

August 1, 2016

The Honorable John B. King Jr.
Secretary of Education
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Re: Docket ID ED-2015-OPE-0103-0221

Dear Secretary King:

As negotiators representing veterans during the Negotiated Rulemaking, we thank you for spelling out the process and standards for borrower defense loan relief in order to protect students and taxpayers from fraud, deception and other misconduct by what President Obama characterized as “bad actors.” We applaud the Department in particular for proposing (1) a process for providing debt relief without requiring individual applications where there is sufficient evidence that a group of students were defrauded; (2) warnings students of government and accreditor concerns about their school; (3) increasing information and access to closed school loan discharges; and (4) preventing schools from shielding themselves from accountability through pre-dispute arbitration clauses and class action waivers.

Why do these regulations matter to veterans? The hallmark of bad actors is that they lure individuals to enroll with misleading advertising and recruiting. The 90/10 loophole incentivizes bad actors to prey on veterans and servicemembers. Their hard-earned educational benefits allow such schools to enroll 9 individuals who depend on federal student aid for every veteran or servicemember. As Holly Patraeus has said, the 90/10 loophole puts targets on the backs of veterans.

The 2012 Senate HELP investigation of publically traded and privately-owned for-profit schools documented the use aggressive and misleading recruiting; use of psychological manipulation (pain points) to enroll students; reliance on lead generators to identify potential recruits, which leads to incessant phone calls and emails; excessive expenditures on recruiting while giving short-shrift to instruction. Veterans, who are frequently encouraged to enroll on the spot, are particularly vulnerable to high pressure recruiting:

- over 60 percent are the first in their family to attend college and have no readily available, trusted source of information to help select a school; and
- most are nontraditional students—49 percent are married, 46 percent have children, 14 percent are single parents, and many work full-or part-time.

Veterans find the promise of immediate enrollment and a quick degree compelling as are the false promises about cost, quality, accreditation, job placement, and post-graduation earnings.

The Department documented widespread misrepresentation of job placement rates by Corinthian. Since 2012, five different federal agencies and nine state Attorneys General have concluded 14 settlements with predatory schools. The basis for all but one of these settlements were findings of misleading and deceptive advertising and recruiting, including misrepresenting costs, quality, accreditation and the transferability of credits, job placement rates, and post-graduation salaries. And one settlement involved violations of the Department's incentive compensation regulations (see Attachment to this letter).

Both Veterans Education Success and Student Veterans of America hear from veterans who were deceived by bad actors. Their stories mirror the findings of federal and state settlements. One frequently voiced complaint is that schools originate federal student loans that veterans don't need, want, or authorize because the GI Bill fully covered their tuition and expenses. Predatory schools are incentivized to originate federal loans because GI Bill dollars are much slower to arrive, particularly, when veterans enroll on the spot and haven't applied for the paperwork to start using their GI Bill benefits. As you know, many such schools are in precarious financial condition due to declining enrollment and the negative press generated by federal and state investigations. In June 2014, Corinthian notified ED that it would have to declare bankruptcy if ED delayed aid disbursements by just 21 days.

While strong ED regulations that make it easier for borrowers to obtain the relief they are entitled to under existing federal law, loan forgiveness will not make veterans whole again. If they use some or all of their 36 months of entitlement at a predatory school that encouraged them to enroll with false promises, those hard earned GI Bill benefits are gone forever.

While we support the more detailed comments submitted by organizations and advocates working on behalf of students, consumers, faculty and staff, civil rights, and college access, we want to provide feedback on two specific topics—financial responsibility triggers and mandatory arbitration.

Escalating letters of credit. The draft NPRM identified many useful circumstances that would result in letters of credit. We would like to comment on two of them—lawsuits/settlements and violations of the 90/10 rule.

