



May 10, 2022

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex B)  
Washington, DC 20580

RE: Comments to the Federal Trade Commission Regarding Proposed Rulemaking on Deceptive or Unfair Earnings Claims (“Earnings Claims ANPR, R111003”)

To Whom It May Concern:

We submit this letter on behalf of the undersigned organizations in response to the notice for comment from the Federal Trade Commission (FTC) on a potential rule to address deceptive or unfair marketing using earnings claims.<sup>1</sup> We represent a broad coalition of organizations working on behalf of students, veterans, faculty and staff, civil rights advocates, researchers, and others concerned about predatory and deceptive practices in higher education that fall under your jurisdiction, when operated by a for-profit entity or a nonprofit operating for profit.<sup>2</sup> Deceptive claims about earnings are a problem for consumers across many industries, and the higher education sector is no exception.

Within higher education, there are myriad ways that misleading earnings claims can negatively impact students. In our comments, we discuss the extensive history of deceptions at for-profit institutions, why short-term programs and coding bootcamps are particular areas of concern, and how private lenders use misleading claims to entice students to take out burdensome loans.

We offer recommendations for the FTC to consider in the rulemaking process, and hope this discussion will illustrate the need for a robust rule to curtail these harmful practices. For any additional information on inquiries, please contact Rachel Fishman, deputy director for research, New America, [fishmanr@newamerica.org](mailto:fishmanr@newamerica.org).

Sincerely,

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<sup>1</sup> 87 FR 13951

<sup>2</sup> See Letter from Edith Ramirez, Chairwoman, Federal Trade Commission, to Johann N. Schneider-Ammann, Head of the Department of Economic Affairs, Education and Research, Bundeshaus Ost (Jan. 9, 2017) (“The FTC also does not have jurisdiction over most non-profit organizations, but it does have jurisdiction over sham charities or other non-profits that in actuality operate for profit. The FTC also has jurisdiction over non-profit organizations that operate for the profit of their for-profit members, including by providing substantial economic benefits to those members”), available at 81 FR 51041. Also see, Veterans Education Success. (2018). Piercing the Veil of Covert For-Profit Colleges. <https://bit.ly/38dtPuj>

Americans for Financial Reform, Education Fund  
Association of Young Americans (AYA)  
David Halperin, Attorney  
National Consumer Law Center on behalf of its low-income clients  
New America, Higher Education Program  
Ohio Student Association  
Stephanie Hall, The Century Foundation  
Student Borrower Protection Center  
The Institute for College Access & Success  
Veterans Education Success  
Young Invincibles

## Deceptive Practices and Misrepresentations from For-Profit Colleges and Universities and Nonprofits Operating For Profit

### FTC Authority and Actions

The FTC has the authority and responsibility to curb predatory behavior by institutions of higher education under its jurisdiction, prevent students from enrolling in such institutions that deceive them and lead them toward economic harm, and pursue monetary penalties and debt relief against bad actors on behalf of students.

There exists a long history of predatory behaviors by institutions of higher education under your jurisdiction to entice students to enroll—promising them a better future with slick advertising campaigns and employing enrollment officers who hold their hands through the admissions and financial aid process, often using high-pressure sales tactics. In *People of the State of California v. Ashford University, LLC; Zovio, Inc*, for example, the court found that Ashford (and its parent company Zovio) operated, “a high-pressure admissions department where the primary focus was enrollment numbers rather than truthful advising.”<sup>3</sup> A Project on Predatory Student Lending report about ITT Technical Institute revealed that financial aid staff were trained to emphasize, during meetings with prospective students, all the benefits they would receive from an ITT education.<sup>4</sup> They shared with students a ‘return on investment’ document to induce enrollment that contained misleading information about average salaries of different programs, greatly inflating earnings levels of ITT graduates. A Brookings brief laid out, “When controlling for socioeconomic differences among students, study after study finds that the earnings and rates of employment of for-profit college graduates are lower than (or at best similar to) those of public college and non-profit college graduates.”<sup>5</sup>

Colleges under your jurisdiction have been documented to prey on Black students and other students of color, women, low-income students, and veterans. For a recent example, the National Student Legal Defense Network and the civil rights law firm Relman Colfax brought forth a class-action lawsuit against Walden University for “lur[ing] and then trap[ping] students, especially those who were Black and female, in a cycle of debt and despair.”<sup>6</sup> Their lawsuit alleges that Walden violated not only consumer protection laws but also the Civil Rights Act by purposefully preying on minorities and women and misrepresenting their costs and time to degree. The Student Borrower Protection Center found in a recent report that, “much like payday lenders, title lenders, check cashers, and other predatory financing

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<sup>3</sup> The People of the State of California, v. Ashford University, LLC, a California limited liability company; ZOVIO, INC., a Delaware corporation, f/k/a BRIDGEPOINT EDUCATION, INC.; and DOES 1 through 50, INCLUSIVE. (2017). <https://bit.ly/37CH5by>

<sup>4</sup> Project on Predatory Student Lending. (2022). Dreams Destroyed. How ITT Technical Institute Defrauded a Generation of Students. <https://bit.ly/3kXR5z5>

<sup>5</sup> Ariel Gelrud Shiro. Richard V. Reeves. (2021). The For-Profit College System is Broken and the Biden Administration Needs to Fix it. The Brookings Institute. <https://brook.gs/3M3lI7D>

<sup>6</sup> Erica L. Green. “Lawsuit Charges For-Profit University Preyed on Black and Female Students.” The New York Times. (2022). <https://nyti.ms/3N4DeD7>

companies that set up shop to target Black and Latino communities, a similar, disturbing pattern was found with for-profit schools.”<sup>7</sup>

In recent years, the FTC has taken action to crack down on the institutions of higher education under its jurisdiction. In October 2016, for example, the FTC reached a \$100 million settlement with DeVry University for misleading prospective students with ads that promised high employment success rates and income levels after graduation.<sup>8</sup> As veteran Eric Luongo told the House Committee on Appropriations about his experience: “I picked DeVry University because I was told that their graduates were making \$80,000+ working in the field of web graphic design... I was never able to find a job in graphic design. I spent over a year looking for a job in that field after graduating and struggling to pay my loans.”<sup>9</sup> The settlement included \$49 million to be distributed to students who were harmed by the ads, and nearly \$51 million in student debt relief. In December 2019, the FTC reached a record \$191 million settlement with the University of Phoenix and its parent company Apollo Group for using deceptive advertising that falsely promised job opportunities with such companies as Twitter and Microsoft.<sup>10</sup>

Civil penalties and restitution are needed to ensure the most egregious behaviors that rip off tens of thousands of consumers, many of whom fund their higher education with taxpayer dollars, don’t continue. Last year, the Supreme Court’s decision in *AMG Capital Management v. FTC* limited the ability of the FTC to obtain equitable monetary relief without first going through drawn out administrative proceedings.<sup>11</sup> This is in part why a new rule needs to be put in place that enables the FTC to obtain equitable monetary relief.

In October 2021, the FTC continued to send a strong message that it has the authority to crack down on the abuses of institutions under its jurisdiction. The FTC sent a “Notice of Penalty Offenses” to 70 large for-profit institutions<sup>12</sup>--a clear message that the agency will take action on any deceptive practices and misrepresentations these colleges make related to graduates’ job and earnings prospects.<sup>13</sup> The Penalty Offense Authority in Section 5 of the FTC Act enables the FTC to level civil penalties of up to \$43,792 per violation. A new rule under the “unfair or deceptive acts or practices” of the FTC Act would go one step further in ensuring that consumers have appropriate regulatory avenues to receive needed financial redress.

