



STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

March 7, 2024

Mr. Tom Jones
American Accountability Foundation
300 Independence Ave, SE
Washington, District of Columbia 20003
BY ELECTRONIC MAIL: records@americanaccountabilityfoundation.com

RE: Public Records Request

Dear Mr. Jones,

I write in response to your Public Records Act request received March 4, 2024, for “All records and communications held by the staff of the Office of the Attorney General with or about the Student Borrower Protection Center, including any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (emails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts.”

Attached please find the emails which are responsive to your request. If you feel information or records have been withheld in error, you may appeal to the Deputy Attorney General in writing at:

Robert McDougall
Deputy Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Thank you for contacting the Vermont Attorney General’s Office.

Sincerely,

/s/ Justin Kolber
Justin Kolber
Chief Environmental and Public Protection Division

Encl.

From: Mike Pierce, Student Borrower Protection Center
Sent: Friday, December 22, 2023 12:01 PM
To: Chaudoir, Merideth
Subject: Cheers to 2023!

You don't often get email from mike+protectborrowers.org@ccsend.com. [Learn why this is important](#)

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STUDENT BORROWER
PROTECTION CENTER

2023

HIGHLIGHTS

As we close out 2023, the fight to protect borrowers remains at the center of American policy and politics.

This year, just hours after the right-wing Supreme Court majority struck down his broad debt relief program, President Biden pledged to deliver relief another way—a demonstration that student debt relief remains a cornerstone of the Administration's historic effort to rebuild an economy for working people.

Our highlights report shows the many ways SBPC has left our mark on the landscape for working people this year—winning student debt relief for millions, confronting predatory financial firms that target students and borrowers, and building the public case for systemic change to ensure that higher education and training remains an engine for economic mobility.

READ OUR HIGHLIGHTS REPORT

SBPC's work to strengthen the student loan safety net and revive scandal-plagued debt relief programs like Income-Driven Repayment and Public Service Loan Forgiveness spurred sweeping new actions, and the Biden Administration has pledged \$136 billion in student debt relief to 3.6 million borrowers.


More than one out of every 10 borrowers who were repaying a student loan before the pandemic is now debt-free—with more to come.

In September, federal student loan payments and interest resumed for the first time in more than three years—exposing the breadth of the problems that remain despite the significant reforms we've won. At every step, we keep working for borrowers who are cheated out of their rights by predatory student loan companies and who remain trapped in the broken student loan system.

SBPC has built a broad, diverse coalition that is working to ensure that borrowers have a fighting chance in the year ahead. Alongside state enforcers, regulators and ombuds; civil rights groups and labor unions; law scholars and economists; mayors and city attorneys; and advocates on behalf of people with disabilities, veterans, older adults, and rural communities, we continue our commitment to protect borrowers.

This year, we drove a wave of federal and state enforcement and private litigation, tipping the scales back towards borrowers. We expanded this fight to include workers steered into predatory Training Repayment Agreement Provisions (TRAPs) by their employers. We drew on every tool in our toolbox to protect borrowers from historically disenfranchised communities—holding government and corporations accountable, conducting innovative research to expose racial disparities, and monitoring the marketplace for bias in emerging financial products.

In 2023, we:




- Worked in 8 states to help pass 11 bills protecting student loan borrowers
- Increased total number of states enacting borrower protection laws to 19
- Protected more than 17 million borrowers through strong state laws since 2018



- Filed 2 new lawsuits on behalf of workers bound by TRAPs
- Supported legislation to ban TRAPs in 5 states
- Advanced sweeping policy recommendations across multiple federal agencies



- Drove \$132 billion in debt relief for more than 3.6 million people
- Launches "Cities Partnership" with 14 cities to help local governments provide direct support to borrowers



- Led a diverse coalition and hosted an historic rally on steps of SCOTUS
- Fought back against right-wing attacks on borrowers, coordinating more than a dozen amicus briefs at the 6th Circuit and SCOTUS




- Published groundbreaking investigation into incarcerated borrowers' debt
- Filed lawsuit against ED for withholding critical information

- Protected 7 million people from wage garnishment and student debt collection
- Restored access to Pell Grants and other federal student aid for millions of students



- Spurred 12+ federal and state investigations into predatory bootcamps
- Advised 6+ private lawsuits holding schools and student loan companies accountable
- Drove the dominant tech firms pushing Income Share Agreements out of business



- Co-hosted virtual event on impact of student debt on women and women of color
- Expanded SLLI research team, including by adding 4 new emerging scholars
- Published 3 new research papers by SLLI on student debt

As we take on all of these big policy and political fights, we are centering the stories of borrowers—making sure policy solutions are grounded in the lived experiences of the people they will most affect. Together, we can leverage these victories in the year ahead, building an economy where college is free and no one struggles under the weight of student debt.

Thank you for standing with borrowers,



MIKE PIERCE

EXECUTIVE DIRECTOR

STUDENT BORROWER PROTECTION CENTER

Connect With Us





Student Borrower Protection Center | 1025 Connecticut Ave NW, Washington, DC 20036

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Sent by mike@protectborrowers.org

From: Zoom

Sent: Thursday, September 21, 2023 9:50 AM

To: Chaudoir, Merideth

Subject: Delivering Distress: Are Student Loan Companies Cheating Borrowers Out of their Rights?
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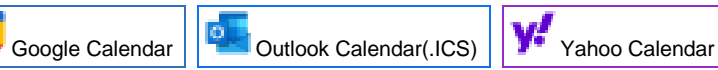
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Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Amy Czulada

Required Attendees: Amy Czulada; Chaudoir, Merideth

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Webinar ID: 893 6312 2590

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From: Zoom

Sent: Monday, October 2, 2023 2:19 PM

To: Chaudoir, Merideth

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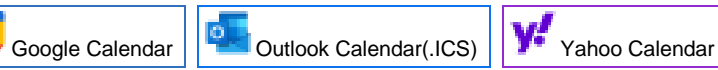
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Required Attendees: Amy Czulada; Chaudoir, Merideth

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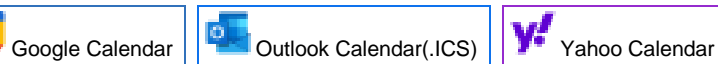
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From: Winston Berkman-Breen

Sent: Tuesday, October 3, 2023 9:33 AM

To: Mike Pierce; Persis Yu

Subject: Fwd: [higherrednotdebt] Fwd: Reminder: Student debt panel series THURSDAY

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Please see the email below about the virtual panel series that the SBPC is hosting this Thursday at 1PM ET. We are excited to have DC Attorney General Schwalb join us for opening remarks, which will be followed by two panel discussions moderated by the Washington Post's Danielle Douglas-Gabriel and POLITICO's Michael Stratford.

More info and a registration link are below. We hope to see you there!

Best,

Winston

----- Forwarded message -----



Hi Jackie,

This Thursday, October 5 at 1pm ET, the Student Borrower Protection Center (SBPC) will host a set of virtual panels, [Delivering Distress: Are Student Loan Companies Cheating Borrowers Out of their Rights?](#)

After three and a half years, payments on federal student loans are set to resume. In the years while payments have been shut off, President Biden has begun to take critical steps to improve the student loan safety net—in particular, committing to improving many of the broken cancellation programs. As a result, millions of federal student loan borrowers are eligible for relief. However, too many of those borrowers are still waiting for that relief to be delivered. This fall, servicers are set to send bills to millions of borrowers who should have those debts cancelled.

We'll start with [keynote remarks from D.C. Attorney General Brian Schwalb](#), followed by two panels that will examine different categories of borrowers and the harm—both legal and financial—that they will face when servicers begin collecting on these loans that should no longer exist.

Register

DELIVERING DISTRESS, A VIRTUAL PANEL SERIES

PART 1: BORROWERS' RIGHTS

Thursday Oct. 5, 2023 — 1 PM - 3:30 PM ET



STUDENT BORROWER
PROTECTION CENTER

MODERATOR:

**DANIELLE
DOUGLAS-GABRIEL**
The Washington Post

PANELISTS:

JULIA BARNARD
*Consumer Financial
Protection Bureau*

EILEEN CONNOR
*Project on Predatory
Student Lending*

CHRIS GOFF
*American Federation
of Teachers*

PERSIS YU
*Student Borrower
Protection Center*

DELIVERING DISTRESS, A VIRTUAL PANEL SERIES

PART 2: RISKS TO THE SYSTEM

Thursday Oct. 5, 2023 — 1 PM - 3:30 PM ET



STUDENT BORROWER
PROTECTION CENTER

MODERATOR:

MICHAEL STRATFORD

Politico

PANELISTS:

WINSTON

BERKMAN-BREEN

*Student Borrower
Protection Center*

JONATHAN GLATER

UC Berkeley Law

EMILY KALANITHI

*California Department
of Justice*

KYRA TAYLOR

*National Consumer
Law Center*

[Register](#)

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Student Borrower Protection Center | 1025 Connecticut Ave NW, Washington, DC 20036

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Sent by mike@protectborrowers.org

--

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From: Winston Berkman-Breen
Sent: Thursday, September 21, 2023 9:45 AM
CC: Persis Yu; Mike Pierce
Subject: Fwd: Mark your calendars!

You don't often get email from winston@protectborrowers.org. [Learn why this is important](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear State colleagues,

I'm flagging the email invitation below for a virtual panel discussion that we're hosting on **October 5** about student loan borrowers who are eligible to have their debt cancelled but who are nonetheless being thrown back into repayment. This poses financial risk for borrowers and raises serious legal questions about student loan servicer accountability. More information and a registration link are below. We hope you can join us!

Best,

Winston

----- Forwarded message -----

From: Mike Pierce <mike@protectborrowers.org>

Date: Wed, Sep 20, 2023 at 4:48 PM

Subject: Mark your calendars!

To: <brandon@protectborrowers.org>

DELIVERING DISTRESS:
**ARE STUDENT LOAN COMPANIES
CHEATING BORROWERS OUT
OF THEIR RIGHTS?**



THURSDAY, OCTOBER 5, 2023
1 PM ET- 3:30 PM ET

www.protectborrowers.org/delivering-distress-event

You're Invited!

Hi Brandon,

After three and a half years, payments on federal student loans are set to resume. In the years while payments have been shut off, President Biden has begun to take critical steps to improve the student loan safety net—in particular,

committing to improving many of the broken cancellation programs. As a result, millions of federal student loan borrowers are eligible for relief. However, too many of those borrowers are still waiting for that relief to be delivered. This fall, servicers are set to send bills to millions of borrowers who should have those debts cancelled.

On Thursday, October 5 at 1pm ET, the Student Borrower Protection Center (SBPC) will host a set of virtual panels, *Delivering Distress: Are Student Loan Companies Cheating Borrowers Out of their Rights?*

This event and its accompanying paper series examine the different categories of borrowers and the harm—both legal and financial—that they will face when servicers begin collecting on these loans that should no longer exist.

[Register](#)

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Sent by mike@protectborrowers.org

--

Claire Stein-Ross
CSR Operations LLC

csroperations.com | claire@csroperations.com | 503.708.0319

she/her

--

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To view this discussion on the web visit https://groups.google.com/d/msgid/All_SBPC/CAE-6KBDDKEoFEA%2BKXMr7xZuX9wS7PDE0MB5DkHYUT5GT%2B%2BWKw%40mail.gmail.com.

From: Winston Berkman-Breen
Sent: Monday, October 30, 2023 2:57 PM
CC: Mike Pierce; Persis Yu
Subject: Fwd: Statement on MOHELA out

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear State partners,

I am writing to share the SBPC statement below on today's announcement by ED that it is withholding \$7.2 million from MOHELA in response to the company's failure to perform basic functions under its federal student loan servicing contract. This includes failing to send timely billing statements to 2.5 million borrowers, resulting in over 800,000 delinquencies. Until the underlying issues are resolved, ED is placing all affected accounts into administrative forbearances, waiving interest, and counting this time toward cancellation under the IDR and PSLF programs.

There is still an important role for state law enforcement and financial regulators to play. This action by the Biden Administration is a major public acknowledgement of ongoing servicing failures. Although ED's response focuses on MOHELA, borrower reports suggest that all of the federal student loan servicers are failing to deliver even the most basic services.

In partnership with the Biden Administrations, states must investigate these failures, ensure they are not systemic and/or repeated, and impose civil penalties where appropriate. Today's announcement helps to mitigate borrower harm, but does not address the underlying conflict directly or assess any penalties for violations of federal and state consumer protection law. We urge your offices to coordinate with each other and with the federal government to investigate these failures. As always, we are here to support you in these efforts.

Best,
Winston

--

Winston Berkman-Breen (He/Him)
Legal Director
www.protectborrowers.org



----- Forwarded message -----

From: Press Team <press@protectborrowers.org>
Date: Mon, Oct 30, 2023 at 11:41 AM
Subject: Statement on MOHELA out
To: sbpcteam@protectborrowers.org <sbpcteam@protectborrowers.org>

Begin forwarded message:

From: Student Borrower Protection Center <press@protectborrowers.org>

Subject: STATEMENT: ED Finds Widespread Servicing Failures Across the Student Loan System, Advocates Urge Follow-On Action By Law Enforcement

Date: October 30, 2023 at 11:39:52 AM EDT

To: press@protectborrowers.org



For Immediate Release: October 30, 2023

Press Contact: Jackie Filson, jackie@protectborrowers.org

[U.S. Department of Education Finds Widespread Servicing Failures Across the Student Loan System, Advocates Urge Follow-On Action By Law Enforcement](#)

October 30, 2023 | WASHINGTON, D.C. — The U.S. Department of Education (ED) [announced](#) widespread servicing failures across the student loan system affecting millions of student loan borrowers. Included in this announcement is a plan to withhold \$7.2 million in payment to the Higher Education Loan Authority of the State of Missouri (MOHELA), meant to cover loan servicing that was required under its federal contract but that the company never performed. ED will also place all affected borrowers in an interest-free forbearance—equivalent to extending the student loan payment pause—until the issue is resolved.

In response, Student Borrower Protection Center (SBPC) Executive Director Mike Pierce issued the following statement:

“Today’s revelation by the Biden Administration affirms what millions of borrowers have experienced in recent weeks: the government’s student loan contractors are not up to the task of restarting loan payments. It has long been clear that the student loan system remains profoundly broken. While more accountability is needed, ED’s action will help blunt some of the harm caused to millions of people as a result. This is excellent news.

“The failures revealed represent only some of the illegal servicing practices borrowers are facing in the return to repayment. Borrowers urgently need law enforcement officials at every level of government to act—addressing this new evidence of illegal practices by MOHELA and its peers, levying penalties where federal and state laws were broken, and ensuring that borrowers are made whole.

“MOHELA failed to perform on its contract with the federal government. Today’s announcement should mark the beginning of the end of MOHELA’s place at the center of the student loan system.”

Background

Earlier this month, borrower advocates released a [series of papers](#) warning of unjust and unlawful collection efforts by the nation’s largest student loan companies. This roadmap for legal action features a foreword by D.C. Attorney General Brian Schwalb and follows the [2020](#) and [2021](#) paper series by many of the same authors, making an urgent case to deliver wide-scale debt relief as quickly as possible. **Read the full paper series here:** <https://protectborrowers.org/delivering-distress-report-series/>

Further Reading

SBPC blog on a national servicer call-in action revealing massive servicing failures: [Dropped Calls, Hours on Hold, and Unanswered Questions: Student Loan Borrower Call-In Day Shows Servicers Are Alarminglly Unprepared to Return to Repayment](#)

SBPC blog on ED's announcement of servicer contracts: [Meet the New Servicers, Same as the Old Servicers](#)

SBPC and National Consumer Law Center (NCLC) blog highlighting revelations of mismanagement and abuse compromising the student loan safety net: [Explosive New Evidence of Mismanagement of Student Loan Program Shows Need for IDR Waiver](#)

###

About Student Borrower Protection Center

[Student Borrower Protection Center](#) (SBPC) is a nonprofit organization focused on eliminating the burden of student debt for millions of Americans. We engage in advocacy, policymaking, and litigation strategy to rein in industry abuses, protect borrowers' rights, and advance racial and economic justice.

Learn more at protectborrowers.org or follow SBPC on Twitter [@theSBPC](#).

From: Mike Pierce
Sent: Wednesday, September 20, 2023 4:48 PM
To: Chaudoir, Merideth
Subject: Mark your calendars!

You don't often get email from mike+protectborrowers.org@ccsend.com. [Learn why this is important](#)

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DELIVERING DISTRESS:
**ARE STUDENT LOAN COMPANIES
CHEATING BORROWERS OUT
OF THEIR RIGHTS?**



THURSDAY, OCTOBER 5, 2023
1 PM ET- 3:30 PM ET

www.protectborrowers.org/delivering-distress-event

You're Invited!

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On Thursday, October 5 at 1pm ET, the Student Borrower Protection Center (SBPC) will host a set of virtual panels, *Delivering Distress: Are Student Loan Companies Cheating Borrowers Out of their Rights?*

This event and its accompanying paper series examine the different categories of borrowers and the harm—both legal and financial—that they will face when servicers begin collecting on these loans that should no longer exist.

[Register](#)

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Sent by mike@protectborrowers.org

From: Jones, Gregory

Sent: Thursday, April 28, 2022 3:40 PM

To: 'thammonds@ago.state.al.us'; 'OMartin@ago.state.al.us'; 'zwilson@ago.state.al.us'; 'Jessica.Tubbs@AlabamaAG.gov'; 'dan.taliaferro@alabamaag.gov'; 'Rebecca.Salisbury@azag.gov'; 'Brad.keogh@azag.gov'; David McCoy; 'nicklas.akers@doj.ca.gov'; 'bernard.eskandari@doj.ca.gov'; 'Michael.Elisofon@doj.ca.gov'; 'Hanah.Harris@coag.gov'; 'john.langmaid@ct.gov'; 'jennifer.rimm@dc.gov'; 'christina.blackburn@myfloridalegal.com'; Victoria Butler; 'James.C.Paige@hawaii.gov'; 'stephen.h.levins@dcca.hawaii.gov'; 'shantel.knowlton@ag.idaho.gov'; Jones, Gregory; 'Jessica.whitney@iowa.gov'; 'Kim.Davenport@ag.ks.gov'; 'Sarah.Dietz@ag.ks.gov'; 'rebecca.price@ky.gov'; 'GitsC@ag.louisiana.gov'; 'Linda.Conti@maine.gov'; 'Bgruhn@oag.state.md.us'; 'pziperman@oag.state.md.us'; 'diana.hooley@state.ma.us'; 'peter.leight@state.ma.us'; 'Yael.Shavit@state.ma.us'; 'jennifer.snow@state.ma.us'; 'BloomfieldW@michigan.gov'; 'GreenB@michigan.gov'; 'Adam.Welle@ag.state.mn.us'; 'james.rankin@ago.ms.gov'; 'Caleb.Pracht@ago.ms.gov'; 'jocelyn.brasher@nebraska.gov'; 'michaela.hohwieler@nebraska.gov'; 'phil.carlson@nebraska.gov'; 'JGibbs@ag.nv.gov'; 'LMTucker@ag.nv.gov'; 'rfulghum@ag.nv.gov'; 'Ana.Atta-Alla@law.njoag.gov'; 'amber.dailey@law.njoag.gov'; 'Cathleen.O_Donnell@law.njoag.gov'; 'Isabella.Pitt@law.njoag.gov'; 'Alina.Wells@dol.lps.state.nj.us'; 'Joshua.Bengal@law.njoag.gov'; 'renee.cadmus@law.njoag.gov'; 'Jane.Azia@ag.ny.gov'; 'Melvin.Goldberg@ag.ny.gov'; 'KANDER@ncdoj.gov'; 'kdarruda@ncdoj.gov'; 'Brandon.Duck@ohioattorneygeneral.gov'; 'timothy.effler@ohioago.gov'; 'Malisa.McPherson@oag.ok.gov'; 'Katherine.Campbell@doj.state.or.us'; 'jharvey@attorneygeneral.gov'; 'lwilliams@attorneygeneral.gov'; 'jabel@attorneygeneral.gov'; 'ESchaub@riag.ri.gov'; 'sprovazza@riag.ri.gov'; 'dgibson@scag.gov'; 'ksimons@scag.gov'; 'mfjowers@scag.gov'; 'yvette.lafrentz@state.sd.us'; 'Jeff.Hill@ag.tn.gov'; 'maria.strohbehne@ag.tn.gov'; 'Esther.Chavez@oag.texas.gov'; 'sterlingc@agutah.gov'; Chaudoir, Merideth; 'gward@oag.state.va.us'; 'JScott@oag.state.va.us'; 'mkubiak@oag.state.va.us'; 'ChrisW@ATG.WA.GOV'; 'julie.doyle@atg.wa.gov'; 'Norman.A.Googel@wvago.gov'; 'beilinlw@doj.state.wi.us'; 'HarlowRD@DOJ.STATE.WI.US'; 'lara.sutherlin@wisconsin.gov'

CC: Casey, Michele; Williams, Alan

Subject: Multistate Sign-On Opportunity - Letter to FTC on For-Profit Earnings Claims

Attachments: FTC NPRM - Request for Comment on Earnings Claims (3.11.22).pdf; 2022.4.28 - Draft Multistate Comment - FTC Earnings Claim.docx

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear For-Profit Working Group States,

For your consideration and potential sign-on, attached please find a proposed multistate letter to the FTC regarding their [Request for Comment](#) (also attached) on their upcoming rulemaking covering earnings claims. Following *AMG*, the FTC is seeking alternative ways to provide restitution for consumers. One way they could do so is through a rule, violations of which are grounds for restitution under the FTC Act.

