student loans include pre-payment penalties that limit the borrower’s ability to benefit from the first strategy discussed above — paying extra toward the loan’s principal each month to shorten their repayment term. In addition, student loan borrowers who refinance federal student loans into private student loans also lose protections available to federal student loan borrowers, including income-driven repayment plans.

⁸² *Back a Boiler, Final Disclosure Sample*, PURDUE UNIVERSITY

<https://www.purdue.edu/backaboiler/disclosure/final.html> (last accessed May 27, 2020).

⁸³ PURDUE UNIVERSITY, *supra* note 16.

educational funding.⁸⁴ However, this payment cap does little to prevent the ISA from costing more than the most onerous of financial products for students who experience significant financial success after graduation. For example, consider an English major at Purdue who received a \$10,000 Vemo-serviced ISA, and after graduation secures a job with a starting salary of \$80,000.⁸⁵ Assuming a 3.8% rate of income growth,⁸⁶ by paying the required monthly amount, the borrower would reach the \$25,000 payment cap after 84 payments. This is the equivalent of paying an APR of 20.5% on a \$10,000 loan. *See* Exhibit 39.

95. Even those experiencing less financial success may lose out on opportunities to pay off their student loans less expensively than the Comparison Tool predicts. For example, Parent PLUS Loan borrowers working full time for qualifying employers can consolidate their loans into a Direct Consolidation Loan and receive Public Service Loan Forgiveness after making 120 qualifying monthly payments on the Standard or Income-Contingent Repayment Plans.⁸⁷

VI. PRAYER FOR INVESTIGATION AND RELIEF

96. The undersigned parties request that the FTC investigate Vemo and enjoin its unfair and deceptive business practices. Specifically, the undersigned request that the FTC:

- a. Prohibit Vemo and all those acting in concert with it from making its Comparison Tools available to students unless and until it has presented an audit verifying all relevant inputs and calculations used in each of its Comparison Tools, conducted by one or more qualified, independent auditors with specialized experience in both

⁸⁴ PURDUE UNIVERSITY, *supra* note 30.

⁸⁵ This figure is just above the 90th percentile income for “English Literature and Rhetoric” majors provided by Purdue (and based on five-year-old data). *See* PURDUE UNIVERSITY, *supra* note 38.

⁸⁶ This is the annual income growth rate that Purdue’s Comparison Tool previously represented that it applied, *see* Exhibit 4, before either Vemo or Purdue stopped providing borrowers with the specifics of the Comparison Tool’s income growth assumptions. *See supra* note 54.

⁸⁷ *See Public Service Loan Forgiveness FAQ*, FEDERAL STUDENT AID, <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/questions> (last accessed May 27, 2020).

education-related financial products and the marketing of consumer financial products, retained by Vemo and acceptable to the FTC;

- b. Require Vemo to represent in any marketing materials presented to students the costs of comparison financial products, such as Parent PLUS Loans, accurately, including calculating those costs in accordance with actual loan terms as set by the U.S. Department of Education;
- c. Require Vemo to disclose and use the most up-to-date and accurate data concerning the average and median initial income for graduates with each of the majors for which ISAs are offered as the default starting income in its current and future ISA Comparison Tools and other estimates of ISA cost in any marketing materials presented to students;
- d. Require Vemo to calculate annual income growth in accordance with its representations made in its Comparison Tools and other marketing, promotional, and informational materials, including, if applicable, accurate calculation of annual income growth expressed as a percentage of income;
- e. If Vemo chooses to calculate income growth based on historic earnings growth of an institution's students for use in its Comparison Tools or in any other marketing materials presented to students, require Vemo to calculate annual income growth based on substantiated data relevant to graduates with degrees in the relevant major who are employed full time — excluding data from non-graduates and those working less than full time;
- f. Require Vemo and its institutional clients, in conjunction with any Comparison Tool, to disclose to potential borrowers the monthly income for the 25th, 50th, 75th, and top percentile of its current ISA borrowers for each major at the relevant institution for each cohort over the previous 12 months;

- g. Require all institutions using a Vemo-designed Comparison Tool incorporating some or all of the deceptive practices described above to offer affected ISA borrowers the opportunity to rescind their ISA agreements on equitable terms;
- h. Require all institutions using a Vemo-designed Comparison Tool incorporating a starting salary below the starting income data reported to the U.S. Department of Education or represented elsewhere on the institution’s website to reform their ISA contracts — either by reducing the percentage of income required or shortening the repayment period — such that the students with the median projected starting income would pay the amount projected by the Comparison Tool using its flawed and understated data;
- i. Order any and all appropriate consumer redress;
- j. Impose a civil penalty on Vemo and upon any of its institutional clients who knowingly, recklessly, or negligently participated in the deceptive practices described above; and
- k. Impose any other terms or requirement that the FTC deems just and equitable.

DATED: May 31, 2020

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