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<sup>7</sup> Student Borrower Protection Center. (2021). Mapping Exploitation: Examining For-Profit Colleges as Financial Predators in Communities of Color. <https://bit.ly/2VTSIVs>

<sup>8</sup> Federal Trade Commission. (2016). DeVry University Agrees to \$100 Million Settlement with FTC. <https://bit.ly/3PbzNwg>

<sup>9</sup> Statement from Eric Luongo. <https://bit.ly/3yqHSqO>

<sup>10</sup> Federal Trade Commission. (2019). FTC Obtains Record \$191 Million Settlement from University of Phoenix to Resolve FTC Charges It Used Deceptive Advertising to Attract Prospective Students. <https://bit.ly/38ctech>

<sup>11</sup> D. Bruce Hoffman. Kenneth Reinker. (2021). *AMG Capital Management v. FTC*. <https://bit.ly/3w2N4jj>

<sup>12</sup> Federal Trade Commission. (2021). List of October 202 Recipients of the FTC’s Notice of Penalty Offenses in the Higher Education marketplace. <https://bit.ly/3wlamzN>

<sup>13</sup> Federal Trade Commission. (2021). FTC Targets False Claims by For-Profit Colleges. <https://bit.ly/3kYVmlH>

## Evidence of Deceptive Practices and Misrepresentations

Colleges and universities have a long history of misleading potential students through their use of deceptive advertisements and high-pressure admissions “sales” tactics. Misdeeds include schools suggesting they had special relationships with employers that did not exist, using false job placement rates, and advertising inflated earnings claims for graduates. Below, we provide more detail on examples of this behavior. Many of these institutions had significant negative findings (some enumerated below) from investigations conducted by the U.S. Department of Education (ED) and have thousands of borrower defense to repayment claims filed against them:<sup>14</sup>

- **Corinthian Colleges (Heald College, Everest College, WyoTech).** Corinthian Colleges misrepresented their job placement rates between 2010 and 2014. Student loan borrowers at Heald College, for example, relied on misrepresented placement rates in deciding to attend, and suffered economic harm as a result.<sup>15</sup> Corinthian representatives also orally promised, guaranteed, or otherwise assured prospective students that they would be placed in jobs.<sup>16</sup> Corinthian also misrepresented the transferability of credits. Corinthian ceased operations in 2015 after a series of legal challenges by state and federal agencies for fraudulent behavior.
- **ITT Technical Institute (ITT).** ITT consistently represented universal employment of graduates and/or representatives of ITT guaranteed employment after graduation to induce enrollment of California students.<sup>17</sup> From 2005 to 2016, ITT was found to have made repeated and significant misrepresentations to students related to earnings and the types of jobs they could obtain upon graduation.<sup>18</sup> From 2007 to 2014, ITT falsely told students that their credits would be transferable to other institutions.<sup>19</sup> Students enrolled in ITT’s associate degree in nursing program were falsely told that the program had the necessary accreditation to get a job in nursing.<sup>20</sup> ITT closed in 2016 after ED rescinded its access to Title IV federal financial aid for its fraudulent behavior.<sup>21</sup>
- **Westwood College.** Westwood falsely claimed through its agents and advertisements that credits earned would be transferable to other schools.<sup>22</sup> Westwood also made substantial misrepresentations when it told students in its criminal justice program that they would be eligible to obtain jobs as police officers. Westwood also made substantial misrepresentations to students about the likelihood of finding a job upon graduation. In 2015, Westwood closed, citing new government regulations and low enrollment.<sup>23</sup>

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<sup>14</sup> For more information on borrower defense claims, see <https://studentaid.gov/borrower-defense/>.

<sup>15</sup> Case 3:17-cv-07106-SK. Document 125-3. (2020). <https://bit.ly/37xqPsj>

<sup>16</sup> Case 3:19-cv-03674-WHA. Document 66-3. (2019). <https://bit.ly/3yzXIF0>

<sup>17</sup> Ibid.

<sup>18</sup> National Consumer Law Center. (2022). The Department of Education Has Announced More Borrower Defense Findings; Which Applications are Getting Granted? <https://bit.ly/3yune9y>

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Danielle Douglas. (2016). “ITT Technical Institutes shut down after 50 years in operation.”The Washington Post. <https://wapo.st/37wc7Bl>

<sup>22</sup> National Consumer Law Center. (2022). The Department of Education Has Announced More Borrower Defense Findings; Which Applications are Getting Granted? <https://bit.ly/3yune9y>

<sup>23</sup> Kurt Snibbe. (2015). Westwood College Announces Closure. The Press-Enterprise. <https://bit.ly/3LWrRgl>

- **Marinello Schools of Beauty.** Marinello made widespread, substantial misrepresentations about the quality of instruction, making it nearly impossible for students to pass licensing exams.<sup>24</sup> Marinello abruptly shut down in 2016 after ED alleged that the school was improperly allocating federal aid.<sup>25</sup>
- **Minnesota School of Business (MSB)/Globe University.** MSB and Globe committed fraud when they told students that their criminal justice programs would enable them to become Minnesota police officers or parole/probation officers.<sup>26</sup> After ED ended Globe’s access to Title IV federal student aid, Globe closed in 2016.<sup>27</sup>
- **Career Education Corporation (Colorado Technical University, American InterContinental University).** In 2019, Career Education Corporation (now known as Perdoceo Education Corporation) reached a settlement with 49 state attorneys general resulting in nearly \$500 million in debt cancellation. The investigation revealed evidence that “CEC misrepresented the potential for students to obtain employment in their field by failing to adequately disclose that some programs lacked necessary programmatic accreditation,” and “CEC deceived prospective students about the rate that graduates of CEC programs got a job in their field of study.”<sup>28</sup> A successful class action suit was brought against a Le Cordon Bleu culinary school (parent company CEC) in 2018, for misrepresenting the percentage of graduates who landed restaurant jobs.<sup>29</sup> Misrepresentations included counting students who ended up working for fast food outlets as having been placed in the culinary industry. Le Cordon Bleu has subsequently ceased most of its US operations.
- **University of Phoenix.** The FTC obtained a record \$191 million settlement from the University of Phoenix after Phoenix used deceptive advertisements that falsely touted their relationships and job opportunities with big name tech employers such as Yahoo!, Microsoft, and Twitter.<sup>30</sup> Phoenix continues to operate.
- **DeVry University.** DeVry agreed to distribute cash and debt relief to students in an FTC settlement for advertisements that misrepresented high employment success rates and income levels upon graduation.<sup>31</sup> DeVry University continues to operate.

