

Comments in Response to Federal Trade Commission Request for Public Comments

Vocational School Guides Review, Matter No. P097701

October 16, 2009

The National Consumer Law Center¹ on behalf of our low-income clients, PIRG the federation of state Public Interest Research Groups)² and Public Advocates Inc.³ file these comments in response to the FTC's request for public comments printed in the Federal Register on July 30, 2009. We submit these comments strongly urging the FTC to improve the vocational school guides and its consumer protection activity in this field in our efforts to further the interests of low-income students seeking access to higher education, program completion and the rewards associated with post-secondary education.

We urge the FTC and other government regulators to act decisively to protect vulnerable students and help promote the Obama Administration's goals of increasing college access and success. Unfortunately, continuing and often serious abuses in the proprietary school sector shatter the hopes and aspirations of many students seeking higher educations. As described below, these problems are by no means just a legacy of the past.

We appreciate the FTC's attention to these important issues. To support these efforts, we include recommendations to improve the Guides in the second section of these comments. Most important, however, is increased public oversight and enforcement. Most of the ongoing problems in the proprietary school sector are within the FTC's traditional mandate to prohibit

¹ The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal services, government and private attorneys, as well as community groups and organizations that represent low-income and elderly individuals on consumer issues. NCLC's Student Loan Borrower Assistance Project provides information about student loan rights and responsibilities for borrowers and advocates. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable. See the Project's web site at <http://www.studentloanborrowerassistance.org>.

² PIRG, the federation of state Public Interest Research Groups (PIRGs), stands up to powerful special interests on behalf of the American public, working to win concrete results for the public. With a strong network of researchers, advocates, organizers and students in state capitols across the country, U.S. PIRG takes on the special interests on issues where these interests stand in the way of reform and progress. For more information, see www.uspirg.org.

³ Public Advocates is a nonprofit law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing and transit equity. It advocates for education equity and opportunity to learn for students at every level including curriculum, standards, testing, data and college opportunity on behalf of low income students. Public Advocates was an active proponent of federal policy changes to provide for increased and more rational safety net and flexibility provisions for low-income borrowers who faced financial problems affecting their ability to repay students loans, and for improvements in income contingent repayment provisions. See Public Advocates' website at <http://www.publicadvocates.org>.

unfair and deceptive practices in the marketplace. The guides should be improved to help meet these goals, but the lack of a specific prohibition in the guide should not be viewed as an excuse for regulatory inaction or an invitation to schools to engage in other deceptive or unfair practices.

The first section of our comments respond to the questions about whether there is a continuing need for the guides, whether there are still problems in the marketplace, and whether the industry has complied with the guides. The second section includes recommendations to improve the guides.

Lax Enforcement Has Allowed Abuses to Flourish

Despite the existence of these guides, the FTC has mostly ignored the proprietary school sector since bringing a few cases in the 1980's and early 1990's. This void has generally not been satisfactorily filled by other agencies, whether state or federal. The regulatory triad of the federal Department of Education, state licensing agencies, and accreditation agencies has failed to protect students. Other federal agencies, such as the Department of Labor, which oversees the Workforce Investment Act have also failed to address abuses.

In an August 2009 report, the GAO concluded that stronger Department of Education oversight is needed to address certain proprietary school problems.⁴ The report noted the higher loan default rate among proprietary school students and focused particularly on the Department's lack of oversight of ability to benefit requirements.

Financial regulators have also failed to fill in the void, allowing unregulated, predatory lending to flourish in the educational loan sector. These private loans, originated by traditional creditors and more recently by schools, are disproportionately taken out by proprietary school students.

Problems in the Proprietary School Sector

At the National Consumer Law Center's Student Loan Borrower Assistance Project, we see the harm to students on a regular basis through our direct client representation work. All of our clients live in Massachusetts and all are available for free legal assistance. We also consult with lawyers across the country representing borrowers, many with complaints against proprietary schools. In addition, a large percentage of the complaints we get through our Student Loan Borrower Assistance web site involve proprietary schools. More recently, we have begun working with a Boston-based work force development project. Many of these clients are currently living in homeless shelters. They are seeking GEDs in many cases and/or higher education. Prior problems with proprietary schools and the resulting debt burdens present a major road block as they try to improve their lives.

⁴ U.S. Government Accountability Office, "Proprietary Schools: Stronger Department of Education Oversight Needed to Help Ensure Only Eligible Students Receive Federal Student Aid", GAO-09-600 (August 2009). The U.S. House of Representatives Committee on Education and Labor held hearings on this report on October 14, 2009. For more information, see <http://edlabor.house.gov/hearings/2009/10/ensuring-student-eligibility-r.shtml>.