The request is very broad and covers a multitude of industries, including for-profit schools. In this letter, we primarily intend to provide insight into AGs' experiences with for-profits in order to create a record which the FTC can reference in proposing any rule. Since there is not a proposed rule at this time, we do not advocate one way or another as to what a rule should entail so as not to limit the FTC in their rulemaking.

The Letter notes our offices' long history of enforcement work against for-profits and encourages the FTC to take this history and experience into account when crafting any proposed rule. We specifically discuss the harm of student loans, the targeting of minority groups by for-profits, and misrepresentations we've seen by for-profits as to the amount, source, and adequacy of earnings.

We hope your states will join. **The submission deadline is May 10, 2022, so we are requesting sign-on by 12pm central on May 9, 2022.** If you intend to sign-on, please let me know (Gregory.jones@ilag.gov) and also provide me your AG's

signature. If you have any questions or suggested edits, please do not hesitate to reach out to me directly as well – my contact information is below.

Best,

Greg Jones

Gregory W. Jones
Supervising Attorney
Consumer Fraud Bureau
Illinois Attorney General's Office
100 W. Randolph Street, 12th Floor
Chicago, Illinois 60601
Phone: 773-590-6980
Fax: 312-814-2593
Gregory.jones@ilag.gov

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Proposed Rules

Federal Register

Vol. 87, No. 48

Friday, March 11, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 462

Deceptive or Unfair Earnings Claims

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is considering proposing a rule to address deceptive or unfair marketing using earnings claims. The Commission is soliciting written comment, data, and arguments concerning the need for such a rulemaking. In addition, the Commission solicits comment on how the Commission can ensure the broadest participation by affected interests in the rulemaking process.

DATES: Comments must be received on or before May 10, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the

SUPPLEMENTARY INFORMATION section below. Write “Earnings Claims ANPR, R111003” on your comment, and file your comment online at <https://www.regulations.gov>. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Melissa Dickey (202-326-2662), mdickey@ftc.gov, or Andrew Hudson (202-326-2213), ahudson@ftc.gov, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Mailstop CC-5201, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission is publishing this notice pursuant to section 18 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 57a, and the provisions of part 1, subpart B of the Commission’s Rules of Practice, 16 CFR 1.7 through 1.20. The FTC Act authorizes the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

I. Background

Misleading earnings claims have long been a significant problem for consumers.¹ The use of such claims both deprives consumers of the ability to make informed decisions and unfairly advantages bad actors in the marketplace at the expense of honest businesses. The promise of significant earnings is a powerful inducement to purchase or invest time or money.

The Commission has extensive law enforcement experience challenging misleading earnings claims under section 5 of the FTC Act, 15 U.S.C. 45,² resulting in a long line of federal court opinions holding that the use of false, unsubstantiated, or otherwise misleading earnings claims violates Section 5.³ The Commission has also

issued litigated rulings in a number of cases dealing with misleading earnings claims and has repeatedly determined that such claims violate Section 5.⁴

The cases establish, among other things: (a) Earnings claims are material;⁵ (b) representations regarding possible earnings are not mere puffery,⁶ and will usually imply that such earnings are typical;⁷ (c) the representation that an amount or degree of earnings is likely can be implied, including through testimonials from successful participants and examples of

judgment); *FTC v. Grant Connect, LLC*, 827 F. Supp. 2d 1199 (D. Nev. 2011) (summary judgment); *FTC v. Holiday Enterprises*, No. 1:06-cv-2939, 2008 WL 953358 (N.D. Ga. Feb. 5, 2008) (summary judgment); *FTC v. Stefanchik*, No. 04-cv-1852, 2007 WL 1058579 (W.D. Wash. Apr. 3, 2007) (summary judgment); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247 (S.D. Fla. 2007) (summary judgment); *FTC v. Tashman*, 318 F.3d 1273 (11th Cir. 2003) (vacating judgment and finding defendants liable on appeal); *FTC v. Medicor LLC*, 217 F. Supp. 2d 1048 (C.D. Cal. 2002) (summary judgment); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502 (S.D.N.Y. 2000) (final judgment after trial); *FTC v. Minuteman Press, Inc.*, 53 F. Supp. 2d 248 (E.D.N.Y. 1998) (judgment on liability after trial); *FTC v. Wolf*, No. 94-cv-8119, 1996 WL 812940 (S.D. Fla. Jan. 31, 1996) (summary judgment); *FTC v. Nat’l Bus. Consultants, Inc.*, No. 89-cv-1740, 1990 WL 32967 (E.D. La. Mar. 20, 1990) (judgment after trial); *FTC v. U.S. Oil and Gas Corp.*, No. 83-cv-1702, 1987 U.S. Dist. LEXIS 16137 (S.D. Fl. 1987) (summary judgment); *FTC v. Kitco*, 612 F. Supp. 1282 (D. Minn. 1985) (final judgment after trial).

⁴ See Notice of Penalty Offense Authority Concerning Money-Making Opportunities, available at <https://www.ftc.gov/MMO-notice>.

⁵ *John Beck Amazing Profits*, 865 F. Supp. 2d at 1067-76 (claims of quick and easy substantial income were material); see also, e.g., *FTC v. Noland*, No. 2:20-cv-0047, 2020 WL 954958, *12-14 (D. Ariz. Feb. 27, 2020); *FTC v. World Patent Mktg.*, No. 17-cv-20848, 2017 WL 3508639, *11-12 (S.D. Fla. Aug. 16, 2017); *FTC v. Vemma Nutrition Co.*, No. 15-cv-01578, 2015 WL 11118111, *5 (D. Ariz. Sept. 18, 2015); *Holiday Enterprises*, No. 1:06-cv-2939, 2008 WL 953358, *6-7; *FTC v. Med. Billers Network, Inc.*, 543 F. Supp. 2d 283, 306-08 (S.D.N.Y. 2008).

⁶ *Grant Connect*, 827 F. Supp. 2d at 1225-26 (rejecting puffery defense and finding claims that “[r]iches range from a few hundred dollars a month to \$50,000 or more a year!” were deceptive), affirmed in relevant part at 763 F.3d 1094 (9th Cir. 2014); see also, e.g., *FTC v. Febre*, No. 94-cv-3625, 1996 WL 396117, *2 (N.D. Ill. Jul. 3, 1996); *Noland*, No. 20-cv-00047, 2020 WL 954958, *12-13; *World Patent*, No. 17-cv-20848, 2017 WL 3508639, *12.

⁷ *Five-Star Auto Club*, 97 F. Supp. 2d at 528 (“[I]t would have been reasonable for consumers to have assumed that the promised rewards were achieved by the typical [participant.]”); see also, e.g., *Tashman*, 318 F.3d at 1276; *Febre*, No. 94-cv-3625, 1996 WL 396117, *2; *National Dynamics Corp.*, 82 FTC 488, 512, 565 (1973) as modified at 85 FTC 1052 (1975).

¹ As discussed further below, consumers encounter such claims in many contexts, including in seeking work, business and other money-making opportunities, education, and more.

² See, e.g., Press Release, Federal Trade Commission, Statement on the FTC’s “Operation Income Illusion” sweep (2020), <https://www.ftc.gov/news-events/press-releases/2020/12/scammers-leverage-pandemic-fears-ftc-law-enforcement-partners>; Press Release, Federal Trade Commission, Statement on the FTC’s “Operation Lost Opportunity Sweep” (2012), <https://www.ftc.gov/news-events/press-releases/2012/11/ftc-expands-fight-against-deceptive-business-opportunity-schemes>; Press Release, Federal Trade Commission, Statement on the FTC’s “Operation Bottom Dollar” enforcement sweep (2010), <https://www.ftc.gov/news-events/press-releases/2010/02/ftc-cracks-down-con-artists-who-target-jobless-americans>; Press Release, Federal Trade Commission, Statement on the FTC’s “Operation Short Change” enforcement sweep (2009), <https://www.ftc.gov/news-events/press-releases/2009/07/ftc-cracks-down-scammers-trying-take-advantage-economic-downturn>; Press Release, Federal Trade Commission, Statement on the FTC’s “Biz Opp Flop” sweep (2005), <https://www.ftc.gov/news-events/press-releases/2005/02/criminal-and-civil-enforcement-agencies-launch-major-assault>.

³ See, e.g., *FTC v. John Beck Amazing Profits*, 865 F. Supp. 2d 1052 (C.D. Cal. 2012) (summary

hypothetical or past profits;⁸ and (d) earnings claims must be substantiated—that is, the maker must have a reasonable basis for the claim before making it.⁹ The well-settled law on deception under section 5 of the FTC Act applies fully to deceptive earnings claims: (a) Liability turns on whether the net impression conveyed by representations—not merely their express terms—is unsubstantiated or otherwise misleading;¹⁰ (b) disclaimers do not bar liability, as they often fail to dispel a misleading impression created by other representations;¹¹ (c) as a matter of law, good faith or a lack of intent to deceive is not a defense;¹² (d) a company may be liable for bait-and-switch advertising or the use of “misleading door openers,” “even if the truth is subsequently made known;”¹³ (e) a principal may be liable for deceptive claims made by its

representatives or other agents;¹⁴ and (f) a company may be liable for providing deceptive marketing materials for others to use on its behalf (sometimes called providing “means and instrumentalities”).¹⁵

Despite the Commission’s aggressive enforcement program,¹⁶ deceptive earning claims continue to proliferate in the marketplace. The FTC continues to receive widespread reports from consumers and informants of misleading earnings claims. In *AMG Capital Mgmt., LLC v. FTC*¹⁷ the Supreme Court ruled that the Commission may not seek equitable monetary relief under section 13(b) of the FTC Act for violations of the FTC Act or other statutes enforced by the Commission.¹⁸ While the Commission recently issued a Notice of Penalty Offenses concerning earnings claims,¹⁹

which will permit the Commission to seek civil penalties for misleading earnings claims in some cases, this authority does not provide a basis for the Commission to recover funds to return to injured consumers.

The Commission anticipates that a rule prohibiting the use of misleading earnings claims would enhance deterrence and help the Commission move quickly to stop illegal conduct. Such a rule also may further clarify for businesses what constitutes a deceptive earnings claim and what it means to have substantiation for an earnings claim.

In addition, a rule would enable the Commission to seek monetary relief for consumers harmed by deceptive earnings claims, as well as civil penalties against those who make the deceptive claims. Specifically, section 19 of the FTC Act, 15 U.S.C. 57b, authorizes the Commission to seek “rescission or reformation of contracts, the refund of money or return of property, [and] the payment of damages,” among other things, to redress harm caused by violations of FTC rules, such as one prohibiting deceptive earnings claims. And section 5 of the FTC Act, 15 U.S.C. 45(m), allows the Commission to “recover civil penalties” against those who violate such a rule.

The Commission has previously promulgated rules regulating the use of earnings claims in certain industry settings: The Franchise Rule,²⁰ the Business Opportunity Rule,²¹ and the Telemarketing Sales Rule.²² However, the scope of coverage of these rules is limited. Numerous different types of enterprises that do not clearly fall under the scope of these existing rules continue to use misleading earnings claims to deceive consumers in violation of section 5. The financial consequences of this deception for consumers are significant.²³

²⁰ Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR part 436 (2007).

²¹ Business Opportunity Rule, 16 CFR part 437 (2012).

²² Telemarketing Sales Rule, 16 CFR part 310.

²³ See, e.g., *FTC v. OTA Franchise Corp.*, No. 8:20-cv-287 (filed C.D. Cal. 2020) (alleging consumer harm of over \$370 million); *FTC v. Neora, LLC*, No. 3:20-cv-1979 (filed D.N.J. 2019, transferred N.D. Tex.) (alleging consumer harm of over \$120 million); *FTC v. Mobe, Inc.*, No. 6:18-cv-862, Dkt. No. 257, Renewed Motion for Default Judgment, at 5 (filed M.D. Fla. 2018) (alleging consumer harm of over \$318 million); *FTC v. The Tax Club, Inc.*, No. 13-cv-210 (filed S.D.N.Y. 2016) (alleging consumer harm of over \$200 million). Individual losses can be substantial; for example, tens of thousands of purchasers in the *OTA Franchise* matter each paid over \$10,000 for purported courses on how to make money trading in the financial markets.

⁸ *John Beck Amazing Profits*, 865 F. Supp. 2d at 1072 (ads featuring testimonials created impression that “a typical consumer can easily and quickly earn thousands of dollars per week”); see also, e.g., *World Patent*, No. 17-cv-20848, 2017 WL 3508639, *12; *Macmillan, Inc.*, 96 FTC 208, 301 (1980); *National Dynamics*, 82 FTC at 511–13, 564 and as modified at 85 FTC at 1057; *Universal Credit Acceptance Corp.*, 82 FTC 570, 669, 682–83 (1973); *Von Schrader Mfg.*, 33 FTC 58, 65 (1941).

⁹ *Grant Connect*, 827 F. Supp. 2d at 1214, 1226 (“Examples of deceptive conduct violative of the Act include unsubstantiated claims that consumers can make a lot of money using the defendant’s product”); see also, e.g., *FTC v. Digital Altitude, LLC*, No. 2:18-cv-0729, 2018 WL 1942392, *7–10 (C.D. Cal. Mar. 9, 2018); *John Beck Amazing Profits*, 865 F. Supp. 2d at 1067, 1071–72; *Holiday Enterprises*, No. 1:06-cv-2939, 2008 WL 953358, *6–7; *Von Schrader*, 33 FTC at 64.

¹⁰ *Vemma*, No. 2:15-cv-01578, 2015 WL 11118111, *6 (in determining whether marketing made deceptive income claims. “[t]he ‘common-sense net impression’ of representations controls”); see also, e.g., *World Patent*, No. 17-cv-20848, 2017 WL 3508639, *11–12; *John Beck Amazing Profits*, 865 F. Supp. 2d at 1073; *Med. Billers Network*, 543 F. Supp. 2d at 306–07; *Tashman*, 318 F.3d at 1276; *Febre*, No. 94-cv-3625, 1996 WL 396117, *4.

¹¹ *World Patent*, No. 17-cv-20848, 2017 WL 3508639, *13–14 (rejecting disclaimer defense as they “failed to change the net impression created by Defendants’ salespeople who verbally promised financial gain”); see also, e.g., *Vemma*, No. 2:15-cv-01578, 2015 WL 11118111, *6; *John Beck Amazing Profits*, 865 F. Supp. 2d at 1072; *Stefanchik*, No. 04-cv-1852, 2007 WL 1058579, *6; *Minuteman Press*, 53 F. Supp. 2d at 262–63.

¹² *Five-Star Auto Club*, 97 F. Supp. 2d at 526 (liability for misleading earnings claims under Section 5 did not turn on “intent to defraud or deceive,” or “bad faith”); see also, e.g., *Holiday Enterprises*, No. 1:06-cv-2939, 2008 WL 953358, *6–7; *Med. Billers Network*, 543 F. Supp. 2d at 304; *Nat’l Bus. Consultants*, No. 89-cv-1740, 1990 WL 32967, *9; *Wolf*, No. 94-cv-8119, 1996 WL 812940, *5.

¹³ FTC Policy Statement on Deception (October 23, 1984) (appended to *Cliffdale Assoc. Inc.*, 103 FTC 110, 180 & n.37 (1984)); see also, e.g., *Exposition Press, Inc. v. FTC*, 295 F.2d 869, 873 (2d Cir. 1961); *Med. Billers Network*, 543 F. Supp. 2d at 307.

¹⁴ *Med. Billers Network*, 543 F. Supp. 2d at 319–20 (holding seller liable for telemarketer agent’s earnings misrepresentations regardless of telemarketer’s purported independent contractor status); see also, e.g., *Stefanchik*, No. 04-cv-1852, 2007 WL 1058579, *6; *FTC v. Skybiz.com, Inc.*, No. 01-cv-396, 2001 WL 1673645, *9 (N.D. Okla. Aug. 31, 2001), *aff’d*, 57 F. App’x 374 (10th Cir. 2003); *Five-Star Auto Club*, 97 F. Supp. 2d at 527; *U.S. Oil and Gas*, No. 83-cv-1702, 1987 U.S. Dist. LEXIS 16137, *48–49; *Goodman v. FTC*, 244 F.2d 584, 592–593 (9th Cir. 1957).

¹⁵ *Five-Star Auto Club*, 97 F. Supp. 2d at 530 (“[Defendants] violated [the] FTC Act by providing participants with deceptive means and instrumentalities,” specifically, marketing materials that included deceptive earnings claims, explaining that “[a]s a matter of law, ‘those who put into the hands of others the means by which they may mislead the public, are themselves guilty of a violation of Section 5 of the Federal Trade Commission Act.’”); see also, e.g., *Vemma*, No. 2:15-cv-01578, 2015 WL 11118111, *7.

¹⁶ See, e.g., *FTC v. BINT Operations LLC*, No. 4:21-cv-518 (filed E.D. Ark. 2021); *FTC v. Moda Latina BZ Inc.*, No. 2:20-cv-10832 (filed C.D. Cal. 2020); *FTC v. Digital Income System, Inc.*, No. 1:20-cv-24721 (filed S.D. Fla. 2020); *FTC v. OTA Franchise Corp.*, No. 8:20-cv-287 (filed C.D. Cal. 2020); *FTC v. Ragingbull.com, LLC*, No. 1:20-cv-3538 (filed D. Md. 2020); *FTC v. National Web Design, LLC*, No. 2:20-cv-846 (filed D. Utah 2020); *FTC v. Noland*, No. 2:20-cv-0047 (filed D. Ariz. 2020); *FTC v. Position Gurus, LLC*, No. 2:20-cv-710 (filed W.D. Wash. 2020); *FTC v. 8 Figure Dream Lifestyle LLC*, No. 8:19-cv-1165 (filed C.D. Cal. 2019); *FTC v. Zurixx LLC*, No. 2:19-cv-713 (filed D. Utah 2019); *FTC v. Advocate, Int’l, L.P.*, No. 4:19-cv-715 (filed E.D. Tex. 2019); *FTC v. Neora, LLC*, No. 3:20-cv-1979 (filed D.N.J. 2019, transferred N.D. Tex.); *FTC v. Fat Giraffe Mktg. Group LLC*, No. 2:19-cv-613 (filed D. Utah 2019); *FTC v. AWS, LLC*, No. 2:18-cv-442 (filed D. Nev. 2018); *FTC v. Sellers Playbook, Inc.*, No. 18-cv-2207 (filed D. Minn. 2018); *FTC v. Dluca*, No. 0:18-cv-60379 (filed S.D. Fla. 2018); *FTC v. Mobe Ltd.*, No. 6:18-cv-862 (filed M.D. Fla. 2018); *FTC v. Vision Solution Marketing LLC*, No. 2:18-cv-356 (filed D. Utah 2018); *FTC v. Jason Cardiff*, No. 5:18-cv-2104 (filed C.D. Cal. 2018).

¹⁷ *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

¹⁸ 15 U.S.C. 53(b).

¹⁹ Penalty Offenses Concerning Multi-Making Opportunities (issued October 2021), available at <https://www.ftc.gov/enforcement/penalty-offenses/money-making-opportunities>.

The Commission believes that initiating a rulemaking to address the use of earnings claims could benefit consumers and could provide useful guidance without burdening businesses. The rule would be designed to deter the use of misleading earnings claims, inform market participants of their legal obligations by spelling out prohibitions plainly, and ensure the Commission can seek monetary relief for consumers deceived by misleading earnings claims.

