



September 13, 2021

Samuel Levine
Acting Director
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, D.C. 20580

Re: Update on Income Share Agreements and the F.T.C.’s Holder Rule

Acting Director Levine,

Thank you for your continued interest in issues related to private student lending and consumer protection. In light of the enforcement action that the Consumer Financial Protection Bureau (CFPB) announced last week against the Income Share Agreement (ISA) lender Better Future Forward, Inc.,¹ we write to highlight the importance of immediate action to enforce the Federal Trade Commission’s Holder Rule, and to protect students—and to empower students to protect themselves—from fraud and deception.

As you may remember, we contacted your office in March regarding evidence that educational institutions, including many for-profit “coding bootcamps,” routinely omit language required by the FTC’s Holder Rule, 16 C.F.R. Part 433.² In particular, an investigation we conducted revealed that schools and affiliated lenders were routinely failing to include this language in ISAs issued to their students. That memo explained that ISAs issued to students by their schools are subject to the Holder Rule as “financed sales” because they fall within the definition of “credit sale” under the Truth in Lending Act (“TILA”) and Regulation Z.³ The same considerations dictate that ISAs issued to students by school-affiliated lenders are “purchase money loans” and therefore also subject to the Holder Rule.⁴ The CFPB’s action against Better Future Forward unequivocally established that ISAs are “credit” within the meaning of TILA and Regulation Z, and therefore removed any potential doubt that they are subject to the Holder Rule.

¹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-lender-for-misleading-borrowers-about-income-share-agreements/>.

² See https://protectborrowers.org/wp-content/uploads/2021/05/SBPC_Holder_Rule_Final.pdf.

³ *Id.* at 3-4.

⁴ *Id.* at 4-5.



Unfortunately, many student ISA borrowers urgently require the Holder Rule’s protections. We have previously reported to the FTC deceptive acts by Vemo Education, Inc., one of the earliest and most prominent industry participants, in the marketing of ISAs.⁵ In addition, many of the “coding bootcamps” that regularly finance their students’ educations through ISAs have been the subject of public reporting exposing unfair and deceptive practices ranging from failure to comply with basic state licensing and enrollment regulations, to advertising inflated job placement rates, to failing to deliver the promised educational services.⁶ Students who have been the subject of these practices should not be forced to continue paying their ISA obligations as a result of their schools’ (a) unlawful failure to include in those ISAs contractual language required by the Holder Rule, and (b) assignment of those ISAs to a third party.

The FTC has tools and authorities at its disposal under the Federal Trade Commission Act (FTC Act) to act on violations of the Holder Rule, including the prosecution of market participants across the lifecycle of an ISA for related violations of Section 5 of the FTC Act.⁷ We also urge you to collaborate with the CFPB and state law enforcement agencies and regulators to hold accountable the lenders that are in clear violation of the Holder Rule (as well as the ISA companies who facilitate these violations), which also violates federal and state consumer protection laws prohibiting unfair and deceptive acts and practices.⁸

Again, we appreciate your continued attention to this matter. As you no doubt agree, students deserve the ability to protect themselves from obligations incurred through fraud and deception, and the higher education system benefits when schools, creditors, and their assignees are required to follow the law. We look forward to any opportunity to discuss this matter further and to continue working with you and your office to protect students.

Sincerely,

Student Borrower Protection Center

⁵ See <https://protectborrowers.org/wp-content/uploads/2020/05/Vemo-Complaint.pdf>.

⁶ See https://protectborrowers.org/wp-content/uploads/2021/05/SBPC_Holder_Rule_Final.pdf at 7-10.

⁷ 15 U.S.C. § 45. For example, the Commission should consider whether it is an unfair practice for a service provider, on behalf of a lender, to routinely draft and facilitate the execution of private education loan contracts that omit language required by the F.T.C.’s Holder Rule.

⁸ See https://protectborrowers.org/wp-content/uploads/2021/05/SBPC_Holder_Rule_Final.pdf at 10-11.