In reviewing our direct representation files from just the past year, we found that about half of our clients attended proprietary schools. Of these clients, about 2/3 failed to complete the programs. This is a diverse population including a young man in his early 20's who was led to believe that he could study a particular program at a vocational school only to find out after he enrolled that the program was no longer offered.

We also represented a monolingual Spanish speaking single mom in her early 40's. She signed up for a beauty school after informing the school representatives that she spoke only Spanish because she was told that courses were offered in both Spanish and English. She found out right away that this was a lie and that the courses were offered in English only. Although she dropped out and her federal loan was cancelled, the school continued to pursue her for about \$5,000 in fees. This was very stressful for a single mom trying to get by working at a school cafeteria, earning just above minimum wage with no health insurance.

Other clients included a homeless man in his mid 40's who was recruited for a pharmaceutical program and signed up because he needed a place to stay during the day when the shelter was closed. He has severe learning disabilities. Other clients had major disabilities which they revealed to school representatives, but they were nevertheless pressured to sign up.

In recent years, schools have also aggressively marketed to military service members. While service members are often looking for flexible schedules, there have been problems with misrepresentations to this population as well. According to a 2006 article in the *Chronicle of Higher Education*, the colleges offering courses today vary widely in quality. The little oversight the military is able to exercise on behalf of its service members, according to the article, does not cover most of the new institutional entrants because it only applies to colleges that operate on bases. Meanwhile the military itself has been forced by budget constraints to cut back on its education counseling.⁵

Consequences for Borrowers

Higher education is expensive and increasingly out of reach of many lower-income and even middle-income Americans. Misrepresentations and false claims have severe consequences for students. Because of the expense of higher education, most borrowers take on some level of debt to pay for college. In cases where the schools do not deliver as promised, loans for education can become an insurmountable burden rather than a benefit. This is especially true in the for-profit higher education sector where, all too often, schools prey on vulnerable students' dreams of betterment through education. As a result, the financial assistance that was intended to help these students does little more than bury them in debt. It is more important than ever to ensure that the dream of accessible higher education can be a reality.

The stakes are even higher in the current environment given that most of these students have not only federal student loans, but subprime private loans as well. The Project on Student Debt recently released data showing that at proprietary (for-profit) colleges and universities, the

⁵ Goldie Blumenstyk, "The Military Market", *The Chronicle of Higher Education* (July 7, 2006).

percentage of students who took out private student loans skyrocketed from 14 percent in the 2003-04 school year to 43 percent last year.⁶

The private loans are in some cases originated through the schools. According to SEC filings, the school chain Corinthian planned to lend about \$100 million in 2009. ITT said its lending would total \$75 million in 2009 and Career Education said its current balance of \$31 million in August 2009 could grow to \$50 million by the end of the year.⁷ To compound the problem, many schools have acknowledged that a very high percentage of students will be unable to repay these loans. The AP reported in August 2009 that two publicly owned college chains set aside roughly half their internal lending amount as a loss reserve.⁸

The potential for default is particularly high among proprietary school students. The Department of Education's data for FY 2007 released in September 2009 indicates persistently higher cohort default rates for proprietary school borrowers.⁹ The August 2009 GAO report further highlighted this troubling trend, noting that students at for-profit colleges and universities are more likely to default on federal loans. And these rates are almost assuredly under-reported.¹⁰

The consequences of federal loan defaults are severe. The government has extraordinary powers to collect student loans, far beyond those of most unsecured creditors. The government can garnish a borrower's wages without a judgment, seize his tax refund, even an earned income tax credit, seize portions of federal benefits such as Social Security, and deny him eligibility for new education grants or loans. Even in bankruptcy, most student loans must be paid. Unlike any other type of debt, there is no statute of limitations. Private loan creditors have only the special protection against bankruptcy discharge, not the other special collection powers, but to date they have been unwilling in most cases to assist financially distressed borrowers.¹¹

To better understand the personal toll on students, Appendix A includes information about NCLC's client, Zachary, and a few others who have suffered due to proprietary school misrepresentations. The school that Zachary and the others attended had survived for nearly 100 years before Career Education Corp. (CEC) purchased it. It closed in 2008, not long after CEC's purchase. As one former management employee of a Katharine Gibbs campus that suffered a similar fate wrote on-line:

⁶ The Project on Student Debt, Press Release, "New Data Show Big Increases in Private Student Loan Borrowing" (April 21, 2009), available at: http://projectonstudentdebt.org/files/pub/Private_loan_data_NR.pdf.

⁷ Justin Pope, "For-profit Colleges Boost Lending", AP Impact (Aug. 14, 2009).

⁸ Id.

⁹ U.S. Department of Education, Press Release, "Student Loan Default Rates Increase" (Sept. 14, 2009).