II. Objectives and Regulatory Alternatives

The Commission requests input on whether and how it can most effectively use its authority under section 18 of the FTC Act, 15 U.S.C. 57a, to address certain deceptive or unfair acts or practices involving the use of false, unsubstantiated, or otherwise misleading earnings claims.

The Commission is aware that such claims are used by numerous companies and individuals to entice prospective purchasers, job-seekers, investors, or other participants in widely varying contexts. For example, the Commission and other government agencies have alleged that misleading earnings claims have been used to tout offers as diverse as coaching or mentoring,²⁴ education,²⁵ work-from-home, “gig” work, and other job opportunities,²⁶ multi-level marketing opportunities,²⁷ franchise,²⁸

²⁴ See, e.g., *FTC v. OTA Franchise Corp.*, No. 8:20-cv-287 (filed C.D. Cal. 2020); *FTC v. Ragingbull.com, LLC*, No. 1:20-cv-3538 (filed D. Md. 2020); *FTC v. Zurixx LLC*, No. 2:19-cv-713 (filed D. Utah 2019); *FTC v. Nudge LLC*, No. 2:19-cv-867 (filed D. Utah 2019); *FTC v. Mobe Ltd.*, No. 6:18-cv-862 (filed M.D. Fla. 2018); *FTC v. Digital Altitude*, No. 2:18-cv-0729 (filed C.D. Cal. 2018).

²⁵ See, e.g., *FTC v. Devry Education Group Inc.*, No. 2:16-cv-579 (filed C.D. Cal. 2016); *Commonwealth of Massachusetts v. ITT Educational Services, Inc.*, No. 16-0411 (filed Mass. Super. Ct. 2016); *State of Colorado v. Center For Excellence in Higher Education, Inc.*, No. 2014-cv-34530 (filed Denver City And County Dist. Ct. 2014); *Macmillan, Inc.*, 96 FTC 208 (1980).

²⁶ See, e.g., *Amazon.com, Inc.*, FTC Docket No. C-4746 (filed 2021); *FTC v. Moda Latina BZ Inc.*, No. 2:20-cv-10832 (filed C.D. Cal. 2020); *FTC v. Fat Giraffe Mktg. Group LLC*, No. 2:19-cv-63 (filed D. Utah 2019); *FTC v. Uber Technologies, Inc.*, No. 3:17-cv-0261 (filed N.D. Cal. 2017); *Encyclopaedia Britannica, Inc., et al.*, 87 FTC 421, 450, 486-88, 531-32 (1976); *Abel Allan Goodman Trading As Weavers Guild*, 52 FTC 982, 988 (1956), order affirmed 244 F.2d 584 (9th Cir. 1957).

²⁷ See, e.g., *FTC v. Noland*, No. 2:20-cv-0047 (filed D. Ariz. 2020); *FTC v. Neora, LLC*, No. 3:20-cv-1979 (filed D.N.J. 2019, transferred N.D. Tex.); *FTC v. Advocare, Int'l, L.P.*, No. 4:19-cv-715 (filed E.D. Tex. 2019); *FTC v. Herbalife Int'l of America, Inc.*, No. 2:16-cv-5217 (filed C.D. Cal. 2016); *FTC v. Vemma Nutrition Co.*, No. 2:15-cv-01578 (filed D. Ariz. 2015).

²⁸ See, e.g., *United States v. We The People Forms and Service Centers USA, Inc.*, No. 04-cv-10075 (filed C.D. Cal. 2004); *FTC v. Government Careers Network, Inc., et al.*, No. 01-cv-2286 (filed S.D.N.Y. 2001); *FTC v. Minuteman Press, Inc.*, No. 93-cv-

e-commerce²⁹ or other business opportunities,³⁰ chain referral schemes,³¹ and other investment opportunities,³² as well as other types of business or money-making opportunities.³³ The Commission requests that commenters provide other information or evidence on the prevalence of these practices in these same contexts as well as any others.

The Commission also is interested in exploring disclaimers: Specifically, whether a disclaimer can be sufficient to correct a misleading impression from an atypical earnings claim,³⁴ and, if so, what features such a disclaimer must have, and in what contexts will it suffice. In the Commission’s experience, we have not seen probative evidence that disclaimers effectively cure atypical earnings claims. In Commission

2496 (filed E.D.N.Y. 1993); *FTC v. National Business Consultants*, No. 89-cv-1740 (filed E.D. La. 1987).

²⁹ See, e.g., *FTC v. National Web Design, LLC*, No. 2:20-cv-846 (filed D. Utah 2020); *FTC v. AWS, LLC*, No. 2:18-cv-442 (filed D. Nev. 2018); *FTC v. Sellers Playbook, Inc.*, No. 18-cv-2207 (filed D. Minn. 2018); *FTC v. Advertising Strategies, LLC*, No. 2:16-cv-3353 (filed D. Ariz. 2016); *FTC v. The Online Entrepreneur, Inc.*, No. 8:12-cv-2500 (filed M.D. Fla. 2012).

³⁰ See, e.g., *FTC v. Digital Income System, Inc.*, No. 1:20-cv-24721 (filed S.D. Fla. 2020); *FTC v. 8 Figure Dream Lifestyle LLC*, No. 8:19-cv-1165 (filed C.D. Cal. 2019); *FTC v. Money Now Funding, LLC*, No. 2:13-cv-1583 (filed D. Ariz. 2013); *FTC v. American Business Builders, LLC*, No. 2:12-cv-2368 (filed D. Ariz. 2012); *United States v. The Zaken Corp.*, No. 2:12-cv-9631 (filed C.D. Cal. 2012); *FTC v. Universal Advertising, Inc.*, No. 1:06-cv-152 (filed D. Utah 2006).

³¹ See, e.g., *FTC v. BINT Operations LLC*, No. 4:21-cv-518 (filed E.D. Ark. 2021); *FTC v. Dluca*, No. 0:18-cv-60379 (filed S.D. Fla. 2018); *FTC v. Evans*, No. 4:03-cv-178 (E.D. Tex. 2003); *FTC v. Lightfoot*, No. C 3-02-145 (filed S.D. Ohio 2002); *FTC v. Bigsmart.com LLC*, No. 01-cv-466 (filed D. Ariz. 2001); *FTC v. Cano*, No. 97-cv-7947 (filed C.D. Cal. 1997).

³² See, e.g., *SEC v. Senderov*, No. 19-cv-5242 (filed E.D. Wa. 2019); *SEC v. Peterson*, No. 19-cv-8334 (filed C.D. Cal. 2019); *In re Spectrum Concepts LLC*, SEC No. 3-16358 (filed SEC 2015); *In re Pankaj Kumar Srivastava*, SEC No. 3-1267 (filed SEC 2014); *SEC v. Butts*, No. 13-23115 (filed S.D. Fla. 2013); *SEC v. Shavers*, No. 4:13-cv-416 (filed E.D. Tex. 2013).

³³ See, e.g., *FTC v. Position Gurus, LLC*, No. 2:20-cv-710 (filed W.D. Wash. 2020) (marketing and other business-related services); *FTC v. Montano*, No. 6:17-cv-2203 (filed M.D. Fla. 2017) (“automatic money systems” and “secret codes”); *FTC v. World Patent Mktg.*, No. 17-cv-20848 (filed S.D. Fla. 2017) (invention promotion); *FTC v. Blue Saguaro Marketing, LLC*, No. 2:16-cv-3406 (filed D. Ariz. 2016) (grant scheme).

³⁴ An atypical earnings claim is a representation, express or implied, regarding profit, earnings, or other financial gain, that does not reflect the experience of the typical purchaser, employee, independent contractor, or other participant engaged in the money-making opportunity at issue. Such claims often convey the message that the represented earnings are typical—this is deceptive. See notes 5 & 6, *supra*; FTC’s Guides Concerning the Use of Endorsements and Testimonials in Advertising (“Endorsement Guides”), 16 CFR 255.2(b).

enforcement actions where defendants have argued that disclaimers or disclosures cured any deceptive earnings claims, courts have repeatedly found otherwise.³⁵ Further, research by the Commission has found that even clear and prominent disclaimers of “Results not typical” or the stronger “These testimonials are based on the experiences of a few people and you are not likely to have similar results,” are not sufficient to dispel the implication that a testimonial depicts typical results.³⁶ Yet, some companies continue to use disclaimers with such language. Based on the foregoing, the Commission seeks comment, information, and evidence on whether a disclaimer can be sufficient to correct an otherwise misleading impression created by earnings claims, and, if so, whether and how the issue should be addressed in a rule.

The Commission also wishes to explore in this rulemaking whether some or all entities and individuals making earnings claims should be required to give recipients specific earnings information. The Franchise and Business Opportunity Rules require companies that make earnings claims to furnish prospective members with a disclosure document that includes information about earnings.³⁷ Should similar provisions be implemented in an earnings claim rule? How would it effectively prevent or curb deception regarding earnings? If so, what information should such a disclosure include? What would be the benefit to consumers and the burden to business of such a disclosure requirement? Given the wide variety of commercial contexts in which earnings claims may be used, should a disclosure requirement apply to only certain types of entities and individuals or in certain contexts, or should its application be limited in some other way? For example, should

³⁵ *World Patent Mktg.*, No. 17-cv-20848, 2017 WL 3508639, *13-14 (even if disclaimers were seen, “they failed to change the net impression created by Defendants’ salespeople who verbally promised financial gain”); *Vemma*, No. 2:15-cv-01578, 2015 WL 1118111, at *6-7 (disclaimers of “results not typical” not sufficient, as “consumer may [still] reasonably believe that a statement of unusual earning potential represents typical earnings”); *Medicor*, 217 F. Supp. 2d at 1053-54 (“consumers could reasonably believe that the statements of earnings potential represent typical or average earnings” despite disclaimer); *Minuteman Press*, 53 F. Supp. 2d at 262-63 (written disclaimers contradicting oral earnings claims not sufficient, as “a reasonable consumer could legitimately conclude that he or she was being furnished important specific earnings information, *subrosa*, to assist in the decision-making process notwithstanding the general disclaimers in the [contract]”).

³⁶ Endorsement Guide 16 CFR 255.2(b) n. 105.

³⁷ 16 CFR 436.2 and 436.5(u); 16 CFR 437.2.

its coverage exclude job postings and help wanted ads? Should it apply only to those whose claims cite atypical earnings figures? Or should it be limited on some other basis?

Relatedly, the Commission is interested in exploring whether a rule should address the use of real or purported earnings data or statistics from an industry or professional field in the promotion of money-making opportunities.³⁸ In the Commission's experience, some such uses are misleading. These seemingly objective figures may create the impression that the depicted level of sales or earnings is typical in the industry or field, or for the opportunity being advertised, and by implication, that the prospective purchaser, employee, or other participant will achieve similar results.³⁹ The Commission seeks comment on whether a prohibition on such misleading "industry" earnings claims should be included in a rule, and if so, what the proper scope of its coverage should be.

The Commission also seeks comment on whether and how a rule can most effectively provide clarity on the substantiation a company must possess before making an earnings claim, and whether those who make earnings claims should be required to keep records to demonstrate how they have substantiated the claims. In the Commission's experience, numerous companies have taken positions that appear to misunderstand the substantiation obligation. For example, the Commission is aware that, historically, some multi-level marketing companies have made earnings claims to potential distributors without knowing what expenses their distributors incur. But earnings claims that reflect gross income and omit material expenses are misleading.⁴⁰

³⁸ For example, the Business Opportunity Rule bars business opportunity sellers from disseminating industry financial information to prospective purchasers unless they have substantiation that the information "reflects, or does not exceed, the typical or ordinary" experience of purchasers. 16 CFR 437.4(c).

³⁹ *FTC v. Zurixx*, No. 2:19-cv-0713, (filed D. Utah 2019), Second Amended Complaint, Dkt. 219, para. 62 & 88 (earnings claims included national averages drawn from industry sources); Dkt. 12-15 (p.7) (same); Dkt. 12-48 (p.35) (same); *Med. Billers Network*, 543 F. Supp. 2d at 305-06 (earnings claims based on industry statistics deceptively implied that participants in defendants' opportunity would make the depicted amounts); *cf.* FTC Endorsement Guides, 16 CFR 255.2(b) (representations of individual consumers' experiences "will likely be interpreted as representing that the . . . experience is representative of what consumers will generally achieve").

⁴⁰ *Febre*, No. 94-cv-3625, 1996 WL 396117, *3-5 (finding ads with earnings claims deceptive

before making an earnings claim, a business must have a reasonable basis for the claim⁴¹—that means both gross income and expenses incurred in generating that income. As another example, entities and individuals often argue before the Commission that earnings claims made in testimonials are substantiated if the testimonialist provides evidence that he or she attained the results described in the testimonial. But confirming that a testimonialist is accurately describing their own experience does not substantiate a key message that such representations usually convey—that prospective participants can expect similar results.⁴² Given the frequency with which these and other similar issues arise, the Commission is considering how a rule might provide clarity on the matter. How should a rule define the evidence necessary to meet the substantiation requirement? Also, should a rule impose a recordkeeping requirement for substantiation evidence? Such requirements ensure that the Commission can obtain the evidence necessary to evaluate a company's claims that its earnings representations are substantiated.⁴³ If

because they failed to disclose expenses); *Encyclopaedia Britannica*, 87 FTC at 445-50, 486-87, 505, 510, 532. *See also Med. Billers Network*, 543 F. Supp. 2d at 315 (failure to disclose costs necessary to earn income with product was a deceptive telemarketing practice and violated the Telemarketing Sales Rule); *Southwest Sunsites, Inc., et al.*, 105 FTC 7, 99-102 (1985) (claims about potential use of property were deceptive because they implied the property was a good investment but failed to disclose substantial expenses that rendered the proposed uses uneconomical), *aff'd* 785 F.2d 1431, 1438 (9th Cir. 1986).

⁴¹ *See, e.g., Grant Connect*, 827 F. Supp. 2d at 1225-1226 (defendants "cannot fabricate a number [in an earnings claim] and then fall back on the defense that they would not have access to the documentation to support that claim"); *Holiday Enterprises*, No. 1:06-cv-2939, 2008 WL 953358, at *6-7 (granting summary judgement to FTC in part because "defendants had no substantiation for [their earnings] claims").

⁴² *World Patent Mktg.*, No. 17-cv-20848, 2017 WL 3508639, *12 ("success stories" in ads implied purchasers would see similar results); *John Beck Amazing Profits*, 865 F. Supp. 2d at 1072-73 (ad with "numerous testimonials" conveyed impression that "a typical consumer" would "earn thousands of dollars per week"); *Cliffdale Assocs., Inc.*, 103 FTC 110, 171-72 (1984) ("[b]y printing the testimonials, respondents implicitly made performance claims" that were deceptive; "irrespective of the veracity of the individual consumer testimonials, respondents' use of the testimonials to make underlying claims that were false and deceptive was, itself, deceptive"); *Macmillan*, 96 FTC at 301 ("testimonials . . . implied that the success portrayed therein was ordinary and typical"). *See also* FTC Endorsement Guides, 16 CFR 255.2(b) (testimonials "will likely be interpreted as representing that the . . . experience is representative of what consumers will generally achieve").

⁴³ For example, the Business Opportunity Rule requires retention of substantiation documents for

the rule includes a recordkeeping requirement, what must be kept? In what form? For how long? What would be the costs of such a requirement, and are there ways to streamline the requirement to minimize the costs on businesses?

Additionally, the Commission seeks comments on whether, if at all, lifestyle claims should be addressed by a rule. Lifestyle claims are claims that participating in a money-making opportunity will lead to a material change in lifestyle—such as getting to go on expensive vacations, quitting your job, or buying a luxury car. These claims are being used frequently on online advertisements and social media. And the Commission has initiated several enforcement actions that involved deceptive lifestyle claims.⁴⁴ The Commission, however, has never comprehensively analyzed such claims, instead addressing them on a case-by-case basis.⁴⁵ Comment, evidence, and information is therefore sought on (a) whether and what lifestyle claims are deceptive; (b) the benefits to businesses and consumers from receiving guidance on this topic; and (c) what evidence a company must have before making a lifestyle claim to substantiate it.

Finally, the Commission seeks comment on, among other things, the costs and benefits of a rule that would address the above practices, and on alternatives to such a rulemaking, such as the publication of additional consumer and business education. In their replies, commenters should provide any available evidence and data that supports their position, such as empirical data, consumer perception studies, and consumer complaints.

III. Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of potential rulemaking in this area. The Commission requests that commenters also submit any relevant factual data

three years after an earnings claim is made. 16 CFR 437.7. The Franchise Rule and Business Opportunity Rules both require that substantiation materials be made available to consumers upon request, thereby implicitly requiring retention of substantiation documents. 16 CFR 436.9(d); 16 CFR 437.6(f).

⁴⁴ *See, e.g., FTC v. Neora, LLC*, No. 3:20-cv-1979 (filed D.N.J. 2019, transferred N.D. Tex.); *FTC v. Advocare, Int'l, L.P.*, No. 4:19-cv-715 (filed E.D. Tex. 2019); *FTC v. Herbalife Int'l of America, Inc.*, No. 2:16-cv-5217 (filed C.D. Cal. 2016); *FTC v. Fortune Hi-Tech Mktg., Inc.*, No. 13-cv-578 (filed N.D. Ill. 2013).

⁴⁵ The Business Opportunity Rule's definition of earnings claims includes lifestyle claims, but only if they imply a certain minimum level of earnings. 16 CFR 437.1(f).

upon which their comments are based. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

1. How widespread is the use of false, unsubstantiated, or otherwise misleading earnings claims by entities or individuals in connection with the offer or sale of a good or service, participation in a job or other work opportunity, or in a business, investment, or other money-making opportunity? Is the practice prevalent among those who make earnings claims? Are there certain business contexts or industries in which the practice is prevalent, or certain business contexts or industries in which it is not? For example, are deceptive earnings claims prevalent among all businesses that offer work or employment, or just among those in certain industries?⁴⁶ If so, describe the relevant industry or business context and the basis for your position. Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, that demonstrates the extent of such practices. Provide all evidence that supports your answer.

2. Are there circumstances in which the practices described in Question 1, above, would not be deceptive or unfair? If so, what are those circumstances? Should the Commission exclude such circumstances from the scope of any rulemaking? Why or why not? Provide all evidence that supports your answer.

3. Do the practices described in Question 1, above, cause injury to consumers, and if so, how much? Do such practices cause injury to other businesses by unfairly disadvantaging them? Provide any evidence that quantifies or estimates these injuries if possible, including the size of the discrepancy between misleading earnings claims and actual earnings. Provide all evidence that supports your answer.

4. Do the practices described in Question 1, above, disproportionately target or affect certain groups, including communities of color or other historically underserved communities?

If so, why and how? Provide all evidence that supports your answer.

5. Please provide any evidence concerning consumer perception of, or experience with, earnings claims that is relevant to the practices described in Question 1, above.

6. Is there a need for new regulatory provisions to prevent the practices described in Question 1, above? If yes, why? If no, why not? What evidence supports your answer?

7. How should a rule addressing the practices described in Question 1, above, be crafted to maximize the benefits to consumers while minimizing the costs to businesses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

8. Should the Commission consider additional consumer, employee, independent contractor, and business education to reduce harm to consumers associated with the practices described in Question 1, above? If so, what should such education materials include, and how should the Commission communicate that information to consumers and businesses?

9. What alternatives to regulations should the Commission consider to address the practices described in Question 1, above? Would those alternatives obviate the need for regulation? If so, why? If not, why not? What evidence supports your answer?

10. Should a rule addressing the practices described in Question 1, above, define or describe the substantiation required to make an earnings claim? Why or why not? If so, how should it do so? Should a rule adopt the Business Opportunity Rule's language of "a reasonable basis" for a claim at the time the claim is made, or should it use some other definition? If the latter, what? What are the benefits to consumers, and costs to businesses, and in particular small businesses, from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, and in particular small businesses.

11. Should a rule addressing the practices described in Question 1, above, require the preservation or documentation of substantiation? Why or why not? If so, what types of recordkeeping requirements should be required? What are the benefits to consumers, and costs to businesses, and in particular small businesses, from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to

consumers, and the costs to businesses, and in particular small businesses.

12. What requirements, if any, should a rule impose to address earnings claims made by agents or others interacting with prospective purchasers, employees, independent contractors, or participants on a company's behalf, to address the potential use of misleading claims? How can the Commission ensure that companies effectively monitor the actions of such agents or other persons? Should a rule addressing the practices described in Question 1, above, impose affirmative requirements on companies regarding earnings claims made by their agents or others acting with them or on their behalf? Why or why not? If so, how? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

13. Are there circumstances in which disclaimers or disclosures can effectively dispel a misleading impression regarding earnings or profits, or prevent such an impression? If so, describe such circumstances in detail, including all necessary aspects of such disclaimer or disclosure, such as language, format, or the context in which it is presented. Provide all evidence that supports your answer, or that otherwise addresses the effectiveness of disclaimers or disclosures.