Countless other examples of fraud and deception are laid out in the *Republic Report*, which keeps an ongoing and updated list of law enforcement investigations and actions regarding for-profit colleges under

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<sup>24</sup> U.S. Department of Education. (2021). Department of Education Approves Borrower Defense Claims Related to Three Additional Institutions. <https://bit.ly/3KXIHTT>

<sup>25</sup> Samantha Masunaga, Chris Kirkham. (2016). Marinello Schools of Beauty Abruptly Shuts Down after Federal Allegations. <https://lat.ms/3wdfOVg>

<sup>26</sup> U.S. Department of Education. (2022). Education Department Approves \$415 Million in Borrower Defense Claims Including the Former DeVry University Students. <https://bit.ly/3N6iafC>

<sup>27</sup> Kyla Calvery Mason. (2016). Globe University Closing Its 5 Wisconsin Campuses. <https://bit.ly/3w0EscJ>

<sup>28</sup> Office of Attorney General Commonwealth of Pennsylvania. (2019). Attorney General Shapiro Announces For-Profit College Company Will Provide \$493 Million in Debt Relief for Over 179,000 Students Nationwide. <https://bit.ly/3M1u7ml>

<sup>29</sup> Stacy Cowley. (2019). For-Profit Chain Cancels \$494 Million in Student Debt to End State Investigations. The New York Times. <https://nyti.ms/3w0tfcB>

<sup>30</sup> Federal Trade Commission. (2019). FTC Obtains Record \$191 Million Settlement from University of Phoenix to Resolve FTC Charges It Used Deceptive Advertising to Attract Prospective Students. <https://bit.ly/38ctech>

<sup>31</sup> Federal Trade Commission. (2016). DeVry University Agrees to \$100 Million Settlement with FTC. <https://bit.ly/3kTU4bQ>

your jurisdiction.<sup>32</sup> Additionally, a detailed examination by The Century Foundation showed that 99 percent of borrower defense to repayment complaints received by ED were made against for-profit colleges and universities under your jurisdiction.<sup>33</sup> And a GAO report found that many for-profit institutions engaged in questionable and deceptive marketing practices to recruit students through using false or questionable information about earnings and job placement rates to entice prospective students to enroll.<sup>34</sup>

### **Deceptive Practices and Misrepresentations Continue**

In spite of the numerous federal enforcement actions taken by the FTC and ED against predatory colleges and universities for various misrepresentations, bad actors continue to mislead students. The ongoing use of false advertising to recruit students is a clear indicator that stronger rules and robust enforcement are needed to ensure consumers are protected from predatory behavior.

Students rely on the accuracy of statements made by colleges and universities to make decisions about where to enroll and in what programs. When institutions make false claims about earnings and job placement rates, students who have based their decision on those claims – often using federally funded financial aid in the process – are left holding the bag while the institution walks away with their money and taxpayer dollars.

These deceptive practices and misrepresentations continue to this day:

- As recently as this month, the FTC sanctioned **Saint James Medical School** for misrepresenting both its residency match rate and licensing exam pass rates.<sup>35</sup>
- The city of New York in March 2022 reached a \$20 million settlement from **Berkeley College** on behalf of students.<sup>36</sup> According to Mayor Eric Adams, “From aggressive recruiting tactics to tricking students into debt, Berkeley College engaged in serious deception that harmed working class students hoping to gain an education.”<sup>37</sup>
- In January 2022, a \$2.1 million settlement was reached between 10 attorneys general and **Argosy University (parent company Dream Center)**. Dream Center did not post required ED Gainful Employment (GE) failure disclosures to prospective students, falsely promised that Argosy campuses would provide career services that would help students achieve their employment

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<sup>32</sup> David Halperin. (2022). Law Enforcement Investigations and Actions Regarding For-Profit Colleges. Republic Report. <https://bit.ly/3l3aFK4>

<sup>33</sup> Yan Cao. Tariq Habash. (2017). College Complaints Unmasked. The Century Foundation. <https://bit.ly/3wh4pDS>

<sup>34</sup> United States Government Accountability Office. (2010). Testimony before the Committee on Health, Education, Labor, and Pensions, U.S. Senate. For-Profit Colleges Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices. <https://bit.ly/38h8K1W>

<sup>35</sup> Federal Trade Commission. (2022). Federal Trade Commission Takes Action Against For-Profit Medical School for Using Deceptive Marketing to Lure Students. <https://bit.ly/3KZF3Q7>

<sup>36</sup> The City of New York and Peter A. Hatch, as Commissioner of the New York Department of Consumer and Worker Protection v. Berkeley Education Services of New York, Inc. (2018). <https://on.nyc.gov/3M5iXgv>

<sup>37</sup> Office of the Mayor, New York City. (2022). Mayor Adams Delivers \$20 Million in Debt Relief to Former Berkeley College Students. <https://on.nyc.gov/3spgHZC>

goals, and falsely marketed and promised high-quality professional education programs, among several other material misrepresentations.<sup>38</sup>

- A recent March 2022 California ruling against **Ashford University (and parent company Zovio)** found that Ashford had used false and misleading information about the ability of its graduates to pursue careers in the fields they were training for, including nursing, teaching, social work, and other professions. Ashford assured students that they would be able to work in their chosen fields.<sup>39</sup> In 2021, Massachusetts secured nearly \$300,000 from Zovio and Ashford for violating several state consumer protection laws and regulations prohibiting unfair or deceptive practices.<sup>40</sup> Ashford University was acquired by University of Arizona and is now known as University of Arizona Global Campus (UAGC). A dozen higher education advocacy and policy organizations have called on ED to cut UAGC off of Title IV aid due to the recent California ruling.<sup>41</sup>
- In May 2021, ED denied the reinstatement application of **Florida Coastal School of Law (and parent company InfiLaw Holdings, LLC)** saying, “Florida Coastal School of Law operated recklessly and irresponsibly, putting its students at financial risk rather than providing the opportunities they were seeking.”<sup>42</sup>

### **Crafting a New Rule and other Considerations**

These recent cases show that even though several high-profile bad actors have shut down, there remain deceptive practices and misrepresentations around job placement and earnings to get students to enroll. There has been a decades-long cycle of regulations being softened when cases of wrongdoing appear to decline followed by an increase in the same wrongdoing that strong regulations were clearly preventing.<sup>43</sup> We urge the FTC not to fall into this trap. By implementing and maintaining effective regulations, the FTC can help protect students from harm, while allowing institutions that provide students with high-quality educations to flourish.

New regulations for earnings and job placement rate claims used by colleges and universities should include the following:

- Any earnings claims should be representative of the particular program at the particular school that is being advertised. If a school advertises institution-wide earnings, that could mask real differences in earnings between programs. Similarly, schools could advertise program-level earnings, using Bureau of Labor Statistics data or some other credible-sounding source, instead of

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<sup>38</sup> Office of the Attorney General, Commonwealth of Virginia. (2021). In the Matter of Argosy University Institutional Debt. <https://bit.ly/3vXipDU>

<sup>39</sup> State of California Department of Justice. (2022). Attorney General Bonta: Ashford University Must Pay \$22 Million in Penalties for Defrauding California Students. <https://bit.ly/3vZw2Cl>

<sup>40</sup> Office of Attorney General, Commonwealth of Massachusetts. (2021). AG Healey Secures Nearly \$300,000 for Students of Online For-Profit School. <https://bit.ly/3PfVaN8>

<sup>41</sup> Natalie Schwartz. (2022). University of Arizona Global Campus Shouldn't Get Federal Student Aid After Court Ruling, Group Says. Higher Ed Drive. <https://bit.ly/3L021a4>

<sup>42</sup> U.S Department of Education. (2021). Department of Education's Federal Student id Denies Reinstatement Application of For-Profit Law School. <https://bit.ly/3M4J7Aa>

<sup>43</sup> Robert Shireman. (2019). The Policies That Work - and Don't Work - to Stop Predatory For-Profit Colleges. The Century Foundation. <https://bit.ly/3w2q0ko>

using the earnings data from their actual program. We have seen, in the context of a regulatory effort around gainful employment from the Department of Education, that there is extreme variation in program-level earnings across schools. Students should be making decisions based on the actual earnings of students in school-specific programs, not a misleading and deceptive aggregated national figure that masks extreme differences.

- The case of ITT Technical Institute provides a useful illustration. ITT Tech advertised average earnings of program graduates that were unrealistically high, with salary projections that were approximately \$100,000 higher than workers with similar credentials from all other institutions.<sup>44</sup>
- This misrepresentation of earnings came on top of ITT Tech only including wage information for graduates, when graduation rates for some programs were in the single digits.