¹⁰ See, e.g., U.S. Department of Education, Office of Inspector General, "Final Audit Report: Audit to Determine if Cohort Default Rates Provide Sufficient Information on Defaults in the Title IV Loan Program", ED-OIG/A03-C0017 (December 2003); General Accounting Office, "Student Loans: Default Rates Need to be Computed More Appropriately", GAO/HEHS-99-135 (July 1999).

¹¹ See generally National Consumer Law Center, "Too Small to Help: The Plight of Financially Distressed Private Student Loan Borrowers" (April 2009), available at: <http://www.studentloanborrowerassistance.org/uploads/File/TooSmalltoHelp.pdf>.

“None of this had to happen. These schools CAN be salvaged by private schools whose aim is to service the public, and not necessarily their over-stuffed pocketbooks.”¹²

Public Enforcement Actions

Although enforcement has generally been lax, some state and federal regulators have taken key steps to address abuses. These cases have had an impact, particularly in states such as New York that have made problems in the proprietary sector a target of state intervention. Although enforcement to date is only the tip of the iceberg, it does show the persistence of abuses in this sector.

Federal Enforcement

Recent federal investigations include:

- A Department of Education (“DOE”) investigation of Miami Technical Institute in 2009 found employees directed students to falsify financial information to qualify for Pell grants.
- DOE investigation of Alta Colleges in 2009 resulted in an order to repay \$7 million under the False Claims Act where the school obtained Texas license to operate by misrepresenting to the state licensing agency that they complied with state job placement requirements and that their interior design programs complied with requirements for professional licenses.
- DOE indictments against American Center for Technical Arts and Sciences in 2008 for fraudulently receiving Pell grant funds and making loans for students who had dropped out of the school’s programs instead of refunding to government.
- The Technical Career Institute was found in 2008 to have improperly paid FFEL lenders to reduce the institution’s cohort default rate in order to continue to participate in the FFEL and Direct Loan programs.
- DOE indictment in 2008 against Harrison Career Institute for illegally receiving funds for loans and grants.
- DOE audit of Hope Career College, January 2008, ordered school to repay DOE for knowingly using invalid documents to admit students and give them federal aid funds.
- Owner of Merit Technical Institute was sentenced to prison and ordered to pay restitution in 2006 for receiving educational and training benefits for students who were unqualified.
- In 2006, owners of Moler Beauty College were sentenced to probation and ordered to pay for administering admissions tests to students that they were not qualified to administer and otherwise manipulating admissions.
- DOE audit of Stone Child College in August 2005 ordered school to repay the government for disbursing federal aid funds to students who did not meet ability to benefit (ATB) requirements.

¹² See comments to Doug Lederman, “Tears for a For-Profit College’s Demise”, Inside Higher Ed (February 20, 2008), available at: <http://www.insidehighered.com/news/2008/02/20/mcintosh>.

- DOE audit of Teddy Ulmo Institute in 2005, fining school for disbursing funds to students who did not have high school diplomas or GEDs and had not passed valid ATB tests.
- DOE audit of American Business College in 2005 ordering school to repay government for disbursing funds to students who did not have high school diplomas or had not passed ATB tests.
- DOE audit of Interactive Learning Systems in 2005 ordering school to repay the government for giving funding to students who did not meet ability to benefit requirements.
- Corinthian Colleges in 2005 ordered to repay \$776,241 to the Department of education for violations of student aid procedures at Bryman College (CA).
- University of Phoenix paid \$9.8 million to settle a 2003 investigation by the Department of Education into recruiting practices that violated the ban on “commissioned sales” of admissions.

State Enforcement

Selected state enforcement actions include:

- In 2008, the Pennsylvania Attorney General reached a settlement with Lehigh Valley College, a subsidiary of CEC, in a case involving misrepresentations about student loans, job placement and transferability.
- The Florida Attorney General settled with Florida Metropolitan University in 2007 in a case alleging misrepresentations of the transfer value of credits. (See <http://chronicle.com/article/Florida-Attorney-General-Se/39895/>).
- The California Attorney General reached a multi-million dollar settlement in 2007 with Corinthian Vocational Schools to settle a lawsuit alleging that the school operator engaged in false advertising and unlawful business practices.
- New York’s 2006 investigations into for-profit college activities led to a moratorium on the establishment of new programs by for-profit colleges. The New York State Education Department also ordered Taylor Business Institute to close as of January 2007. (See Doug Lederman, “N.Y. Reins in For-Profit Colleges,” Inside Higher Education, January 23, 2006).
- Texas Attorney General sued Kaplan Higher Education Corp. in 2006 alleging that the “electricians” program misled students about licensing and employment.
- In 2005, the Washington State Higher Education Coordinating Board required the Business Career Training Institute (BCTI) to repay state grants for low-income students after the school admitted falsifying enrollment tests to admit unqualified students. The Oregon Department of Education placed the school on probation in 2005 after it found that the school was “unfair and deceptive” in how it recruited, admitted and enrolled students.
http://www.oregonlive.com/business/index.ssf/2008/01/oregon_students_file_classacti.html
- Kentucky’s Attorney General asked a court to strip Decker College, in 2005, of its charter.

