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Lessons for Marketers from the CFPB Attack on For-Profit Education

We have [written recently](#) about the stepped-up scrutiny that the Consumer Financial Protection Bureau (the CFPB) and the Federal Trade Commission (FTC) are placing on for-profit education and related marketing. The opening round of federal enforcement actions started on Wednesday, when the CFPB filed a [lawsuit](#) against ITT Educational Services, Inc. with accusations that ITT "used high-pressure tactics to push many students into expensive private student loans that were likely to end in default." The CFPB is seeking restitution for consumers, a civil fine, and an injunction against the company. For-profit schools and marketers of all types can learn important lessons from this enforcement action.

Background

The CFPB brings its lawsuit against ITT under the Dodd-Frank Wall Street Reform and Consumer Protection Act, which grants it authority to take action against institutions engaging in unfair, deceptive, or abusive practices. The CFPB's lawsuit alleges that (1) ITT "misled students by overstating their job prospects and likely salaries upon graduation;" (2) it then pushed students into high-cost private loans that were likely to end in default; and (3) ITT credits typically didn't transfer to nonprofit schools or community colleges, so it used the prospect of expulsion and the loss of the money already spent during the student's first year to coerce students into taking out the private loans.

While this is the CFPB's first public enforcement action against a company in the for-profit education sector, there are likely to be more actions taken against private sector schools, and others involved in student recruitment and lending. According to the prepared remarks of CFPB Director Richard Cordray, "Moving forward, the Consumer [Financial Protection] Bureau will subject the financial products and services offered by for-profit colleges and their partners to the same standards as any other consumer financial product or service."

Key Takeaways for Advertisers and Marketers

- **Don't rush enrollment/purchase decisions.** The CFPB alleges here that ITT used its financial aid staff to rush students through an automated application process without affording them a fair opportunity to understand the loan obligations involved. In some cases, students did not even know they had a private student loan until they started getting collection calls.
- **SEC filings and investor calls are not beyond scrutiny.** According to the CFPB, the school was providing limited information about the loan programs at issue to its students, but at the same time providing more information to its investors. According to the CFPB's press release, "ITT's CEO revealed in investor calls that converting the temporary loans to long-term loans was the company's 'plan all along.'"
- **Set reasonable expectations.** When you have aggregate data and specific information about the consumer to whom you are marketing, take it all into account in order to help avoid allegations about a product or service being inappropriate for a specific consumer. According to the CFPB, "ITT exploited student expectations while it knew that a majority of students would default." The CFPB bases its allegations on the company's own default rate calculations.

Finally, for those advertising and marketing educational services and student loans, check out the Federal Trade Commission's (FTC) [Vocational School Guides](#), which are newly revised and provide a roadmap of best practices (even if written primarily for the vocational school audience). The Guides warn against deceptive marketing practices by businesses that offer vocational training, provide specific guidance on representations used in recruitment, and address claims about how long it takes people to complete the program, whether the program will qualify them for licensing exams, and their likelihood of success. The Guides also warn about misrepresentations regarding financial aid, help with language skills, assistance with learning disabilities, and how many credits students can transfer from other schools.

For more on the CFPB and FTC's enhanced scrutiny of private sector colleges and universities and related student recruitment by third-party lead generators, [click here](#). If you're a recipient of a CFPB (or FTC) civil investigative demand and subject to an investigation, you may find useful this [primer](#) by Venable attorneys [Jonathan L. Pompan](#) and [Alexandra Megaris](#).