14. In the cases the Commission has brought, we have repeatedly seen circumstances where earnings claims convey the impression that the represented earnings are typical. Are there circumstances where they do not? If so, describe such circumstances in detail. Provide all evidence that supports your answer.

15. How should the rule address disclaimers? Are there any circumstances in which a rule should require a disclaimer, such as with atypical earnings claims? Why or why not? If so, describe such circumstances in detail. How should a rule define or describe such disclaimer? Should the rule address conduct that may minimize the effectiveness of any disclaimer, and if so, how? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

16. Based on the Commission's enforcement experience, representations of an expensive or otherwise desirable lifestyle—such as images of or references to mansions, yachts, luxury

⁴⁶ See, e.g., *Amazon.com, Inc.*, FTC Docket No. C-4746 (filed 2021); *FTC v. Uber Technologies, Inc.*, No. 3:17-cv-0261 (N.D. Cal. filed 2017); *Encyclopaedia Britannica*, 87 FTC at 450, 486–88, 531–32; *Abel Allan Goodman*, 52 FTC at 988, order affirmed 244 F.2d 584 (9th Cir. 1957).

goods or automobiles, exotic or otherwise desirable vacations, or even just having more free time—convey the impression that a money-making opportunity can or will provide participants sufficient income to afford a similar lifestyle. Under what circumstances, if any, do such representations not convey such an impression? Describe such circumstances in detail. Provide all evidence that supports your answer.

17. Should a rule addressing the practices described in Question 1, above, address the use of “lifestyle” claims of the type described in Question 15? Why or why not? If so, how? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

18. Should a rule addressing the practices described in Question 1, above, exempt from its coverage businesses or individuals that are subject to the Business Opportunity Rule, the Franchise Rule, or the Telemarketing Sales Rule? Why or why not? If so, how and to what extent? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

19. If a rule addressing the practices described in Question 1, above, is adopted, should the Business Opportunity Rule, the Franchise Rule, or the Telemarketing Sales Rule be amended? Why or why not? If so, how and to what extent?

20. Should a rule addressing the practices described in Question 1, above, exempt from its coverage any other businesses or individuals? Why or why not? If so, how and to what extent? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

21. Should a rule addressing the practices described in Question 1, above, include an example earnings disclosure statement that would not be mandatory, but would provide guidance for companies on how to make a lawful earnings claim? Why or why not? If so, what should be contained in the example statement? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies

the benefits to consumers, and the costs to businesses.

22. Should a rule addressing the practices described in Question 1, above, require that an earnings claim disclosure document be provided to consumers prior to purchase, prior to accepting an offer for work, or at any other time? Why or why not? If so, how should the rule define or describe the required disclosure, the time(s) at which it must be provided, the manner in which it must be provided (so it cannot be hidden or obscured by other paperwork), the languages in which it must be provided, and who must provide it? What are the benefits to consumers, and costs to businesses, and in particular small businesses, from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, and in particular small businesses.

23. How prevalent is the deceptive or misleading use of real or purported industry earnings data or statistics in the promotion of money-making opportunities? Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, that demonstrates the extent of such practices. Provide all evidence that supports your answer.

24. Do the practices described in Question 21, above, cause injury to consumers, and if so, how, and how much? Provide any evidence that quantifies or estimates that injury if possible, including any non-financial or indirect injuries to consumers, and including the size of the discrepancy between misleading earnings claims and actual earnings. Provide all evidence that supports your answer.

25. Should a rule addressing the practices described in Question 1, above, include a provision concerning the use of real or purported industry earnings data or statistics? Why or why not? If so, how? Should the coverage of such a provision be limited? If so, how and why? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

26. Do existing laws and regulations covering false, unsubstantiated, or otherwise misleading earnings claims affect businesses, particularly small businesses? If so, how? Provide all evidence that supports your answer.

27. Are there other commercial acts or practices involving earnings claims that are deceptive or unfair that should be addressed in the proposed rulemaking? If so, describe the practices. How widespread are the practices? Provide all evidence that supports your answer,

and please answer Questions 2–9 with respect to the practices.

28. Do current or impending changes in technology or market practices affect the need for rulemaking? If so, describe the changes and how they affect whether and how a rulemaking should proceed. Provide all evidence that supports your answer.

IV. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 10, 2022. Write “Earnings Claims ANPR, R111003” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of the public health emergency in response to the COVID–19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “Earnings Claims Rulemaking, R111003” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health

information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential”—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before May 10, 2022. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,
Secretary.

Statement of Commissioner Rebecca Kelly Slaughter Regarding Advance Notice of Proposed Rulemaking on the Use of Earnings Claims

Unfair and deceptive earnings claims underpin some of the worst and most financially ruinous scams Americans face. Pyramid schemes, phony investments, and multi-level-marketing all exploit people’s hopes—for financial stability, for a chance to improve their lives—with false promises. These scammers often take advantage of

national and financial crises to exploit the newly vulnerable. And unfortunately, we’ve seen that in the Covid-19 pandemic as well. The extent of these scams is astounding. In a 2020 law enforcement crackdown the FTC pursued over a billion dollars lost to these schemes.¹

Combating these schemes illuminates something important about the agency’s authority and our mission, too. Section 5’s requirement that earnings claims are honest and substantiated reflects an underappreciated obligation of the FTC: To protect Americans as workers and not simply as the consumers of products and services. Markets cannot function effectively without honest and transparent pricing. That is just as true for the labor market as it is for consumer goods. False or misleading earnings claims robs people of their investments, their time, and the fair value of their labor. It is also worth remembering: Individuals who put their savings into the stock market—often wealthier individuals—can rely on the SEC to police misrepresentations about earnings claims with respect to those investments. But less wealthy folks who may pour their life savings into promised business opportunities deserve the protection of the federal government as well; that is why we must aggressively police misleading earnings claims.

Two of our recent enforcement actions demonstrate how this kind of exploitation works in practice. Last year the FTC settled with the owners and operators of Moda Latina.² The company primarily targeted Latinas with Spanish-language ads that made false promises of significant earnings reselling luxury products. Moda Latina’s marketing campaign specifically targeted Latina consumers interested in starting work-at-home businesses.³ It seems like none of the women targeted in this scheme made money but were instead cheated out of their time and funds to buy useless goods. These kinds of false claims crowd out honest opportunities for people to start businesses, making life even more

precarious for vulnerable workers and would-be entrepreneurs.

I’m also deeply concerned about the effect of the over-promises of the gig economy on workers and the labor market. Last year, the FTC settled with Amazon over our charges that it robbed its Amazon Flex drivers the full amount of tips it promised to them.⁴ These gig-economy workers signed up as drivers to deliver goods and groceries order through Amazon based on an advertised hourly rate and the promise of receiving “100% of tips” they earned while completing deliveries. After people had already signed up to work for the company, Amazon secretly changed its payment scheme and ceased giving drivers their tips while still representing that it did so to these workers and to consumers. In settlement the agency recovered \$61.7 million from Amazon, the full amount of the tips the agency believe Amazon withheld from them. By misrepresenting these drivers’ take-home pay Amazon distorted both the gig-driver labor market and the consumer home delivery market in what I believe we can fairly surmise was an unlawful bid to increase its market share and lower its labor costs.

Effective enforcement of Section 5’s consumer protection obligations helps make these markets for labor functional, fair, and competitive. That’s why I’m eager to begin a rulemaking inquiry on earnings claims. I’m proud of the decades of enforcement actions the agency has undertaken to protect against these unfair and deceptive practices. But case by case enforcement has left gaps unscrupulous actors can exploit.

Starting this inquiry means we can now gather evidence on how best to protect against these scams and begin to think about how a possible trade regulation rule could help level the playing field between workers and those that employ them. Pursuing rule violations would also reopen an avenue to return stolen money to consumers—something we can no longer do under section 13(b) until Congress steps in to fix it.

I want to thank everyone that helped bring this ANPR to the Commission today, in particular Melissa Dickey, Andrew Hudson and Kati Daffan in DMP. I’d also like to thank Elisa Jillson, the CTD for the Bureau, Kenny Wright in the Office of the General Counsel, Jason Adler and Guy Ward from the MWRO, and David Givens, Douglas

¹ Press Release, Federal Trade Commission, As Scammers Leverage Pandemic Fears, FTC and Law Enforcement Partners Crack Down on Deceptive Income Schemes Nationwide, December 14, 2020, <https://www.ftc.gov/newsevents/press-releases/2020/12/scammers-leverage-pandemic-fears-ftc-law-enforcement-partners>.

² Press Release, Federal Trade Commission, Operators of Bous Income Scam Targeting Latinas Face FTC Settlement, March 2, 2021, <https://www.ftc.gov/news-events/press-releases/2021/03/operators-bogus-income-scam-targeting-latinas-face-ftc-settlement>.

³ FTC v. *Moda Latina BZ Inc.*, No. 2:20-cv-10832 (filed C.D. Cal. 2020), https://www.ftc.gov/system/files/documents/cases/001_complaint.pdf.

⁴ Press Release, Federal Trade Commission, Amazon to Pay \$61.7 Million to Settle FTC Charges it Withheld Some Customer Tips from Amazon Flex Drivers, February 2, 2021, <https://www.ftc.gov/news-events/press-releases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some>.

Smith, and Yan Lau, in the Bureau of Economics for all their work.

Concurring Statement of Commissioner Christine S. Wilson on Advance Notice of Proposed Rulemaking Concerning Earnings Claims

Today, the Commission issues an Advance Notice of Proposed Rulemaking (“ANPRM”) to commence proceedings to address the use of false, unsubstantiated, or otherwise misleading earnings claims. As explained in this **Federal Register** document, despite the Commission’s aggressive enforcement efforts for decades to combat deceptive earnings claims, false claims about income opportunities continue to proliferate. While I remain skeptical of unleashing a tsunami of rulemakings to address common unfair or deceptive acts or practices, I do not oppose seeking comment on today’s ANPRM.

We contemplate this rule against the backdrop of *AMG Capital Mgmt., LLC v. FTC*.¹ The Supreme Court’s recent decision in *AMG* limits the Commission’s authority to use section 13(b) of the FTC Act to obtain monetary relief for consumers harmed by misleading earnings claims. While a rule would not prevent fraudsters from engaging in deceptive earnings claims, it would enhance the FTC’s ability to strip them of their ill-gotten gains and return that money to consumers. But for *AMG*, I would be skeptical about the need for rules regarding conduct frequently targeted by the FTC’s extensive fraud program. That said, a 13(b) fix would be preferable to having the FTC pursue a cornucopia of rules. And if a 13(b) fix is enacted during the pendency of this rulemaking, I likely would ask the Commission to terminate the process.

In the wake of *AMG*, the exploration of a potential Earnings Claims rule is appropriate for two reasons. First, whether false earnings claims are made by frauds or legitimate businesses, no benefit accrues to consumers or competition. In fact, a 2020 FTC Data Spotlight about “income scams” stated that the median loss associated with business and work-at-home opportunities is \$3,000.² Consumer losses related to deceptively marketed investment seminars are even higher, exceeding \$16,000.³ For decades, the

Commission has challenged deceptive earnings claims in connection with coaching and mentoring schemes, multi-level marketing (“MLM”) arrangements, and work-from-home or other business opportunity scams, to name a few.⁴ Despite decades of aggressive enforcement and extensive consumer and business education efforts, deceptive earnings claims persist.

Second, consumers cannot analyze the costs and benefits of investing significant resources to pursue coaching, training, MLM, or educational opportunities without accurate representations from sellers. But the true value of these opportunities is best assessed by the entities offering them. In other words, we see significant information asymmetries between consumers and the entities that make earnings claims. The monetary value of an opportunity is likely the central, material claim that consumers consider before spending hundreds, thousands, or even tens of thousands of dollars on financial-improvement opportunities. This ANPRM seeks information on how to ensure that when disclosures are made, they are substantiated.

For these reasons, I do not oppose an ANPRM that explores ways to incentivize establishing a reasonable basis for earnings claims.

[FR Doc. 2022–04679 Filed 3–10–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0085]

RIN 1625–AA00

Temporary Safety Zone; Tugs Champion, Valerie B, Nancy Anne and Barges Kokosing I, Kokosing III, Kokosing IV Operating in the Straits of Mackinac, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable water within a 500-yard radius of several tugs and barges in the Straits of Mackinac. The safety zone is needed to protect personnel, vessels, and the marine environment from the potential hazards created by the work,

survey, and inspection conducted within the Straits of Mackinac. Entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port Sault Sainte Marie or their designated representative. Due to the lengthy duration of this safety zone, the Coast Guard is accepting and reviewing public comments until March 31, 2022. While this document is effective beginning April 15, 2022, the Coast Guard reserves the right to modify the safety zone if an issue is raised by the public comments that requires such a modification. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 11, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0085 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Deaven S. Palenzuela, Sector Sault Sainte Marie Waterways Management Division, U.S. Coast Guard at (906) 635–3223 or email ssmprevention@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On February 3, 2022, the Project Manager of Kokosing Industrial notified the Coast Guard that they are contracted by American Transmission Company (ATC) for the purpose of protecting their new 138kV submarine power cables installed in the Straits of Mackinac RNA in 2021. Pursuant to 33 CFR 165.944, Kokosing sent the Coast Guard a letter notifying their 2022 project proposal and request to anchor and work inside the regulated navigation area (RNA) within one nautical mile of submerged pipeline/cable.

The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards associated with the work, survey, and inspection of underwater infrastructure within the

¹ *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

² Emma Fletcher, *Income scams: big promises, big losses*, FTC Consumer Protection Data Spotlight (Dec. 10, 2020), available at https://www.ftc.gov/system/files/attachments/blog_posts/%20scams%3A%20big%20promises%2C%20big%20losses%20final_correctlink.pdf.

³ *Id.*

⁴ See Section I of **SUPPLEMENTARY INFORMATION**, *supra*. See also Notice of Penalty Offense Authority Concerning Money-Making Opportunities, available at <https://www.ftc.gov/MMO-notice>.

[IL letterhead]

May 10, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave. NW, Suite CC-5610
Washington, DC 20580

Via Electronic Submission

RE: Earnings Claims ANPR, R111003

Dear Federal Trade Commission:

We, the undersigned Attorneys General of Illinois, [INSERT STATES], write in response to the Federal Trade Commission's ("FTC" or the "Commission") call for written comments regarding deceptive marketing using earnings claims, as set forth in 87 Fed. Reg. 13951 (the "Request"). As the Request notes, a variety of different industries rely heavily on earnings claims. Undoubtedly, each industry is different. However, we write today specifically regarding the variety of earnings-related claims utilized by for-profit schools. In our investigation and enforcement experience, for-profit misrepresentations can be broad and especially harmful for students who may carry the burden of student loan debt for the rest of their lifetimes. In the course of this rulemaking, we strongly encourage the Commission to consider the variety of misrepresentations made by for-profits as to the amount, source, and adequacy of earnings, as well as the targets of such misrepresentations and the impact of such misrepresentations.

Higher education has long been synonymous with advancing a career and achieving life goals. In many ways, then, schools providing access to higher education use marketing tactics strikingly similar to that used by businesses selling "business opportunities" which, those businesses claim, can provide a career and plentiful income. For-profit schools in particular have relied heavily on marketing related to earnings, including job and career advancement.¹

As a part of the regulatory triad of higher education, states have an important role to play in overseeing higher education. Each of our offices are charged with enforcing our respective state consumer protection statutes, which prohibit deceptive acts and practices much as the FTC Act does. In that role, we have investigated and litigated against numerous for-profit schools,²

¹ See, for example, Westwood College, Inc., Complaint, People of the State of Illinois v. Westwood College, Inc. *et al.*, No. 12 CH 01587 (Cir. Ct. Cook County Jan. 18, 2012).

² Including, for instance, Career Education Corporation (including the Sanford Brown schools), Assurance of Discontinuance available at <https://ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>; The Career Institute, LLC, Final Judgment available at <http://www.mass.gov/ago/docs/consumer/aci-consent-judgment.pdf>; Corinthian Colleges, Inc., Judgment available at https://oag.ca.gov/system/files/attachments/press_releases/Corinthian%20Final%20Judgment_1.pdf; DeVry University, Assurance of Discontinuance available at <https://ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-devry-university-providing-225-million-restitution>; Education Management Corporation, Consent

including for misrepresentations relating to those schools' earnings claims. While the Request seeks to cover a variety of industries, we urge the Commission to consider the harm for-profit schools inflict on students, as well as the variety of ways in which for-profit schools misrepresent the amount, source, and adequacy of earnings, in any proposed rule.

I. The Harm: A Lifetime of High Student Loan Debt

For-profits, as the name suggests, operate to maximize profit for their owners and shareholders. To do so, for-profits spend large portions of their budgets on marketing to entice students to enroll and typically charge higher tuition than charged in comparable programs at community colleges and public universities.³ In fact, average tuition at a for-profit college is over \$10,000 more than at a comparable community college.⁴

Importantly, federal student loans afford an easily-obtained source of funding for these high tuitions, of which for-profits take full advantage of. In 2009, for instance, 15 publicly-traded for-profit companies received over 86% of their revenues from taxpayers.⁵ Moreover, 71% of students at for-profits take out loans, compared to only 49% at public four-year schools.⁶ Given higher tuition at for-profits, students attending these schools also end up borrowing more – \$2,000 more on average than students at four-year, public colleges.⁷ Moreover, for-profits have lower completion rates than other higher education institutions: in 2019, for instance, the 6-year completion rates for students was “62 percent at public institutions, 68 percent at private nonprofit institutions, and 26 percent at private for-profit institutions.”⁸ As a result, many for-profit students will end up with a large amount of debt and no diploma or other credential which might provide them increased earning capacity. These borrowers are the worst off of all.

Judgment, *People of the State of Illinois v. Education Management Corporation et al.*, No. 2015 CH 16728 (Cir. Ct. Cook County Nov. 16, 2015); *Lincoln Technical Institute, Inc., Consent Judgment available at* <http://www.mass.gov/ago/docs/press/2015/lincoln-tech-settlement.pdf>; *ITT Educational Services, Inc., Complaint, Massachusetts v. ITT Educ. Servs. Inc.*, No. 16-0411 (Mass. Super. Ct. Mar. 31, 2016); *Kaplan Higher Education, LLC, Assurance of Discontinuance available at* <http://www.mass.gov/ago/docs/press/2015/kaplan-settlement.pdf>; *Minnesota School of Business, Inc. and Globe University, Inc., Findings of Fact, Conclusions of Law and Order, Minnesota v. Minnesota School of Business et al.*, No. 27-CV-14-12558 (Minn. Dist. Ct. September 8, 2016); *The Salter School, Judgment by Consent available at* <http://www.mass.gov/ago/docs/press/2014/salter-judgment-by-consent.pdf>; *Westwood College, Inc., Complaint, People of the State of Illinois v. Westwood College, Inc. et al.*, No. 12 CH 01587 (Cir. Ct. Cook County Jan. 18, 2012).

³ *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, United States Senate, Health, Education, Labor and Pensions Committee, at 1-2 (July 30, 2012) (“Senate Report”) *available at* https://www.help.senate.gov/imo/media/for_profit_report/ExecutiveSummary.pdf

⁴ *The for-profit college system is broken and the Biden administration needs to fix it*, Ariel Shiro and Richard Reeves, Brookings Institute, Jan. 12, 2021, *available at* <https://www.brookings.edu/blog/how-we-rise/2021/01/12/the-for-profit-college-system-is-broken-and-the-biden-administration-needs-to-fix-it>

⁵ *See* Senate Report, *supra* note 3, at 2.

⁶ *See* Brookings Article, *supra* note 4.

⁷ *See* Brookings Article, *supra* note 4.

⁸ *Fast Facts: Graduation Rates*, National Center for Education Statistics, *available at* [https://nces.ed.gov/fastfacts/display.asp?id=40#:~:text=The%206%2Dyear%20graduation%20rate,at%20both%20public%20\(65%20vs](https://nces.ed.gov/fastfacts/display.asp?id=40#:~:text=The%206%2Dyear%20graduation%20rate,at%20both%20public%20(65%20vs) (last visited April 21, 2022).

