CFPB's Expanding Scope Evident In Coding Bootcamp Fine

By **Jason McElroy and Brandon Sherman** (May 30, 2024)

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The Consumer Financial Protection Bureau continued its jurisdictional expansion April 17 when it issued a consent order against BloomTech Inc., which does business as Bloom Institute of Technology, a for-profit college for computer programming.[1] According to the consent order, the school "offers training programs in areas such as web development, data science, and backend engineering that typically last six to nine months."

The bureau's continued expansion here is in two arenas: what are known as "income-share agreements" and for-profit educational institutions. The consent order marks at least the third time in which the bureau has taken action with respect to income-share agreements and continues the bureau's recent focus on for-profit educational institutions.

Combined with recent actions and statements related to the expansion of its supervisory authority, the bureau is staking out a wider path for its supervision and enforcement activities that any industry that regularly deals with credit or credit-adjacent products must be aware of.

The BloomTech Consent Order

According to the consent order, Bloom Institute of Technology offered low-income prospective students the opportunity to attend its programs through the use of income-share agreements, often referred to as ISAs. In exchange for covering the cost of tuition at the school, the income-share agreement required students to pay the school a portion of their future income. According to the bureau, a majority of the school's students between 2017 and 2022 used this program.

If a student's income was less than $50,000 per year in any given month, the student was not required to pay; if a student earned more than $50,000 per year in any given month, the student was required to pay 17% of their pretax income, with a lifetime cap of $30,000. Importantly for the bureau's determination that the income-share agreement was consumer credit, that $30,000 cap was up to $10,000 more than the cost to attend the school.

While the school marketed the income-share agreements as not being loans or debt and as carrying no finance charge, the bureau alleged that they were indeed loans for the following reasons:

- The agreements carried an average finance charge of $4,000;
- A single missed payment triggered default, requiring the remainder to be paid immediately and allowing the contract to be sent to collections;
- The school furnishes negative credit reporting information on defaulted students; and

- The school did not disclose any of these terms properly under the Truth in Lending Act and its implementing regulation, Regulation Z.

Because the bureau found the income-share agreements to be loans, it also found that they were subject to the Federal Trade Commission's Holder Rule, Title 16 of the Code of Federal Regulations, Section 433.1 et seq., which requires certain language to be included in consumer loan documents and preserves certain defenses against subsequent holders of the loans.

This finding also informs another finding of the bureau — that the school misrepresented its interests in the income-share agreements. The bureau alleged that the school failed to inform students that it sold the income-share agreements to investors and that it often got paid regardless of whether the students found employment. Instead, the bureau alleged that the school misrepresented to the students that the income-share agreements aligned with the school's interests with those of its students.

Finally, the bureau found that the school misrepresented employment prospects to its students. The bureau alleged that the school used logos in its advertisements implying that well-known tech companies, such as Google and Amazon, hire the school's graduates. But in fact, according to the bureau, such companies rarely hired its graduates.

The bureau also alleged that the school inflated its job placement rates, advertising between 2017 and 2019 that up to 86% of its graduates found jobs within six months of graduation, while its reporting to investors showed placement rates closer to 50%. The bureau also cited an example where the CEO publicized a 100% placement rate for one of its classes — which consisted of a single student.

The bureau is forcing the school to cease collections on some graduates, amend the income-share agreement contracts, pay a $164,000 penalty and allow students to withdraw without penalty. The bureau has also permanently banned the school from engaging in any consumer lending activities, though it may still receive funds from third party lenders, and it has banned the CEO from engaging in student lending activities for 10 years.

This consent order continues the CFPB's recent focus on both income-share agreements and for-profit educational institutions. In September 2021, the CFPB issued a consent order against Better Future Forward Inc. and affiliated companies based on similar allegations related to income-share agreements.[2] In November 2023, the bureau issued a consent order against Prehired LLC and its affiliates due to similar allegations.[3]

In issuing these consent orders, the bureau has staked out its position that income-share agreements are financial services subject to its purview, despite such agreements often being marketed as not being credit products.

