STUDENT BORROWER PROTECTION CENTER | Berkeley Law | Center for Consumer Law & Economic Justice

MEMORANDUM

DATE:	March 10, 2021
TO:	Interested Parties
FROM:	Marshal Lawler and Michelle Dold, Center for Consumer Law & Economic Justice, University of California, Berkeley, School of Law
RE:	For-Profit Schools as Covered Persons under the CFPA

I. Introduction

Predatory for-profit schools are a key driver of the student debt crisis. As this memo explains, the Consumer Financial Protection Act (CFPA) gives the Consumer Financial Protection Bureau (CFPB)[1] clear authority with respect to for-profit schools as providers of financial advisory services and as brokers of student loans. Given the scale of the financial distress that these institutions leave in their wake, the CFPB should quickly and vigorously utilize its authority to protect student borrowers from further abuses.

American borrowers owe an estimated $1.7 trillion in federal and private student loans, driven in part by for-profit schools and specialty lenders via predatory financial aid processes designed to unlock access to federal funds.[2, 3] For-profit schools entice students to enroll, and to take on the federal and private student loans necessary to finance steep tuition, with misleading advertising about the schools' accreditation status and about graduates' earning potential.[4] Financial aid officers then take over, rushing students through complex financial aid processes without providing adequate information while assuring students that the school is working in their interest.[5] With full knowledge that borrowers are likely to

[1] The California Department of Financial Protection and Innovation (DFPI) shares a definition set with the CFPB under the California Consumer Financial Protection Law. *See* Cal. Fin. Code § 90005. Consequently, an entity that qualifies as a covered person under the CFPB's authority will also be a covered person under DFPI. As this memo explains, for-profit schools are covered persons under the CFPB's authority. Thus, for-profit schools are also subject to DFPI's authority.

[2] *Consumer Credit – G.19*, Board of Governors of the Fed. Res. Sys., https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html (last updated Feb. 5, 2021).

[3] Deanne Loonin, Piling It On: The Growth of Proprietary School Loans and the Consequences for Students 1 (Nat'l Consumer Law Ctr., 2011).

[4] Complaint at ¶¶ 32–34, 40, 50, *Consumer Fin. Prot. Bureau v. ITT Educ. Servs., Inc,* 219 F. Supp. 3d 878 (S.D. Ind. 2015) (No. 14CV00292) [hereinafter "ITT Complaint"].

[5] *Id*. at ¶ 64.

default, these schools sign students up for high-cost loans with predatory terms such as forced arbitration and hair-trigger default clauses.[6] Financial aid officers often fill out forms on students' behalf, in some cases even fraudulently signing forms in the borrower's name.[7] Aggressive collections practices such as pulling students from classes and withholding transcripts and diplomas cap off the cycle of abuse.[8]

The consequences for student borrowers can be long-lasting. Saddled with excessive debt and low-value degrees, borrowers face incessant robocalling, poorly substantiated private loan debt suits, and negative credit reports that keep them in a state of financial insecurity.[9] Moreover, for-profit schools target low-income communities and communities of color. A report by the Center for Responsible Lending notes that people of color are disproportionately enrolled at for-profit schools and that these individuals are more likely to default on their loans and to face poor employment outcomes than their white peers.[10] For-profit schools also utilize aggressive debt collection practices, particularly against students of color. An analysis by the Student Borrower Protection Center found that, between 2015 and 2019, borrowers in majority-black zip codes faced a significantly higher volume of debt collection suits compared to borrowers in majority-white zip codes.[11]

The legal framework for the Consumer Financial Protection Bureau to crack down on predatory for-profit schools is clear. For-profit schools that lend directly to students through their own institutional loan programs undoubtedly provide a consumer financial product and are therefore "covered persons" under the CFPA.[12] Moreover, as this memo lays out, schools that provide financial advisory services or broker student loans during the financial aid process are also "covered persons" and are thus subject to the

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[6] Loonin, *supra* note 3 at 2.
[7] ITT Complaint *supra* note 4 at ¶¶ 72, 88.
[8] Student Borrower Prot. Ctr., Shadow Student Debt 5 (July 2020), https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf.
[9] Tamara Cesaretti, *Maryland Stands Up to Predatory Student Loan Lawsuit Machine Targeting Borrowers of Color*, Student Borrower Prot. Ctr. (Mar. 4, 2020), https://protectborrowers.org/maryland-stands-up-to-predatory-student-loan-lawsuit-machine-targeting-borrowers-of-color/; Loonin, *supra* note 3 at 19.
[10] Peter Smith & Leslie Parish, Do Students of Color Profit from for Profit College? 3 (Ctr. for Responsible Lending, 2020).
[11] Cesaretti, *supra* note 9.
[12] 12 U.S.C. § 5481(6)(A).

