Student Borrower Protection Center
1025 Connecticut Avenue NW, 7th Floor
Washington, DC 20005

March 9, 2021

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the U.S. Department of Education ("ED"), 34 C.F.R. Part 5, the Student Borrower Protection Center ("SBPC") makes the following requests for records.

Background

Institutions of higher education, including those that receive federal funding through Title IV of the Higher Education Act, are authorized to engage in so-called "preferred lender arrangements" with private creditors.[1] These arrangements are "essentially agreements or understandings between lenders and post-secondary educational institutions in which the lender provides . . . [p]rivate [l]oans to students attending the school and the school recommends, promotes or endorses the lender's student loan products."[2] In part because of a long history of abuse in the private student loan space, including instances of "kickback" schemes between lenders and colleges with preferred lender arrangements,[3] Title IV schools with these arrangements are required to make various public disclosures. In particular, 20 U.S.C. 1019b(c)(2)[4] and its implementing regulation, 34 CFR § 601.20,[5] define as an eligibility requirement for federal student aid programs that institutions of higher education with any preferred lender arrangements submit to the Secretary of Education an "annual report" each year detailing the nature of and motivation behind these arrangements. Under the law, preferred lender arrangement annual reports must include "[a] detailed explanation of why such covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable," among various other requirements.[6] These reports are a key transparency measure that

[1] 20 U.S.C. § 1019(8).
[2] Am. Bar Assoc., Preferred Lender Arrangements, https://www.americanbar.org/groups/business_law/safeborrowing/student/lenders/ (last accessed Mar. 8, 2021)
[3] *See, e.g.*, Melissa McNamara, *Student Loans Target of Investigation*, CBS News (Mar. 16, 2007), https://www.cbsnews.com/news/student-loans-target-of-investigation/.
[4] 20 U.S.C. § 1019(c)(2).
[5] 34 CFR § 601.20.
[6] *Id*.

serve to protect borrowers against unscrupulous lenders and unfair agreements between schools and creditors.

Moreover, these reports are especially relevant in light of impending changes to the 90/10 rule.[7] This rule mandates that no more than 90 cents of every dollar that a Title IV school takes in as revenue can come from federal coffers, but the rule currently excludes various federal benefits available to servicemembers and veterans from being counted as federally sourced revenue.[8] As a result, every dollar of GI Bill benefits and Department of Defense Tuition Assistance that a for-profit college takes from a student currently allows that school to take in $9 *more* in federal student aid—a legal structure that "gives for-profit colleges an incentive to see service members as nothing more than dollar signs in uniform. . . ."[9] Legislation likely to be signed into law in the near future would end this loophole, finally requiring schools to count the receipt of borrowers' military benefits as federally sourced revenue and thereby diminishing institutions' ability to evade accountability.[10]

This is a welcome change, but it is possible that colleges may respond by pressuring students to take on additional private student loan debt to replace revenue from military benefits that would no longer be counted on the "10" side of the 90/10 rule. Such concerns are evidenced by a history of lawsuits in which notorious for-profit colleges used low-quality private student loans as a loss leader to bring the schools in compliance with 90/10—even when the schools likely knew that these private student loans could never be repaid.[11]

Request

As part of our work monitoring and investigating the private education finance space and compliance with the 90/10 rule,[12] we are interested in the annual reports described above and their contents. Accordingly, we request that the Department provide us with copies of all available preferred lender arrangement annual reports for the following institutions, which advertise the availability of credit from shadow student loan companies:[13]

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[7] American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021-2022), https://www.congress.gov/bill/117th-congress/house-bill/1319.

[8] *See* The Inst. for Coll. Access and Success, Q&A on the For-Profit College "90-10 Rule" (Jan. 25, 2016), https://ticas.org/wp-content/uploads/legacy-files/pub_files/90-10_qa_0.pdf (explaining that, for the purposes of the 90/10 rule's mandate that at least 10 percent of a school's revenue come from private sources, "GI Bill funds and Department of Defense (DoD) Tuition Assistance are counted as private dollars on the 10% side").

[9] *Id.*; Hollister K. Petraeus, *For-Profit Colleges, Vulnerable G.I.'s*, N.Y. Times (Sept. 21, 2011), https://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html.