We are concerned about the 10 percent threshold for lawsuits/settlements. The attached handout on federal and state settlements demonstrates that the settlement amounts are very small and, we believe, unlikely to reach the threshold of 10 percent of current assets. We believe that the final rule should eliminate the 10 percent threshold. A settlement, in and of itself, should be sufficient to trigger a 10 percent letter of credit. Additionally, in order to enforce this important financial responsibility trigger, the Department must require all schools that participate in Title IV to promptly notify the Department when it is being sued or enters into a settlement.

ii) The institution is currently being sued by one or more State, Federal, or other oversight entities based on claims of any kind that are not described in paragraph (c)(1)(i)(B) of this section, and the potential monetary

sanctions or damages from that suit or suits are in an amount that exceeds 10 percent of its current assets;

We are also concerned about the active gaming by schools to avoid exceeding the 90 percent cap on Title IV revenue.¹ In particular, large, publicly traded for-profit schools (1) delay federal student aid disbursements until the next fiscal year; (2) combine campuses that exceed the 90 percent cap with those that don't; and (3) raise tuition, which forces students to take out private loans that increase revenue from non-Title IV sources.

Given that schools proactively manage their 90/10-compliance, only a handful of schools actually exceed the 90 percent cap in any given year (14 institutions for the 2013-14 reporting period). We strongly urge the Department to take steps to limit schools use of these gaming strategies. For example, The Institute for College Access and Success has urged the Department to separately track 90/10 compliance for merged campuses for 3-years after the consolidation or to not allow such consolidations when institutional 90/10 compliance is in question.

(5) *Non-title IV revenue.* For its most recently completed fiscal year, a proprietary institution did not derive at least 10 percent of its revenue from sources other than title IV, HEA program funds, as provided under § 668.28(c).

Mandatory arbitration. Any final rule must apply to all students at Title IV eligible schools, not just federal borrowers. Because the GI Bill and Tuition Assistance often cover tuition and fees, many veterans do not take out federal student loans. According to the National Postsecondary Student Aid Study, 57 percent of veterans using the GI Bill had no federal student loans in the 2011-12 academic-year. The proposed rule would allow these student veterans to fall through the crack, allowing schools to mandate arbitration of all claims, including class action claims. Although we strongly believe that no school that participates in Title IV should be allowed to require mandatory arbitration, any Department regulation should apply, at a minimum, to any student who completes the FAFSA and receives any federal student aid—whether grants or loans. Some veterans and servicemembers who do not take out federal student loans do receive Pell Grants.

Department draft proposal: Non-title IV revenue. For its most recently completed fiscal year, the institution did not derive at least 10 percent of its revenue from sources other than title IV, HEA program funds, as provided under §668.28(c);

¹See *Comments on Topics for Negotiated Rulemaking Docket ID: ED-2015-OPE-0103*, September 16, 2015, The Institute for College Access and Success. http://ticas.org/sites/default/files/pub_files/ticas_dtr_neg_reg_comments.pdf This gaming is in addition to loopholes introduced by the Higher Education Act of 2008, which make it easier for schools to maintain their 90/10 compliance, such as counting non-Title IV eligible, professional development courses on the 10 percent side.

Walter Ochinko
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Veterans Education Success