CFPB Expands Use of Its Supervision Authority

The CFPB has statutory authority to designate companies for supervision if it determines that person or entity "is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services."[4]

On April 16, the CFPB announced revisions to its rules on how it would designate nonbank companies for supervision under its authority.[5] This followed its November 2022 announcement that it would begin using this authority more actively.[6]

The CFPB publicizes any order under this provision wherein the entity challenges the bureau's authority; it publicized its first such order on Feb. 23.[7] Pursuant to its statutory authority, the bureau only needs to demonstrate reasonable cause to meet its burden for an order of supervision, and in its order designating World Acceptance Corp. for supervision, the bureau construed this to be a low bar — lower than the "preponderance of the evidence" standard used in most federal civil actions.[8]

The bureau regularly conducts studies of various industries it believes may pose financial risk to consumers.[9] Oftentimes, these reports have predated or been contemporaneous with consent orders or other actions taken in the industry on which the report was issued. For instance, the bureau has been making public statements about its focus on for-profit educational institutions throughout Director Rohit Chopra's tenure, including a September 2023 report titled "Tuition Payment Plans in Higher Education."[10]

Indeed, the bureau announced in January 2022 that it would commence supervisory examinations of "post-secondary schools, such as for-profit colleges, that extend private loans directly to students."[11] The CFPB's announcement on its supervision of educational institutions[12] noted that it would be examining for the following issues:

- Placing enrollment restrictions on students who are late on loan payments;
- Withholding transcripts from students that owe the school a debt;
- Improperly accelerating payments;
- Failing to issue refunds when students withdraw; and
- Maintaining improper preferential lending relationships that result in harm to students.[13]

The bureau has also been aggressive recently in its pursuit of enforcement actions against student loan servicers, issuing a $5 million consent order on May 6 against the National Collegiate Student Loan Trusts and its loan servicer, the Pennsylvania Higher Education Assistance Agency, for allegedly unfair and deceptive practices.[14] The National Collegiate Student Loan Trusts is a group of securitized trusts that acquire and pool student loans.[15]

The consent order comes on the heels of the U.S. Court of Appeals for the Third Circuit's March opinion in CFPB v. National Collegiate Master Student Loan Trust, which found the bureau has jurisdiction over such investment trusts.[16]

For industries that find themselves the subject of a CFPB research report, such as the April 4 report on financial transactions in video games[17] and the May 1 report on health savings accounts,[18] the bureau just may be seeking a toehold in your arena. With its considerable supervisory and enforcement powers, the bureau is actively seeking to expand its footprint in American industry, and it is not an agency whose interest should be ignored.

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[1] The bureau also included the company's CEO, Austen Allred, in the consent order. https://www.consumerfinance.gov/enforcement/actions/bloomtech-inc-and-austen-allred/.

[2] https://www.consumerfinance.gov/enforcement/actions/better-future-forward-inc/.

[3] https://www.consumerfinance.gov/enforcement/actions/prehired-llc-et-al/.

[4] 12 U.S.C. § 5514(a)(1)(C).

[5] https://files.consumerfinance.gov/f/documents/cfpb_procedures-for-supervisory-designation-proceedings_2024-04.pdf.

[6] https://www.consumerfinance.gov/about-us/blog/the-cfpb-finalizes-rule-to-increase-transparency-regarding-key-nonbank-supervision-tool/.

[7] https://files.consumerfinance.gov/f/documents/cfpb_world-acceptance_decision-and-order_2023-11.pdf.

[8] https://files.consumerfinance.gov/f/documents/cfpb_world-acceptance_decision-and-order_2023-11.pdf.

[9] See, e.g., https://www.consumerfinance.gov/data-research/research-reports/.

[10] https://www.consumerfinance.gov/data-research/research-reports/tuition-payment-plans-in-higher-education/.

[11] https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/.

[12] The bureau also published examination procedures for education loan examinations. https://www.consumerfinance.gov/compliance/supervision-examinations/education-loan-examination-procedures/.

[13] https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/.

[14] https://www.consumerfinance.gov/enforcement/actions/pennsylvania-higher-education-assistance-agency-and-national-collegiate-student-loan-trusts/.

[15] https://files.consumerfinance.gov/f/documents/cfpb_complaint-pheaa-ncslt_2024-05.pdf.

[16] CFPB v. National Collegiate Master Student Loan Trust, 96 F.4th 599 (3d Cir. 2024).

[17] https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-video-games/.

[18] https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-health-savings-accounts/.