



September 9, 2021

Hon. Michael Hsu  
Acting Comptroller  
Office of the Comptroller of the Currency  
400 7th Street SW  
Washington, DC 20219

Acting Comptroller Hsu,

Thank you for your continued interest in the substantial risks that third-party relationships pose for the financial system, nationally chartered banks, and consumers. We write today to highlight recent developments related to one variety of increasingly prevalent third-party relationship: those between banks and providers of income share agreements (ISAs). As we outlined in an April letter to you and your staff,<sup>1</sup> ISAs are an emerging but extremely 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.<sup>2</sup> Moreover, the ISA industry has historically centered its business model on the spurious claim that its product is not a loan or a form of credit.<sup>3</sup> Accordingly, national banks' entrance into the ISA space exposes these institutions to considerable reputational, legal, and prudential risks.

This week, the Consumer Financial Protection Bureau (CFPB) announced an enforcement action against the ISA provider Better Future Forward, alleging that the company "falsely represented that [its] ISAs are not loans, failed to provide disclosures required by federal law, and violated a prepayment penalty prohibition for private education loans."<sup>4</sup> Though Better Future Forward did not act in partnership with a national bank, we have previously identified identical conduct by ISA providers that do operate through national bank partnerships.<sup>5</sup> An example is the partnership we identified in our April letter between MentorWorks, a prominent ISA provider, and Blue Ridge Bank, a nationally chartered bank in Virginia that originates MentorWorks's ISAs. As part of this partnership, MentorWorks claims that ISAs under its branding are not loans.<sup>6</sup> The CFPB's action this week against Better Future Forward affirms that MentorWorks' assertion is false. More broadly, the CFPB's action shows that banks partnered with ISA providers are collaborating with firms that have historically denied that they have to comply with consumer protection statutes, have been caught violating those statutes,<sup>7</sup> and are now likely on the precipice of facing the consequences of their conduct.

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<sup>1</sup> [https://protectborrowers.org/wp-content/uploads/2021/04/Letter\\_MentorWorks\\_OCC.pdf](https://protectborrowers.org/wp-content/uploads/2021/04/Letter_MentorWorks_OCC.pdf)

<sup>2</sup> See generally <https://protectborrowers.org/income-share-agreements-2/>

<sup>3</sup> <https://protectborrowers.org/credit-by-any-other-name-how-federal-consumer-financial-law-governs-income-share-agreements/>

<sup>4</sup>

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

<sup>5</sup> [https://protectborrowers.org/wp-content/uploads/2021/04/Letter\\_MentorWorks\\_OCC.pdf](https://protectborrowers.org/wp-content/uploads/2021/04/Letter_MentorWorks_OCC.pdf)

<sup>6</sup> <https://mentorworks.com/income-share-agreements-program/> [<https://perma.cc/9CDJ-JTAP>]

<sup>7</sup> See generally <https://protectborrowers.org/income-share-agreements-2/>

With the CFPB's consent order in mind, we hope to draw attention once again to the substantial safety and soundness risks posed by national banks' creeping involvement in the ISA space. The CFPB's consent order is the first public federal enforcement action against an ISA provider, but it is unlikely to be the last. States have begun their own parallel wave of legal actions in the ISA market,<sup>8</sup> and the findings of various investigations we have conducted to date make clear that harmful and abusive conduct is endemic to the ISA space.<sup>9</sup> The question we raised in April of "whether ISAs are an appropriate product for any national bank to offer"<sup>10</sup> has never been more salient.<sup>11</sup>

We urge your immediate attention to this matter. If you have any questions, please contact Ben Kaufman ([ben@protectborrowers.org](mailto:ben@protectborrowers.org)), Head of Investigations.

Sincerely,

Student Borrower Protection Center

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<https://dfpi.ca.gov/2021/08/05/california-dfpi-enters-groundbreaking-consent-order-with-ny-based-income-share-agreements-service/>

<sup>9</sup> <https://protectborrowers.org/income-share-agreements-2/>

<sup>10</sup> [https://protectborrowers.org/wp-content/uploads/2021/04/Letter\\_MentorWorks\\_OCC.pdf](https://protectborrowers.org/wp-content/uploads/2021/04/Letter_MentorWorks_OCC.pdf) at 8.

<sup>11</sup> Though outside of the scope of this letter, a lingering question is whether it is appropriate to ever certify an ISA provider as a Community Development Financial Institution (CDFI), as MentorWorks was in February, 2021. Today's action by CFPB throws the contrast between the ISA industry's conduct and the pro-social goals of the CDFI fund into stark relief.