Earnings used in advertising must be representative of the salaries of all students who enrolled in a particular program of study—including those who did not graduate—or institutions should be required to provide completion data beside earnings data to provide context. Many states have longitudinal data systems that collect earnings information, the Census Bureau has also engaged in a multi-state effort to provide actual program-level earnings for particular schools, and there are federal efforts to provide this information at the federal level.

- Examples of graduates who experienced significant income growth not representative of typical earnings should not be used in advertising.
- Any claims of a particular job field having significant need for more workers, or expected earnings growth, should be substantiated by using independent data from a reputable source such as the U.S Department of Labor. Earnings claims that assume annual wage growth should be based on median wage growth in the industry for which the claim is made. And, wherever the data are available, claims should be backed up by actual student earnings data from the particular school and program.
- Job placement rates have been used to deceive students for decades.<sup>45</sup> Job placement rates should represent graduates of a program being placed into the types of jobs for which the program purports to prepare them. For example, culinary programs should use placement rates for sit down restaurants, catering firms, and similarly applicable work. Working a low-wage, entry-level job in fast food service that requires no extra credential or specialized training should not count as a successful job placement.
- Disclaimers and disclosures alone would fall short of the FTC’s goal of ending deceptive practices and misrepresentations. Disclosures should supplement but not supplant financial penalties, and they should not be used as an easy way for institutions to use earnings data out of context.
  - The case of Dream Center provides an illustrative example: Argosy University did not post required ED gainful employment failure disclosures for prospective students.<sup>46</sup>

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<sup>44</sup> Project on Predatory Student Lending. (2022). Dreams Destroyed. How ITT Technical Institute Defrauded a Generation of Students. <https://bit.ly/3kXR5z5>

<sup>45</sup> The Institute for College Access & Success. (2018). New Report Outlines Path Forward on Job Placement Rates. <https://bit.ly/3ysdo7S>

<sup>46</sup>Office of the Attorney General, Commonwealth of Virginia.(2021). In the Matter of Argosy University Institutional Debt. <https://bit.ly/3vXipDU>

FTC should also consult with and share information with ED, especially about open investigations between agencies. ED is currently promulgating a new gainful employment regulation which, as of the last draft during negotiated rulemaking, has a proposed earnings threshold requirement.<sup>47</sup> Depending where the final rule lands, the GE data could be useful for understanding deceptive practices and misrepresentations since the data can be compared to any claims made through an institution's agents or advertisements.

Additionally, in the interim before a final rule is determined, the FTC should continue to use its investigative powers to crack down on the deceptive practices and misrepresentations of institutions under its jurisdiction, and should share investigation findings with relevant federal agencies. The FTC's coordination with the Department of Veterans Affairs (VA) is particularly needed to assist with enforcement of the VA's prohibition against substantial misrepresentations. Under 38 U.S.C. § 3696, VA may use the FTC's facilities and services in carrying out investigations into institutions making substantial misrepresentations.

### **Deceptive Practices and Misrepresentations from Coding Bootcamps**

Coding bootcamps, or tech bootcamps generally, are short-term software development training programs offered in a compressed format.<sup>48</sup> The use of misleading earnings claims by such bootcamps is widespread and has been for at least a decade.<sup>49</sup> An early entrant into the bootcamp market, Dev Bootcamp, opened in 2012 and in recruitment materials, falsely claimed that over 90 percent of graduates were employed within three months and earning around \$83,000. The company later conceded the statistics could be misleading.<sup>50</sup>

Now closed, the Silicon Valley bootcamp company Coding House, also made false job placement and earnings claims, including that 95 percent of graduates were hired within two months of completing their programs, with average starting salaries of \$91,000.<sup>51</sup> The California Bureau of Postsecondary Private Education found both figures to be incorrect and ordered the company to refund students and cease operations.<sup>52</sup>

More recently, a lawsuit has alleged that a California-based coding bootcamp company, Lambda School (now known as Bloom Tech), relied heavily on false job placement rates and unsubstantiated earnings claims to lure students into enrolling and taking on its private debt product (sold as an income-share agreement).<sup>53</sup> The complaint also alleges that Lambda relied on a claim that it did not get paid until students graduated and earned a certain salary. This claim was deceptive in that Lambda School did, in

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<sup>47</sup> U.S. Department of Education. Office of Postsecondary Education. Issue Paper 3: Gainful Employment. (2022). <https://bit.ly/3996kTh>

<sup>48</sup> Taela Dudley and Emma Rindlisbacher. (2021). Flying Under the Regulation Radar: University Partnerships with Coding Bootcamps. The Century Foundation. <https://bit.ly/3srpCde>

<sup>49</sup> Sarah McBride. (2016). Want a Job in Silicon Valley? Keep Away From Coding Schools. Bloomberg. <https://bloom.bg/3vXkAY6>

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> See: Student Defense, Cases: Lambda School, <https://bit.ly/3w04lcC>; for further detail see Emily Bruner v. Bloom Institute of Technology formerly d/b/a Lambda School; Austen Allred, in his individual capacity; and John Does 1-9, filed April 15, 2022. <https://bit.ly/3N3OzmP>

fact, get paid before students graduated, by engaging in a debt-swapping partnership where it sold its debts to hedge funds.<sup>54</sup> Lambda School likely used the claim to heighten students' sense of legitimacy that the program was a safe path to a particular career and pay rate.

According to an April 15, 2022 California superior court filing, Lambda School displayed inflated job placement numbers on its website, in marketing materials, and on social media.<sup>55</sup> For example, on October 8, 2018 the Lambda website included the claim that "...over 75 Lambda School graduates have been hired, including 83 percent of early cohorts, with an average salary increase of over \$47,000 per hired graduate."<sup>56</sup> Meanwhile, a private memo sent to investors revealed the actual job placement rate was around 50 percent and that co-founders and executives had concerns that placement at scale was not possible.<sup>57</sup>

Further, Lambda School co-founder, Austen Allred, made the following statements on Twitter:

- April 21, 2022: "When I started Lambda School[,] early detractors gave me hell because I said that **Lambda School would cause thousands of people to become millionaires who wouldn't have otherwise been** [emphasis added]. It's now pretty clear that was very conservative."
- May 4, 2021: "I get to watch a bunch of people **double their income (or more) every single day. Even the worst days are punctuated by a bunch of people changing their lives and the lives of their families forever** [emphasis added]."

Lambda's business model relied on inflated, false job placement rates in order to get students in the door.

Trilogy Education Services is a similar company that operates tech bootcamps, though it sells its product under the brands of some of the largest and most highly ranked public and nonprofit colleges in the country. Trilogy takes on university clients, markets its bootcamps to prospective students, and in turn shares 20 percent of the revenue collected from students with the university client.<sup>58</sup> Students who enquire about or enroll in a Trilogy bootcamp interact almost exclusively with Trilogy employees and instructors from start to finish, despite the fact that the certificate earned upon completion includes the name of the university client.<sup>59</sup>

The Trilogy website features testimonials in video and print form. In one video, a former student named Mohammed, a political asylee from Syria and US army veteran, described his dramatic change in lifestyle, which he attributed to attending the bootcamp. Prior to completing the bootcamp, he said he was

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<sup>54</sup> See: Emily Bruner v. Bloom Institute of Technology formerly d/b/a Lambda School, <https://bit.ly/3L2SFtS>

<sup>55</sup> Ibid.