Media Reports

The media has reported on these problems for years. In addition to reports about the investigations that are described above, we include below a partial list of recent investigative articles and blogs about proprietary school problems.

- Matt Smith, “Stimulus Wreckage”, San Francisco Weekly September 28, 2009 (Article about Corinthian Colleges, describing how despite recent litigation and government enforcement, Corinthian is the beneficiary of significant stimulus funds).
<http://www.sfweekly.com/2009-09-30/news/stimulus-wreckage>
- Jonathan Glater, “Were They Just Paper Airplanes”, New York Times, July 5, 2009 (Key Bank private lending and connection to closed helicopter school)
- Stephen Burd, “More Scrutiny Needed of the University of Phoenix’s Recruiting Practices”, New America Higher Ed Watch Feb. 19, 2009
<http://www.newamerica.net/blog/higher-ed-watch/2009/more-scrutiny-needed-university-phoenix-10193>
- Bruce V. Bigelow, “Left in the Lurch: Lenders Expect Students to Repay Private Loans Even if School Goes Bankrupt”, San Diego Union-Tribune, March 9, 2008.
http://www.signonsandiego.com/uniontrib/20080309/news_lz1b9lenders.html
- Mary Spicuzza, “Students File Class Action Lawsuit Against California Culinary Academy”, San Francisco Weekly, Oct. 9, 2007.
<http://www.sfweekly.com/2007-10-10/news/students-file-class-action-lawsuit-against-california-culinary-academy/>
- Sam Dillon, “Troubles Grow for a University Built on Profits”, New York Times, Feb. 11, 2007.
<http://www.nytimes.com/2007/02/11/education/11phoenix.html>
- CBS 60 Minutes Story in July 2005 about problems with for-profit colleges. This led to a hearing held by the House of Representatives Committee on Education and Labor, including evidence of continued improprieties.
<http://www.cbsnews.com/stories/2005/01/31/60minutes/main670479.shtml>
- Post from Florida Union article, “For-Profit Colleges Need More Consumer Oversight”
http://www.redorbit.com/news/education/456019/forprofit_colleges_need_more_consumer_oversight/
- Doug Lederman, “Progress and Peril for Career Education”, Inside Higher Ed, May 18, 2006 <http://www.insidehighered.com/news/2006/05/18/careered>
- Stephen Burd, “Promises and Profits”, The Chronicle of Higher Education, January 13, 2006 (Detailing problems at American Intercontinental University)
<http://chronicle.com/article/PromisesProfits/12779>
- Eryn Brown, “Can For-Profit Schools Pass an Ethics Test”, The New York Times, December 12, 2004
<http://query.nytimes.com/gst/fullpage.html?res=9907E3D81131F931A25751C1A9629C8B63&sec=&spon=&pagewanted=all>

Private Enforcement

There has been important private litigation in this area in recent years. For example, false claims act litigation has been instrumental in revealing problems and recovering funds for the government.

Examples of Key Private Litigation Include:

False Claims Act Litigation

1. In 2009, four false claim suits against Kaplan Higher Education were consolidated in Florida. The four lawsuits had been filed in Florida in April 2007, Illinois in October 2007, Pennsylvania in November 2006 and Nevada in November 2007.¹³
2. The Justice Department also settled a false claims lawsuit against Alta Colleges in April 2009. The lawsuit alleged that the company and its Westwood College campuses obtained a state license to operate in Texas by falsely stating that they observed state requirements on job placement reporting and that their interior design programs complied with the requirements for a professional license in the field.¹⁴
3. A plaintiff was allowed to proceed in a case alleging that a university repeatedly violated the Higher Education Act incentive compensation ban. The plaintiff alleged more than twenty separate instances in which the school violated the ban by compensating enrollment counselors directly based upon securing enrollments, ranking counselors against each other based upon the number of enrollments they secured, and providing incentive trips, lunches, dinners, gift certificates, and paid days off based upon the number of enrollments secured. The plaintiff-realtor had worked at the school as an enrollment counselor.¹⁵
4. *Hendow v. University of Phoenix*, 461 F. 3d 1166 (9th Cir. 2006), cert. den. 550 U.S. 903 (2007) (False Claims act action allowed to proceed in case involving incentive compensation ban).

