

June 8, 2022

Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Re: Oversight of Online Program Managers and Private Student Loan Borrower Protection

Dear Director Chopra:

We write today to draw your attention to reports of lax supervision of apparently risky areas of for-profit education, and to request immediate action to protect borrowers who may be taking on particularly predatory forms of private student loan debt.

In early May, the Government Accountability Office (“GAO”) published the findings of an audit showing that the Department of Education (“ED”) is conducting substandard oversight of so-called “online program managers” (“OPMs”), a quickly-growing variety of for-profit firms that offer schools a range of educational, recruitment, and course management services.¹ Public reports² and investigative findings³ cited critically by members of the U.S. House⁴ and Senate⁵ alike have shown that OPMs use deceptive marketing and lofty, frequently false promises to drive students into massive debt for low-quality courses. This conduct is particularly harmful as it relates to OPMs’ involvement with unaccredited, short-term vocational “bootcamp” programs housed at Title IV schools that rely on and direct students toward risky private student loans.⁶

The GAO’s recent findings show that ED’s auditing and supervision of schools’ partnerships with OPMs and associated private student loan companies are so ineffective at identifying legal violations and consumer risks as to be effectively nonexistent.⁷ For example, the Department

¹ <https://www.gao.gov/assets/gao-22-104463.pdf>.

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<https://protectborrowers.org/pushing-predatory-products-how-public-universities-are-partnering-with-unaccountable-contractors-to-drive-students-toward-risky-private-debt-and-credit/>;
<https://tcf.org/content/report/dear-colleges-take-control-online-courses/>.

³ <https://www.wsj.com/articles/usc-online-social-work-masters-11636435900>.

⁴ <https://www.youtube.com/watch?v=qh9so6p2VOs>.

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<https://www.wsj.com/articles/democratic-senators-probe-whether-online-degree-programs-contribute-to-high-student-debtloads-11642203842>;

<https://www.chronicle.com/article/they-didnt-care-inside-one-universitys-sputtering-online-partnership-with-2u?>

⁶ https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_OPM.pdf.

⁷ <https://www.gao.gov/assets/gao-22-104463.pdf>.

does not even currently know “the exact number of OPM arrangements” that schools have entered into, and ED’s auditors (both external and internal) lack basic information regarding how to examine these relationships.⁸

The Consumer Financial Protection Bureau (“CFPB”) has robust authority under the law that it can use to protect borrowers from the abuses that OPMs and their lender partners inflict on the public.⁹ Given that ED is apparently unwilling or unable to rein in OPMs on behalf of consumers, we urge immediate action.

Schools’ relationships with OPMs have produced widespread, well-known consumer harm, and the problem is getting worse.

OPMs are for-profit, third-party companies that work with colleges to provide a range of services including “market research, marketing and student recruiting, enrollment management, student retention services, and technology related support” in addition to “instructional design and curriculum development” for online educational programs.¹⁰ More simply, OPMs help schools offer, market, recruit for, and carry out a range of courses of study including both Title IV-eligible degree programs and short-term vocational bootcamps. OPMs serve hundreds of thousands of students at hundreds of schools nationwide ranging from local community colleges to flagship state universities,¹¹ and some colleges now rely on OPMs for up to 50 percent of their total enrollment.¹² Notable firms in this space include 2U, Zovio, Coursera, Promineo, Academic Partnerships, Pearson, and Wiley Education Services.¹³

The business model of OPMs almost universally involves splitting tuition revenue with schools for programs that OPMs help facilitate, with many schools remitting more than 61 percent¹⁴ and some paying as much as 80 percent¹⁵ of a given program’s revenue to an assisting OPM. Tuition sharing arrangements along these lines rely on a dubious regulatory carveout: a 2011 “Dear Colleague” letter from ED that generally exempted OPMs from a key ban on so-called “incentive

⁸ <https://www.gao.gov/assets/gao-22-104463.pdf> at 11.

⁹ <https://protectborrowers.org/wp-content/uploads/2021/08/Legal-Landscape-Private-Student-Lenders.pdf>.