CFPB's authority.[13, 14] Allowing for-profit schools to continue taking advantage of vulnerable student borrowers with impunity is no longer an option. The CFPB has broad authority under the CFPA as it relates to for-profit schools, including the CFPA's ban on unfair, deceptive, or abusive acts and practices. The agency must fully utilize this authority to halt abuses by for-profit schools that violate the CFPA.

II. For-Profit Schools Provide a Consumer Financial Product or Service and are Covered Persons Under the CFPA.

An entity is a covered person under the CFPA and falls within the purview of the CFPB if it "engages in offering or providing a consumer financial product or service."[15] Under the CFPA, a "financial product or service" includes "providing financial advisory services . . . to consumers on individual financial matters,"[16] as well as "brokering" loans.[17] Thus, for-profit schools that provide financial advisory services to students or broker student loans are covered persons.

For-profit schools are providers of financial advisory services because they provide credit counseling and debt management services to students during the financial aid process. Additionally, for-profit schools act as brokers of student loans when they shepherd students through the financial aid process while receiving compensation or gain for their brokering services. Because either theory is sufficient, for-profit schools provide financial products or services and are covered persons under the CFPA.

A. For-profit schools that provide financial advisory services to students are covered persons under the CFPA.

For-profit schools that provide financial advisory services to their students by performing credit counseling and assisting with debt management during the financial aid process are covered persons under the CFPA. The CFPA defines the term "financial advisory services" to include "providing credit

[13] *Id*.
[14] The foregoing analysis considers one basis for the application of the CFPA to for-profit schools. The CFPB administers a wide range of federal consumer financial protection laws, many of which may apply to specific types of conduct by these schools. *See, e.g.* Stephen Hayes & Andrea Lowe, *Holding For-Profit Schools Accountable for Civil Rights Violations, Student Borrower Protection Ctr.* (Dec. 4, 2020), https://protectborrowers.org/combating-exploitative-education-holding-for-profit-schools-accountable-for-civil-rights-violations/.
[15] 12 U.S.C. § 5481(6)(A).
[16] *Id.* § 5481(15)(A)(viii).
[17] *Id.* § 5481(15)(A)(i).

counseling to any consumer" and "providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure."[18, 19] Schools that give advice and assistance to students seeking loans to pay for tuition provide financial advisory services because they are performing "credit counseling" and assisting students with "debt management."[20, 21] Using this reasoning, courts have already held that for-profit schools engage in financial advisory services.[22] The CFPB has authority over for-profit schools on that basis.

For example, in *CFPB v. ITT Educ. Servs., Inc.*, the Bureau alleged, and the district court concluded, that ITT Technical Institute engaged in financial advisory services because it offered financial guidance and assistance regarding loans and debt.[23, 24] The CFPB asserted that ITT offered advice to students regarding loans, filled out students' loan applications, and forwarded applications to the lenders.[25] ITT also counseled students on how to manage their existing debt to the school, channeling

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[18] 12 U.S.C. § 5481(15)(A)(viii).
[19] In *Consumer Fin. Prot. Bureau v. Access Funding LLC*., the court held that "financial advisory services" are not limited to credit counseling, debt management, and debt settlement. 270 F. Supp. 3d 831, 846 (D. Md. 2017). Those activities are an "illustrative, rather than exhaustive, list" of what qualifies as financial advisory services. *Id.*
[20] Under this broad definition, it is possible that *any* college or university that provides financial aid that can be characterized as "credit counseling" and "debt management" would be a covered person under the CFPA.
[21] Additionally, where student loan officers exercise professional judgment to deviate from federal loan guidelines, they are engaging even more directly in credit counseling and debt management, thus providing a financial product or service under the CFPA. Typically, when schools offer financial aid packages to an entering student, the student takes out the maximum loan amount allowed by the Higher Education Act (HEA). However, under 20 USC § 1087(tt), the HEA allows student loan officers to exercise professional judgment to increase students' loan packages under "special circumstances," which typically include extreme financial need. On January 29, 2021, the Department of Education's Office of Postsecondary Education issued guidance that it will not negatively evaluate schools' use of special circumstances authority in making eligibility determinations in the 2021-2022 period, giving schools license to exercise this authority in response to the COVID crisis. As additional sources of emergency financing are available, and as families are more likely to be in greater need of access to credit to pay for tuition, the practice of exercising special circumstance authority is likely to proliferate among loan officers, including those at for-profit schools. In such cases, the officers in question are providing an even more extensive financial advisory service under the CFPA. Dep't of Educ, Fed. Student Aid, *Update on the Use of "Professional Judgment by Financial Aid Administrators"* (Jan. 29, 201), https://ifap.ed.gov/dear-colleague-letters/GEN2102.
[22] *See* Consumer Fin. Prot. Bureau v. ITT Educ. Servs., Inc, 219 F. Supp. 3d 878, 910 (S.D. Ind. 2015); Consumer Fin. Prot. Bureau v. Corinthian Colleges, Inc., No. 14-cv-07194, 2015 WL 10854380 at *3 (N.D Ill. Oct. 27, 2015) [hereinafter "Corinthian Oct. 27, 2015 Order"].
[23] *ITT*, 219 F. Supp. 3d at 910.
[24] The CFPB also alleged that ITT specifically targeted low-income consumers, relying on the knowledge that these students would need to take out loans to finance ITT's high tuition. ITT Complaint *supra* note 4 at ¶ 3.
[25] *Id*. at ¶¶ 91–92, 122.