Additional Selected Cases

1. *Bobbitt v. Academy of Court Reporting, Inc.*, 2008 WL 1925058 (E.D. Mich. May 1, 2008) (granting motion for class certification in case challenging school's misrepresentations about ability to grant degrees). op. corrected and superseded *Bobbitt v. Academy of Court Reporting, Inc.*, 252 F.R.D. 327 (E.D. Mich. June 25, 2008). A settlement agreement was approved in this case. See *Bobbitt v. Academy of Court Reporting, Inc.*, 2009 WL 2168833 (E.D. Mich. July 21, 2009).

¹³ Goldie Blumenstyk, "4 False-Claims Lawsuits Against Kaplan are Consolidated", The Chronicle of Higher Education (June 11, 2009).

¹⁴ Andrew Mytelka, "Proprietary College to Pay \$7-Million to Settle Federal Student-Aid Charges", The Chronicle of Higher Education (April 20, 2009).

¹⁵ *U.S. v. Significant Education*, 2009 WL 322875 (D. Ariz. Feb. 10, 2009).

2. A 2008 case was filed in Maryland against CEC's Ultrasound Technical College alleging violations of state law.
3. The Seattle Times reported about problems with Crown College of Tacoma, including allegations of fraud, revocation of accreditation, and lawsuits by students who alleged the school misled them about transferability of credits.
http://www.crowncollegelawsuits.com/The%20Seattle%20Times_%20Student%20takes%20on%20college%20and%20wins.pdf;
http://seattletimes.nwsourc.com/html/localnews/2003828234_crown09m.html
4. In 2007, a class action was filed against CEC's California Culinary Academy alleging false claims about employment. <http://chronicle.com/article/Lawsuit-Accuses-Career/39682>.
5. Chubb Institute, a chain of career schools owned by High Tech Institute, lost its accreditation in Chicago and was sued by former students alleging misrepresentation of job placement figures. <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/12/AR2007081201029.html>
6. In 2005, three former students of CEC's Brooks Institute of Photography filed a class action lawsuit in Santa Barbara, CA alleging misrepresentations regarding placement rates and false and misleading advertising practices. (The case was settled, with an order entered in April 2008. A similar case was filed in Los Angeles and settled).
7. In 2005, a class action was filed in New York against Katherine Gibbs Co. alleging false and misleading practices regarding job placement assistance, among other violations. (For more information, see http://bankrupt.com/CAR_Public/060320.mbx)
8. In 2005, a lawsuit was filed by former students of Sanford Brown College in Missouri arguing violations of state consumer protection laws.
9. In August 2005, a class action was filed against CEC alleging that the defendants made fraudulent misrepresentations by failing to disclose, among other concerns, details regarding instructors' experience, estimates for starting salaries, and transferability of credits.
10. A 2004 case was filed against Corinthian and Florida Metropolitan University alleging that the school concealed the fact that it was not accredited and that credits were not transferable.
11. In a 2004 article, the *Chronicle of Higher Education* described lawsuits across the country against Corinthian Colleges and Career Education Corp. <http://chronicle.com/article/For-Profit-Colleges-Face-Ne/17488>
12. A 2000 lawsuit against Corinthian alleged that the school made misrepresentations about starting salaries, transferability of credits, and the quality of instruction (Soltero et al. v. Corinthian Schools, Inc., filed in Superior Court of California, Los Angeles County 2000. The case settled in 2003).

Limits to Private Enforcement

Private litigation can be an important tool in combating abuses in the proprietary school sector. It is especially useful in exposing broad-based practices through class action litigation and waste of government funds through false claims act litigation. However, it is more difficult for individual borrowers to get relief, particularly from burdensome student loan debt, through litigation.

A major problem is that courts have consistently held that there is no private right of enforcement under the Higher Education Act (HEA). Largely by default, most private enforcement of student loan violations, to the extent it occurs at all, is through the federal and state debt collection laws. The federal law is the Fair Debt Collection Practices Act (FDCPA).¹⁶ This type of enforcement is most appropriate and useful when abusive and harassing debt collection agency conduct is involved. However, there are severe limitations to using this law to enforce borrower rights.

Many students and borrowers who do bring private cases to address school-related problems face restrictive and unfair mandatory arbitration clauses. Some students have been able to get out from under these clauses and get their day in court, but only after extensive and costly litigation. For example, in a case involving a closed trade school, Silver State Helicopters, a California court denied Key Bank's motion to compel arbitration.¹⁷ However, other courts have forced students into arbitration.¹⁸

Another impediment to enforcement of rights occurs when schools violate the law, but then file for bankruptcy or close. The question is to what extent student loan creditors should be liable for the violations of schools. A favorite tactic of national banks is to ignore the rule, saying that it does not apply to them. Among other arguments, they claim that they are outside the reach of FTC enforcement. They also argue that state versions of the rule do not apply to them because such laws are preempted.¹⁹

At a minimum, the FTC and state regulators can address this problem by reviewing loan documents arranged by schools and sue schools that violate federal law by not including the holder notice or by contradicting or otherwise evading the holder requirement. In addition, we urge the FTC to establish direct liability for lenders for failing to include the holder notice. With respect to the guides, we recommend that it should be a specific prohibited practice for a school to provide a student with a loan that does not include the holder notice.