Therefore, students at for-profit colleges are borrowing more money at higher rates. This means that for-profit students make up a disproportionate share of defaulting borrowers.⁹ The effects of such borrowing can last a lifetime for such students:

The vast majority of the students left with student loan debt that may follow them throughout their lives, and can create a financial burden that is extremely difficult, and sometimes impossible, to escape.¹⁰

Unlike debts accrued to pursue a business opportunity, for instance, student loans are typically not dischargeable in bankruptcy. Because these educational debts follow borrowers forever, then, earnings misrepresentations made to prospective students are especially damaging.

II. The Targets: Predominantly Black and Latino Populations

While for-profit schools harm a broad swath of individuals, for-profits overwhelmingly target and harm communities of color. Black and Latino students constitute nearly half of all for-profit students, compared to all undergraduate institutions where these groups constitute only one-third of students.¹¹ In fact, for-profits often locate themselves specifically in predominantly minority neighborhoods, resulting in such skewed enrollment:

Nationally, and in city after city, we found that for-profit schools cluster in and around Black and Latino neighborhoods...Neighborhoods that are majority Black or Latino are significantly more likely—over 75 percent and 110 percent, respectively—to have at least one for-profit school than communities that are not.¹²

In Chicago, for instance, “[t]here are 11x more for-profits in the 10 percent of Chicago zip codes with the largest Latino populations than in those with the largest white populations.”¹³ This conduct is especially heinous given that Black borrowers have to borrow more to attend schools across all sectors.¹⁴ As a result, these for-profit schools’ targeting of such populations increases the racial wealth gap and drives such borrowers into a lifetime of debt from which they have little hope of escaping.

III. The Fraud: Misrepresentations Relating to the Amount, Source, and Adequacy of Earnings

Through a variety of state investigations and enforcement actions, the States have uncovered a wide array of predatory practices employed by abusive for-profit schools. These practices commonly include harassing recruitment tactics and false and misleading representations

⁹ “[s]tudents who attended a for-profit college already account for 47 percent of all borrowers in default” See Senate Report, *supra* note 1, at 115, available at https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf.

¹⁰ See Senate Report, *supra* note 3, at 1.

¹¹ *Mapping Exploitation*, Student Borrower Protection Center, July 2021, at 9, available at <https://protectborrowers.org/wp-content/uploads/2021/07/SBPC-Mapping-Exploitation-Report.pdf>

¹² *Id.* at 11

¹³ *Id.* at 20.

¹⁴ *Id.* at 6.

to consumers, among other things. As we have seen, some for-profit schools employ misrepresentations regarding the amount, source, and adequacy of earnings that prospective students should expect to receive after enrollment.

a. For-Profits Misrepresent the Amount of Earnings:

For-profit schools make misrepresentations regarding the dollar amount of increased earnings that students might expect to receive upon graduation. These numbers are often fundamentally false and fail to take into account the often abysmal completion rates of students at these schools. In April, 2021, a group of 25 states submitted a group discharge application (“ITT Group Discharge Application”) for certain ITT borrowers outlining this very sort of conduct. As set forth in that application, and as evidenced by the Expert Report of Dr. Jordan Matsudaira, ITT misrepresented the projected annual earnings for ITT graduates “at \$100,000 more than the average earnings of workers with the same credentials.”¹⁵ There, the Value Proposition Chart used by ITT wrongly represented that earnings would constantly rise and deceptively represented high base salary levels for ITT graduates. ITT also misleadingly aggregated earnings outcomes across majors and locations, instead of providing students with a more accurate sense of the financial benefit of a student’s enrollment at a specific program in a specific location.

ITT’s Value Proposition Chart also failed to take into account other relevant information, such as low graduation rates. For instance, the ITT Group Discharge Application notes that the average graduation rate across all programs was only 36%. Thus, “[o]nly around one-third of borrowers who enrolled at ITT could expect to be paid the wages of an ITT graduate.”¹⁶ Importantly, the ITT Group Discharge Application notes that borrowers should have been informed about the earnings outcomes for all borrowers who enrolled – not just those who graduated – due to the substantial likelihood of non-completion. Given the low completion rates across all for-profit schools, we encourage the FTC to consider completion rates and their impact on expected earnings in their rulemaking process, in addition to other misrepresentations regarding the amount of expected earnings.

b. For-Profits Misrepresent the Source of Earnings:

Our offices have uncovered for-profit schools misrepresenting whether programs of instruction would allow a student to be employed in a specific industry. While these misrepresentations do not explicitly target the amount of expected earnings, they are particularly deceptive regarding the *source* of earnings.

In Illinois, for instance, one for-profit school, Westwood, misrepresented that its criminal justice program in Illinois could lead to employment as police officers.¹⁷ In fact, the Chicago Police Department, Illinois State Police, and other law enforcement agencies would not accept Westwood credits or degrees. As the Department of Education has itself now concluded: “This advertising and marketing was misleading because most police officer positions in the Chicago area required credits or a degree from a regionally accredited school, and Westwood was not regionally

¹⁵ AG Group Discharge Application on Behalf of ITT Students, April 1, 2021, available at https://illinoisattorneygeneral.gov/pressroom/2021_04/2021_States_Group_BD_Application_ITT.pdf.

¹⁶ *Id.* at 4.

¹⁷ See Westwood Complaint, *supra* note 1.

accredited.”¹⁸ Similarly, CEC, another for-profit, allegedly misrepresented the rate of graduates’ jobs being in their field of study, claiming that graduates were “placed” in jobs in the advertised fields. In fact, many graduates were employed only temporarily in those fields. In some egregious instances, graduates were even placed in unrelated jobs.¹⁹ As these cases illustrate, misrepresentations regarding the source of earnings can be just as problematic as misrepresentations regarding the amount of those earnings.

c. For-Profits Misrepresent the Adequacy of the Earnings:

Fundamentally, students attend institutions of higher education to improve their lives and careers. Whether or not a student’s earnings will be sufficient to cover the cost of those institutions significantly impacts a prospective student’s decision of whether to attend a specific institution. As we have noted, the few students who do graduate from for-profits often end up not making enough money to repay the large amount of debt they accrued. The Department of Education has noted similar poor outcomes. Under the currently-rescinded Gainful Employment Rule, the Department attempted to hold for-profit schools accountable for the amount of students’ debt incurred compared to those students’ earnings upon graduation. The Department did so by cutting off schools from Title IV loans if the school repeatedly graduated students who did not earn enough to repay those loans. When the Department released the first debt-to-earnings rates for applicable programs over 800 programs were “failing” – in other words, graduating students could not repay their loans. Of these 800 failing programs, *ninety-eight percent* were offered by for-profit institutions.²⁰

As such, in formulating any rule, the Commission should take into account the massive cost of student loans and whether the promised earnings provide enough income to allow these borrowers to climb out of the debt they have to accrue in order to attend these institutions in the first place.

Similar to other businesses making earnings claims, for-profit schools sell borrowers on lofty dreams and often market themselves as a means to achieve career advancement and a comfortable livelihood, when in fact many borrowers end up with no employment prospects and crippling debt. However, for-profits are also different from other businesses in that borrowers – often targeted minorities – take on high amounts of loans that can follow these borrowers for a lifetime. We strongly urge the Commission to consider for-profits’ misrepresentations regarding the amount, source, and adequacy of earnings as well as the nature of the resulting harms in formulating any rule regarding earnings claims.

Sincerely,

¹⁸ See Westwood Statement of Facts, Parts 1 and 2, available at <https://studentaid.gov/announcements-events/borrower-defense-update> (last visited March 28, 2022).

¹⁹ *Attorney General Madigan Reaches \$493.7 Million Settlement with For-Profit Education Company*, Jan. 3, 2019, available at https://www.illinoisattorneygeneral.gov/pressroom/2019_01/2019103.html.

²⁰ *Overburdened with Debt*, Andrew Kreighbaum, Inside Higher ED, Jan. 10, 2017, available at <https://www.insidehighered.com/news/2017/01/10/federal-data-show-hundreds-vocational-programs-fail-meet-new-gainful-employment>.

Kwame Raoul
Illinois Attorney General

[insert signatures]

From: Winston Berkman-Breen

Sent: Friday, August 18, 2023 11:07 AM

CC: Mike Pierce; Persis Yu

Subject: Re: Federal-state cooperation, preemption, and return to repayment for federal student loans

Attachments: SBPC R2R data dashboard Tab 3.xlsx; SBPC R2R data dashboard.xlsx

You don't often get email from winston@protectborrowers.org. [Learn why this is important](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear state partners,

Thank you for joining us earlier this week to discuss the recent U.S. Department of Education [final interpretation](#) on preemption of state consumer protection laws by the Higher Education Act. We were lucky to have Colorado Assistant Deputy Attorney General Martha Fulford provide a very comprehensive overview of HEA preemption with respect to student loan servicers.

The case law and recent Department interpretation make clear that states play a critical and welcome role in overseeing the student loan servicing system and in protecting borrowers, with limited preemption concerns. This is especially relevant for the upcoming return to repayment of federal student loans.

Following the call and in advance of the payment pause ending next month, we urge your offices to use all of your availability authorities—under state law and Dodd Frank—to protect borrowers. There are already indications that servicers will fail borrowers, who will ultimately pay the price. For example:

-
-
- Nelnet's
 - [call](#)
 - [center crashed](#) two weeks ago when it was overwhelmed by consumers seeking assistance.
-
-
-
- The Federal Student Aid
 - [FY2022](#)
 - [report](#) states that consumer call abandonment rates were 10.4%. That is both well above the target rate of 2%, and is unacceptably high in the abstract, at 1-in-10 consumers!
-
-
- MOHELA is telling borrowers that it will take them
 - [90](#)
 - [days](#) to process applications from borrowers for the new affordable SAVE repayment plan, during which time interest that would be waived for low-income borrowers under SAVE will continue to accrue.
-
-
-

- There are likely millions of borrowers who are eligible for complete debt cancellation under PSLF or
- the new SAVE plan but who are [still](#)
- [waiting for determinations](#) from their servicers, and will therefore needlessly be thrown
- back into repayment on debts that under law should have already been discharged.
-

Although consumer complaints and exams will continue to identify specific misrepresentations by servicers to borrowers, reviewing these companies' overall staffing and customer service reveals structural deficiencies that rise to the level of unfair, deceptive, and abusive conduct. Identifying these practices now, before they result in widespread consumer harm, is imperative.

We urge your offices to request these high-level metrics from servicers and from FSA, and to intervene swiftly when the data demonstrate that servicers are failing to deliver critical but basic services, which results in borrowers being stuck paying too much on loans that they may not even legally have to repay.

We have attached a sample call report that can help identify actionable misconduct over the coming weeks. From this document, we have broken out and separately attached Tab 3, which focuses on the issues discussed above. For **attorneys general**, servicers operate on national platforms, and so your offices can use national reporting or borrower stories online as cause to investigate servicer conduct in your jurisdiction; what one borrower experiences anywhere is likely representative of how borrowers are being treated everywhere. For **regulators**, especially those that license servicers, Tab 3 can be the model for a special call report. This can be done on a faster timeline than typical exam schedules and before consumer harm becomes irreversible.

We would be happy to work with your offices to protect the borrowers living in your jurisdictions and across the country. Thank you for your partnership.

Best,
Winston

On Mon, Aug 14, 2023 at 12:59 PM Winston Berkman-Breen <winston@protectborrowers.org> wrote:
Good afternoon,

Per the email below, tomorrow we will host a conversation about federal preemption and states' authority to regulate and enforce consumer protections against federal student loan servicers. Please see the original email below for more information and please register here: <https://us02web.zoom.us/meeting/register/tZwtfu2spz0tG9a13Ku44ZJfbqbyoMeQbLn0>.

Best,
Winston

On Wed, Aug 9, 2023 at 11:11 AM Winston Berkman-Breen <winston@protectborrowers.org> wrote:
Dear state partners,

ICYMI: last month the Department of Education published its [final interpretation](#) on the legality of state laws that govern various aspects of the servicing of federal student loans. This finalizes its [2021 interpretation](#), for which it accepted comments, and clarifies that the Higher Education Act only

preempts state oversight in limited and narrow instances. It also makes clear that state consumer protection and partnership is welcome in overseeing student loan servicers.

Please join us on Tuesday, August 15, at 1PM ET to discuss the final interpretation and its relevance for the return to repayment. We will be joined by **Martha Fulford, Assistant Deputy Attorney General in the Colorado Attorney General's Office**, who will present on the interpretation and preemption of state consumer protection laws.

Please register here:

<https://us02web.zoom.us/meeting/register/tZwtfu2spz0tG9a13Ku44ZJfbqbyoMeQbLn0>

This interpretation and continued invitation by the Biden administration to engage in “cooperative federalism” comes at a critical time, with return to repayment around the corner. We hope to see you on the call!

In solidarity,
Winston

--

Winston Berkman-Breen (He/Him)

Legal Director

www.protectborrowers.org



STUDENT BORROWER
PROTECTION CENTER

Servicing Activity & Metrics	
Reporting	[Weekly]
Date:	
Special	Data should reflect the situation for the services as of the Reporting Date at the end of the Reporting Period, unless otherwise specified. Gray sections are not required portions of the data request.
Instructions:	

Row Label	1. Borrower Contacts	
3.1.1.0.0.0	Number of Full-Time Equivalent Employees Whose Primary Responsibility Is Interaction with Borrowers	
3.1.2.0.0.0	Number of Inbound Borrower Contacts During the Reporting Period	
3.1.2.1.0.0	Via telephone	
3.1.2.2.0.0	Via email	
3.1.2.3.0.0	Via online chat	
3.1.2.4.0.0	Via other forms of contact	
3.1.3.0.0.0	Average Wait Time During the Reporting Period	
3.1.4.0.0.0	Abandoned Call Rate During the Reporting Period	
3.1.5.0.0.0	Average Call Time During the Reporting Period	
3.1.6.0.0.0	FVK Containment Rate During the Reporting Period	
3.1.7.0.0.0	Number of Calls Transferred to a Supervisor During the Reporting Period	
3.1.8.0.0.0	Percent of Calls Transferred to a Supervisor During the Reporting Period	
2. Servicing Metrics		
Forbearance		
3.2.1.1.0.0	The number of borrowers who requested forbearance	
3.2.1.2.0.0	The number of borrowers whose requests for forbearance were approved	
3.2.1.3.0.0	The number of borrowers whose requests for forbearance were denied	
Reporting to Credit Reporting Agencies		
3.2.2.1.0.0	The number of borrowers whose missed payments were reported to credit reporting agencies as current	
3.2.2.2.0.0	The number of borrowers whose missed payments were not reported to credit reporting agencies as current	
Referrals to Third-Party Debt Collectors		
3.2.3.1.0.0	The number of borrowers whose defaulted loan accounts were not sent to third-party debt collectors	
3.2.3.2.0.0	The number of borrowers whose defaulted loan accounts were sent to third-party debt collectors	
Late Payment Fees		
3.2.4.1.0.0	The number of borrowers whose late payment fees were waived	
3.2.4.2.0.0	The number of borrowers for whom late payment fees were assessed	
3.2.4.3.0.0	Size of late payment fee	

Summary of Terms and Definitions

Term	Definition
Reporting Date	The point in time from which metrics should be calculated, unless otherwise specified.
Servicer	The student loan servicer
Reporting Period	The period of time from which metrics should be calculated, unless otherwise specified.
Unduplicated Borrowers	Unit representing the single/primary borrower (or a married couple in the case of a federal spousal consolidation loan) to a given lender/loan holder. Unduplicated borrowers may have many loans and multiple accounts. In the case of a co-signed loan, the co-signer is not the primary borrower and should not be included in totals.
Accounts	The unit by which the servicer counts the group of loans held by a single/primary borrower (or a married couple in the case of a federal spousal consolidation loan) to a given lender/loan holder. In the case of a co-signed loan, the co-signer is not the primary borrower and should not be included in totals.
Loan Volume	The total outstanding principal and unpaid interest balance of loans in the specified status.
In-School	Includes loans that have not entered into repayment following separation or completion by the student from an education institution. "In-School" loans are distinct from loans that are in deferment following a period of repayment due to the borrower re-enrolling at least half-time in an education institution.
Grace	Includes loans that have entered a period in which no payment is due after the borrower ceases to be enrolled in school at least half-time.
In Active Repayment	Includes loans that are in an active repayment status, including forbearance and deferment.
Current	Includes loans that are currently in active repayment and loans that are no more than 29 days past due; excludes loans in forbearance or deferment.
Not Current	Includes loans 30 or more days past due; excludes loans already transferred to Debt Management Collection System (DMCS).
Deferment	Includes loans in which payments have been postponed as a result of certain circumstances such as returning to school, active military service, or economic hardship. This should include any loans in deferment as set forth by 34 CFR 685.204 (Direct) or 34 CFR 682.210 (FFEL).
Forbearance	Includes loans in which payments have been temporarily suspended or reduced. This should include any loans in forbearance as set forth by 34 CFR 685.205 (Direct) or 34 CFR 682.211 (FFEL).

Other Status	Any other loans in a status not reported as “In-School,” “Grace,” or “In Active Repayment”; includes loans that are in non-defaulted bankruptcy status or in a disability status.
Defaults	Loans that are technically in default as defined by 34 CFR 685.102(b) (Direct) or 34 CFR 682.200(b) (FFEL). For Direct and FFEL, generally, any loan that is 270 or more days past due, including, but not limited to, loans that have been referred to DMCS or transferred to a guaranty agency during the reporting period.
Loans Discharged	Loans removed due to discharge, end of an IDR term, total and permanent disability, death discharges, or other means of removing student loan debt from a borrower's balance.
Complaint	An expression of dissatisfaction, made by a borrower or on a borrower's behalf, to the Servicer regarding the borrower's student loan. This definition should not include telephone or chat inquiries that are fully resolved by a customer service representative on the same inquiry in which the complaint is initially made.
Escalated Complaint	A complaint that is resolved after referral to a supervisor, ombudsman, or complaint escalation team.
Undergraduate	Education loan taken out by the student with or without a co-signer to fund post-secondary education (including loans for bachelor, associate, and certificate programs); does not include Parent loans, Graduate loans, or any loan used to pay for expenses not included in cost of attendance.
Graduate	Education loan taken out by the student with or without a co-signer to fund graduate school education; does not include Parent loans, residency loans, bar exam loans, or any loan used to pay for expenses not included in cost of attendance.
Parent	Education loan taken out by the parent or an individual other than the student to fund a student's education; includes loans to support post-secondary or graduate school.
Unemployment or Hardship Deferment	Includes deferments utilized due to unemployment or economic hardship (includes Peace Corps service).
Unemployment or Hardship Deferment (>12 months)	Use of unemployment or economic hardship deferment to date, if cumulative total is greater than 12 months.
Military Deferment	Includes deferments utilized due to a period of active duty military service during a war, military operation, or national emergency.
Military Deferment (>12 months)	Use of military deferment to date, if cumulative total is greater than 12 months.
School Deferment	Includes deferments available to loans that have entered repayment but borrowers have since enrolled in school at least half-time.

Other Deferment	Includes all periods of deferment other than those connected to military service, unemployment, economic hardship, or enrollment in school. Note that this category, when combined with the values for Unemployment or Economic Hardship Deferments, Military Deferment, School Deferment, should equal the value for Deferment.
Administrative Forbearance	Includes the application of non-capitalizing forbearance applied for administrative purposes, including instances such as forbearance applied in the case of as national emergencies, military mobilizations, death, or to process documentation supporting requests for deferment, forbearance, or a change in repayment plans (including enrollment in or recertification of an income-driven repayment plan, or consolidation loans). This should only include the prospective application of Administrative Forbearance.
Voluntary Forbearance Long-Term Forbearance	Capitalizing forbearance applied at the request of the borrower. An account that has been in a capitalizing forbearance for a period of 12 consecutive months or greater.
Serial Forbearance	An account that has three (or greater) periods of capitalizing forbearance applied to an account over the preceding 24 months. Individual periods of forbearance can be of any length.
Other Forbearance	Any other type of forbearance, including mandatory forbearance. Note that this category, when combined with the values for Administrative Forbearance and Voluntary Forbearance, should equal the value for Forbearance.
Second-Time Default	Loans that are technically in default (270 days or more past due) after returning to "In Active Repayment" status in the last 24 months following a successful rehabilitation or consolidation curing a prior default.
DMCS	Debt Management and Collections System, managed by the Department of Education for use by debt collection or private collection agencies.
Inbound Borrower Contacts	Communications to the servicer from a borrower, co-signer, guarantor, or other person acting on behalf of a borrower.
Credit Reporting Agency	A business that regularly engages in whole or in part in the practice of assembling or evaluating, and maintaining, consumer credit information for the purpose of furnishing consumer reports to third parties. Also known as a credit reporting bureau.
Late Payment Fee	An amount charged to a borrower who misses paying at least the minimum payment by the payment deadline. Also known as a late charge.
Income-Driven Repayment ("IDR")	A repayment plan which sets the borrower's monthly student loan payment at an amount that is intended to be affordable based on the borrower's income and family size. For Direct and FFEL loans, this should include any loans in an income-based repayment plan as defined by 34 CFR 685.209 or 34 CFR 682.215.