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ATTACHMENT

State Attorneys General and Federal Agency Settlements with Schools

School	Agency	Settlement date	Settlement amount	Findings
Alta (<i>Westwood College</i>)	CO-AG	March 2012	\$4.5 million	Provided misleading information to students on job placement rates, tuition, and transferability of credits. Veterans were falsely told that their GI Bill benefits would cover the cost of tuition. ^a
Alta (<i>Westwood College</i>)	IL-AG	Nov. 2015	\$15 million	Misrepresented costs and employment opportunities in its criminal justice program. ^b
Ashworth	FTC	May 2015	\$11 million ^c	Many programs did not meet state licensure requirements for those professions, including teachers and massage therapists, and the claims made about credit transfers were often not true. ^d
ATI	Justice	Aug. 2013	\$3.7 million	Misleading recruiting practices at campuses in Texas and several other states. ^e
Bridgepoint (<i>Ashford College</i>)	IA-AG	May 2014	\$7.5	Misleading recruiting practices. ^f
Career Education Corporation (<i>Sanford Brown, Briarcliff, American Continental University, Colorado Technical University</i>)	NY-AG	Aug. 2013	\$10.25 million	Significantly inflated job placement rates and provided misleading information about credit transfers. ^g
EDMC (<i>Argosy</i>)	CO-AG	Dec. 2013	\$3.3 million	Falsely claimed that PhD graduates could become licensed clinical psychologists even though its program was not accredited by the American Psychological Association. ^h
EDMC (<i>Art Institute</i>)	SF City Attorney	June 2014	\$4.4 million	Used illegal marketing practices, including providing misleading data on placement rates, actual or average salaries, and graduation/completion rates. ⁱ
EDMC	Justice	Nov. 2015	\$95.5 million	Violated the Dept. of Education incentive compensation regulations. ^j
EDMC	40 state AGs	Nov. 2015	\$103 million	Used misleading and deceptive recruiting practices. ^k
Education Affiliates (<i>Fortis Institute</i>)	Justice	June 2015	\$13 million	Misrepresented job placement rates. ^l

<i>and numerous other brands)</i>				
Kaplan	FL-AG	June 2014		Misleading recruiting practices. ^m
	Justice	July 2015	\$1.3 million	Used unqualified instructors who did not meet minimum Texas standards in its medical assisting program. ⁿ
Premier Education Group (<i>Salter College</i>)	MA-AG	Dec. 2014	\$3.75 million	Misrepresented job placement rates and used deceptive enrollment tactics. ^o

^ahttp://www.denverpost.com/smart/ci_20172161/colorado-attorney-general-reaches-settlement-westwood-2-

^b<https://www.cfbmonitor.com/wp-content/uploads/sites/5/2014/11/IL-AG-second-amended-complaint.pdf>

^cThe \$11 million fine was waived because of the school's inability to pay.

^d<https://www.ftc.gov/news-events/press-releases/2015/05/ashworth-college-settles-ftc-charges-it-misled-students-about>

^e<http://www.justice.gov/opa/pr/2013/August/13-civ-953.html#sthash.fla0snpj.dpuf>

^f<http://www.ashfordsettlement.com/faqs.html>

^g<http://www.ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>

^hhttps://www.coloradoattorneygeneral.gov/press/news/2013/12/05/attorney_general_suthers_announces_consumer_protection_settlement_argosy_unive and

<http://www.bizjournals.com/denver/news/2013/12/05/argosy-university-pays-colorado-33m.html>

ⁱ<http://www.sfgate.com/bayarea/article/SF-wins-4-4M-settlement-with-for-profit-art-5559635.php>

^j<http://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and>

^k<http://kentucky.gov/Pages/Activity-Stream.aspx?viewMode=ViewDetailInNewPage&eventID=%7B15E27858-880A-4479-A5F6-B1966D22274F%7D&activityType=PressRelease>

^l<http://www.justice.gov/opa/pr/profit-education-company-pay-13-million-resolve-several-cases-alleging-submission-false>

^mThe Florida AG entered into a voluntary assurance of compliance with Kaplan.

ⁿ[http://myfloridalegal.com/webfiles.nsf/WF/JMEE-9L6QDA/\\$file/KaplanAVC.pdf#sthash.YDI8hEsG.dpuf](http://myfloridalegal.com/webfiles.nsf/WF/JMEE-9L6QDA/$file/KaplanAVC.pdf#sthash.YDI8hEsG.dpuf)

^o<http://www.justice.gov/usao-wdtx/pr/profit-college-kaplan-refund-federal-financial-aid-under-settlement-united-states>

^p<http://www.mass.gov/ago/news-and-updates/press-releases/2014/2014-12-12-salter-college.html#sthash.fla0snpj.dpuf>