<sup>56</sup> Vincent Woo. (2020). Lambda School's Misleading Promises. New York Magazine. <https://nym.ag/399cjXT>

<sup>57</sup> Vincent Woo. (2021). Lambda School Promised a Fast and Cheap Path to a Lucrative Tech Career. Leaked Documents and Former Students Cast Doubt on that Claim. Business Insider. <https://bit.ly/3wj64ZB>

<sup>58</sup> Taela Dudley. Emma Rindlisbacher. (2021). Flying Under the Regulation Rada: University Partnerships with Coding Bootcamps. <https://bit.ly/3wf9yMR>; See also, <https://bit.ly/3wiVnGv>

<sup>59</sup> Taela Dudley. Emma Rindlisbacher. (2021). Flying Under the Regulation Rada: University Partnerships with Coding Bootcamps. <https://bit.ly/3wf9yMR>; Lindsay McKenzie. (2018). The Invisible Boot Camp. Inside Higher Ed. <https://bit.ly/3KZCmy7>

“struggling to make ends meet.”<sup>60</sup> Another Trilogy graduate, Valerie, is also featured on the Trilogy website. Valerie said, “Prior to bootcamp, I was an involuntary stay at home mom. I had a bachelors degree that didn’t enable me to make enough money to pay for daycare.”<sup>61</sup> Valerie attended the Georgia Technology Institute coding bootcamp run by Trilogy and as a result landed her “dream job...at a local company.” An additional graduate testimonial on the Trilogy website states, “Going through the bootcamp was the best decision I made in my life. I took a risk, but it paid off in a career that I am wildly passionate about.”<sup>62</sup>

Trilogy’s primary enrollment funnel comes in through its university clients. For example, The University of Central Florida (UCF) hosts Trilogy bootcamps through its Division of Continuing Education. The landing page for the UCF Trilogy bootcamp is a microsite that is created and maintained by Trilogy but in the name of its university client and indexed as part of the university’s homepage (i.e., ucf.edu) and serves as both an advertisement and lead generator.<sup>63</sup> Trilogy’s UCF landing page states without citation, “Thousands of students have had life-changing learning experiences in Trilogy-powered programs, and 2,000+ companies—including 50 percent of the Fortune 100—employ them.”<sup>64</sup> The content and claims presented on the UCF Trilogy microsite is nearly identical to the microsites managed by Trilogy for all of its other university clients.<sup>65</sup>

Other companies also host their bootcamps under the brand names of well-known public and nonprofit universities, and therefore maintain similar microsites for university clients. Fullstack Academy, which is owned by Zovio,<sup>66</sup> runs a bootcamp under the brand of its client—California Polytechnic State University (Cal Poly). The landing page for the Fullstack Cal Poly bootcamps claims: “Powered by award-winning Fullstack Academy, the Cal Poly Extended Education Tech Bootcamps provide condensed, immersive programs taught by industry experts in convenient 100% live, online formats. Bootcamp graduates leave ready for lucrative high-tech careers in the Golden State and beyond,” and “Fullstack Academy is one of the longest-running and most successful bootcamp providers in the nation. Its graduates are equipped to succeed in the professional world through Fullstack Academy’s foundational teaching method, allowing students to thrive in their first job and every job.”<sup>67</sup> The landing page also includes a list of companies under a heading, “Who Hires Our Grads?” though there is clarification that follows the list indicating that the companies had, in fact, hired *Fullstack NYC* graduates—not Fullstack Cal Poly grads. No other context is provided which might clarify the share of graduates employed or the positions taken at each company.

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<sup>60</sup> Trilogy Programs: <https://bit.ly/3P6Mj09>, see also: <https://trilogyed.wistia.com/medias/3aq8rzfhyd>

<sup>61</sup> Trilogy Programs: <https://bit.ly/3P6Mj09> see also: <https://wi.st/3vXQ6VV>

<sup>62</sup> Trilogy Programs: <https://bit.ly/3P6Mj09> see quote from Edna Jonsson.

<sup>63</sup> See, for example, Cookie policy which details that Trilogy Education operates a website despite UCF branding and .edu address: <https://bit.ly/3PdwsN6>

<sup>64</sup> University of Central Florida Trilogy Education microsite: <https://bit.ly/3PbLLGk>

<sup>65</sup> For a list of Trilogy university clients, see: <https://bit.ly/3M5mIYL>

<sup>66</sup> Zovio is a publicly traded for-profit education company. It previously owned Ashford University, which it sold to the University of Arizona and subsequently entered into a long-term service contract for online program management with the newly formed UA-owned institution. As cited in the first section of this comment: a California court recently found that Ashford (and its parent company Zovio) operated, “a high-pressure admissions department where the primary focus was enrollment numbers rather than truthful advising.” See: <https://bit.ly/3M5mfAn>

<sup>67</sup> Cal Poly Fullstack microsite: <https://bit.ly/3L9aNTi>

Given that many of these companies rely on testimonials to convey the purported efficacy of their product(s), and a reasonable consumer can be expected to interpret such claims to convey the typical experience of other consumers, a strong rule around the use of such claims is essential and overdue. Because of the FTC's interest in stopping the use of misleading earnings and lifestyle claims, the FTC should follow the same principles outlined in the previous section when writing new rules that would affect how for-profit coding bootcamps rely on earnings claims to recruit students:

- Job placement, earnings, and industry growth claims should be representative and substantiated;
- disclaimers should supplement and not supplant deterrents like financial penalties; and
- the FTC should consult with and share data with other agencies like ED and the VA.

### **Private Student Lenders are Making Dubious, Misleading Earnings Claims As a Part of their Growing Role as Lead Generators for Bootcamps under the FTC's Jurisdiction**

Deceptive marketing behaviors traditionally carried out by schools and their agents have been adopted by a growing set of private lenders that serve the dual functions of directing students toward *and* providing financing for them to attend short-term, often low-quality "bootcamp" programs.<sup>68</sup> The FTC must act now to prevent these conflicted creditors-cum-lead generators from continuing to mislead borrowers into debilitating debt.

As laid out in the previous section of these comments, bootcamps represent a new chapter in the annals of exploitative for-profit educational institutions preying on students.<sup>69</sup> Leveraging glossy marketing and the promise of lucrative jobs in the technology sector,<sup>70</sup> these programs are riding a decades-long wave of

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<sup>68</sup> Benjamin Roesch and Ben Kaufman. (2020). The CFPB Must Investigate ClimbCredit and PRotect Borrowers Across the Dangerous, High-Cost Shadow Student Debt Market. Student Borrower Protection Center. <https://bit.ly/3yp3TGE>; Student Borrower Protection Center. Pushing Predatory Products: How Public Universities are Partnering with Unaccountable Contractors to Drive Students TOward RIsky Private Debt and Credit. (2021). <https://bit.ly/3N6tmlU>; Student Borrower Protection Center. Point of Fail: How a Flood of "Buy Now, Pay Later" Student Debt is Putting Million at Risk. <https://bit.ly/3FzF3W1>

