

March 31, 2022

Secretary Miguel Cardona
United States Department of Education
830 First Street, N.E.
Washington, D.C. 20002

Dear Secretary Cardona,

We write today to highlight troubling ongoing practices by a Title IV school that appear to violate provisions of the Higher Education Act (“HEA”) and otherwise to jeopardize the school’s Program Participation Agreement (“PPA”) with the Department. In particular, it appears that Purdue University has failed to comply with obligations that govern colleges’ relationships with private student lenders. In this case, Purdue appears to maintain an ongoing illegal business relationship with “Back a Boiler - ISA Fund, LLC” and “Back a Boiler - ISA Fund II, LLC.” These two Indiana corporations are involved in the extension of private student loans referred to as “income share agreements” (“ISAs”) to Purdue students through the school’s “Back-A-Boiler™ ISA” program.¹

Through the HEA and, by extension, Purdue’s PPA, the school is generally prohibited from co-branding private loan products with student lenders and is bound by substantial restrictions and disclosure obligations around so-called “preferred lender arrangements” (“PLAs”) between colleges and creditors. All available evidence indicates that Purdue has brazenly ignored these limits and responsibilities as part of a scheme to drive its students to take on risky, high-rate private student loans.

Earlier this month, the Department reminded Title IV schools that it expects them to follow all laws pertaining to their relations with private student loan companies, even when those firms’ products are stylized as ISAs.² Purdue’s ongoing lawlessness in the face of these clearly articulated expectations requires the Department to put this statement into action.

The Department’s Office of Federal Student Aid should condition Purdue’s continued participation in Title IV aid programs on the school’s abandonment of this risky and illegal lending scheme. In addition to halting the issuance of new private student loans, Purdue should be required to remediate its past violations by arranging for the cancellation of all unlawfully

¹ <https://www.purdue.edu/backaboiler/> [<https://perma.cc/D7KH-56WH>].

² <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-02/income-share-agreements-and-private-education-loan-requirements>.

originated loans and the refunding of any money paid by students under these agreements. If the private lenders that own these loans are unwilling to take these steps voluntarily, it is incumbent upon Purdue to use its own ample financial resources to secure this outcome on behalf of students harmed by its unlawful conduct.

Finally, it is notable that the structure of the private student loans delivered through the Back-A-Boiler program was designed by Vemo Education, Inc. (“Vemo”), a private company that specializes in creating and managing ISA programs.³ Vemo has previously been accused of a wide range of abuses including misrepresenting the cost of its ISA products,⁴ deceptively servicing and collecting on unenforceable debts,⁵ and engineering a predatory lending scheme that intentionally targeted veterans with high-cost loans.⁶ As part of any effort to address the serious violations of law outlined in this letter, it is incumbent on the Department to obtain and publish all documents pertaining to the financial relationship between Purdue and Vemo, and a complete list of all other Title IV schools engaged in similar arrangements.

The HEA and Title IV Schools’ PPAs Place Clear Restrictions Around Relationships Between Institutions of Higher Education and Private Creditors

Responding to well-publicized scandals involving kickbacks between schools and private student loan companies that aimed to drive students further into debt,⁷ Congress passed the Student Loan Sunshine Act (P.L. 110-315) (“the Act”) in 2008 as part of that year’s reauthorization (P.L. 110-315) of the HEA. Under the Act, institutions of higher education accessing Title IV aid must comply with a sweeping “code of conduct” related to private student loans. This code includes substantial limitations on, and disclosure obligations surrounding, their relationships with individual private lenders.⁸ In particular, the Act defines any “arrangement or agreement between a lender and a covered institution [of higher education] . . . under which a lender provides or otherwise issues education loans to the students attending such covered institution . . . [and where, in return, the school engages in] recommending, promoting, or endorsing the education loan products of the lender” as a “preferred lender arrangement.”⁹

³ <https://vemoeducation.com/purdue-university-case-study/> [<https://perma.cc/8H96-3B2Z>].

⁴ <https://protectborrowers.org/vemo-release/>.

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<https://protectborrowers.org/the-companies-enabling-isa-providers-illicit-activities-could-also-face-steep-legal-liability/>.

⁶ <https://protectborrowers.org/make-school-vemo-lawsuit/>.

⁷ See <https://www.wsj.com/articles/SB117573094292160341>,
<https://www.cbsnews.com/news/student-loans-target-of-investigation/>;
<https://www.nytimes.com/2007/03/23/us/23loans.html>.

⁸ <https://www.congress.gov/bill/110th-congress/house-bill/890#>.

⁹ 20 U.S.C. § 1019(8); 34 C.F.R. § 601.2(b).