¹⁰ <https://www.gao.gov/assets/gao-22-104463.pdf> at 5.

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[https://www.warren.senate.gov/imo/media/doc/2022.01.14%20Follow%20up%20letter%20to%20Online%20Program%20Managers%20\(OPMs\).pdf](https://www.warren.senate.gov/imo/media/doc/2022.01.14%20Follow%20up%20letter%20to%20Online%20Program%20Managers%20(OPMs).pdf) note 3.

¹² <https://tcf.org/content/report/invasion-college-snatchers/?agreed=1>.

¹³ <https://philonedtech.com/opm-market-landscape-and-dynamics-summer-2021-updates/>.

¹⁴ <https://www.gao.gov/assets/gao-22-104463.pdf> at 15 (most colleges in an ED survey “(16 of 25) pay between 41 and 60 percent of tuition to the OPM, and four respondents said their college pays the OPM 61 percent or more.”).

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<https://tcf.org/content/about-tcf/tcf-analysis-70-university-opm-contracts-reveals-increasing-risks-students-public-education/>.

compensation.”¹⁶ Incentive compensation generally refers to any payments that companies may make to school employees or contractors based on the number of students they recruit or on the share of federal aid dollars they generate for the institution. The ban on incentive compensation was installed in the early 1990s after a series of scandals revealed that for-profit colleges were deploying high-pressure sales tactics on vulnerable, unprepared students to meet enrollment goals even when schools knew those students would be unlikely to finish or benefit from a degree.¹⁷ Under the 2011 carveout, firms such as OPMs can share a program’s tuition revenue while providing recruitment services if they also offer ancillary services such as program assistance and online platform access, and if the OPM’s revenue sharing is structured as payment for the entire set of “bundled services” they provide.¹⁸ Accordingly, this carveout is generally referred to as the “bundled services exception.”¹⁹

The OPM business model made possible by the bundled services exception has proven lucrative for both schools and OPMs, with industry revenues rising to \$5.7 billion in 2020 and estimates indicating that schools will hand \$13.3 billion to these firms by 2025.²⁰ Administrators at more than one institution that has contracted with an OPM to develop online courses have derisively referred to these programs as a “cash cow,”²¹ and minutes from a faculty senate meeting at a flagship state university reveal that the school views its OPM-based coding bootcamp mainly as one of various “revenue opportunities”—not centrally as a pedagogical exercise.²²

Unfortunately, OPMs have also come to reproduce many of the worst abuses that had previously been weeded out by the incentive compensation ban that the OPM industry’s business model skirts. This fact has long been clear in the Title IV space, where high-profile scandals at brand-name universities have revealed a pattern of OPMs recruiting as many students as possible regardless of those students’ readiness, maximizing revenue by burying enrollees under exorbitant student debt loads, and cutting costs by skimping on program quality.²³ The most visible example of this reality has involved the University of Southern California’s (“USC”) agreement for the OPM 2U, Inc. to manage the school’s Title IV-eligible Master’s in Social Work (“MSW”) program. As outlined in a years-long series of reports by the *Los Angeles Times* and

¹⁶ <https://fsapartners.ed.gov/sites/default/files/attachments/dpcletters/GEN1105.pdf>.

¹⁷ <https://www.thirdway.org/memo/three-loopholes-that-congress-needs-to-close-to-protect-students>.

¹⁸ <https://fsapartners.ed.gov/sites/default/files/attachments/dpcletters/GEN1105.pdf>.

¹⁹ See, e.g.,

<https://www.highereddive.com/news/are-tuition-share-agreements-between-colleges-and-opms-on-solid-legal-footi/602051/>.

²⁰ <https://www.holoniq.com/notes/global-opm-and-opx-market-to-reach-13.3b-by-2025/>.

²¹ <https://www.huffpost.com/highline/article/capitalist-takeover-college/>;

<https://www.chronicle.com/article/they-didnt-care-inside-one-universitys-sputtering-online-partnership-with-2u?>

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<https://senate.uconn.edu/wp-content/uploads/sites/1323/2019/10/2019-10-07-Senate-Minutes-Final-Draft-1.pdf#page=19>.