<sup>69</sup> Tomio Geron. (2021). Tech Bootcamp Students are Suing Over Income-Share Agreements. Protocol. <https://bit.ly/3snEOYY>; Student Borrower Protection Center. (2021). Income Share Agreement PRovider, For-Profit School Operator Sued by Dozens of Former Students for Illegal Lending and Deceptive Practices. <https://bit.ly/3wg08k9>; Aarthi Swaminathan. (2021). For-Profit Coding School Sued Over Allegedly "Predatory" Student Contracts. Yahoo! Finance. <https://yhoo.it/3yp5mNa>; Student Borrower Protection Center. (2022). A Predatory School is Dragging 290 Defrauded Students into Court in the Latest Example of the Exploitative State of the Income Share Agreement Market. <https://bit.ly/38mYaX7>; Student Borrower Protection Center. Coding Bootcamps Offering ISAs May Be Unlawfully Depriving Students of the Ability to Protect Themselves from Fraud. (2021). <https://bit.ly/3smG1e>; New York State Office of the Attorney General. (2017). AG Schneiderman Announces \$375,000 Settlement with Flatiron Computer Coding School for Operating Without a License and for its Employment and Salary Claims. <https://on.ny.gov/3kYe7G3>; Commonwealth of Massachusetts. Office of Attorney General Maura Healey. (2021). AG Healey Secures \$89,000 for Students from Online For-Profit Coding Bootcamp to Resolve Claims of High-Pressure Enrollment, Failing to Provide Proper Disclosures. <https://bit.ly/3w2kwGH>; CBS Bay Area. (2020). San Francisco-Based Holberton Coding School Facing Fraud Accusations from Former Students. <https://cbsloc.al/3FzdLil>

<sup>70</sup> *Compare* Lamba School - What are you Waiting For? <https://bit.ly/3M2fi2Z> to Chase DiFelicianantonio. (2022) Lawsuit Accuses For-Profit Coding School for Misleading Student about Instruction, Job Prospects. San Francisco Chronicle. <https://bit.ly/39Ssdqf>

hype and venture capital funding to become the perpetual “Next Big Thing” in higher education.<sup>71</sup> Bootcamps are generally relatively small (though large in number) and focus on short-term vocational credentials rather than on bachelor’s or associate’s degrees. They differ from their predecessors in the for-profit higher education space by usually relying only on private loans for student financing instead of on Title IV federal financial aid. Still, bootcamps have proven to be no less predatory than other for-profit schools. Lawsuits and investigations emerging across the country point to a pattern of lofty promises by these firms that are then followed by disappointment, financial devastation, and little by way of career improvement for students.<sup>72</sup> Bootcamps often target Black, Latino, and low-income students, resulting in disproportionate harm to these groups.<sup>73</sup>

A crop of specialty private lenders—including but not limited to Climb Credit (“Climb”),<sup>74</sup> Meritize,<sup>75</sup> Ascent Funding (“Ascent”),<sup>76</sup> and MentorWorks<sup>77</sup>—have emerged to support and continue driving students toward bootcamps. These creditors market themselves as a one-stop-shop for informational resources that students can rely on to find a worthwhile educational program *and* to secure the financing students can use to pay for their chosen course of study.<sup>78</sup> These lenders make extensive, detailed claims about the earning potential for students who attend the schools that they market. However, these claims are frequently dubious, and lenders continue to provide little insight into the veracity and/or methodology that underlie them.<sup>79</sup>

The questionable earnings representations these lenders make come in various forms, including:

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<sup>71</sup> James Gallagher. (2022). State of the Coding B0otcamp Market Report 2020. Career Karma. <https://bit.ly/3PdZ2mg>; See also, Silvia Li Sam. Are COding Bootcamps the Next “Big Thing” in Edtech & Marketing? THrive Global. <https://bit.ly/3wkJdgo>

<sup>72</sup> See *supra* note 2.

<sup>73</sup> Student Borrower Protection Center. (2021). Income Share Agreement Company and For-Profit School Sued for Deceptive Practices and Illegal Lending. <https://bit.ly/3w3hGkM>. (“Elevate/Top Applicant specifically targeted its program and Leif’s ISAs toward economically vulnerable students. For example, on Elevate’s website, the school discloses that: ‘[m]arginalized, non-traditional, first-gen, high-potential, are all adjectives that accurately describe the talent we source, and we source that talent with intention.’ Other available information indicates that Elevate/Top Applicant’s ‘membership base is over 70% [people of color] and close to 50% women.’”)

<sup>74</sup> See “Climb Credits” <https://bit.ly/3PbPhAw>

<sup>75</sup> See “Mertize” <https://bit.ly/3wipRbN>

<sup>76</sup> See “Ascent Funding” <https://bit.ly/3FBDhE4>

<sup>77</sup> See “Mentor Works:” <https://bit.ly/3FyDKXq>

<sup>78</sup> Ascent Funding. “I’m Browsing Schools.” <https://bit.ly/3PdCU6M>; Describing the steps that prospective students take through the firm consisting of “01 Find the perfect school,” “02 See loan options and apply,” and “03 We pay your school” [the latter being a reference to loan disbursement]; <https://bit.ly/399ICXP> [<https://perma.cc/J398-JFU2>] (“Start here: explore training options, contact programs you’re interested in, and apply for funding all in one place.”); <https://bit.ly/3w0fUAA>; (“We evaluate schools for education value. We identify, assess, and partner with schools that help people reach their goals in a financially responsible way. We offer loans for valuable education. We then provide accessible, affordable payment options to attend these schools.”) [footnotes omitted]; <https://bit.ly/3L2KhuL>; [<https://perma.cc/QWG9-JEEN>] (“Looking for the Best Coding Bootcamp? . . . MentorWorks Education Capital, Inc. partners with a wide array of schools to provide students funding for education via Income Share Agreements (ISAs) – an income-driven alternative to traditional fixed payment installment loans.”)

<sup>79</sup> Student Borrower Protection Center. (2020). Potential Consumer Protection Violations by Climb Credit. <https://bit.ly/3M5dpT9>

- Specific statements regarding mean or median graduate incomes for a given program.** Specialty private lenders that act as lead generators for bootcamps sometimes make specific representations about the mean and/or median incomes for the programs they market, and to whose students they offer financing. For example, Climb recently advertised an “[a]verage grad salary” for various educational programs promoted on its website, such as an “[a]verage grad salary of ‘\$25,000—\$35,000’ for students at a Florida cosmetology school.”<sup>80</sup> However, serious questions surround these types of representations. For example, in a 2020 letter, the Student Borrower Protection Center (SBPC) noted that the graduate income reported for the cosmetology school cited above was likely far lower than what Climb claimed, and that Climb’s stated data source did not, in fact, appear to actually host information regarding the school in question.<sup>81</sup> Climb does not appear to now advertise any “[a]verage grad salary” information on its public website, but it is not clear whether the company may do so elsewhere, and there is evidence that Climb’s peers are still making similarly questionable claims. For example, Meritize appears to report the specific average salary for people working in fields for which it markets training programs and associated loans.<sup>82</sup> However, it is not clear whether these average incomes are in any way reflective of average salaries for people working in those fields who attended the programs that Meritize markets, let alone ones who did not secure work in their field of study after attending one of Meritize’s partner bootcamps. Further, MentorWorks appears in certain instances to re-post graduate salary information reported by bootcamp partners without offering additional detail to substantiate their statements.<sup>83</sup> It also appears to report generalized data on salaries for people working in a given field that one of its promoted courses covers without offering information on how that general salary compares to salaries relevant for students at the specific course.<sup>84</sup> Conduct along these lines may deceive or mislead potential borrowers about future earnings—leading them to believe that a specific program is a worthwhile investment in their future.
- Representations around changes in income before and after students attend a given program.** Short of making specific promises around what one’s earnings are likely to be after graduation, lead generating lenders in the bootcamp space will sometimes make claims around the *increase* in income a student can expect if it attends one of the programs it is marketing. For example, Climb states on its website that Climb graduates enjoy a “65% Median salary increase.”<sup>85</sup> However, as the SBPC noted in its 2020 letter, Climb’s figure for median salary increase (then 66.7 percent) relied on data that were outdated and pulled from an extremely limited pool of students who were likely to be unrepresentative of Climb borrowers as a whole<sup>86</sup> Accordingly, this representation—which is still present on the company’s public-facing