Federal student loan administrative cancellations provide relief to some borrowers, but these too are incomplete remedies. The three types of cancellations intended mainly to address fraud are closed school, false certification, and unpaid refunds. It is important to emphasize that not one of these programs provides general remedies for borrowers who attended a fraudulent school. For example, a school may routinely pay admissions officers by commission in violation of incentive compensation rules, fail to provide educational materials or qualified teachers, and

¹⁶ 15 U.S.C. § 1692.

¹⁷ Kilgore v. Keybank National Association, No. C 08-2958 THE (N.D. Ca. July 8, 2009).

¹⁸ See, e.g., Fallo v. High-Tech Institute, 559 F. 3d 874 (8th Cir. 2009) (Upholding arbitration clause in trade school case).

¹⁹ See, e.g., *Abel v. Keybank U.S.A.*, 313 F. Supp. 2d 720 (N.D. Ohio 2004); *Blanco v. Keybank USA*, 2005 WL 4135013 (N.D. Ohio 2005). See generally Deanne Loonin, "Holding Lenders Responsible for Ripped-Off Students", New America Higher Ed Watch (Feb. 17, 2009), available at: <http://www.newamerica.net/blog/higher-ed-watch/2009/guest-post-holding-lenders-responsible-ripped-students-10139>.

admit unqualified students on a regular basis. None of these violations is a ground for cancellation. Instead, each cancellation offers relief for a narrow set of circumstances.

The bottom line for many borrowers is the lack of relief. For example, NCLC attorneys recently met with a single mom with a 20 year old developmentally disabled son. Her son was eager to go to school a few years ago and study auto mechanics. He enrolled in a proprietary school in Connecticut. The mother discussed the son's disabilities with the admissions staff. They assured her that they would admit her son only if he passed rigorous admissions exams. He took the exams and was told he passed. It became clear early on that her son was not doing well. His mother went to the school and asked for a copy of his admissions exam. She was given a test that was not in her son's handwriting, although his name was written on it. The school ultimately admitted that this was a mistake and apologized. The son has left school and is emotionally devastated.

The school has moved on, but the mother and her son do not have this luxury until they can deal with the outstanding federal and private loans. The mother has spoken with a number of lawyers and has found, as most students do, that there are very few lawyers that have expertise in student loan matters. She works at a local non-profit and has a limited income that is just enough to disqualify her for legal aid. Even if she did qualify for legal aid, there are only scattered programs across the country that represent these clients. She cannot afford a private lawyer. A few pro bono lawyers have considered the case, but among other problems, it is difficult to bring a case when the son resides in Massachusetts, but the school is located in another state (Connecticut). There should be actionable claims against the school, but at best this will lead to a potential award of money damages, not cancellation of the loans. It is very difficult to hold the lenders liable for the school's fraudulent behavior even though the school and lender had a referral relationship. Further, none of the federal loan cancellations apply in this case.

Public enforcement is critical to help deter future problems and provide relief for those already harmed. Given the limits in providing relief for individual borrowers, we urge the FTC to work closely with the Department of Education to help those borrowers who are harmed by abusive practices and stuck with unmanageable debts.

Recommendations to Improve the Guides

The most important need going forward is for thorough, systematic, indeed aggressive government oversight and enforcement. Most of the ongoing problems with proprietary schools are within the FTC's traditional mandate to curb unfair and deceptive practices in the marketplace.

Despite the paramount importance of enforcement, our response to question #1 is that the guides remain useful in influencing state courts and regulators and useful to consumers bringing claims under their state unfair and deceptive acts and practices (UDAP) laws.

The lawsuits and enforcement actions described above mostly involve deceptive advertising and marketing and misrepresentations about educational quality and outcomes. The

guides in their current form highlight these important issues and are for the most part adequately targeted at these concerns.

We agree with the focus in the Guides on misrepresentations about employability and job placement. Section 254.4 in particular prohibits misrepresentations about the availability of employment and placement assistance. Section 254.4(d) is well-targeted to this problem as well, stating that it is deceptive for schools to misrepresent the availability of employment after graduation, success of graduates, or salaries.