²³ <https://tcf.org/content/report/invasion-college-snatchers/?agreed=1>.

the *Wall Street Journal*, USC's 2U-backed MSW program drove students into hundreds of thousands of dollars of debt for a degree that could be expected to earn the typical graduate a salary equal to barely a fraction of that sum.²⁴ Reports show that the cost of the USC MSW far exceeds that of non-OPM based MSW courses at similar schools, that instruction in the program has fallen far short of students' and USC faculty's expectations, and that the school appears to have taken up the habit of admitting students who were evidently unprepared at the time for a graduate-level program.²⁵

Conduct along these lines is in part a reflection of the design of the underlying contracts between OPMs and schools, which further incentivizes OPMs to grow short-term revenue at the expense of students' long-term financial interests.²⁶ As U.S. Senators Elizabeth Warren, Sherrod Brown, and Tina Smith noted in a recent letter to industry executives,²⁷ OPMs' contracts with schools can include penalties if the university "lowers tuition, raises admissions standards, or otherwise reduces revenue."²⁸ One OPM contract for an online course at a public college required the company to "contact every prospective student at least 13 times per day, for ten days in a row."²⁹

²⁴ <https://www.latimes.com/local/lanow/la-me-usc-social-work-20190606-story.html> ("Under then-Provost C.L. Max Nikias, USC signed on with an East Coast digital learning start-up [2U], and the university's well-regarded social work school soon rolled out an online master's program. . . . The student body grew from about 900 in 2010 to 3,500 in 2016, and the social work school became the largest in the world. . . . The school had long required a 3.0 grade-point average, but over time, the university made more and more exceptions to fill the online classes. In recent years, about 40% of entering students were so-called conditional admits, meaning they lacked the requisite minimum GPA or failed to meet other stated requirements. . . . Faculty noticed many new students had difficulty doing graduate-level work. The school provided extra tutoring and counseling programs, but problems persisted. Faculty grumbled among themselves and, ultimately, to Quick and other administrators."); <https://www.wsj.com/articles/usc-online-social-work-masters-11636435900> ("Recent USC social-work graduates who took out federal loans borrowed a median \$112,000. Half of them were earning \$52,000 or less annually two years later. . . . At California State University, Long Beach in Los Angeles County, graduates borrowed less than a third of USC students and earned a median \$59,000 two years later—about 14% more than USC students. . . . The school formulated marketing campaigns to woo applicants, using demographic profiles of the kinds of students they would recruit, internal documents used by the marketing department and reviewed by the Journal show. The profiles include cartoon characters depicting potential recruits; in one depiction, a Black woman dubbed Needy Nelly 'needs hand-holding' and 'calls and emails everyone' because she has trouble with her application. . . . USC increased tuition by nearly 50% between fall 2010 and 2020 USC graduates do a slightly worse job passing a national licensing exam than other California test-takers"); <https://www.wsj.com/articles/usc-officials-diverge-on-plan-to-end-contract-with-online-provider-11637788200>.

²⁵ *Id.*

²⁶ *See also*

<https://tcf.org/content/report/memo-to-college-leaders-revising-your-opm-contracts-is-in-your-best-interest/>;

<https://tcf.org/content/report/dear-colleges-take-control-online-courses/>.

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[https://www.warren.senate.gov/imo/media/doc/2022.01.14%20Follow%20up%20letter%20to%20Online%20Program%20Managers%20\(OPMs\)_pdf](https://www.warren.senate.gov/imo/media/doc/2022.01.14%20Follow%20up%20letter%20to%20Online%20Program%20Managers%20(OPMs)_pdf).

²⁸ *Id.*

²⁹ <https://www.wsj.com/articles/usc-online-social-work-masters-11636435900>.