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Mertize. Explore Careers. <https://bit.ly/3M7gcel>; see also [<https://perma.cc/8NNL-XKQT>

<sup>83</sup> Mentor Works. Code Fellows. <https://bit.ly/3MfpER2>; see also [<https://perma.cc/7FSA-YFPT>]

<sup>84</sup> Mentor Works. Start Your Pharmacy Technician Education & Training Today! Lakewood University. <https://bit.ly/3srLzsvi>; see also, [<https://perma.cc/7FX9-PJUW>]; Pay with ISA Funding. Benjamin Franklin Institute of Technology. <https://bit.ly/3w2tZ0H>; see also, [<https://perma.cc/Z2T3-KNCJ>]

<sup>85</sup> About Climb. <https://bit.ly/3w0fUAA>; see also, [<https://perma.cc/EW7C-E3MZ>]

<sup>86</sup> Student Borrower Protection Center. (2020). Potential Consumer Protection Violations by Climb Credit. <https://bit.ly/395Mulq>

website—is likely to mislead students. Similarly, MentorWorks has claimed as recently as 2021 that the students it funds see a staggering “126% increase” in average income.<sup>87</sup> But the firm has yet to offer any substantiation for that claim.

- **Forward projections of “return on investment” that compare promised earnings for students at a given program to the cost of the loan the creditor offers for that course.** Private student loan companies that also act as lead generators are increasingly touting the “return on investment” (ROI) purportedly attributable to students through the programs and associated financing these lenders promote. Specifically, ROI calculations aim to compare the cost of paying for a given educational program with credit through one of these lenders to the estimated wage premium that the program in question promises students. Climb, for example, reports that it has developed a proprietary ROI calculation algorithm that it uses to verify whether school partners’ offerings amount to “positive financial investment for learners,”<sup>88</sup> while Meritize claims that its lead generation platform is available only to “programs that have a positive expected return on investment.”<sup>89</sup> However, while Climb provides a general overview of how it thinks about ROI,<sup>90</sup> neither firm proffers audited or examinable data or reports on its ROI measures. This conduct leaves the door open for harmful misrepresentations. MentorWorks, meanwhile, claims broadly that the type of private student loan it offers (an income-share agreement<sup>91</sup>) would only ever be “primarily available to higher ROI programs” given inherent aspects of its design.<sup>92</sup> But the company points students to this conclusion without providing any information on how its assessment of ROI relates in detail or at all to information it may have about its own programs.

To the extent they involve comparing income projections to the static cost of a given loan, ROI claims should be understood as just another form of representation regarding earnings. And to the extent that they may reflect a desire by lenders to confuse borrowers with creative accounting, allowing them to downplay both the exorbitant cost of their loan offerings and any less-than-desirable earnings data,<sup>93</sup> they should draw careful scrutiny from the FTC. Lenders that act as lead generators must not be allowed to deceptively mislead borrowers using confusing, unsubstantiated, and opaque metrics.

- **General statements that a given program is “endorsed” or “approved” by the lender in instances where the lender frames its value proposition to students as identifying schools that increase earnings.** Lenders that act as lead generators need not point to any particular

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<sup>87</sup> MentorWorks. (2021). MentorWorks Education Capital and Venture University Team up to Offer Innovative Income Share Agreements (ISAs) to Aspiring Investors. <https://bit.ly/3FCkpEW>; see also, [\[https://perma.cc/B33G-XY29\]](https://perma.cc/B33G-XY29)

<sup>88</sup> Climb. Education ROI Calculations. <https://bit.ly/3snflJp>; see also, [\[https://perma.cc/F9TJ-SHM8\]](https://perma.cc/F9TJ-SHM8)

<sup>89</sup> Quincy Preston. (2020). Career Connection: New Search Engine Helps “Often-Overlooked Talent” Find Training for In-Demand Jobs. Dallas Innovates. <https://bit.ly/396mRHp>; see also, [\[https://perma.cc/YW4P-D6PE\]](https://perma.cc/YW4P-D6PE)

<sup>90</sup> Climb. Education ROI Calculations. <https://bit.ly/3snflJp>; see also, [\[https://perma.cc/F9TJ-SHM8\]](https://perma.cc/F9TJ-SHM8)

<sup>91</sup> See Generally, Student Borrower Protection Center. Income Share Agreements. <https://bit.ly/3kZhwVa>

<sup>92</sup> MentorWorks. (2019). Will Income Share Agreements (ISAs) Only Work by Cherry Picking “STEM” Programs? The Reality is Quite Different. <https://bit.ly/37wGzvs>; see also, [\[https://perma.cc/HW2M-3QRF\]](https://perma.cc/HW2M-3QRF)

<sup>93</sup> Climb, for example, notes that APRs on its loans range up to 26.47 percent. <https://bit.ly/3PbPhAw>; see also [\[https://perma.cc/L7QL-FHY8\]](https://perma.cc/L7QL-FHY8)

statistic to leave students with the impression that they have vetted the schools they promote and confirmed that graduates enjoy high earnings. For example, on the home page of its website, Climb states, “We verify all our schools and programs for outcomes and value”<sup>94</sup> alongside clear representations that the “value” Climb has in mind refers to the more than \$100 million in cumulative boosted wages it claims to have generated for students.<sup>95</sup> Then, on the portal that students can use to apply for funding to attend each of Climb’s partner schools, the lender includes a banner describing the student’s chosen program as “Climb approved!”<sup>96</sup> Even a student who had not seen Climb’s specific ROI claims would likely be left with the impression that Climb had confirmed that students at the educational programs the firm promotes enjoy an increase in income. As described above, the foundations for any such confirmation is at best opaque and at worst wholly unsubstantiated.

Similarly, Ascent states, “We vet every partner school, so you can be confident that the school you select will help you get to where you want to go.”<sup>97</sup> The implied destination is clearly professional advancement and associated financial rewards, as Ascent’s webpage reads, “We offer bootcamp loans, so you can transform your career.”<sup>98</sup> Turning to its lead generation and loan products, Ascent then asserts, “We believe our schools are worth the investment.”<sup>99</sup> Even without referring specifically to any ROI metric, the net impression Ascent is likely to leave consumers with is that the company has confirmed that each of the programs it markets generate positive results. And even if this is actually the case, Ascent does not provide any relevant evidence to validate it.

These examples appear to be emblematic of practices across the bootcamp lead generation and lending space, and they stand to put consumers at a grave risk of deception. The particular focus that vocational training bootcamps place on students’ employment and earnings outcomes means that any representations by lead generators that a given course of study is approved or recommended are likely to be taken by the public as evidence that the lead generator in question has confirmed that the course leads to a lucrative job. But it is not clear that these firms are, in fact, engaging in the vetting that they may be implying, and if so they are not providing meaningful detail on their methods. This situation is made all the more troubling by the fact that these lead generators’ conduct serves to market such outstandingly expensive and risky forms of credit.<sup>100</sup>

There is ample reason to fear that the representations made above are likely to mislead borrowers. For example, beyond the evidence of deception cited in the SBPC’s 2020 letter to the lender, Climb now includes a disclaimer in small font on the bottom of the page where it discusses student outcomes and

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<sup>94</sup> Climb. Gain Essential Skills. Own Your Next. <https://bit.ly/3PbPhAw>; see also, [\[https://perma.cc/L7QL-FHY8\]](https://perma.cc/L7QL-FHY8)

<sup>95</sup>Ibid.