Average Wait Time	The average (mean) time an inbound call spends waiting in queue (or waiting for a callback if that feature is available).
Abandoned Call Rate	The percentage of inbound calls that are discontinued prior to the borrower reaching a live agent or representative of the Servicer.
Average Call Time	The average (mean) duration of an inbound call once the borrower has reached a live agent or representative of the Servicer.
Interactive Voice Response ("IVR")	A telephone system which asks borrowers to press the buttons on their telephone keypad to select which service they want, after which the call is referred, if appropriate, to a live agent or representative of the Servicer.
IVR Containment Rate	The percentage of calls completed within the IVR, without having to be forwarded to a live agent or representative of the Servicer.

Federally

Reporting
Date:

Special
Instructions:

Row Label

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1.7.2.1.0.0

Owned Loans

[Weekly]

Data should reflect borrowers' accounts as they appeared on the Reporting Date, unless otherwise specified.

1. Totals

Total Unduplicated Borrowers

Total Accounts

Total Loan Volume

Median Loan Amount

2. Loan Type

Direct (Undergraduate)

Direct (Graduate)

Grad PLUS

Parent PLUS

Direct Consolidation (Parent only)

Direct Consolidation (Non-Parent)

3. Loan Status

In-School

Grace

In Active Repayment

Current

Not Current

30-59 Days Delinquent

60-89 Days Delinquent

90-119 Days Delinquent

120-149 Days Delinquent

150-179 Days Delinquent

180-270 Days Delinquent

270+ Days Delinquent

Total in Deferment

Unemployment or Hardship Deferment

Unemployment or Hardship Deferment (>12 months)

Military Deferment

Military Deferment (>12 months)

School Deferment

Other Deferment

Forbearance

Administrative Forbearance

Voluntary Forbearance

Long-Term Forbearance

Serial Forbearance

Other Forbearance

Total in Income-Driven Repayment (“IDR”)

The number of completed IDR applications submitted during the reporting period

The number of IDR applications approved during the reporting period

The number of IDR applications denied during the reporting period

The average number of days to approve IDR applications

The number of IDR applications pending at the end of the reporting period

Total in active repayment in IDR

Total not current in IDR (any delinquency >30 days)

Other Status

4. Defaults and Discharges

Defaults

First-Time Default

Second-Time Default

Transferred To DMCS

Loans Discharged

5. Complaints

Number of Complaints

Number of Escalated Complaints

Most Frequent Subject Matter for Complaints

Second-Most Frequent Subject Matter for Complaints

Third-Most Frequent Subject Matter for Complaints

6. Auto-Debit

Total Borrowers Enrolled in Auto-Debit at End of Reporting Period

Number of Borrowers who Enrolled in Auto Debit During the Reporting Period

Number of Borrowers who Exited Auto Debit During the Reporting Period

Number of Borrowers who Enrolled in Auto Debit During the Reporting Period who had a Late Payment Since

Number of Borrowers who Enrolled in Auto Debit During the Reporting Period who had a Late Payment in the

7. PSLF (Only For the Designated PSLF Servier)

Total Borrowers who Submitted a PSLF Application During the Reporting Period

The number of borrowers whose PSLF applications were approved during the reporting period

The number of borrowers whose PSLF applications were denied during the reporting period

The average number of days to process PSLF applications

The number of borrowers with PSLF applications pending at the end of the reporting period

Total Borrowers who Achieved Cancellation under PSLF During the Reporting Period

Total Cancelled Debt for Borrowers who Achieved Cancellation under PSLF During the Reporting Period

Number Dollar Amount

Response

Response

*the End of the Payment Pause
Last Reporting Period*

Response

Federally Time

Reporting
Date:

Special
Instructions:

Row Label

2.1.1.0.0.0

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2.5.1.3.0.0
2.5.1.4.0.0



2.6.1.0.0.0
2.6.1.1.0.0
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2.7.1.3.0.0
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Owned Loans - Borrowers Entering Repayment for the First

[Weekly]

Data should reflect borrowers' accounts as they appeared on the Reporting Date, unless otherwise specified. Borrowers entering repayment for the first time are defined here as borrowers who exited in-school deferment in

1. Totals

Total Unduplicated Borrowers
Total Accounts
Total Loan Volume
Median Loan Amount

2. Loan Type

Direct (Undergraduate)
Direct (Graduate)
Grad PLUS
Parent PLUS

3. Loan Status

In-School
Grace
In Active Repayment
 Current
 Not Current
 30-59 Days Delinquent
 60-89 Days Delinquent
 90-119 Days Delinquent
 120-149 Days Delinquent
 150-179 Days Delinquent
 180-270 Days Delinquent
 270+ Days Delinquent
Total in Deferment
 Unemployment or Hardship Deferment
 Unemployment or Hardship Deferment (>12 months)
 Military Deferment
 Military Deferment (>12 months)
 School Deferment
 Other Deferment
Forbearance
 Administrative Forbearance
 Voluntary Forbearance
 Long-Term Forbearance
 Serial Forbearance
 Other Forbearance
Total in Income-Driven Repayment (“IDR”)
 The number of completed IDR applications submitted during the reporting period

The number of IDR applications approved during the reporting period
The number of IDR applications denied during the reporting period
The average number of days to approve IDR applications
The number of IDR applications pending at the end of the reporting period
Total in active repayment in IDR
Total not current in IDR (any delinquency >30 days)

Other Status

4. Defaults and Discharges

Defaults

First-Time Default
Second-Time Default
Transferred To DMCS

Loans Discharged

5. Complaints

Number of Complaints

Number of Escalated Complaints
Most Frequent Subject Matter for Complaints
Second-Most Frequent Subject Matter for Complaints
Third-Most Frequent Subject Matter for Complaints

6. Auto-Debit

Total Borrowers Enrolled in Auto-Debit at End of Reporting Period

Number of Borrowers who Enrolled in Auto Debit During the Reporting Period
Number of Borrowers who Exited Auto Debit During the Reporting Period
Number of Borrowers who Enrolled in Auto Debit During the Reporting Period who had a Late Payment Since
Number of Borrowers who Enrolled in Auto Debit During the Reporting Period who had a Late Payment in the

7. PSLF (Only For the Designated PSLF Servier)

Total Borrowers who Submitted a PSLF Application During the Reporting Period

The number of borrowers whose PSLF applications were approved during the reporting period
The number of borrowers whose PSLF applications were denied during the reporting period
The average number of days to process PSLF applications
The number of borrowers with PSLF applications pending at the end of the reporting period

Number Dollar Amount

Response

Response

*the End of the Payment Pause
Last Reporting Period*

Response

Servicing Activity & Metrics	
Reporting Date:	<i>[Weekly]</i>
Special Instructions:	<i>Data should reflect the situation for the services as of the Reporting Date at the end of the Reporting Period, unless otherwise specified. Gray sections are not required portions of the data request.</i>

Row Label	1. Borrower Contacts	
3.1.1.0.0.0	Number of Full-Time Equivalent Employees Whose Primary Responsibility Is Interaction with Borrowers	
3.1.2.0.0.0	Number of Inbound Borrower Contacts During the Reporting Period	
3.1.2.1.0.0	Via telephone	
3.1.2.2.0.0	Via email	
3.1.2.3.0.0	Via online chat	
3.1.2.4.0.0	Via other forms of contact	
3.1.3.0.0.0	Average Wait Time During the Reporting Period	
3.1.4.0.0.0	Abandoned Call Rate During the Reporting Period	
3.1.5.0.0.0	Average Call Time During the Reporting Period	
3.1.6.0.0.0	IVR Containment Rate During the Reporting Period	
3.1.7.0.0.0	Number of Calls Transferred to a Supervisor During the Reporting Period	
3.1.8.0.0.0	Percent of Calls Transferred to a Supervisor During the Reporting Period	
2. Servicing Metrics		
Forbearance		
3.2.1.1.0.0	The number of borrowers who requested forbearance	
3.2.1.2.0.0	The number of borrowers whose requests for forbearance were approved	
3.2.1.3.0.0	The number of borrowers whose requests for forbearance were denied	
Reporting to Credit Reporting Agencies		
3.2.2.1.0.0	The number of borrowers whose missed payments were reported to credit reporting agencies as current	
3.2.2.2.0.0	The number of borrowers whose missed payments were not reported to credit reporting agencies as current	
Referrals to Third-Party Debt Collectors		
3.2.3.1.0.0	The number of borrowers whose defaulted loan accounts were not sent to third-party debt collectors	
3.2.3.2.0.0	The number of borrowers whose defaulted loan accounts were sent to third-party debt collectors	
Late Payment Fees		
3.2.4.1.0.0	The number of borrowers whose late payment fees were waived	
3.2.4.2.0.0	The number of borrowers for whom late payment fees were assessed	
3.2.4.3.0.0	Size of late payment fee	

Summary of Terms and Definitions

Term	Definition
Reporting Date	The point in time from which metrics should be calculated, unless otherwise specified.
Servicer	The student loan servicer
Reporting Period	The period of time from which metrics should be calculated, unless otherwise specified.
Unduplicated Borrowers	Unit representing the single/primary borrower (or a married couple in the case of a federal spousal consolidation loan) to a given lender/loan holder. Unduplicated borrowers may have many loans and multiple accounts. In the case of a co-signed loan, the co-signer is not the primary borrower and should not be included in totals.
Accounts	The unit by which the servicer counts the group of loans held by a single/primary borrower (or a married couple in the case of a federal spousal consolidation loan) to a given lender/loan holder. In the case of a co-signed loan, the co-signer is not the primary borrower and should not be included in totals.
Loan Volume	The total outstanding principal and unpaid interest balance of loans in the specified status.
In-School	Includes loans that have not entered into repayment following separation or completion by the student from an education institution. "In-School" loans are distinct from loans that are in deferment following a period of repayment due to the borrower re-enrolling at least half-time in an education institution.
Grace	Includes loans that have entered a period in which no payment is due after the borrower ceases to be enrolled in school at least half-time.
In Active Repayment	Includes loans that are in an active repayment status, including forbearance and deferment.
Current	Includes loans that are currently in active repayment and loans that are no more than 29 days past due; excludes loans in forbearance or deferment.
Not Current	Includes loans 30 or more days past due; excludes loans already transferred to Debt Management Collection System (DMCS).
Deferment	Includes loans in which payments have been postponed as a result of certain circumstances such as returning to school, active military service, or economic hardship. This should include any loans in deferment as set forth by 34 CFR 685.204 (Direct) or 34 CFR 682.210 (FFEL).
Forbearance	Includes loans in which payments have been temporarily suspended or reduced. This should include any loans in forbearance as set forth by 34 CFR 685.205 (Direct) or 34 CFR 682.211 (FFEL).

Other Status	Any other loans in a status not reported as “In-School,” “Grace,” or “In Active Repayment”; includes loans that are in non-defaulted bankruptcy status or in a disability status.
Defaults	Loans that are technically in default as defined by 34 CFR 685.102(b) (Direct) or 34 CFR 682.200(b) (FFEL). For Direct and FFEL, generally, any loan that is 270 or more days past due, including, but not limited to, loans that have been referred to DMCS or transferred to a guaranty agency during the reporting period.
Loans Discharged	Loans removed due to discharge, end of an IDR term, total and permanent disability, death discharges, or other means of removing student loan debt from a borrower's balance.
Complaint	An expression of dissatisfaction, made by a borrower or on a borrower's behalf, to the Servicer regarding the borrower's student loan. This definition should not include telephone or chat inquiries that are fully resolved by a customer service representative on the same inquiry in which the complaint is initially made.
Escalated Complaint	A complaint that is resolved after referral to a supervisor, ombudsman, or complaint escalation team.
Undergraduate	Education loan taken out by the student with or without a co-signer to fund post-secondary education (including loans for bachelor, associate, and certificate programs); does not include Parent loans, Graduate loans, or any loan used to pay for expenses not included in cost of attendance.
Graduate	Education loan taken out by the student with or without a co-signer to fund graduate school education; does not include Parent loans, residency loans, bar exam loans, or any loan used to pay for expenses not included in cost of attendance.
Parent	Education loan taken out by the parent or an individual other than the student to fund a student's education; includes loans to support post-secondary or graduate school.
Unemployment or Hardship Deferment	Includes deferments utilized due to unemployment or economic hardship (includes Peace Corps service).
Unemployment or Hardship Deferment (>12 months)	Use of unemployment or economic hardship deferment to date, if cumulative total is greater than 12 months.
Military Deferment	Includes deferments utilized due to a period of active duty military service during a war, military operation, or national emergency.
Military Deferment (>12 months)	Use of military deferment to date, if cumulative total is greater than 12 months.
School Deferment	Includes deferments available to loans that have entered repayment but borrowers have since enrolled in school at least half-time.

Other Deferment	Includes all periods of deferment other than those connected to military service, unemployment, economic hardship, or enrollment in school. Note that this category, when combined with the values for Unemployment or Economic Hardship Deferments, Military Deferment, School Deferment, should equal the value for Deferment.
Administrative Forbearance	Includes the application of non-capitalizing forbearance applied for administrative purposes, including instances such as forbearance applied in the case of as national emergencies, military mobilizations, death, or to process documentation supporting requests for deferment, forbearance, or a change in repayment plans (including enrollment in or recertification of an income-driven repayment plan, or consolidation loans). This should only include the prospective application of Administrative Forbearance.
Voluntary Forbearance Long-Term Forbearance	Capitalizing forbearance applied at the request of the borrower. An account that has been in a capitalizing forbearance for a period of 12 consecutive months or greater.
Serial Forbearance	An account that has three (or greater) periods of capitalizing forbearance applied to an account over the preceding 24 months. Individual periods of forbearance can be of any length.
Other Forbearance	Any other type of forbearance, including mandatory forbearance. Note that this category, when combined with the values for Administrative Forbearance and Voluntary Forbearance, should equal the value for Forbearance.
Second-Time Default	Loans that are technically in default (270 days or more past due) after returning to "In Active Repayment" status in the last 24 months following a successful rehabilitation or consolidation curing a prior default.
DMCS	Debt Management and Collections System, managed by the Department of Education for use by debt collection or private collection agencies.
Inbound Borrower Contacts	Communications to the servicer from a borrower, co-signer, guarantor, or other person acting on behalf of a borrower.
Credit Reporting Agency	A business that regularly engages in whole or in part in the practice of assembling or evaluating, and maintaining, consumer credit information for the purpose of furnishing consumer reports to third parties. Also known as a credit reporting bureau.
Late Payment Fee	An amount charged to a borrower who misses paying at least the minimum payment by the payment deadline. Also known as a late charge.
Income-Driven Repayment ("IDR")	A repayment plan which sets the borrower's monthly student loan payment at an amount that is intended to be affordable based on the borrower's income and family size. For Direct and FFEL loans, this should include any loans in an income-based repayment plan as defined by 34 CFR 685.209 or 34 CFR 682.215.

Average Wait Time	The average (mean) time an inbound call spends waiting in queue (or waiting for a callback if that feature is available).
Abandoned Call Rate	The percentage of inbound calls that are discontinued prior to the borrower reaching a live agent or representative of the Servicer.
Average Call Time	The average (mean) duration of an inbound call once the borrower has reached a live agent or representative of the Servicer.
Interactive Voice Response ("IVR")	A telephone system which asks borrowers to press the buttons on their telephone keypad to select which service they want, after which the call is referred, if appropriate, to a live agent or representative of the Servicer.
IVR Containment Rate	The percentage of calls completed within the IVR, without having to be forwarded to a live agent or representative of the Servicer.

From: Jones, Gregory

Sent: Thursday, May 5, 2022 9:57 AM

To: 'thammonds@ago.state.al.us'; 'OMartin@ago.state.al.us'; 'zwilson@ago.state.al.us'; 'Jessica.Tubbs@AlabamaAG.gov'; 'dan.taliaferro@alabamaag.gov'; 'Rebecca.Salisbury@azag.gov'; 'Brad.keogh@azag.gov'; David McCoy; 'nicklas.akers@doj.ca.gov'; 'bernard.eskandari@doj.ca.gov'; 'Michael.Elisofon@doj.ca.gov'; 'Hanah.Harris@coag.gov'; 'john.langmaid@ct.gov'; 'jennifer.rimm@dc.gov'; 'christina.blackburn@myfloridalegal.com'; Victoria Butler; 'James.C.Paige@hawaii.gov'; 'stephen.h.levins@dcca.hawaii.gov'; 'shantel.knowlton@ag.idaho.gov'; 'Jessica.whitney@iowa.gov'; 'Kim.Davenport@ag.ks.gov'; 'Sarah.Dietz@ag.ks.gov'; 'rebecca.price@ky.gov'; 'GitsC@ag.louisiana.gov'; 'Linda.Conti@maine.gov'; 'Bgruhn@oag.state.md.us'; 'pziperman@oag.state.md.us'; 'diana.hooley@state.ma.us'; 'peter.leight@state.ma.us'; 'Yael.Shavit@state.ma.us'; 'jennifer.snow@state.ma.us'; 'BloomfieldW@michigan.gov'; 'GreenB@michigan.gov'; 'Adam.Welle@ag.state.mn.us'; 'james.rankin@ago.ms.gov'; 'Caleb.Pracht@ago.ms.gov'; 'jocelyn.brasher@nebraska.gov'; 'michaela.hohwieler@nebraska.gov'; 'phil.carlson@nebraska.gov'; 'JGibbs@ag.nv.gov'; 'LMTucker@ag.nv.gov'; 'rfulghum@ag.nv.gov'; 'Ana.Atta-Alla@law.njoag.gov'; 'amber.dailey@law.njoag.gov'; 'Cathleen.O_Donnell@law.njoag.gov'; 'Isabella.Pitt@law.njoag.gov'; 'Alina.Wells@dol.lps.state.nj.us'; 'Joshua.Bengal@law.njoag.gov'; 'renee.cadmus@law.njoag.gov'; 'Jane.Azia@ag.ny.gov'; 'Melvin.Goldberg@ag.ny.gov'; 'KANDER@ncdoj.gov'; 'kdarruda@ncdoj.gov'; 'Brandon.Duck@ohioattorneygeneral.gov'; 'timothy.effler@ohioago.gov'; 'Malisa.McPherson@oag.ok.gov'; 'Katherine.Campbell@doj.state.or.us'; 'jharvey@attorneygeneral.gov'; 'lwilliams@attorneygeneral.gov'; 'jabel@attorneygeneral.gov'; 'ESchaub@riag.ri.gov'; 'sprovazza@riag.ri.gov'; 'dgibson@scag.gov'; 'ksimons@scag.gov'; 'mfjowers@scag.gov'; 'yvette.lafrentz@state.sd.us'; 'Esther.Chavez@oag.texas.gov'; 'sterlingc@agutah.gov'; Chaudoir, Merideth; 'gward@oag.state.va.us'; 'JScott@oag.state.va.us'; 'mkubiak@oag.state.va.us'; 'ChrisW@ATG.WA.GOV'; 'julie.doyle@atg.wa.gov'; 'Norman.A.Googel@wvago.gov'; 'beilinlw@doj.state.wi.us'; 'HarlowRD@DOJ.STATE.WI.US'; 'lara.sutherlin@wisconsin.gov'; 'Kaplan, Glenn (AGO)'; 'ESchaub@riag.ri.gov'; 'Jonathan.Blake@ct.gov'; 'Michael.Wertheimer@ct.gov'; 'Azia, Jane'

CC: Casey, Michele; Williams, Alan

Subject: RE: Multistate Sign-On Opportunity - Letter to FTC on For-Profit Earnings Claims

Attachments: 2022.5.5 - Draft Multistate Comment - FTC Earnings Claim (Clean).docx; 2022.5.5 - Draft Multistate Comment - FTC Earnings Claim (Redline).docx

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi folks,

We've gotten some great edits on the attached letter, which I think have made it much better. Thanks to everyone who has shared their thoughts!