However, results such as those seen at USC are also a reflection of the poor incentives that OPMs' revenue sharing drives even in the absence of badly drafted contracts. Education finance analysts have noted that USC's MSW program has proven remarkably efficient at getting students into debt, with USC's OPM-backed MSW accounting for 13 percent of all federal student loan debt issuance for MSW programs while accounting for only 5 percent of these degrees in a recent academic year.³⁰ Similarly, public reports show that "about half" of 2U employees work at call centers focused on driving recruitment.³¹ Companies like 2U need not be instructed or specifically empowered through contracts to maximize the number of students they enroll and the number of dollars those students generate as revenue for the firm through rising student debt loads taken on to cover ever-increasing tuition. And as the landscape currently stands, it appears that these companies need not substantively consider the educational and financial outcomes that students may ultimately have to reckon with.

Worse, it has recently become clear that OPMs are now heightening their focus on—and increasing their deployment of abusive business strategies within—the opaque and treacherous world of credential-based training programs that fall outside of the Title IV space but that are nevertheless housed within Title IV-eligible schools.³² Managed, facilitated, and marketed by OPMs, these programs generally consist of short-term certificate-based courses purporting to offer training in software engineering, and they are advertised as quickly leading to high-paying jobs in the technology sector.³³

As the Student Borrower Protection Center outlined in a recent report, because these programs are not eligible for Title IV dollars, OPMs direct students in these classes to finance their education with massive private student loans from specialty creditors with whom—unbeknownst to or little understood by the student—the school and/or OPM have a preexisting relationship.³⁴ Notable examples of these lenders include Climb Credit, Ascent, and Meritize, whose loans regularly involve eye-popping APRs, pervasive junk fees, and a wide range of contractual tricks

³⁰ <https://twitter.com/HerdaBrett/status/1511394515361349638>.

³¹ <https://www.forbes.com/sites/carolinehoward/2014/02/12/no-college-left-behind-randy-bests-money-making-mission-to-save-higher-education/?sh=2d6316914a27>.

³² This trend appears to mark an industry-wide pivot toward the bootcamp space. For example, when the OPM 2U purchased the bootcamp company Trilogy Education in 2019 and when the OPM Zovio (then Bridgepoint Education) purchased the bootcamp company Fullstack Academy in 2019, management from both acquiring firms described the transactions as efforts to expand on and drive profitability through bootcamp offerings. *See* <https://investor.2u.com/news-and-events/press-releases/news-details/2019/2U-Inc-to-Acquire-Trilogy-Education-the-Leader-in-Powering-University-Boot-Camps/default.aspx>; <https://zovio.mediaroom.com/index.php?s=43&item=620>.

³³ https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_OPM.pdf.

³⁴ https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_OPM.pdf; *see also* <https://protectborrowers.org/financial-institutions-are-nickel-and-diming-students-into-financial-ruin-with-junk-fees>.

and traps.³⁵ The Center has previously noted that key aspects of the partnerships and conduct observed between OPMs, schools, and lenders may violate laws and regulations that the Bureau administers pertaining to dealings between colleges and private creditors, particularly as it relates to conduct limitations and disclosure requirements schools and lenders appear to be flouting related to so-called “preferred lender arrangements.”³⁶

The student outcomes that OPMs’ Title IV-housed certificate mills generate are as tragic as one may fear. Data from one OPM show that barely one-in-three students who enroll in its university-housed coding bootcamps with the specific goal of pursuing a pivot into a tech career ultimately secure a job in their field of study.³⁷ The job placement rate for Black bootcamp students within this subset is closer to one-in-four.³⁸

These statistics are echoed in real-world experiences from borrowers, who report that OPMs’ glossy marketing and promises of plush tech jobs all too frequently give way to course material and employment prospects that fall far below what was billed.³⁹ First, students routinely report learning only after enrollment that the underlying bootcamp is run by a for-profit company and not by the trusted Title IV school whose name the firm is renting, something that many students report would have likely deterred them from enrollment if they had known it.⁴⁰ Then, students regularly recount that course curricula end up being worth little more than what could be gleaned for free online, and that promises of jobs and career coaching prove illusory.⁴¹ Students emerge feeling cheated both by the OPM and the Title IV school whose name they tragically trusted, owing on massive loads of unaffordable debt with little to show for it.⁴²

But despite OPMs’ widespread misrepresentations, deception, and apparent lawbreaking in this area, law enforcement agencies at the state and federal level have so far watched shamefully from the sidelines instead of stepping in to protect students.