The Act stipulates that schools with any PLAs must disclose to students several aspects of the loan products that their creditor partners in these arrangements offer, including “the potential range of rates of interest applicable” to their loans, the “fees or range of fees applicable” to these loans, any “payment deferral options,” and “an example of the total cost of the private education loan over the life of the loan,” among other facts and terms.¹⁰ Schools must also provide to the Department and make public an annual report regarding its PLAs, including, for each lender with which the school has a PLA, “a detailed explanation of why such covered institution . . . entered into a preferred lender arrangement with the lender” and why each preferred lender’s products are beneficial for students.¹¹ The Department has made clear that the notion of a PLA should be read broadly, existing regardless of whether the school and lender have “entered into a formal agreement”¹² or whether the lender is “aware of the preferred lender arrangement.”¹³

Further, the Act explicitly forbids schools from engaging in the co-branding of products offered by a preferred lender, including by prohibiting the use of “the name, emblem, mascot, or logo” of the school or “other words, pictures, or symbols readily identified with such institution or organization” in the lender’s marketing of private loans to students “in any way that implies that the loan is offered or made by such institution or organization instead of the lender.”¹⁴

Colleges’ PPAs involve an explicit commitment by the school to follow each of these legal obligations within a broader pledge to comply with all terms of the HEA as a precondition for access to Title IV aid.¹⁵

Purdue is Systematically Violating its Compliance Obligations Through its Back-A-Boiler Program

Purdue’s “Back-A-Boiler” program offers rising Sophomores, Juniors, and Seniors tuition financing of \$5,000 or more through an ISA.¹⁶ An ISA is a form of private student loan¹⁷ wherein

¹⁰ 20 U.S.C. § 1019a(a)(1)(B)(i); 15 U.S.C. §§ 1638(e)(1)(A), (F), (I), (K); 34 C.F.R. § 601.11(b)(1).

¹¹ 20 U.S.C. § 1019b(c)(2)(A)(ii); 34 C.F.R. § 601.20.

¹² Institution and Lender Requirements Relating to Education Loans, 74 Fed. Reg. 55628 (Oct. 28, 2009).

¹³ *Id.*

¹⁴ 20 U.S.C. § 1019a(a)(2); 34 C.F.R. § 601.12(a).

¹⁵ 34 C.F.R. § 668.14(b) (“By entering into a program participation agreement, an institution agrees that . . . It will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA . . .”).

¹⁶ <https://www.purdue.edu/backaboiler/FAQ/index.html>.

¹⁷ See

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-02/income-share-agreements-and-private-education-loan-requirements>,
<https://www.consumerfinance.gov/enforcement/actions/better-future-forward-inc/>,
<https://dfpi.ca.gov/2021/08/05/california-dfpi-enters-groundbreaking-consent-order-with-ny-based-income-share-agreements-servicer/>.

students pledge to pay a predetermined percent of their gross income each month during periods after graduation when their income exceeds a minimum “income threshold.”¹⁸ Students continue paying until the sooner of having made a predetermined maximum number of payments, having made payments cumulatively equal to a “maximum cap” of dollars paid, or having been in repayment for a length of time equal to a maximum “repayment window” (regardless of how many payments they have made or the cumulative amount they have paid over that period).¹⁹ Under the Back-A-Boiler ISA, borrowers’ monthly income share and length of repayment obligation vary based on their major, graduation date, and funding amount.²⁰

Purdue’s Back-A-Boiler ISAs are funded and owned by two private Indiana companies: “Back a Boiler - ISA Fund, LLC”²¹ and “Back a Boiler - ISA Fund II, LLC”²² (“the Companies”). These two firms respectively raised \$6.3 million and \$10.2 million through private securities offerings in 2016 and 2018 to fund ISA lending.²³ Purdue officials report that investors in these funds include large money managers, hedge funds, and wealthy individuals.²⁴ Indeed, Purdue’s Back-A-Boiler ISAs are not institutional loans made through the school or a form of grant aid—they are privately held and originated student debt.²⁵

Nevertheless, as the lending program’s name implies, Back-A-Boiler involves extensive co-branding between Purdue and the Companies. For example:

- The main webpage used to market the Companies’ Back-A-Boiler loans is hosted at a “purdue.edu” webdomain, with Purdue’s logo placed directly next to the header “Back a Boiler” on the top of the page.²⁶

¹⁸ See <https://protectborrowers.org/income-share-agreements-2/>.

¹⁹ *Id.*

²⁰ <https://www.purdue.edu/backaboiler/comparison/index.html>.

²¹ <https://sec.report/CIK/0001687532>.

²² <https://sec.report/CIK/0001752455>.

