Proposed Revision

§ 668.28 Non-title IV revenue (90/10).

(5) ***Revenue generated from institutional aid.*** The institution may include only the following institutional aid as revenue:

(i) For institutional loans made to students and credited in full to the students' accounts at the institution, the amount of payments made on those loans by current or former students that the institution received during the fiscal year, if the loans—

(A) Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;

(B) Are issued at intervals related to the institution's enrollment periods;

(C) Are subject to regular loan repayments and collections by the institution; and

(D) Are separate from the enrollment contracts signed by the students.

(ii) For purposes of this subsection, the term "institutional loan" means any loan, extension of credit, retail installment contract, income-share agreement, or any other agreement or instrument as defined in 12 C.F.R. § 1026.46(b)(5) and extended by the institution, its owner, or affiliate to the institution's students. "Income-share agreement" means any agreement in which a student commits to pay a portion of their future income in exchange for money, payments, or credits applied to or on behalf of the student.

Explanation:

The AG representatives propose to add the above blue language to section 668.28(5) to ensure that all forms of institutional debt issued by schools are included in this provision, which is designed to prevent institutions from evading the 90/10 Rule by signing up students for high-cost loans that frequently default, are harmful to borrowers, and may not actually lead to actual revenue for the school. As enforcers of our state's laws, state AGs are well aware of the creativity and deception that can be used to try to evade laws that regulate the business of lending. It is thus important for Education to apply a broad definition that applies to any instrument that may be used to shirk section 668.28. We are specifically concerned about the arrival of high-cost income-share agreements that have been increasingly used in the higher-education sector to provide financing to students without complying with consumer-finance laws. Regulators have brought enforcement actions to prevent this practice in violation of usury laws, disclosure requirements, and prohibitions on unfair and deceptive practices. *See, e.g.*, *In re Better Future Forward*, Consent Order, 2021-CFPB-0005 (CFPB Sep. 7, 2021); *In re Meratas, Inc.*, Consent Order, NMLS ID No. 2120180 (Cal. Dep't Fin. Protection & Innovcation Aug. 5, 2021). Put simply, institutions that attempt to use ISAs in lieu of traditional institutional loans should be covered by this provision. The above additions are also necessary to ensure that Education is not incentivizing these costly and deceptive lending instruments for consumers in our respective states.