students into third-party private loan programs that the school helped to design and implement.[26, 27] The court determined that such activity, if proven, qualified as "credit counseling" and "assist[ing] a consumer with debt management."[28, 29] Consequently, the court held that ITT's activities qualified as financial advisory services, making ITT a covered person under the CFPA.

Similarly, in *CFPB v. Corinthian Colleges, Inc.*, the district court, accepting the CFPB's factual allegations as true, held that Corinthian Colleges provided financial advisory services to its students[30] because it advised them on paying tuition and acquiring loans.[31] Corinthian staff advised students on available public and private loan options and recommended that students take out loans from the private Genesis loan program, which Corinthian developed with a third-party lender.[32] Financial aid officers also assisted students in completing necessary application forms, including filling out the requested loan amounts and ensuring forms were delivered to the lender.[33] Based on these allegations, the court held that Corinthian provided financial advisory services under the CFPA and that Corinthian was, therefore, a covered person.

In short, both ITT and Corinthian "provid[ed] credit counseling" to their students and assisted with "debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure."[34] Other for-profit schools are likely engaged in similar practices and, if so, they are covered persons under the CFPA.

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[26] *Id.* at ¶¶ 110, 138–151.
[27] ITT's close involvement in the design of the private loan program was not a necessary ingredient in the court's finding that the school's consumer-facing acts constituted financial advisory services.
[28] 219 F. Supp. 3d at 910.
[29] The court further reasoned that the CFPA did not restrict the CFPB's regulatory reach to financial institutions, and that, therefore, an educational institution could engage in providing financial advisory services within the meaning of the statute. *Id.* at 911.
[30] Most of Corinthian's students were low-income. In 2012, the school reported that approximately 85% of its students had annual household incomes of less than $45,000. Further, a 2011 survey showed that 57% of Corinthian students had a household income of $19,000 or less and 35% of its students had a household income of less than $10,000. Complaint at ¶¶ 33, *Corinthian*, No. 14-cv-07194, 2015 WL 10854380 (N.D. Ill. Oct. 27, 2015) [hereinafter "Corinthian Complaint"].
[31] Corinthian Complaint, *supra* note 30, ¶¶ 27–29; Corinthian Oct. 27, 2015 Order, *supra* note 22 at *3.
[32] Corinthian Complaint, *supra* note 30, ¶¶ 6, 29, 91, 107, 108; Corinthian Oct. 27, 2015 Order, *supra* note 22.
[33] Corinthian Complaint, *supra* note 30, ¶ 109.
[34] 12 U.S.C. § 5481(15)(A)(viii).

B. For-profit schools are covered persons under the CFPA when they broker student loans.

In addition, for-profit schools are covered persons under the CFPA when they broker student loans—shepherding students through the loan application process while receiving indirect compensation or gain. Under the CFPA, a "financial product or service" includes "brokering" loans and "other extensions of credit."[35] Though neither the CFPA nor relevant case law explicitly defines the term "broker" in relation to student loans, other definitions of the term in the consumer credit context indicate that for-profit schools qualify as brokers under the CFPA when engaged in this conduct.