<sup>96</sup> See <https://bit.ly/3yr6r70>; see also [\[https://perma.cc/QQ27-VDMD\]](https://perma.cc/QQ27-VDMD)

<sup>97</sup> Ascent. “I’m Browsing Schools.” <https://bit.ly/3PdCU6M>; see also, [\[https://perma.cc/4KFV-CLGZ\]](https://perma.cc/4KFV-CLGZ)

<sup>98</sup>Ibid.

<sup>99</sup>Ibid.

<sup>100</sup>See Generally, Student Borrower Protection Center. (2020). Shadow Student Debt. <https://bit.ly/3N6xokM>

ROI that states, “Climb makes no representation or warranty as to the accuracy of this information, and this information should not be relied on in making a decision whether or not to attend a course at the above-referenced entity.”<sup>101</sup> These are hardly the defenses of a company that has carefully vetted and feels confident in its the representations included in its marketing materials. Moreover, if not to inform a prospective student’s choice to attend or not attend a given course of study, it is not obvious what purpose Climb’s claims regarding student outcomes at those programs could possibly serve.

The FTC must act quickly to ensure that private student lenders acting as lead generators for bootcamps under its jurisdiction are not engaging in deceptive earnings representations and are not facilitating deception and other abuses by schools themselves. In particular, the FTC should take a broad view of lenders’ liability for violations of Section 5 of the FTC Act as it relates to recruitment and enrollment schemes engineered by these lenders and bootcamps and other schools under the FTC’s jurisdiction. As such, the Commission should immediately investigate the full swath of companies that provide student financing to vocational programs for which they also serve as a gatekeeper, including but not limited to as it relates to any representations these companies may be making around student outcomes, postgraduate incomes, job placement rates, and return on investment. The FTC should report publicly on its findings and take any subsequent enforcement action necessary to hold industry participants accountable for violations of law.

### **Future Consideration: The Expansion of Short-Term Pell and Growth of Short-Term Credentials**

In FTC’s call for comment, the agency asked whether impending changes to market practices affect the need for a rulemaking. For years now, there has been an appetite in Congress (particularly through the Jumpstart Our Businesses By Supporting Students or JOBS Act) to expand federal Pell Grants to extremely short-term certificate programs as short as eight weeks.<sup>102</sup> The JOBS Act was most recently included in the version of the America Competes Act (also known as the China competitiveness bill) that passed the House earlier this year, and while this bill has yet to become law, short-term Pell, given the amount of support in Congress, is likely inevitable either in this bill or another legislative vehicle in the future. Short-term credentials seldom lead to the economic payout touted by those who promote them as a pathway for students. FTC must be aware, when conducting this rulemaking, that the market for these credentials is about to explode and that misrepresentation of earnings potential won’t be restricted to just the for-profit sector. Many of the regulatory suggestions offered in the for-profit section of these comments are applicable as well to all short-term programs, although short-term Pell as currently envisioned in the America Competes Act would include only public and nonprofit institutions. Some of these nonprofit institutions will fall under the FTC’s jurisdiction if they actually operate for profit.

There is already reason to believe that the expansion of Pell will only hasten the robust growth of these programs. Students already have access to Pell Grants for sub-baccalaureate certificates as short as 15 weeks, despite the limited evidence of how those credentials perform in the labor market.<sup>103</sup> As of 2015,

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<sup>101</sup> Climb. Education ROI Calculations. <https://bit.ly/3snfJp>; see also, [<https://perma.cc/F9TJ-SHM8>]

<sup>102</sup> Kaine, Portman, Levin, & Gonzalez Introduce Bipartisan, Bicameral Bill to Help More Americans Access Jobs Training & Get Back to Work. (2021). <https://bit.ly/3MfvIFe>

<sup>103</sup> Monique O. Ositelu, PhD. (2021). Five Things Policymakers Should Know about Short-Term Credentials. New America. <https://bit.ly/3FxxL06>

slightly more than half of all undergraduate credentials were at the sub-baccalaureate level, with the largest growth among short-term certificates that require less than a year to complete.<sup>104</sup> In just a decade from 2000 to 2010, for example, colleges saw a 151 percent increase in the number of short-term certificates awarded.<sup>105</sup> An expansion to even shorter term programs will increase the enrollment in existing programs and the proliferation of more programs targeting the availability of Pell dollars.

There are huge equity implications that come with this expansion. Short-term credential programs tend to enroll more Black students, women, and older students compared to those who typically enroll in bachelor's degrees that have better economic payouts.<sup>106</sup> A report by New America emphasized, "there is growing concern about the inevitable, continued stratification of higher education attainment, in which our most vulnerable students earn non-degree credentials that tend to be valueless towards social and economic mobility."<sup>107</sup>

Short-term credentials are a ripe space to easily make deceptive claims about earnings. The advertisements practically write themselves—enroll in this certificate program for an easy way to make much more money in a short amount of time. But that is very unlikely to be the case—in many instances, students don't make more than the typical high school graduate. Third Way, for example, found that for those short-term credentials that already qualify for Pell, over four fifths earn less than the typical high school graduate.<sup>108</sup>

To understand the implications of expansion of Pell to shorter-term programs, New America used a short-term 8 to 15 week credential proxy within the Adult Training and Education Survey (ATES: 2016). They found that a substantial proportion of adults with short-term certificates earn \$30,000 or less per year, and that people of color and women earn far less than white graduates of short-term certificate programs.<sup>109</sup> Almost half of the adults in that survey did not feel their credential was useful for increasing their pay, and only two in five of credential recipients believe their current job is related to the credential they received.<sup>110</sup> Approximately 40 percent of those with only a short-term certificate were unemployed.<sup>111</sup>

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<sup>104</sup> Jizhi Zhang, Ceylan Oymak. (2018). Stats in Brief. U.S. Department of Education. Participants in Subbaccalaureate Occupational Education: 2012. National Center for Education Statistics.

<https://bit.ly/393zqTT>

<sup>105</sup> Mina Dadgar, Madeline Joy Weiss. (2012) Labor Market Returns to Sub-Baccalaureate Credentials: How Much Does a Community College Degree or Certificate Pay?. Community College Research Center. Teachers College, Columbia University. <https://bit.ly/3srGqAF>

<sup>106</sup> Clive Belfield, Thomas Bailey. (2017). Does It Pay to Complete Community College - and How Much?. Center for Analysis of Postsecondary Education and Employment. <https://bit.ly/3N6yiOc>

<sup>107</sup> Monique O. Ositelu, PhD. (2021). Five Things Policymakers Should Know about Short-Term Credentials. New America. <https://bit.ly/3FxxL06>

<sup>108</sup> Michael Itzkowitz. Third Way. (2019). Short-Term Pell Grants: What the Data Say. Medium. <https://bit.ly/3w0IW3f>

<sup>109</sup> Monique O. Ositelu, PhD. (2021). Five Things Policymakers Should Know about Short-Term Credentials. New America. <https://bit.ly/39F1AVt>

<sup>110</sup> Ibid.

<sup>111</sup> Monique O. Ositelu, PhD. (2021). Five Things Policymakers Should Know about Short-Term Credentials. New America. <https://bit.ly/3L3KSfo>

We urge the FTC, when crafting a new rule, to have the foresight to take into account how the expansion of Pell to very short-term programs might create a new space for institutions of higher education to exploit when it comes to making deceptive earnings claims and misrepresentations.