²³

<https://www.sec.gov/Archives/edgar/data/1687532/000168753216000001/0001687532-16-000001-index.htm>;

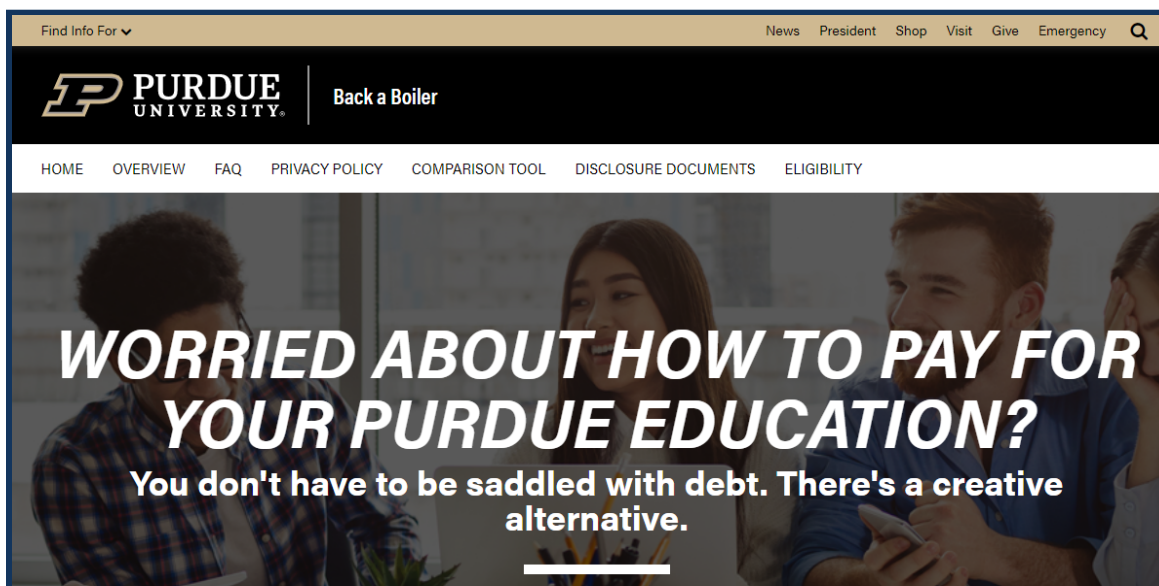
<https://www.sec.gov/Archives/edgar/data/1752455/000175245518000001/0001752455-18-000001-index.htm>.

²⁴

<https://www.purdue.edu/newsroom/releases/2018/Q4/purdue-research-foundation-raises-10.2-million-for-back-a-boiler-income-share-agreement-fund-ii.html>.

²⁵ Note that Purdue and/or the Companies appear to concede this in marketing materials for Back-A-Boiler, which state that the ISA is “not a grant or a *traditional* loan” (emphasis added). See <https://www.purdue.edu/backaboiler/overview/index.html> [<https://perma.cc/3UGP-YS3R>]. The use of the word “traditional” in this context can be read simply as an observation that the ISA involves income-contingent features that are generally different from the default repayment mechanism for fully amortizing private student loans, but that the ISA nevertheless remains a private student loan.

²⁶ <https://www.purdue.edu/backaboiler/> [<https://perma.cc/D7KH-56WH>].



Marketing text on this page draws a direct line between Purdue and the Companies' loans, reading: "Purdue's mission is to provide you with higher education at the highest proven value, with the goal to make you marketable as you enter the job market. The Back-A-Boiler™ Income Share Agreement is an innovative option to make your prestigious Purdue degree more affordable by banking on yourself. Managed by the Purdue Research Foundation, the Back-A-Boiler™ ISA is a contractual agreement in which you receive education funding in exchange for an agreed upon percentage of your post-graduation income over a defined number of years, with payments adjusted based on your salary."²⁷

- On an FAQ page presenting information for prospective Bank-A-Boiler ISA borrowers hosted on a "purdue.edu" webdomain, the Companies answer the question "**Q: How much funding is available for individual students?**" (emphasis in original) with advice that "Students should talk with a financial aid adviser or call the Purdue Division of Financial Aid at 765-494-5050 for more information."²⁸ Similarly, on the same page, the Companies answer the question "**Q: How can Purdue students apply for an ISA or get more information?**" (emphasis in original) by saying that students should "call the Purdue Division of Financial Aid at 765-494-5050."²⁹
- The sample ISA contract posted on the Back-A-Boiler landing page utilizes Purdue's university logo, refers borrowers to Purdue's Division of Financial Aid for questions, and

²⁷ *Id.*

²⁸ <https://www.purdue.edu/backaboiler/FAQ/index.html> [<https://perma.cc/4WHB-PASR>].