³⁵ https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_OPM.pdf;

https://protectborrowers.org/wp-content/uploads/2022/04/SBPC_US-PIRG-EF_Junk-Fees.pdf.

³⁶ <https://protectborrowers.org/legal-analysis-and-need-for-increased-enforcement-of-the-student-loan-sunshine-act/>.

³⁷ <https://news.gallup.com/opinion/gallup/392477/tech-boot-camps-linked-higher-pay-stem-jobs-grads.aspx>.

³⁸ <https://news.gallup.com/opinion/gallup/392477/tech-boot-camps-linked-higher-pay-stem-jobs-grads.aspx>.

³⁹ *See, e.g.,*

https://www.reddit.com/r/codingbootcamp/comments/iwv98h/trilogy_education_experiences_uc_irvine_in/;

https://www.reddit.com/r/codingbootcamp/comments/grxqpg/university_of_oregon_coding_bootcamp_trilogyrun/;

https://www.reddit.com/r/codingbootcamp/comments/naqgnb/trilogy_edu_bootcamps_are_a_scam/;

https://www.reddit.com/r/codingbootcamp/comments/rrs7q4/say_no_to_trilogy/.

⁴⁰ <https://protectborrowers.org/wp-content/uploads/2022/06/Hearing-Statement-J.-Hammond.pdf>;

https://www.reddit.com/r/codingbootcamp/comments/jonwhg/various_universities_offering_the_same_bootcamp/.

⁴¹ *Id.*

⁴² *Id.*

OPMs' work in the bootcamp space shows no sign of slowing down. Bootcamps in general are projected to see compound average revenue growth of 17 percent through 2025,⁴³ and OPMs have staked their business on capturing a large share of that expansion.⁴⁴ It is long past due for policymakers, regulators, and law enforcement to crack down on abuses in this market and hold industry participants accountable for wrongdoing.

ED is asleep at the wheel in its oversight of schools' relationships with OPMs.

Beyond giving rise to the OPM market's current form by creating the bundled services exception discussed above, ED has taken vanishingly few steps to regulate—let alone to install badly-needed oversight and weed out consumer harm within—the OPM market. This choice stands in conflict with ED's responsibility “for ensuring that colleges comply with the requirements associated with federal student aid programs,” for “oversight of colleges' arrangements with OPMs,” and “for enforcing the ban on incentive compensation”—the latter responsibility being paired with the authority “to recover from the college federal student aid funds associated with” any violations thereof.⁴⁵

Unfortunately, recent findings from the GAO make clear that ED remains unable or unwilling to stop the abusive tactics OPMs are deploying to profit at students' expense. In particular, in early May the GAO published the results of a review examining “(1) colleges' use of OPMs and how commonly OPM arrangements include services that are subject to the ban on incentive compensation and (2) the extent to which Education's monitoring instructions ensure that it obtains the information it needs to assess whether OPM arrangements comply with the incentive compensation ban.”⁴⁶

Despite the long-documented record discussed above of OPMs imposing extensive harm on students, the GAO found the following:

- **Nobody, including ED, knows how many arrangements between schools and OPMs there actually are,**⁴⁷ even while it is clear that the OPM market is massive and rapidly growing.⁴⁸

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<https://www.prnewswire.com/news-releases/coding-bootcamp-market-size-to-grow-by-usd-772-04-mn--technavio-301498830.html>.

⁴⁴ See *supra* note 32.

⁴⁵ <https://www.gao.gov/assets/gao-22-104463.pdf> at 8.

⁴⁶ <https://www.gao.gov/assets/gao-22-104463.pdf> at 3.

⁴⁷ <https://www.gao.gov/assets/gao-22-104463.pdf> (“[t]he exact number of OPM arrangements is unknown, due to a lack of comprehensive data, and there could be more of these OPM arrangements.”).