I've attached an updated draft (clean and redline). The draft primarily fixes grammatical issues and provides greater clarity on some of the cited statistics. The one main additional point was noting that some states may already have disclosure requirements for for-profits, so any rule should be clear that it is not replacing such requirements (pg. 1-2).

As a reminder, sign-on is **May 9 at 12pm central**, as we have to submit on May 10. Please let me know if anyone wants to discuss or has additional edits. Hope to have you all aboard!

Best,
Greg

From: Jones, Gregory

Sent: Thursday, April 28, 2022 2:40 PM

To: 'thammonds@ago.state.al.us' <thammonds@ago.state.al.us>; 'OMartin@ago.state.al.us'

<OMartin@ago.state.al.us>; 'zwilson@ago.state.al.us' <zwilson@ago.state.al.us>; 'Jessica.Tubbs@AlabamaAG.gov' <Jessica.Tubbs@AlabamaAG.gov>; 'dan.taliaferro@alabamaag.gov' <dan.taliaferro@alabamaag.gov>; 'Rebecca.Salisbury@azag.gov' <Rebecca.Salisbury@azag.gov>; 'Brad.keogh@azag.gov' <Brad.keogh@azag.gov>; 'david.mccoy@arkansasag.gov' <david.mccoy@arkansasag.gov>; 'Nicklas.Akers@doj.ca.gov' <Nicklas.Akers@doj.ca.gov>; 'Bernard.Eskandari@doj.ca.gov' <Bernard.Eskandari@doj.ca.gov>; 'Michael.Elisofon@doj.ca.gov' <Michael.Elisofon@doj.ca.gov>; 'Hanah.Harris@coag.gov' <Hanah.Harris@coag.gov>; 'john.langmaid@ct.gov' <john.langmaid@ct.gov>; 'jennifer.rimm@dc.gov' <jennifer.rimm@dc.gov>; 'christina.blackburn@myfloridalegal.com' <christina.blackburn@myfloridalegal.com>; 'Victoria.Butler@myfloridalegal.com' <Victoria.Butler@myfloridalegal.com>; 'James.C.Paige@hawaii.gov' <James.C.Paige@hawaii.gov>; 'stephen.h.levins@dcca.hawaii.gov' <stephen.h.levins@dcca.hawaii.gov>; 'shantel.knowlton@ag.idaho.gov' <shantel.knowlton@ag.idaho.gov>; Jones, Gregory <Gregory.Jones@ilag.gov>; 'Jessica.whitney@iowa.gov' <Jessica.whitney@iowa.gov>; 'Kim.Davenport@ag.ks.gov' <Kim.Davenport@ag.ks.gov>; 'Sarah.Dietz@ag.ks.gov' <Sarah.Dietz@ag.ks.gov>; 'rebecca.price@ky.gov' <rebecca.price@ky.gov>; 'GitsC@ag.louisiana.gov' <GitsC@ag.louisiana.gov>; 'Linda.Conti@maine.gov' <Linda.Conti@maine.gov>; 'Bgruhn@oag.state.md.us' <Bgruhn@oag.state.md.us>; 'pziperman@oag.state.md.us' <pziperman@oag.state.md.us>; 'diana.hooley@state.ma.us' <diana.hooley@state.ma.us>; 'peter.leight@state.ma.us' <peter.leight@state.ma.us>; 'Yael.Shavit@state.ma.us' <Yael.Shavit@state.ma.us>; 'jennifer.snow@state.ma.us' <jennifer.snow@state.ma.us>; 'BloomfieldW@michigan.gov' <BloomfieldW@michigan.gov>; 'GreenB@michigan.gov' <GreenB@michigan.gov>; 'Adam.Welle@ag.state.mn.us' <Adam.Welle@ag.state.mn.us>; 'james.rankin@ago.ms.gov' <james.rankin@ago.ms.gov>; 'Caleb.Pracht@ago.ms.gov' <Caleb.Pracht@ago.ms.gov>; 'jocelyn.brasher@nebraska.gov' <jocelyn.brasher@nebraska.gov>; 'michaela.hohwieler@nebraska.gov' <michaela.hohwieler@nebraska.gov>; 'phil.carlson@nebraska.gov' <phil.carlson@nebraska.gov>; 'JGibbs@ag.nv.gov' <JGibbs@ag.nv.gov>; 'LMTucker@ag.nv.gov' <LMTucker@ag.nv.gov>; 'rfulghum@ag.nv.gov' <rfulghum@ag.nv.gov>; 'Ana.Atta-Alla@law.njoag.gov' <Ana.Atta-Alla@law.njoag.gov>; 'amber.dailey@law.njoag.gov' <amber.dailey@law.njoag.gov>; 'Cathleen.O_Donnell@law.njoag.gov' <Cathleen.O_Donnell@law.njoag.gov>; 'Isabella.Pitt@law.njoag.gov' <Isabella.Pitt@law.njoag.gov>; 'Alina.Wells@dol.lps.state.nj.us' <Alina.Wells@dol.lps.state.nj.us>; 'Joshua.Bengal@law.njoag.gov' <Joshua.Bengal@law.njoag.gov>; 'renee.cadmus@law.njoag.gov' <renee.cadmus@law.njoag.gov>; 'Jane.Azia@ag.ny.gov' <Jane.Azia@ag.ny.gov>; 'Melvin.Goldberg@ag.ny.gov' <Melvin.Goldberg@ag.ny.gov>; 'KANDER@ncdoj.gov' <KANDER@ncdoj.gov>; 'kdarruda@ncdoj.gov' <kdarruda@ncdoj.gov>; 'Brandon.Duck@ohioattorneygeneral.gov' <Brandon.Duck@ohioattorneygeneral.gov>; 'timothy.effler@ohioago.gov' <timothy.effler@ohioago.gov>; 'Malisa.McPherson@oag.ok.gov' <Malisa.McPherson@oag.ok.gov>; 'Katherine.Campbell@doj.state.or.us' <Katherine.Campbell@doj.state.or.us>; 'jharvey@attorneygeneral.gov' <jharvey@attorneygeneral.gov>; 'lwilliams@attorneygeneral.gov' <lwilliams@attorneygeneral.gov>; 'jabel@attorneygeneral.gov' <jabel@attorneygeneral.gov>; 'ESchaub@riag.ri.gov' <ESchaub@riag.ri.gov>; 'sprovazza@riag.ri.gov' <sprovazza@riag.ri.gov>; 'dgibson@scag.gov' <dgibson@scag.gov>; 'ksimons@scag.gov' <ksimons@scag.gov>; 'mfjowers@scag.gov' <mfjowers@scag.gov>; 'yvette.lafrentz@state.sd.us' <yvette.lafrentz@state.sd.us>; 'Jeff.Hill@ag.tn.gov' <Jeff.Hill@ag.tn.gov>; 'maria.strohbehn@ag.tn.gov' <maria.strohbehn@ag.tn.gov>; 'Esther.Chavez@oag.texas.gov' <Esther.Chavez@oag.texas.gov>; 'sterlingc@agutah.gov' <sterlingc@agutah.gov>; 'Merideth.Chaudoir@vermont.gov' <Merideth.Chaudoir@vermont.gov>; 'gward@oag.state.va.us' <gward@oag.state.va.us>; 'JScott@oag.state.va.us' <JScott@oag.state.va.us>; 'mkubiak@oag.state.va.us' <mkubiak@oag.state.va.us>; 'ChrisW@ATG.WA.GOV' <ChrisW@ATG.WA.GOV>; 'julie.doyle@atg.wa.gov' <julie.doyle@atg.wa.gov>; 'Norman.A.Googel@wvago.gov' <Norman.A.Googel@wvago.gov>; 'beilinlw@doj.state.wi.us' <beilinlw@doj.state.wi.us>; 'HarlowRD@DOJ.STATE.WI.US' <HarlowRD@DOJ.STATE.WI.US>; 'lara.sutherlin@wisconsin.gov' <lara.sutherlin@wisconsin.gov>

Cc: Casey, Michele <Michele.Casey@ilag.gov>; Williams, Alan <Alan.Williams@ilag.gov>

Subject: Multistate Sign-On Opportunity - Letter to FTC on For-Profit Earnings Claims

Dear For-Profit Working Group States,

For your consideration and potential sign-on, attached please find a proposed multistate letter to the FTC regarding their [Request for Comment](#) (also attached) on their upcoming rulemaking covering earnings claims. Following *AMG*, the FTC is seeking alternative ways to provide restitution for consumers. One way they could do so is through a rule, violations of which are grounds for restitution under the FTC Act.

The request is very broad and covers a multitude of industries, including for-profit schools. In this letter, we primarily intend to provide insight into AGs' experiences with for-profits in order to create a record which the FTC can reference in proposing any rule. Since there is not a proposed rule at this time, we do not advocate one way or another as to what a rule should entail so as not to limit the FTC in their rulemaking.

The Letter notes our offices' long history of enforcement work against for-profits and encourages the FTC to take this history and experience into account when crafting any proposed rule. We specifically discuss the harm of student loans, the targeting of minority groups by for-profits, and misrepresentations we've seen by for-profits as to the amount, source, and adequacy of earnings.

We hope your states will join. **The submission deadline is May 10, 2022, so we are requesting sign-on by 12pm central on May 9, 2022.** If you intend to sign-on, please let me know (Gregory.jones@ilag.gov) and also provide me your AG's signature. If you have any questions or suggested edits, please do not hesitate to reach out to me directly as well – my contact information is below.

Best,

Greg Jones

Gregory W. Jones
Supervising Attorney
Consumer Fraud Bureau
Illinois Attorney General's Office
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[IL letterhead]

May 10, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave. NW, Suite CC-5610
Washington, DC 20580

Via Electronic Submission

RE: Earnings Claims ANPR, R111003

Dear Federal Trade Commission:

We, the undersigned Attorneys General of Illinois, [INSERT STATES], write in response to the Federal Trade Commission's ("FTC" or the "Commission") call for written comments regarding deceptive marketing using earnings claims, as set forth in 87 Fed. Reg. 13951 (the "Request"). As the Request notes, a variety of different industries rely heavily on earnings claims. Undoubtedly, each industry is different. However, we write today specifically regarding earnings-related claims by for-profit schools to aid in the Commission's determination of the requirements and scope of such a rule, given the unique issues posed by for-profit schools. In our investigation and enforcement experience, misrepresentations by for-profit schools can be broad and especially harmful for students who may carry the burden of student loan debt for the rest of their lifetimes. In the course of this rulemaking, we strongly encourage the Commission to consider the variety of misrepresentations historically made by many for-profit schools as to the amount, source, and adequacy of earnings, as well as the targets of such misrepresentations and the impact of such misrepresentations.

Higher education has long been synonymous with advancing a career and achieving life goals. In many ways, then, schools providing access to higher education use marketing tactics strikingly similar to those used by businesses selling "business opportunities" which, those businesses claim, can provide a career and plentiful income. For-profit schools in particular have relied heavily on marketing related to future earnings, including job and career advancement.¹

As a part of the regulatory triad of higher education, state regulators have an important role to play in overseeing higher education. Our offices are charged with enforcing our respective state consumer protection statutes, which, like the FTC Act, prohibit deceptive acts and practices. In that role, we have investigated and brought enforcement actions against numerous for-profit schools,² including for misrepresentations relating to those schools' earnings claims. Many of our

¹ See, for example, Westwood College, Inc., Complaint, People of the State of Illinois v. Westwood College, Inc. *et al.*, No. 12 CH 01587 (Cir. Ct. Cook County Jan. 18, 2012).

² Including, for instance, Career Education Corporation (including the Sanford Brown schools), Assurance of Discontinuance *available at* <https://ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>; The Career Institute, LLC, Final Judgment *available at* <http://www.mass.gov/ago/docs/consumer/aci-consent-judgment.pdf>; Corinthian Colleges, Inc., Judgment *available at*

states also maintain a robust regulatory role in overseeing for-profits, including requiring disclosures relating to jobs and salaries. We urge the Commission to make clear that any requirements imposed by this rulemaking will not replace such local requirements. While the Request seeks to cover a variety of industries, we also urge the Commission to consider the harm for-profit schools can and often do inflict on students, as well as the variety of ways in which for-profit schools can misrepresent the amount, source, and adequacy of future earnings, in any proposed rule.

I. The Harm: A Lifetime of High Student Loan Debt

For-profits, as the name suggests, operate to maximize profit for their owners and shareholders. To do so, for-profits spend large portions of their budgets on marketing to entice students to enroll and typically charge higher tuition than at community colleges and public universities charge for comparable programs.³ In fact, average tuition for certificate programs at a for-profit college is on average four and a half times more than at a comparable program at a community college.⁴ Bachelor's degree programs at for-profits averaged 20% more than analogous programs at public universities, and associate degree programs at for-profits averaged four times the cost at traditional public colleges.⁵

Importantly, federal student loans afford an easily-accessible source of funding for these high tuitions, further enabling for-profits to take advantage of consumers. For instance, in 2009, 15 publicly-traded for-profit education companies received over 86% of their revenues from taxpayers.⁶ Moreover, 71% of students at for-profit schools take out student loans, compared to only 49% at public four-year schools.⁷ Given higher tuition at for-profits, students attending these schools also end up borrowing more – \$2,000 more on average per year than students at four-year, public colleges and over \$5,000 more on average per year than students at public community

https://oag.ca.gov/system/files/attachments/press_releases/Corinthian%20Final%20Judgment_1.pdf; DeVry University, Assurance of Discontinuance *available at* <https://ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-devry-university-providing-225-million-restitution>; Education Management Corporation, Consent Judgment, *People of the State of Illinois v. Education Management Corporation et al.*, No. 2015 CH 16728 (Cir. Ct. Cook County Nov. 16, 2015); Lincoln Technical Institute, Inc., Consent Judgment *available at* <http://www.mass.gov/ago/docs/press/2015/lincoln-tech-settlement.pdf>; ITT Educational Services, Inc., Complaint, *Massachusetts v. ITT Educ. Servs. Inc.*, No. 16-0411 (Mass. Super. Ct. Mar. 31, 2016); Kaplan Higher Education, LLC, Assurance of Discontinuance *available at* <http://www.mass.gov/ago/docs/press/2015/kaplan-settlement.pdf>; Minnesota School of Business, Inc. and Globe University, Inc., Findings of Fact, Conclusions of Law and Order, *Minnesota v. Minnesota School of Business et al.*, No. 27-CV-14-12558 (Minn. Dist. Ct. September 8, 2016); The Salter School, Judgment by Consent *available at* <http://www.mass.gov/ago/docs/press/2014/salter-judgment-by-consent.pdf>; Westwood College, Inc., Complaint, *People of the State of Illinois v. Westwood College, Inc. et al.*, No. 12 CH 01587 (Cir. Ct. Cook County Jan. 18, 2012).

³ *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, United States Senate, Health, Education, Labor and Pensions Committee, at 1-2 (July 30, 2012) (“Senate Report”) *available at* https://www.help.senate.gov/imo/media/for_profit_report/ExecutiveSummary.pdf

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⁵ *Id.*

⁶ See Senate Report, *supra* note 3, at 2.

⁷ *The for-profit college system is broken and the Biden administration needs to fix it*, Ariel Shiro and Richard Reeves, Brookings Institute, Jan. 12, 2021, *available at* <https://www.brookings.edu/blog/how-we-rise/2021/01/12/the-for-profit-college-system-is-broken-and-the-biden-administration-needs-to-fix-it..>

colleges.⁸ Moreover, for-profits have lower completion rates than other higher education institutions: in 2019, for instance, the 6-year completion rates for students seeking bachelor degrees at 4-year degree granting institutions was “62 percent at public institutions, 68 percent at private nonprofit institutions, and 26 percent at private for-profit institutions.”⁹ As a result, many for-profit students will end up with a large amount of debt and no diploma or other credential.

Therefore, a higher percentage of students at for-profit colleges are borrowing more money than at other institutions. For-profit students also make up a disproportionate share of defaulting borrowers.¹⁰ The effects of such borrowing can last a lifetime for such students:

The vast majority of the students left with student loan debt that may follow them throughout their lives, and can create a financial burden that is extremely difficult, and sometimes impossible, to escape.¹¹

Unlike other debts, including, for example, debts accrued to pursue a business opportunity, student loans are often not dischargeable in bankruptcy. Federal direct loans have some limited protections that may help a borrower discharge their loans over time, for instance under an income driven repayment plan or public service loan forgiveness. However, usually private student loans have no such protections. Because these educational debts can follow borrowers forever, then, earnings misrepresentations made to prospective students are especially damaging.

II. The Harmed: Predominantly Black and Latino Populations

While for-profit schools harm a broad swath of individuals, they especially harm communities of color. Black and Latino students constitute nearly half of all for-profit students, compared to all undergraduate institutions where these groups constitute only one-third of students.¹² In fact, one zip code mapping analysis found that for-profits often locate themselves in predominantly minority neighborhoods:

Nationally, and in city after city, we found that for-profit schools cluster in and around Black and Latino neighborhoods, a stark contrast to their relatively thin presence in predominantly white neighborhoods. These findings make clear that the disproportionate enrollment of people of color at for-profit colleges is likely a consequence of these firms’ intentional targeting of Black and Latino neighborhoods. At the national level, we found that neighborhoods that are majority

⁸ *Different degrees of debt: Student borrowing in the for-profit, nonprofit, and public sectors*, Stephanie Cellini and Rajeev Darolia, Brown Center on Education Policy, June 2016, available at <https://www.brookings.edu/wp-content/uploads/2016/07/cellini.pdf>.

⁹ *Fast Facts: Graduation Rates*, National Center for Education Statistics, available at [https://nces.ed.gov/fastfacts/display.asp?id=40#:~:text=The%206%2Dyear%20graduation%20rate,at%20both%20public%20\(65%20vs](https://nces.ed.gov/fastfacts/display.asp?id=40#:~:text=The%206%2Dyear%20graduation%20rate,at%20both%20public%20(65%20vs) (last visited April 21, 2022).

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¹¹ *See* Senate Report, *supra* note 3, at 1.

¹² *Mapping Exploitation*, Student Borrower Protection Center, July 2021, at 9, available at <https://protectborrowers.org/wp-content/uploads/2021/07/SBPC-Mapping-Exploitation-Report.pdf>

Black or Latino are significantly more likely—over 75 percent and 110 percent, respectively—to have at least one for-profit school than communities that are not.¹³

In Chicago, for instance, “[t]here are 11x more for-profits in the 10 percent of Chicago zip codes with the largest Latino populations than in those with the largest white populations.”¹⁴ Moreover, nearly two-thirds of Black and Latino student borrowers end up dropping out of four-year for-profit schools.¹⁵ Black borrowers also have to borrow more to attend schools across all sectors.¹⁶ As a result, these communities can be especially harmed by the misconduct of predatory for-profits, including by income misrepresentations.

III. The Fraud: Misrepresentations Relating to the Amount, Source, and Adequacy of Earnings

Through a variety of state investigations and enforcement actions, the states have uncovered a wide array of predatory practices by abusive for-profit schools. These practices include harassing, high pressure recruitment tactics and false and misleading representations to consumers, among other things. We have seen some for-profit schools employ misrepresentations regarding the amount, source, and adequacy of earnings that prospective students should expect after enrollment.

a. For-Profits Misrepresent the Amount of Future Earnings:

For-profit schools often make representations regarding the dollar amount of increased earnings that students might expect to receive upon graduation. These numbers are often fundamentally false and fail to take into account the often abysmal program completion rates at these schools. In April 2021, a group of 25 states submitted a group discharge application (“ITT Group Discharge Application”) for certain ITT borrowers outlining this type of conduct. As set forth in that application, and as evidenced by the Expert Report of Dr. Jordan Matsudaira, ITT misrepresented the projected annual earnings for ITT graduates “at \$100,000 more than the average earnings of workers with the same credentials.”¹⁷ There, the Value Proposition Chart used by ITT wrongly represented that earnings would constantly rise and deceptively represented high base salary levels for ITT graduates. ITT also misleadingly aggregated earnings outcomes across majors and locations, instead of providing students with a more accurate sense of the financial benefit of a student’s enrollment at a specific program in a specific location.

ITT’s Value Proposition Chart also failed to take into account other relevant information, such as low graduation rates. For instance, the ITT Group Discharge Application notes that the average graduation rate across all programs was only 36%. Thus, “[o]nly around one-third of borrowers who enrolled at ITT could expect to be paid the wages of an ITT graduate.”¹⁸

¹³ *Id.* at 11

¹⁴ *Id.* at 20.

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¹⁶ See Mapping Exploitation, *supra* note 12, at 6.