Misrepresentations about job placement has been a long-standing problem, but is even more crucial during the recession. A number of school officials have disclosed in conference calls that due to the economic downturn, they are experiencing pressure to keep up job placement rates.²⁰

There are some cases in which schools may be violating existing standards for completion and job placement rates. Proprietary institutions of higher education are specifically required by law to provide programs of training that prepare students for “gainful employment in a recognized occupation.”²¹ In some cases, these schools are required to meet minimum completion and job placement standards in order to participate in the federal assistance programs. These requirements, however, do not apply to all schools. In addition, the laws that do exist are rarely enforced. For example, as part of research for NCLC’s June 2005 report, we sent testers to admissions offices at local campuses for each of the five corporations in our study, Career Education Corporation, Educational Management Corporation, Apollo Group, Corinthian Colleges and ITT Educational Services.²² Among other results, we found that none of the admissions representatives gave official completion rate statistics, even though they are required to do so by law and even though they were specifically asked for this information. Job placement rates were equally difficult to obtain.

It is difficult to obtain job placement data because in most cases, schools are not required to calculate rates. Even when it is available, given the lack of information about sources, it is nearly impossible for the average consumer to determine whether the rates are accurate. Because there is little or no oversight, there is tremendous room for the schools to manipulate the placement rates. The 2005 CBS 60 Minutes story about CEC described ways school officials pump up placement rates by including students placed in any job, not necessarily jobs they were trained for. A former CEC employee interviewed for that story said that it may be that students are considered “placed” when they are actually folding T-shirts at the Gap rather than working in fashion design.²³

Even a quick review of the data that is available reveals problems. For example, Tennessee’s regulator provides on-line completion and job placement data. In a quick search

²⁰ See, e.g., Final Conference Call Transcript, Career Education Corp.-Q2 2009 (Aug. 6, 2009).

²¹ 34 C.F.R. §600.5(a)(5).

²² National Consumer Law Center, “Making the Numbers Count: Why Proprietary School Data Doesn’t Add Up and What Can be Done About It” (June 2005), available at: <http://www.studentloanborrowerassistance.org/uploads/File/ProprietarySchoolsReport.pdf>

²³ CBS News Transcripts, 60 Minutes, January 30, 2005, “An Expensive Lesson; Career Education Corporation Schools.” Note that Congress held hearings in response to this show.

starting with the letter “A”, we found one school with dismal job placement rates. Allied Health Careers in Chattanooga, reported for 2008 at an overall rate of 50.8% (67 of 132 “placeable” students).” The cardiac monitoring program had a placement rate of 19%.²⁴

The key consumer protection issue is whether schools are accurately disclosing placement rates or more generally, misrepresenting the employment prospects for students. Low placement rates should be a warning signal to regulators in this area.

To help address this problem, we recommend that the guides explicitly state that schools engage in unfair and deceptive practices if they do not meet any applicable job placement and completion standards or fail to accurately disclose these rates. We urge the FTC, as a federal regulator with broad powers, to examine not only schools with low placement rates, such as the school described above, but also schools with consistently high rates. Very high rates year after year may signal that the school is manipulating the rates, clearly an unfair and deceptive practice.

This is a critical area and the FTC should think broadly about possible changes in the scope of disclosure requirements that would help avoid misleading students through selective and self-serving employment and placement information. We would welcome the opportunity to work with the FTC to develop tighter and targeted standards in this area.

Suggested Improvements

Responses to Selected Questions

Question #4 Clear and Conspicuous Definition

We agree that it would be helpful to define “clearly and conspicuously.” However, it is not necessary to reinvent the wheel. We recommend that the agency refer to the TILA Official Staff Commentary, 12 C.F.R. §226.17(a)(1)-1.

Question #6 Costs to Consumers

We do not believe that there any costs to consumers associated with the Guides. The only cost is due to the lack of enforcement and oversight.

Question #11 Costs for Businesses

We do not see how these guides could entail costs for businesses. The prohibited practices described in these guides are clearly unfair and deceptive business practices. While there are some costs associated with being honest and transparent, these should be obvious costs of doing business in a country that values a fair marketplace.

Question #13 Degree of Compliance Within the Industry

²⁴ <http://www.state.tn.us/thec/Divisions/LRA/PostsecondaryAuth/segpr/AlliedHealthCareers.pdf>

The initial sections of these comments present evidence to show that compliance is not occurring industry-wide.

Question #14 Guidance that May no Longer Be Needed

We believe that section 254.3 addressing improper endorsement or affiliations should remain, but these issues may no longer arise as frequently as in the past. As the accreditation system has become less restrictive, it has become easier for schools to find agencies that will endorse or accredit them. The most serious problem is the lack of standards and oversight by accreditation agencies. However, we still believe it is useful to include provisions in the guides prohibiting misrepresentations about affiliations or endorsements.