²⁹ *Id.*

defines “University” to mean only “Purdue University, its affiliates, successors and assigns” even though—in an apparent nod to the reality underlying the lending arrangement—the “FUNDER” on the contract is prominently labeled as “Back a Boiler – ISA Fund, LLC.”³⁰





INCOME SHARE AGREEMENT (ACADEMIC YEAR 2019-20)

PARTICIPANT: First and Last Name Street Name City, State Zip Code	FUNDER: Back a Boiler – ISA Fund, LLC 1281 Win Hentschel Blvd West Lafayette, IN 47906 (765) 588-5495	*** THIS IS NOT A LOAN OR CREDIT ***
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Participation Disclosure

It is clear that Purdue and the Companies are engaging in extensive co-branding as outlawed in the HEA.³¹ Moreover, to the extent that the Companies evidently lend ISAs to Purdue students and that Purdue clearly promotes and endorses the Companies’ products, the relationship between the school and these creditors plainly constitutes a PLA as defined under the law.³² However, the Companies are not present on Purdue’s preferred lender list,³³ and it does not appear that Purdue has met its obligations to publish an annual report concerning its PLAs as described above.

This conduct may reflect Purdue and the Companies’ continued insistence—despite straightforward instructions otherwise by the Department³⁴ and federal financial regulators³⁵—that ISAs are not debt or a form of credit. For example, both the Application and Solicitation Disclosure³⁶ and the ISA Sample Contract³⁷ posted on the Purdue-hosted Back-A-Boiler website erroneously state that the ISA “IS NOT A LOAN OR CREDIT.” Similarly, the main landing page for the Back-A-Boiler program introduces an online credit comparison tool by saying, “[u]se this comparison tool to see how an Income Share Agreement

³⁰

<https://www.purdue.edu/backaboiler/disclosure/BaB%20-%202019-20%20-%20Contract%20Standardized%20Web%20Sample.pdf> [<https://perma.cc/6Z5B-BKQQ>].

³¹ 20 U.S.C. § 1019a(2); 34 C.F.R. § 601.12(a).

³² 20 U.S.C. § 1019(8); 34 C.F.R. § 601.2(b).

³³ <https://www.elmselect.com/v4/school/73/program/1/lender-results> [<https://perma.cc/25SA-PHUC>].

³⁴

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-02/income-share-agreements-and-private-education-loan-requirements>.

³⁵ <https://www.consumerfinance.gov/enforcement/actions/better-future-forward-inc/>.

³⁶ <https://www.purdue.edu/backaboiler/disclosure/application.html> [<https://perma.cc/3VKY-9E97>].

³⁷ <https://www.purdue.edu/backaboiler/disclosure/contract.html> [<https://perma.cc/B35X-ZNLA>].

(ISA) compares with loan options,”³⁸ while the Back-A-Boiler FAQ page cited above posits that, “[a]n ISA could be a good alternative to private student loans . . .”³⁹ In each case, Purdue implies that the ISA is not itself a loan. This false rhetoric is echoed by past assertions from Purdue President Mitch Daniels, who wrote an Op-Ed in the Washington Post in 2019 regarding ISAs titled “Here is a powerful alternative to student loans” that encouraged readers to “[t]hink of an ISA as equity instead of debt.”⁴⁰

These representations are simply incorrect as a matter of law, placing Purdue's conduct related to Back-A-Boiler and its relationship with the Companies in violation of the HEA and the school's PPA with the Department.

The findings outlined above follow a long line of warnings from advocates that Purdue's Back-A-Boiler program involves grave risks for students.⁴¹ The Department must carefully examine the extent to which Purdue's open disregard for the code of conduct required under the HEA should jeopardize its students' continued access to federal student aid. As noted above, at minimum, the Department's Office of Federal Student Aid should ensure that Purdue immediately halts its illegal lending scheme and makes all borrowers harmed by this conduct whole. Along the way, the Department must exhaustively investigate the role that Vemo has played in the design of Back-A-Boiler and other ISA programs at Title IV schools.

Sincerely,

Student Borrower Protection Center

CC:

James Kvaal, Under Secretary, Department of Education

Ben Miller, Deputy Under Secretary of Education, Department of Education

³⁸ <https://www.purdue.edu/backaboiler/> [<https://perma.cc/D7KH-56WH>].

³⁹ <https://www.purdue.edu/backaboiler/FAQ/index.html> [<https://perma.cc/4WHB-PASR>].

⁴⁰ https://www.washingtonpost.com/opinions/income-share-agreements-are-a-powerful-alternative-to-student-loans/2019/11/27/5290d0ee-0be3-11ea-97ac-a7ccc8dd1ebc_story.html.

⁴¹ <https://protectborrowers.org/sbpc-and-nclc-file-ftc-complaint-against-vemo-education-for-deceptive-marketing-practices/>.

Julie Morgan, Deputy Under Secretary of Education, Department of Education

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Hon. Lina Khan, Chair, Federal Trade Commission

Hon. Rohit Chopra, Director, Consumer Financial Protection Bureau

Samuel Levine, Director, Bureau of Consumer Protection, Federal Trade Commission

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