1. Under the CFPA, for-profit colleges are analogous to other brokers of consumer credit, like mortgage brokers.

Because for-profit schools intermediate between lenders and borrowers, their conduct aligns with the plain meaning of the term "broker." Courts typically interpret an undefined statutory term "in accord with its ordinary or natural meaning."[36] Black's Law Dictionary defines "broker" as an "agent who acts as an intermediary or negotiator, esp. between prospective buyers and sellers; a person employed to make bargains and contracts between other persons in matters of trade, commerce, or navigation."[37] For-profit colleges act as "intermediar[ies]" employed to make student loan contracts between students and lenders, clearly falling within this general definition.

Moreover, the legislative history of the CFPA demonstrates that Congress intended to give the CFPB broad regulatory oversight of all providers of consumer financial products or services, including student loan brokers. In the report of the Committee on Banking, Housing, and Urban Affairs to the full Senate recommending the CFPA's passage, co-sponsor Senator Chris Dodd noted that the CFPB's goal would be to "protect consumers from unfair, deceptive, and abusive" acts.[38] To do so, it would make and enforce rules "without regard to whether a mortgage, credit card, auto loan, or any other consumer financial product or service is sold by a bank, a credit union, a mortgage broker, an auto dealer, or any

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[35] 12 U.S.C. § 5481(15)(A)(i).
[36] Smith v. United States, 508 U.S. 223, 228 (1993).
[37] Black's Law Dictionary 219 (11th ed. 2019).
[38] S. Rep. No. 111-176, at 11 (2010).

other nondepository financial company."[39] The Committee contemplated that the Bureau would have broad authority over mortgages, credit cards, auto loans, or "any other" consumer financial product or service. Like mortgages, credit cards, and auto loans, student loans are extensions of consumer credit, and they were intended to be included within the CFPB's broad purview. While the CFPB was created in response to the financial and mortgage crisis of 2008, Congress knew that "creating an agency that only had the authority to address the problems of the past, such as mortgages, would be too short-sighted. Experience has shown that consumer protections must adapt to new practices and new industries."[40] Thus, the CFPB was created to be adaptable and proactive, responding to protect consumers from new and unforeseen abuses. It follows naturally that the CFPB should have authority over predatory brokers of student loans such as for-profit colleges.

Given that the Committee report explicitly identified mortgage brokering as being within the CFPB's ambit, and absent a federal law defining student loan brokering, courts should look to federal definitions of mortgage brokering to assess whether for-profit colleges act as brokers under the CFPA.[41] Under the Truth in Lending Act (TILA), for example, a mortgage broker is one "who, for direct or indirect compensation or gain, or in expectation" of such compensation or gain "takes a residential mortgage application"; "assists a consumer in obtaining or applying to obtain a residential mortgage loan"; or "offers or negotiates terms of a residential mortgage loan."[42] Likewise, under the Real Estate Settlement Procedures Act (RESPA), "mortgage broker" refers to a person who "renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a

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[39] *Id.*
[40] *Id.*
[41] Federal law also defines "broker" in the insurance and deposit contexts, though the mortgage loan context is most analogous to the student loan context because mortgages, like student loans, are credit transactions. The Federal Deposit Insurance Act refers to "deposit brokers" as brokers of bank deposit transactions at FDIC-insured institutions. 12 U.S.C.A. § 1831(f). Additionally, Title 31 of the Code of Federal Regulations refers to "insurance brokers" as brokers of insurance policies, annuity contracts, or other insurance products. 31 C.F.R. § 1025.100(f). In neither the deposit nor the insurance context is there any extension of credit. Mortgage brokers, on the other hand, assist borrowers in accessing credit, as do student loan brokers. Accordingly, of the available definitions of the term "broker" under federal law, the mortgage broker definition is most applicable to the student loan context.
[42] 15 U.S.C. § 1602(dd)(2).

federally related mortgage loan."[43] Under RESPA, origination services include "any service involved in the creation of a federally related mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions."[44, 45] Mortgage brokering, as a means of facilitating the extension of credit to consumers, is closely analogous to the arranging of student loans. Both mortgage and student loan brokers are meant to assist borrowers in obtaining consumer credit by surveying the market for loans that match the borrower's financing needs and by acting as an intermediary between lenders and borrowers. Thus, it is logical to apply federal definitions of mortgage brokering to define brokering in the student loan context.

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[43] 12 C.F.R. § 1024.2.

[44] *Id*.