⁴⁸ <https://www.gao.gov/assets/gao-22-104463.pdf> at 11 (“At least 550 colleges worked with an online program manager (OPM) to support at least 2,900 education programs (e.g., certificate and degree programs) as of July 2021

- **The instructions that ED provides to third-party auditors that perform annual reviews of schools’ compliance with the law lack basic references to key details of schools’ arrangements with OPMs.**⁴⁹ This means that **a school can pass through an audit with the details of its OPM deals—and particularly those related to deals for non-Title IV bootcamp programs—going unexamined.**⁵⁰ Even non-Title IV bootcamp programs should fall within the ambit of these audits, as the incentive compensation ban and various other laws apply at the *institutional* level for schools with Title IV-eligible programs. Yet in describing the state of ED’s delegated auditing of schools’ arrangements with OPMs, the GAO wrote, “Officials from two audit organizations told us that none of the colleges they audited informed them of any contracts with OPMs for recruiting services and an official from another audit organization provided the perspective that colleges run their online programs internally and do not contract with OPMs for student recruiting. However, **publicly available information on OPM arrangements indicated that each of these organizations had audited colleges that in fact do have contracts with OPMs** that often provide recruiting services.”⁵¹ It is clear that ED’s auditing function is falling far short of the Department’s obligations and students’ needs.
- **Contracts between schools and OPMs that stipulate that the “college will pay an OPM a greater share of tuition revenue as student enrollment in a program increases are becoming more common in OPM contracts.”**⁵² This payment structure clearly stands to expose OPMs that provide schools with recruiting services to the same bad incentives that led to the incentive compensation ban in the first place, as OPMs will likely once again find themselves inclined to profit by filling seats regardless of what might be best for each student. ED appears **not to have questioned at all** whether these contract arrangements might violate the letter or spirit of the incentive compensation ban.
- **ED is not instructing auditors to examine how individual recruiters at a given OPM are paid, exposing borrowers to the risk of badly incentivized OPM staff.**⁵³ While a given OPM *as a whole* may not be paid by a school on a per-head basis for enrollment, it is possible that the *individual employees* at a given OPM might be being paid by the company based on the number of bodies they get in the door. Paying on a per-head basis

... There were at least 20 new arrangements between colleges and OPMs in 2010, and by 2020 the number had grown to at least 165. . . In 2010, at least 25 new online programs were offered by colleges with support from an OPM, and in 2020 the number of new programs grew to at least 385”).

⁴⁹ <https://www.gao.gov/assets/gao-22-104463.pdf> at 17.

⁵⁰ *Id.*

⁵¹ <https://www.gao.gov/assets/gao-22-104463.pdf> at 21 (emphasis added).

⁵² <https://www.gao.gov/assets/gao-22-104463.pdf> at 16 (emphasis added).

⁵³ <https://www.gao.gov/assets/gao-22-104463.pdf> at 18.

is outlawed under the incentive compensation ban regardless of the bundled services carve-out, which still requires that revenue sharing be for the entire set of bundled services the OPM provides and not just for recruiting. The apparent possibility that OPM employees could be being paid on an effectively per-head basis and ED's stark lack of oversight regarding that risk pose a huge danger to students.

- ED has handed much responsibility for diligence over OPM arrangements to schools, but **this system is clearly failing:**
 - In the course of the GAO's investigation, ED officials reported “that **it is common for college officials not to inform them of relevant OPM arrangements**” during program reviews that ED staff conduct on selected high-risk colleges, allowing these arrangements to escape oversight.⁵⁴ This problem is particularly acute for the uniquely risky bootcamp programs discussed above. As the GAO put it, ED “has not yet conducted a program review where the college identified an OPM arrangement that supported such programs. Education officials said they are likely not notified of relevant OPM arrangements because their instructions to colleges do not clearly state that college officials are responsible for identifying all OPM arrangements that include recruiting services.”⁵⁵ Indeed, it appears that OPMs' riskiest programs have fallen entirely out of the field of ED's supervisory vision.
 - **Colleges are not keeping basic track of the nature of their own OPM arrangements.** In one case, ED described a school that had partnered with an OPM by saying that “**few college staff knew details about the services the OPM provided.**”⁵⁶
 - In instances where schools are attentive to their OPM partnerships, **ED has allowed colleges to side with OPMs and shield them from the little oversight that it does conduct.** As the GAO describes it, “Education officials also told us that even when college officials inform them of relevant OPM arrangements, the agency has challenges obtaining complete information about the arrangements. Specifically, they said that **some colleges have withheld or redacted relevant sections of OPM contracts during program reviews and have not provided information about OPM recruiter compensation.** According to Education officials, this is because college officials incorrectly believed that the Dear

⁵⁴ <https://www.gao.gov/assets/gao-22-104463.pdf> at 21(emphasis added).