[10] American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021-2022), https://www.congress.gov/bill/117th-congress/house-bill/1319.

[11] *See, e.g.*, Complaint at 10, Consumer Fin. Prot. Bureau v. Corinthian Colls., Inc., No. 14-4194, 2015 WL 10854380 (N.D. Ill. 2015) (stating "[r]egardless of whether students were able to repay the private student loans, Corinthian would profit from the increased availability of Title IV monies"); Complaint at 26, Consumer Fin. Prot. Bureau v. ITT Educ. Servs., Inc., 219 F.Supp.3d 878 (S.D. Ind. 2015) (No. 1:14-cv-292) (stating "[w]hile ITT remains profitable—it reaped approximately $59 million in net income during 2013—former ITT students, having been coerced by ITT into the ITT Private Loans, face a high likelihood of defaulting").

[12] *See* Shadow Student Debt, Student Borrower Prot. Ctr. (July 2020), https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf; Benjamin Roesch & Ben Kaufman, The CFPB Must Investigate Climb Credit and Protect Borrowers Across the Dangerous, High-Cost Shadow Student Debt Market, Student Borrower Prot. Ctr. (Oct. 21, 2020), https://protectborrowers.org/the-cfpb-must-investigate-climb-credit-and-protect-borrowers-across-the-dangerous-high-cost-shadow-student-debt-market/; Press Release, Student Borrower Prot. Ctr, PayPal's Partnerships With Over 150 For-Profit Schools Drive Students to Take on High-Cost Education Debt, Advocates Warn (Aug. 21, 2020) https://protectborrowers.org/150-2/.

[13] These institutions were selected after a review of school with public documentation noting the availability for their students of credit provided by one of the shadow student debt companies we have identified in our research. See [shadow student debt] id. From among schools advertising the availability of shadow student debt, we selected

Acaydia School of Aesthetics
American Institute-Clifton
Bellus Academy
Brittany Beauty Academy
Brookline College-Phoenix
Capri Cosmetology Learning Center (Nanuet)
Central Career Institute
Douglas J Aveda Institute (East Lansing)
Jean Madeline Aveda Institute
L'esprit Academy
Mandalyn Academy
Peloton College
Robert Fiance Beauty School (NJ)
Santa Barbara Business College-Bakersfield
Southern California Health Institute
Summit Salon Academy Kansas City
Summit Salon Academy-Gainesville
Tenaj Salon Institute
The College of Westchester
The Salon Professional Academy-Ft Myers
Vogue College of Cosmetology (San Antonio)

In light of the likely imminent changes mentioned above to the 90/10 rule and the possibility of consequent pressure on the private student loan market, please also provide all preferred lender arrangement annual reports available for the following institutions, which the Department identified as receiving more than 90 percent of revenues from federal funding when servicemembers' benefits are included:[14]

American National University
Aviation Institute of Maintenance-Dallas
Fortis College
Intellitec College-Colorado Springs
Intellitec College-Grand Junction
Mayfield College
Platt College
Tidewater Tech-Trades
University of Phoenix-Arizona
Western Technical College

representative schools based on publicly available metrics of student outcomes, including post-graduation incomes and typical debt loads, as made available through the Department of Education's College Scorecard. See U.S. Dep't of Educ., College Scorecard, https://collegescorecard.ed.gov.

[14] These institutions were selected based on publicly available information indicating that greater than 90 percent of their revenue came from federal sources when military benefits (including both GI Bill benefits and the VA and DOD Tuition Assistance program) are considered. See Press Release, U.S. Dep't of Educ., New Analysis Finds Many For-Profits Skirt Federal Funding Limits, https://www.ed.gov/news/press-releases/new-analysis-finds-many-profits-skirt-federal-funding-limits.

Finally, we would like to access any archived preferred lender arrangement annual reports for the following closed schools:

All schools owned by Career Education Corporation
All schools owned by Education Management Corporation
All schools owned by Anthem Education Group
Corinthian Colleges and any subsidiaries
ITT Tech and any subsidiaries
Westwood College

The SBPC does not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, the SBPC requests records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, and emails. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

The SBPC seeks all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records.

SBPC looks forward to working with you on this request within the statutorily provided timeframe.

Sincerely,

Ben Kaufman
Head of Investigations & Senior Policy Advisor
Student Borrower Protection Center