¹⁷ AG Group Discharge Application on Behalf of ITT Students, April 1, 2021, available at https://illinoisattorneygeneral.gov/pressroom/2021_04/2021_States_Group_BD_Application_ITT.pdf.

¹⁸ *Id.* at 4.

Importantly, the ITT Group Discharge Application notes that borrowers should have been informed about the earnings outcomes for all borrowers who enrolled – not just those who graduated – due to the substantial likelihood of non-completion. Given the low completion rates across all for-profit schools, we encourage the FTC to consider completion rates and their impact on expected earnings in its rulemaking process, in addition to other misrepresentations regarding the amount of expected future earnings.

b. For-Profits Misrepresent the Source of Future Earnings:

Our offices have uncovered for-profit schools misrepresenting whether programs of instruction would lead to employment in a specific industry. While these misrepresentations do not explicitly target the amount of expected earnings, they deceptively represent the *source* of earnings.

In Illinois, for instance, one for-profit school, Westwood, misrepresented that its criminal justice program in Illinois could lead students to employment as police officers.¹⁹ In fact, the Chicago Police Department, Illinois State Police, and other law enforcement agencies would not accept Westwood credits or degrees. As the Department of Education has itself now concluded: “This advertising and marketing was misleading because most police officer positions in the Chicago area required credits or a degree from a regionally accredited school, and Westwood was not regionally accredited.”²⁰ Similarly, CEC, a primarily online for-profit, allegedly misrepresented the rates at which graduates became employed in their field of study, claiming that graduates were “placed” in jobs in the advertised fields. In fact, many graduates were employed only temporarily in those fields. In some egregious instances, graduates were even placed in unrelated jobs.²¹ As these cases illustrate, misrepresentations regarding the source of earnings can be just as problematic as misrepresentations regarding the amount of those earnings.

c. For-Profits Misrepresent the Adequacy of the Future Earnings:

Most students attend institutions of higher education to improve their lives and careers. Whether or not a student’s earnings will be sufficient to cover the cost of those institutions significantly impacts many prospective students’ decision regarding whether to attend a specific institution. As we have noted, the few students who do graduate from for-profits often end up not making enough money to repay the large amount of debt they accrued. The Department of Education has noted these poor outcomes. Under the currently-rescinded Gainful Employment Rule, the Department attempted to hold schools accountable for the amount of students’ debt incurred compared to those students’ earnings upon graduation. The Department did so by cutting off schools from Title IV loans if the school repeatedly graduated students who did not earn enough to repay those loans. When the Department released the first debt-to-earnings rates for applicable programs over 800 programs were “failing” – in other words, graduating students could not repay their loans. While the majority of programs covered by the Gainful Employment Rule were at

¹⁹ See Westwood Complaint, *supra* note 1.

²⁰ See Westwood Statement of Facts, Parts 1 and 2, available at <https://studentaid.gov/announcements-events/borrower-defense-update> (last visited March 28, 2022).

²¹ Attorney General Madigan Reaches \$493.7 Million Settlement with For-Profit Education Company, Jan. 3, 2019, available at https://www.illinoisattorneygeneral.gov/pressroom/2019_01/2019103.html.

public colleges,²² of the 800 failing programs, *ninety-eight percent* were offered by for-profit institutions.²³

Given this, in formulating any rule, the Commission should take into account the massive cost of student loans and whether the likely earnings would provide enough income to allow borrowers attending for-profit schools to climb out of the debt many of them have to accrue to attend these institutions in the first place.

Similar to other businesses making earnings claims, for-profit schools sell consumers on lofty dreams and often market themselves as a means to achieve career advancement and a comfortable livelihood. In reality, many consumers who attend for-profit schools end up with limited employment prospects and crippling debt. However, for-profits are also different from other businesses in that their students – often, targeted minorities – take on significant debt loads that can follow these borrowers for a lifetime. We strongly urge the Commission to consider for-profits’ historical misrepresentations regarding the amount, source, and adequacy of likely future earnings, as well as the magnitude and nature of the resulting harms, in formulating any rule regarding earnings claims.

Sincerely,

Kwame Raoul
Illinois Attorney General

[insert signatures]

²² *Why Students Need a Strong Gainful Employment Rule*, TICAS, Feb. 3, 2021, available at <https://ticas.org/wp-content/uploads/2021/02/Why-Students-Need-a-Strong-Gainful-Employment-Rule.pdf>.

²³ *Overburdened with Debt*, Andrew Kreighbaum, Inside Higher ED, Jan. 10, 2017, available at <https://www.insidehighered.com/news/2017/01/10/federal-data-show-hundreds-vocational-programs-fail-meet-new-gainful-employment>.

[IL letterhead]

May 10, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave. NW, Suite CC-5610
Washington, DC 20580

Via Electronic Submission

RE: Earnings Claims ANPR, R111003

Dear Federal Trade Commission:

We, the undersigned Attorneys General of Illinois, [INSERT STATES], write in response to the Federal Trade Commission's ("FTC" or the "Commission") call for written comments regarding deceptive marketing using earnings claims, as set forth in 87 Fed. Reg. 13951 (the "Request"). As the Request notes, a variety of different industries rely heavily on earnings claims. Undoubtedly, each industry is different. However, we write today specifically regarding ~~the variety of~~ earnings-related claims ~~utilized~~ by for-profit schools to aid in the Commission's determination of the requirements and scope of such a rule, given the unique issues posed by for-profit schools. In our investigation and enforcement experience, ~~for-profit~~ misrepresentations by for-profit schools can be broad and especially harmful for students who may carry the burden of student loan debt for the rest of their lifetimes. In the course of this rulemaking, we strongly encourage the Commission to consider the variety of misrepresentations historically made by many for-profit schools as to the amount, source, and adequacy of earnings, as well as the targets of such misrepresentations and the impact of such misrepresentations.

Higher education has long been synonymous with advancing a career and achieving life goals. In many ways, then, schools providing access to higher education use marketing tactics strikingly similar to ~~that those~~ used by businesses selling "business opportunities" which, those businesses claim, can provide a career and plentiful income. For-profit schools in particular have relied heavily on marketing related to future earnings, including job and career advancement.¹

As a part of the regulatory triad of higher education, state regulators have an important role to play in overseeing higher education. ~~Each of o~~Our offices are charged with enforcing our respective state consumer protection statutes, which, like the FTC Act, prohibit deceptive acts and practices ~~much as the FTC Act does~~. In that role, we have investigated and litigated brought enforcement actions against numerous for-profit schools,² including for misrepresentations

¹ See, for example, Westwood College, Inc., Complaint, People of the State of Illinois v. Westwood College, Inc. *et al.*, No. 12 CH 01587 (Cir. Ct. Cook County Jan. 18, 2012).

² Including, for instance, Career Education Corporation (including the Sanford Brown schools), Assurance of Discontinuance *available at* <https://ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>; The Career Institute, LLC, Final Judgment *available at* <http://www.mass.gov/ago/docs/consumer/aci-consent-judgment.pdf>; Corinthian Colleges, Inc., Judgment *available at*

relating to those schools' earnings claims. Many of our states also maintain a robust regulatory role in overseeing for-profits, including requiring disclosures relating to jobs and salaries. We urge the Commission to make clear that any requirements imposed by this rulemaking will not replace such local requirements. While the Request seeks to cover a variety of industries, we also urge the Commission to consider the harm for-profit schools can and often do inflict on students, as well as the variety of ways in which for-profit schools can misrepresent the amount, source, and adequacy of future earnings, in any proposed rule.

I. The Harm: A Lifetime of High Student Loan Debt

For-profits, as the name suggests, operate to maximize profit for their owners and shareholders. To do so, for-profits spend large portions of their budgets on marketing to entice students to enroll and typically charge higher tuition than ~~charged in comparable programs~~ at community colleges and public universities charge for comparable programs.³ In fact, average tuition for certificate programs at a for-profit college ~~is over \$10,000~~ is on average four and a half times more than at a comparable program at a community college.⁴ Bachelor's degree programs at for-profits averaged 20% more than analogous programs at public universities, and associate degree programs at for-profits averaged four times the cost at traditional public colleges.⁵

Importantly, federal student loans afford an easily-~~obtained-accessible~~ source of funding for these high tuitions, ~~of which further enabling~~ for-profits to take ~~full~~ advantage of consumers. ~~In 2009, f~~For instance, in 2009, 15 publicly-traded for-profit education companies received over 86% of their revenues from taxpayers.⁶ Moreover, 71% of students at for-profit schools take out student loans, compared to only 49% at public four-year schools.⁷ Given higher tuition at for-

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⁷ *The for-profit college system is broken and the Biden administration needs to fix it*, Ariel Shiro and Richard Reeves, Brookings Institute, Jan. 12, 2021, *available at* <https://www.brookings.edu/blog/how-we->

profits, students attending these schools also end up borrowing more – \$2,000 more on average per year than students at four-year, public colleges and over \$5,000 more on average per year than students at public community colleges.⁸ Moreover, for-profits have lower completion rates than other higher education institutions: in 2019, for instance, the 6-year completion rates for students seeking bachelor degrees at 4-year degree granting institutions was “62 percent at public institutions, 68 percent at private nonprofit institutions, and 26 percent at private for-profit institutions.”⁹ As a result, many for-profit students will end up with a large amount of debt and no diploma or other credential ~~which might provide them increased earning capacity. These borrowers are the worst off of all.~~

Therefore, a higher percentage of students at for-profit colleges are borrowing more money at higher rates than at other institutions. ~~This means that f~~For-profit students also make up a disproportionate share of defaulting borrowers.¹⁰ The effects of such borrowing can last a lifetime for such students:

The vast majority of the students left with student loan debt that may follow them throughout their lives, and can create a financial burden that is extremely difficult, and sometimes impossible, to escape.¹¹

Unlike other debts, including, for example, debts accrued to pursue a business opportunity, ~~for instance,~~ student loans are typically often not dischargeable in bankruptcy. Federal direct loans have some limited protections that may help a borrower discharge their loans over time, for instance under an income driven repayment plan or public service loan forgiveness. However, usually private student loans have no such protections. Because these educational debts can follow borrowers forever, then, earnings misrepresentations made to prospective students are especially damaging.

II. The ~~Targets~~Harmed: Predominantly Black and Latino Populations

While for-profit schools harm a broad swath of individuals, ~~for profits they overwhelmingly target and especially~~ harm communities of color. Black and Latino students constitute nearly half of all for-profit students, compared to all undergraduate institutions where these groups constitute only one-third of students.¹² In fact, one zip code mapping analysis found that for-profits often locate themselves specifically in predominantly minority neighborhoods, ~~resulting in such skewed enrollment:~~

[rise/2021/01/12/the-for-profit-college-system-is-broken-and-the-biden-administration-needs-to-fix-it](https://www.brookings.edu/articles/2021/01/12/the-for-profit-college-system-is-broken-and-the-biden-administration-needs-to-fix-it). See Brookings Article, *supra* note 4.

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Nationally, and in city after city, we found that for-profit schools cluster in and around Black and Latino neighborhoods, a stark contrast to their relatively thin presence in predominantly white neighborhoods. These findings make clear that the disproportionate enrollment of people of color at for-profit colleges is likely a consequence of these firms' intentional targeting of Black and Latino neighborhoods. At the national level, we found that Neighborhoods neighborhoods that are majority Black or Latino are significantly more likely—over 75 percent and 110 percent, respectively—to have at least one for-profit school than communities that are not.¹³

In Chicago, for instance, “[t]here are 11x more for-profits in the 10 percent of Chicago zip codes with the largest Latino populations than in those with the largest white populations.”¹⁴ Moreover, nearly two-thirds of Black and Latino student borrowers end up dropping out of four-year for-profit schools. ~~This conduct is especially heinous given that~~ Black borrowers also have to borrow more to attend schools across all sectors.¹⁶ As a result, these for-profit schools' communities can be especially harmed by the misconduct of predatory for-profits, including by income misrepresentations targeting of such populations increases the racial wealth gap and drives such borrowers into a lifetime of debt from which they have little hope of escaping.

III. The Fraud: Misrepresentations Relating to the Amount, Source, and Adequacy of Earnings

Through a variety of state investigations and enforcement actions, the ~~States~~ states have uncovered a wide array of predatory practices ~~employed~~ by abusive for-profit schools. These practices ~~commonly~~ include harassing, high pressure recruitment tactics and false and misleading representations to consumers, among other things. ~~As w~~We have seen, some for-profit schools employ misrepresentations regarding the amount, source, and adequacy of earnings that prospective students should expect ~~to receive~~ after enrollment.

a. For-Profits Misrepresent the Amount of Future Earnings:

For-profit schools often make ~~mis~~representations regarding the dollar amount of increased earnings that students might expect to receive upon graduation. These numbers are often fundamentally false and fail to take into account the often abysmal program completion rates ~~of students~~ at these schools. In April, 2021, a group of 25 states submitted a group discharge application (“ITT Group Discharge Application”) for certain ITT borrowers outlining this very sort type of conduct. As set forth in that application, and as evidenced by the Expert Report of Dr. Jordan Matsudaira, ITT misrepresented the projected annual earnings for ITT graduates “at

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\$100,000 more than the average earnings of workers with the same credentials.”¹⁷ There, the Value Proposition Chart used by ITT wrongly represented that earnings would constantly rise and deceptively represented high base salary levels for ITT graduates. ITT also misleadingly aggregated earnings outcomes across majors and locations, instead of providing students with a more accurate sense of the financial benefit of a student’s enrollment at a specific program in a specific location.

ITT’s Value Proposition Chart also failed to take into account other relevant information, such as low graduation rates. For instance, the ITT Group Discharge Application notes that the average graduation rate across all programs was only 36%. Thus, “[o]nly around one-third of borrowers who enrolled at ITT could expect to be paid the wages of an ITT graduate.”¹⁸ Importantly, the ITT Group Discharge Application notes that borrowers should have been informed about the earnings outcomes for all borrowers who enrolled – not just those who graduated – due to the substantial likelihood of non-completion. Given the low completion rates across all for-profit schools, we encourage the FTC to consider completion rates and their impact on expected earnings in ~~their-its~~ rulemaking process, in addition to other misrepresentations regarding the amount of expected future earnings.

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¹⁹ See Westwood Complaint, *supra* note 1.

²⁰ See Westwood Statement of Facts, Parts 1 and 2, *available at* <https://studentaid.gov/announcements-events/borrower-defense-update> (last visited March 28, 2022).

²¹ *Attorney General Madigan Reaches \$493.7 Million Settlement with For-Profit Education Company*, Jan. 3, 2019, *available at* https://www.illinoisattorneygeneral.gov/pressroom/2019_01/2019103.html.

c. For-Profits Misrepresent the Adequacy of the Future Earnings:

~~Fundamentally, Most~~ students attend institutions of higher education to improve their lives and careers. Whether or not a student's earnings will be sufficient to cover the cost of those institutions significantly impacts ~~a-many~~ prospective student's' decision ~~of-regarding~~ whether to attend a specific institution. As we have noted, the few students who do graduate from for-profits often end up not making enough money to repay the large amount of debt they accrued. The Department of Education has noted ~~similar-these~~ poor outcomes. Under the currently-rescinded Gainful Employment Rule, the Department attempted to hold ~~for-profit~~ schools accountable for the amount of students' debt incurred compared to those students' earnings upon graduation. The Department did so by cutting off schools from Title IV loans if the school repeatedly graduated students who did not earn enough to repay those loans. When the Department released the first debt-to-earnings rates for applicable programs over 800 programs were "failing" – in other words, graduating students could not repay their loans. While the majority of programs covered by the Gainful Employment Rule were at public colleges,²² ~~Of of~~ these 800 failing programs, *ninety-eight percent* were offered by for-profit institutions.²³

~~As such~~ Given this, in formulating any rule, the Commission should take into account the massive cost of student loans and whether the ~~promised-likely~~ earnings would provide enough income to allow ~~these~~ borrowers attending for-profit schools to climb out of the debt many of they them have to accrue ~~in order~~ to attend these institutions in the first place.

Similar to other businesses making earnings claims, for-profit schools sell ~~borrowers consumers~~ on lofty dreams and often market themselves as a means to achieve career advancement and a comfortable livelihood. In reality, when in fact many ~~borrowers-consumers who attend for-profit schools~~ end up with ~~no-limited~~ employment prospects and crippling debt. However, for-profits are also different from other businesses in that ~~borrowers-their students~~ – often, targeted minorities – take on ~~high amounts of loans significant debt loads~~ that can follow these borrowers for a lifetime. We strongly urge the Commission to consider for-profits' historical misrepresentations regarding the amount, source, and adequacy of likely future earnings, as well as the magnitude and nature of the resulting harms, in formulating any rule regarding earnings claims.

Sincerely,

Kwame Raoul

²² *Why Students Need a Strong Gainful Employment Rule*, TICAS, Feb. 3, 2021, available at <https://ticas.org/wp-content/uploads/2021/02/Why-Students-Need-a-Strong-Gainful-Employment-Rule.pdf>.

²³ *Overburdened with Debt*, Andrew Kreighbaum, Inside Higher ED, Jan. 10, 2017, available at <https://www.insidehighered.com/news/2017/01/10/federal-data-show-hundreds-vocational-programs-fail-meet-new-gainful-employment>.

Illinois Attorney General

[insert signatures]

From: Mike Pierce
Sent: Monday, October 2, 2023 10:50 AM
To: Chaudoir, Merideth
Subject: Reminder: Student debt panel series THURSDAY

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Dear colleague,

This Thursday, October 5 at 1pm ET, the Student Borrower Protection Center (SBPC) will host a set of virtual panels, [Delivering Distress: Are Student Loan Companies Cheating Borrowers Out of their Rights?](#)

After three and a half years, payments on federal student loans are set to resume. In the years while payments have been shut off, President Biden has begun to take critical steps to improve the student loan safety net—in particular, committing to improving many of the broken cancellation programs. As a result, millions of federal student loan borrowers are eligible for relief. However, too many of those borrowers are still waiting for that relief to be delivered. This fall, servicers are set to send bills to millions of borrowers who should have those debts cancelled.

We'll start with [keynote remarks from D.C. Attorney General Brian Schwab](#), followed by two panels that will examine different categories of borrowers and the harm—both legal and financial—that they will face when servicers begin collecting on these loans that should no longer exist.

Register

DELIVERING DISTRESS, A VIRTUAL PANEL SERIES

PART 1: BORROWERS' RIGHTS

Thursday Oct. 5, 2023 — 1 PM - 3:30 PM ET



STUDENT BORROWER
PROTECTION CENTER

MODERATOR:

DANIELLE

DOUGLAS-GABRIEL

The Washington Post

PANELISTS:

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*Consumer Financial
Protection Bureau*

EILEEN CONNOR

*Project on Predatory
Student Lending*

CHRIS GOFF

*American Federation
of Teachers*

PERSIS YU

*Student Borrower
Protection Center*

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Politico

PANELISTS:

WINSTON

BERKMAN-BREEN

*Student Borrower
Protection Center*

JONATHAN GLATER

UC Berkeley Law

EMILY KALANITHI

*California Department
of Justice*

KYRA TAYLOR

*National Consumer
Law Center*

PART 2: RISKS TO THE SYSTEM

Thursday Oct. 5, 2023 — 1 PM - 3:30 PM ET



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Sent by mike@protectborrowers.org

From: Mike Pierce

Sent: Thursday, August 3, 2023 9:45 AM

To: Winston Berkman-Breen; Klem Ellen (Ellen.Klem@doj.state.or.us)

Subject: Thank you for joining us in Portland!

You don't often get email from mike@protectborrowers.org. [Learn why this is important](#)

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Colleagues:

Thank you for joining us in Portland for AG Rosenblum's Third Symposium on the Student Debt Crisis. It was incredible to learn so much from so many leaders across dozens of agencies and organizations. Together, we began to chart a path forward for millions of people facing the daunting prospect of a student loan bill for the first time in more than three years.

SBPC is excited to announce our next conference, focused on Training Repayment Agreement Provisions (TRAPs) and Employer-Driven Debt, and co-hosted by our friends at [Towards Justice](#) and the University of California [Student Loan Law Initiative](#) (SLLI). This event will take place **in Irvine, CA at UCI Law during the week of December 4th. Save the Date!**

Lastly, we wanted to let all attendees know that we have received several requests to circulate the contact information of attendees and speakers so folks can keep in touch after the conference. Please let us know by **12:00pm PT/3:00pm ET on Thursday, August 10th (one week from today) if you do not want your email to be included.**

Thank you again for your time, energy and insights!

Mike

--

Mike Pierce (he/him)

Executive Director

Student Borrower Protection Center

www.protectborrowers.org



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