⁵⁵ *Id.*

⁵⁶ *Id.* (emphasis added).

Colleague Letter exempts OPM arrangements for student recruiting from Education’s review if recruiting services are provided as part of a bundle of services.”⁵⁷ This understanding is inaccurate, but ED has gone for more than a decade without systematically correcting it.

It is possible that ED will turn a corner, address each of the shortcomings cited above, and more generally commit itself to robust oversight of the OPM space. But the GAO’s findings offer little reason for optimism, and they instead underscore the immediacy of the need for strong consumer protections to address harmful ongoing OPM conduct. Students cannot wait to see if the meager oversight measures and additional transparency steps the GAO suggested will have the effect of weeding out bad practices, or if ED will choose to engage in more active supervision at some point in the future. The CFPB must step in now to deliver the public the safety and relief it deserves.

The CFPB has multiple avenues to hold OPMs and their private lender partners accountable while ED remains on the sidelines.

i. The CFPB should enforce prohibitions against unfair, abusive, and deceptive practices by OPMs, lenders, and partner schools

The CFPB should vigorously enforce the prohibitions against unfair, abusive, and deceptive practices⁵⁸ by OPMs, schools, and lenders in recruiting and driving students towards taking out high-cost private loans for subpar educational programs. The CFPB has authority to enforce the Consumer Financial Protection Act’s (“CFPA”) prohibition on unfair, deceptive and abusive practices⁵⁹ against “covered persons,” or “any person that engages in offering or providing a consumer financial product or service; and any affiliate [that] acts as a service provider to such person.”⁶⁰ As the relationships between OPMs, schools, and lenders take varying forms, the CFPB’s entry points are numerous and varied. These include but are not limited to:

- Enforcing consumer financial protection law against OPMs insofar as they provide “substantial assistance”⁶¹ to private lenders, covered persons who are “extending credit and servicing loans” to student borrowers.⁶² This assistance is provided by recruiting students and driving them towards certain private credit, as discussed above.

⁵⁷ <https://www.gao.gov/assets/gao-22-104463.pdf> at 22.

⁵⁸ 12 U.S.C. § 5536(a)(1)(B).

⁵⁹ 12 U.S.C. § 5536(a)(1)(B).

⁶⁰ 12 U.S.C. § 5481(6).

⁶¹ 12 U.S.C. § 5536(a)(3).

⁶² 12 U.S.C. § 5481(5);(6);(15).

- Examining whether schools and OPMs are covered by the CFPA in providing “financial advisory services” or “credit counseling” to students.⁶³ As we have described, schools routinely provide financial aid counseling services to students. Sometimes, OPMs may also provide financial aid or credit counseling to students as part of their relationship to schools, in addition to driving them towards private credit options.
- Exercising authority over OPMs and schools as far as these entities are providing a financial service by “brokering” extensions of credit⁶⁴ (that is, facilitating students’ access to federal student loans or private credit to pay for schooling).
- Similarly, enforce consumer protection law against OPMs or schools when these entities act as service providers to covered lenders in providing “a material service” to private lenders offering student loans.⁶⁵ This could include an OPM or school “designing, operating, or maintaining” a consumer financial service and product, particularly where these entities drive students towards certain credit products through recruiting, marketing, and other practices. It could also include a school or OPM “processing transactions” relating to loans made to students. As we have described, this could include situations in which students are able to pay OPM programs directly for educational services using potentially co-branded loan products, such as income share agreements.

