STUDENT BORROWER PROTECTION CENTER

September 8, 2021

Hon. Michelle Cooper
Acting Assistant Secretary
Office of Postsecondary Education
Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Update on Income Share Agreements and Private Student Loan Borrower Protections

Secretary Cooper,

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 yesterday against the Income Share Agreement (ISA) lender Better Future Forward, Inc.,[1] we write to highlight the importance of immediate action to enforce existing consumer protections that empower students to safely navigate education financing markets.

As you may remember, we contacted your office in June regarding new evidence of widespread violations of key transparency measures and other safeguards set in place by Congress to govern partnerships between colleges and private creditors. In particular, an investigation we conducted revealed that schools and lenders were failing to meet key disclosure obligations related to statutorily defined "Preferred Lender Arrangements" (PLAs) they had entered into with private companies, breaching a clear ban on co-branding between lenders and schools, and putting borrowers at risk through a series of additional black-letter violations of the law.[2]

Of particular concern related to the findings of our June investigation are ISAs, an emerging and risky form of financing product that requires students to pledge a portion of their future income in exchange for an advance of money used to pay for college or vocational training.[3] As we wrote in June, companies marketing ISAs "have a well-documented history of deploying deceptive business practices, profiting off of disparate impacts that harm students of color, inserting illegal fees into their contracts, blocking borrowers from accessing their rights, and, most importantly,

[1] https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-lender-for-misleading-borrowers-about-income-share-agreements/
[2] https://protectborrowers.org/new-report-finds-public-universities-are-driving-students-toward-risky-private-student-loans/
[3] See generally https://protectborrowers.org/income-share-agreements-2/. While our research shows that ISA providers are clearly running afoul of requirements surrounding PLAs, it is important to note that these companies are not acting alone. In particular, as we highlighted in an April 22 letter to your staff, it appears that ED has historically failed to enforce key aspects of the disclosure and conduct requirements that govern PLAs under the law in the context of ISAs and beyond. For example, it appears that ED has not enforced the requirement under the Student Loan Sunshine Act that schools submit a report annually to ED outlining the nature of and rationale behind any PLAs they may be engaged in.

claiming that [ISAs] are not a loan or form of credit and therefore do not need to comply with key state and federal consumer protection laws."[4] Nevertheless, ISAs are available at a growing number of Title IV schools, all while schools and ISA providers flout laws and regulations governing private credit offerings at those institutions—including by clearly presenting ISAs as a co-branded product.[5]

In light of the CFPB's action yesterday, which affirmed that ISAs are a form of credit that falls within the ambit of existing consumer protection laws and dispatched spurious industry claims to the contrary, we urge you to take immediate steps to address ongoing violations of laws and regulations governing relationships between schools and companies offering private education credit. As outlined in our June report, these harmful violations include but are not limited to schools not featuring partner ISA lenders on their Preferred Lender Lists, failing to submit statutorily required annual reports to the Department detailing the rationale behind any PLAs they may have entered into, and improperly allowing for loan co-branding that "implies that the loan is offered or made by such institution [of higher education] or organization instead of the lender."[6]

Notably, as we outlined in a memo published last month as a follow-on to our June report, the Department has several tools and authorities at its disposal under the Higher Education Act to act on violations of restrictions around PLAs.[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 federal and state consumer protection laws.

Again, we appreciate your continued attention to this matter. As you no doubt agree, students deserve to pursue higher education while enjoying the benefits of the extensive disclosure requirements and other obligations that schools and creditors are required to adhere to under 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

CC:

Richard Cordray, Chief Operating Officer, Office of Federal Student Aid, U.S. Department of Education
Julie Morgan, Senior Advisor and Acting Under Secretary of Education, U.S. Department of Education

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[4] https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_OPM.pdf#page=13 (internal citations omitted)
[5] See, e.g., https://vemoeducation.com/higher-education-income-share-agreements/, https://mentorworks.com/top-schools-for-advanced-business-engineering-health-and-tech-careers/, https://studentfreedominitiative.org/schools/
[6] 20 U.S.C. § 1019a(2) (emphasis added); 34 C.F.R. § 601.12(a). More generally, see https://protectborrowers.org/wp-content/uploads/2021/08/Legal-Landscape-Private-Student-Lenders.pdf at 6 for a full set of responsibilities schools face related to PLAs.
[7] https://protectborrowers.org/legal-analysis-and-need-for-increased-enforcement-of-the-student-loan-sunshine-act/