[45] The district court in *ITT* inappropriately applied the Securities Exchange Act (SEA) definition of broker in dismissing the CFPB's allegation that ITT brokered loans to its students. The SEA defines a broker as "any person engaged in the business of effecting [securities] transactions . . . for the account of others." 15 USCS § 78c (4). Though the CFPA expressly incorporates that definition of broker in 12 U.S.C. § 5301(15)(A), it does so under the heading "Securities terms," plainly intending to apply that definition only in the securities, rather than consumer finance, context. The SEA definition notes that its definition applies only to "transactions" that are "in securities," indicating that Congress intended to limit this definition to brokers of securities. 15 U.S.C. § 78c(a)(4)(A) Moreover, the CFPA specifies that the Securities and Exchange Commission and Commodity Futures Trade Commission are the primary regulators for brokers operating in the securities industry, supporting the proposition that the SEA's definition of the term broker was reserved for the securities context. §5301(12)(B)(i); §5301(12)(C)(iii). The *ITT* court reasoned that "the CFPA's own definitions section makes reference to 'broker[s] or dealer[s] that [are] required to be registered under the Securities Exchange Act'—a context clue that, if anything, further suggests that the specialized, imported meaning applies. § 5481(21)(A)." Consumer Fin. Prot. Bureau v. ITT Educ. Servs., Inc., 219 F. Supp. 3d 878, 909 (S.D. Ind. 2015). However, this conclusion is erroneous. Securities constitute a specialized category of tradable financial instruments wholly distinct from other financial products. In *Reves v. Ernst & Young*, the U.S. Supreme Court set forth a list of financial instruments that are "obviously not securities" in that they fall outside the scope of Congress' intent in enacting the SEA—to regulate investments. 494 U.S. 56, 63 (1990). Included in that list of non-securities are "the note delivered in consumer financing, the note secured by a mortgage on a home... [and] the note evidencing a 'character' loan to a bank customer…." *Id*. at 65. The promissory note underpinning a student loan is unquestionably a note delivered in consumer financing. Like the home mortgages and personal loans described in Reves, student loans are not securities. *See id*.

Mortgages, on the other hand, are functionally equivalent to other consumer loans, such as student or auto loans, meant to finance the purchase of some product or service, though the purpose of the loan and underlying collateral may be different. Furthermore, the relevant section of the CFPA clarifies that its definitions apply "except as the context otherwise requires." 12 U.S.C. § 5301. This case presents just such a context. Student loans, as consumer finance products, clearly fall outside the realm of securities, making the securities broker definition inapposite. Accordingly, to understand whether for-profit schools act as brokers of student loans for the purpose of regulation under the CFPA, it is much more logical to borrow from the mortgage lending context than from the securities context.

Further, these federal laws are consistent with state laws defining loan brokering, and confirm that for-profit colleges are analogous to other brokers of consumer credit. For instance, the California Financing Law defines "broker" broadly as a person who engages in any of the following activities: (1) transmitting confidential data on a prospective borrower to the lender, (2) referring borrowers to the lender, (3) participating in any loan negotiation between borrower and lender, (4) advising or making recommendations to a prospective borrower about a loan, (5) preparing any loan documents, (6) communicating to a prospective borrower the lender's financing decisions, or (7) charging an application fee to a prospective borrower.[46] For-profit colleges are engaged in many such activities and would thus certainly qualify as brokers under the California definition.

2. **Using federal mortgage broker definitions for guidance, the CFPB may regulate for-profit colleges as brokers of student loans because they facilitate student loan transactions for compensation or gain.**

Applying established statutory frameworks governing mortgage brokers to the student loan context, the CFPB has authority with respect to for-profit colleges as brokers of student loans because the colleges (1) function as intermediaries between lenders and their students and (2) assist their students during the origination process.[47] Furthermore, for-profit schools receive indirect compensation or gain for their brokering activities because certain private student loans are used to finance tuition and to satisfy the Department of Education requirement's that for-profit schools receive at least ten percent of their revenue from non-federal sources, known as the "90-10 rule."[48, 49]

For example, ITT acted as a broker by assisting its students through the loan application process. First, ITT solicited students to apply for private loans through a third-party program.[50] Next, the school

[46] Cal. Fin. Code § 22004 (West 2019).
[47] For the purpose of this analysis, the nation's largest student lender, the U.S. Department of Education, may be considered a key party to the financial aid process, indistinguishable from a private-sector lender.
[48] Loonin, *supra* note 3 at 1.
[49] While the Higher Education Act prohibits schools receiving Title IV funding from providing direct incentive compensation to personnel, 20 U.S.C. § 1094(a)(20), indirect compensation in the form of facilitating enrollment and satisfying the 90-10 rule is the specific reason that for-profit schools engage in brokering. Some schools reap these indirect benefits in addition to the direct compensation they receive from operating their own institutional debt programs.
[50] ITT Complaint, *supra* note 4 at ¶¶ 8, 9, 85–87, 97, 138–42.

