



Consumer Financial  
Protection Bureau

1700 G Street, N.W., Washington, DC 20552

May 22, 2014

Ms. Ashley Higgins  
U.S. Department of Education  
1990 K St NW, Room 8037  
Washington, DC 20006

Re: Comments submitted in response to the Notice of Proposed Rulemaking regarding Program Integrity: Gainful Employment (Docket ID: ED-2014-OPE-0039)

Dear Ms. Higgins:

Thank you for the opportunity to provide comment on the Notice of Proposed Rulemaking regarding Program Integrity: Gainful Employment.

The Consumer Financial Protection Bureau (“CFPB” or “Bureau”) was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The CFPB opened its doors in 2011, and since that time, has coordinated closely with the Department of Education (“Department” or “ED”) on issues of common concern, including consumer protection risks posed by certain for-profit institutions of higher education. The Bureau is concerned that ordinary market forces may not function properly in the for-profit college market, due to insufficient transparency, misaligned incentives, and potentially unlawful conduct.

The CFPB is also committed to working with other federal agencies and state Attorneys General to ensure that institutions of higher education are helping Americans climb the economic ladder, rather than burdening them with high levels of student debt with few chances to get ahead. Earlier this year, the CFPB sued ITT Educational Services, Inc., one of the largest for-profit college chains in the United States, for misconduct related to student loans.<sup>1</sup> The CFPB will continue to monitor this marketplace closely and take action as appropriate.

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<sup>1</sup> *CFPB Sues For-profit College Chain ITT for Predatory Lending* (February 2014) available at <http://www.consumerfinance.gov/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/>

While we are pleased that agencies and regulators at the federal and state level are working closely together to combat noncompliance, it will also be important to change some of the underlying incentives that create consumer protection risks. Like the subprime boom in mortgages and other consumer lending in the years leading up to the financial crisis, market participants can profit even when consumers fail – the Department of Education’s proposed rulemaking is an important step to address this incentive misalignment.

As the Department seeks to finalize this regulation, we respectfully offer some comments relating to the calculation of “debt-to-earnings” (DTE) as defined by the proposed rule.

**(1) The Department of Education may wish to consider the role of other consumer credit products used to finance expenses associated with cost of attendance in the DTE calculation.**

The proposed rule offers a detailed explanation of what kinds of debt should be factored into the DTE calculation. As noted in the proposal, the calculation seeks to factor in “the most complete picture of the indebtedness” by including private student loans as well as federal student loans.

However, to ensure that the DTE requirements capture the full scope of students’ debt burden, ED may wish to consider the role of other forms of borrowing, such as credit cards and home equity lending. While data on borrower utilization of these other credit products for educational expenses is limited, some data suggest that students are utilizing credit cards and other forms of credit. For example, a survey conducted by Ipsos (paid for by SLM Corporation)<sup>2</sup> found that some students and families used credit cards to pay for college cost in 2013.<sup>3</sup>

Additionally, a review of similar rules used to evaluate borrower debt burden in other markets reveals that other financial obligations are often included in other debt-to-income (DTI) calculations. For example, the calculation of DTI in the Bureau’s Qualified Mortgage rule includes other liabilities in addition to debt directly related to the home purchase.<sup>4</sup>

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<sup>2</sup> Ipsos Public Affairs and Sallie Mae, *How America Pays for College* (2013)

<sup>3</sup> The same survey also found that 32 percent of low-income students and 28 percent of middle-income college students carry credit cards. We acknowledge the significant methodological limitations of this survey. However, the general observation that students use credit products beyond student loans to fund higher education is worthy of careful consideration.

<sup>4</sup> See, for example, Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6408 (Jan. 30, 2013). Amendments to the rule and further information about

The Department's proposed rule considers only federal and private student loans. However, a student may utilize other financing options, to cover additional educational expenses. Ignoring other forms of credit used to fund higher education expenses might inadvertently understate debt burden, leading some programs to remain eligible despite leaving students with high levels of total debt. ED may wish to consider these factors when developing eligibility cutoffs in the final rule.

**(2) The Department of Education may wish to clarify the proposed language regarding the inclusion of private student loans.**

The proposed rule requires schools to include the “total amount the student received from private student loans for enrollment in the program that the institution is, or should reasonably be, aware of.” Absent clarification as to how a school might “reasonably be aware of” a student’s utilization of a private student loan, some borrowing will go unrecorded – perhaps intentionally. Federal law does not currently require a school to certify that a borrower has demonstrated need to receive a private student loan. As noted in a 2012 study conducted by the CFPB and the Department of Education, private student lenders have directly originated loans to students, sometimes without the school’s knowledge.<sup>5</sup>

Clarifying this language may reduce the likelihood that institutions of higher education will engage in unorthodox tactics to arrange credit for students in an attempt to “game” DTE requirements.

**(3) The Department of Education might consider ways to limit the use of “innovative” strategies that frustrate the intent of the regulation.**

Some participants in the for-profit college industry have used unique marketing and financial strategies to meet statutory and regulatory requirements. For example, Holly Petraeus, the CFPB’s Assistant Director for Servicemember Affairs, has noted the aggressive marketing techniques employed to recruit veterans and active-duty servicemembers, in part to comply with the “90-10” rule.<sup>6</sup>

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the Qualified Mortgage rule are available at <http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/>

<sup>5</sup> Consumer Financial Protection Bureau and U.S. Department of Education: *Report on Private Student Loans* (August 2012) available at <http://www.consumerfinance.gov/reports/private-student-loans-report/>

<sup>6</sup> New York Times: *For-Profit Colleges, Vulnerable G.I.'s* (September 2011) available at <http://www.consumerfinance.gov/newsroom/for-profit-colleges-vulnerable-gis/>

We have also noted that some for-profit colleges have arranged unorthodox private lending programs that may not have been specifically contemplated in other requirements, including the calculation of non-Title IV revenue.<sup>7</sup>

The regulations, as proposed, may lead to “innovative” techniques that may allow a covered institution to manipulate performance metrics while retaining Title IV eligibility. For example, an institution might adjust billing practices or a borrower’s enrollment status so that non-Title IV debt is obligated to the borrower outside of the time period when DTE is calculated. This is just one of many examples of how an institution might use unorthodox tactics to retain Title IV eligibility. When crafting the final regulation, the Department should anticipate that unscrupulous market participants might invest significant resources to obfuscate the intent of the regulation.

In conclusion, we share the Department of Education’s goal to create further transparency in the student loan market. The Department may wish to consider making adjustments to the proposed rule to address the role of other credit products, clarify the treatment of private student loans, and limit opportunities for obfuscation. We appreciate the opportunity to comment, and our ongoing partnership with the Department on matters of shared concern.

Respectfully submitted,



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Assistant Director & Student Loan Ombudsman  
Consumer Financial Protection Bureau

cc: Hon. John W. Conway, Attorney General of Kentucky  
Hon. Thomas J. Miller, Attorney General of Iowa  
Jeff Appel, Deputy Under Secretary of Education  
Curtis Coy, Deputy Under Secretary of Veterans Affairs for Economic Opportunity  
Rosemary Freitas Williams, Deputy Assistant Secretary of Defense for Military Community  
& Family Policy

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<sup>7</sup> See requirements under 34 CFR 668.28 that describe the calculation of non-Title IV revenue generated from affiliated lending programs.