As discussed above, OPMs and their partner lenders routinely engage in what could constitute unfair, deceptive, or abusive practices. Such practices include obfuscating the relationship between the school and the OPM such that students are misled into believing their instruction is provided by a brand-name Title IV school rather than a for-profit company, or, similarly, co-branding loans in such a way that it appears the school has endorsed a particular lender, potentially in violation of the HEA and ED regulations. Misrepresentations by OPMs about future job outcomes, program quality, and graduate salaries also appear to be commonplace. Further investigation is urgently warranted as schools, OPMs, and lenders continue to engage in partnerships that are not in students’ best financial or educational interests with little regulatory oversight.

ii. *The CFPB should enforce the Truth in Lending Act to protect students from certain OPMs and lenders*

Additionally, the CFPB should use the tools at its disposal to enforce the Student Loan Sunshine Act, as enacted in the Truth in Lending Act (“TILA”) and implemented in Regulation Z, against

⁶³ 12 U.S.C. § 5481(15)(vii).

⁶⁴ 12 U.S.C. § 5481(15).

⁶⁵ 12 U.S.C. § 5481(26).

both lenders and OPMs driving students into risky, high-cost private debt. TILA and its implementing regulations require private lenders to provide critical loan disclosures to borrowers during the various stages of a loan application and approval, and prohibit private lenders from engaging in unlawful gifts or kickbacks, unlawful revenue sharing, or unlawful co-branding with higher education institutions, and by extension, the OPMs that partner with them.⁶⁶ TILA’s prohibitions are broader than the Department’s parallel rules, as they apply to an institution of higher education regardless of accreditation status.⁶⁷

There are several ways in which OPMs are subject to TILA’s various prohibitions. For one, these entities are acting as “agents” of higher education institutions as defined for the purposes of the law, or as organizations that are “directly or indirectly related” to higher education institutions and are “engaged in the practice of recommending, promoting, or endorsing education loans” for students, because they provide marketing, instruction, recruiting and other services to schools and advertise certain private lenders.⁶⁸ Second, the CFPB should also consider whether OPMs are in some cases acting as private educational lenders and engaging in TILA violations in “soliciting” private educational loans⁶⁹—particularly when they recruit students to their program and drive them towards a particular private lender.

As we have previously documented, OPMs and schools are driving students towards private credit and potentially engaging in co-branding violations in the process, failing to provide required disclosures to students, and potentially engaging in unlawful revenue sharing, among other violations of TILA and Regulation Z. This conduct engenders confusion among students about whether a school endorses a certain loan product, and drives students to take on high-cost debt when they have better options. The CFPB must use its existing authority to ensure borrowers are protected from such arrangements, which ultimately benefit schools, lenders, and OPMs to the detriment of borrowers’ financial security.

These rules are critical, as the Department recently stated they exist to broadly ensure “an informed student loan borrower; the borrower’s choice of lender; transparency and high ethical standards in the student lending process, including the maintenance of a code of conduct for employees of institutions; institutions’ selection of preferred lenders based on the best interest of borrowers; and a prohibition on institutions’ revenue-sharing arrangements with lenders.”⁷⁰

⁶⁶ 15 U.S.C. § 1638(e); 15 USC § 1650(b)-(d); 12 CFR 1026.46 et seq.

⁶⁷ 12 C.F.R. § 1026.46(b)(1)(i).

⁶⁸ 15 U.S.C. § 1650(b); 12 CFR 1026.46(b).

⁶⁹ 15 U.S.C. § 1650(a)(7) (“the term “private educational lender” means . . . any [] person engaged in the business of soliciting, making, or extending private education loans.”).

⁷⁰

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

Without robust enforcement, students are being driven into high-cost private debt to the benefit of for-profit companies, and to their personal detriment.

The GAO's findings underscore what so many students have already learned the hard way: that ED has systematically failed to supervise and protect borrowers from predatory conduct by OPMs. As the nation's top consumer watchdog, the CFPB has the clear authority and the undeniable duty to step in. We ask that you use the substantial tools already at your disposal to stand up for the public.

Thank you for your time and consideration.

Sincerely,

Student Borrower Protection Center
Dr. Stephanie Hall, Senior Fellow, The Century Foundation