ran credit checks to determine students' eligibility for the program, then completed and submitted loan applications on students' behalf using its proprietary SmartForms system.[51] Finally, once the loan was approved, ITT informed students of the amount and terms of their new loans and the process by which the loan would be disbursed.[52] Throughout this process, ITT was the "sole conduit" through which a student could access the private loan program.[53]

In line with the TILA and RESPA broker definitions, ITT engaged in brokering activities for indirect compensation or gain because the school used the third-party loans as outside sources of payment that could be booked as income to improve its cash flow and the appearance of its financial statements.[54] ITT's third-party lender disbursed loans directly to the school and students could not use the funds for any purpose other than to cover tuition gaps or repay outstanding Temporary Credits to ITT.[55] These loans also allowed ITT to satisfy the 90-10 rule, so the school could continue to access federal financial aid funds.[56] Had ITT failed to meet this requirement, it would have lost the "overwhelming majority" of its revenue.[57, 58] Accordingly, ITT benefited, at least indirectly, from its brokering activities.

Likewise, Corinthian acted as a broker by serving as the intermediary between lenders and its students, in addition to assisting students in completing and submitting loan applications. Once a student entered his or her personal information, Corinthian's staff filled out the remaining fields, verified the information entered by the student, and submitted an application for a credit check on behalf of the student.[59] Staff also directed students to a "Preferred Lender List" for private loans, which Corinthian published on its websites.[60]

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[51] *Id*. ¶¶ 11, 100, 101, 116–18, 121; *id.* at ¶ 91.
[52] *Id.* at ¶¶ 122–24.
[53] *Id.* at ¶ 122.
[54] *Id.* at ¶ 98.
[55] *Id*. at ¶¶ 8, 9, 85-87, 97, 110, 122, 138–40.
[56] *Id.* at ¶ 97.
[57] *Id.* at ¶¶ 3,4.
[58] Loonin, *supra* note 3 at 8 (noting that many for-profit schools receive up to 93.1% of their revenue from federal sources).
[59] Corinthian Complaint, *supra* note 30 at ¶ 108.
[60] *Id*. at ¶ 109.

Similarly to ITT, Corinthian received compensation or gain from its brokering activities because revenue from private loans ensured that Corinthian's students would remain eligible for federal student loans. When Corinthian students took out private Genesis loans, those loans were to be paid directly to Corinthian, and Corinthian was obligated to purchase the loans from the lender immediately after origination.[61] Corinthian also urged students to take out these loans to ensure the school remained compliant with the 90-10 rule.[62] Like ITT, Corinthian depended on federal student loans for the vast majority of its revenue.[63] In short, every dollar of private loans that Corinthian convinced its students to borrow allowed it to receive up to nine additional dollars in federal loans for tuition.[64] Therefore, Corinthian received both direct and indirect financial gain from its brokering activities.

III. The CFPB Must Swiftly Use Its Authority Over For-Profit Schools to Address Their Unfair, Deceptive, and Abusive Acts and Practices.

Under the CFPA, the CFPB has authority over for-profit schools as providers of financial advisory services and as brokers of student loans. These institutions provide financial advisory services by counseling students on how to acquire student loans and manage existing debt. Further, for-profit schools act as brokers when functioning as intermediaries between student borrowers and lenders, soliciting students to apply for loans and shepherding them through the application process. Schools that perform loan brokering services do so for direct or indirect compensation or gain, because the loans are used to finance tuition payments and to establish eligibility for federal financial aid programs.

For-profit schools deploy deceptive sales tactics and unscrupulous collections practices that inflict widespread financial distress on vulnerable borrowers, particularly in low-income communities and communities of color. The CFPB has unique authority to prevent this predatory behavior by directly intervening against these institutions. In doing so, the agency will not only secure remedies for students harmed and injunctions preventing individual schools from continuing their bad behavior. It will also

[61] *Id.* at ¶ 8.
[62] *Id.* at ¶¶ 12, 36.
[63] *Id.* at ¶ 35.
[64] *Id.*

send a message to other schools that such predatory behavior will not be tolerated. Without the CFPB's action, these schools will continue to prey on vulnerable students. The CFPB has both the authority and the responsibility to protect these students, and it should do so as soon as possible.