We also urge the FTC to closely monitor the Department of Education's upcoming negotiated rulemaking session. One of the issues on the agenda is the role of state authorization as a component of institutional eligibility.²⁵ This is a particularly critical issue as many states have gutted previously existing laws. In California, for example, the law that regulated for-profit colleges expired in 2007. As a result, until legislation recently passed in September 2009, the state had no regulatory system for the proprietary school sector. This is an area that could easily lead to misrepresentations from schools stating that they have state approval. In addition, the law passed in California is extraordinary weak with large-scale exemptions from coverage and automatic approval based solely on accreditation.²⁶

Question 15 and 16 Areas that are Not Adequately Covered

1. Marketing Practices

This response is appropriate for question #16 as well regarding technological or economic changes in the marketplace since 1998. We recommend that the FTC update the guides to better address current marketing practices.

The constant pressure to grow and show profits to investors has led many institutions to pressure staff to enroll as many students as possible. There is no question that the schools are focused on growth. Annual reports abound with detailed graphs and tables showing growth in enrollment, growth in campuses, and growth in profits. Even the Department of Education's Inspector General has warned that rapid growth is a risk factor for abuse in the federal financial aid programs.²⁷

A former Corinthian employee testifying before Congress in March 2005 stated that

²⁵ 74 Fed. Reg. 46399 (Sept. 9, 2009).

²⁶ See Elizabeth Redden, "Who Watches California For-Profits", Inside Higher Ed, (July 15, 2009); Betsy Imholz, "California Dreamin' Becoming Proprietary Students' Nightmare", New America Higher Ed Watch August 13, 2009, available at: <http://www.newamerica.net/blog/higher-ed-watch/2009/guest-post-california-dreamin-becoming-proprietary-students-nightmare-13914>.

²⁷ Statement of John P. Higgins, Jr., Inspector General, Department of Education, Before the U.S. House Committee on Government Reform (May 26, 2005).

“It was not until I stepped in the position and began learning the process by which Corinthian operated that I realized the extent of the unethical and underhanded proceedings that took place, all for the sake of mere admission enrollment numbers and quotas, regardless of the student’s needs, desires, and hopes for a better future.”²⁸

She testified further that many times attendance records were adjusted and altered to suit the need of the school to increase enrollments and that prospective students were enticed to visit the campus with the idea of attending one particular program, and if that program was not offered, strong-armed into attending another.

In 1992, Congress added an important provision to the HEA prohibiting institutions from giving “any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments” to admissions officers. The Department later gutted the incentive compensation limits, creating safe harbors that took the teeth out of the statutory prohibition. The underlying principle, however, remains in the statute, specifying that any attempt to tie staff compensation to the number of students enrolled is an inherent conflict of interest.²⁹

Although the Department of Education is primarily responsible for tracking violations of incentive compensation laws, the FTC should also focus on marketing and compensation structures in order to target potential problems. Employees at schools with aggressive marketing and commission-based compensation are more likely to mislead students. And misleading students is clearly within the FTC’s jurisdiction.

The general principles prohibiting unfair and false advertising are already reflected in the Guides. However, they could be updated to specifically describe more recent practices, including use of Internet banner ads to lure students.

The guides should be updated, but the main imperative is for the FTC to target misleading and false advertising in all forms. This is not difficult to find. For example, one of NCLC’s clients who signed up for a beauty school was given a packet of information including articles about hairdressers making \$300/hour and articles about “typical” salaries for hairstylists. A few examples of the information provided in this packet are included at Appendix B of the National Consumer Law Center’s June 2009 testimony to the Department of Education.³⁰ Rather than an article about Julia Roberts’ hair stylist (included in the packet and at Appendix B), prospective students should be given verifiable information about the average salaries that graduates of the particular program are earning.

²⁸ Testimony of Paula Dorsey, “Enforcement of Federal Anti-Fraud Laws in For-Profit Education”, Hearing Before the U.S. House Committee on Education and the Workforce (March 1, 2005).

²⁹ 20 U.S.C.1094(a)(20). For a description of problems and enforcement in this area, see National Association for College Admission Counseling, “NACAC Policy Brief: Incentive Compensation” (November 2006), available at: http://www.nacacnet.org/LegislativeAction/Recommendations/Documents/brief_incentivecomp.pdf

³⁰ The June 22, 2009 testimony is available at: http://www.studentloanborrowerassistance.org/uploads/File/Testimony_DOE_062209.pdf.

2. Targeting Admissions Practices

The guides should also be updated to address misrepresentations about admissions policies and standards. Many of the government investigations and private lawsuits described above involved violations of admissions rules and other misrepresentations about admission. This is a by-product of the schools' constant need to feed investors with new enrollments. The GAO report released in August 2009 also highlighted concerns about admissions. The current guides, particularly in section 254.5, prohibit misrepresentation with respect to the nature or extent of prerequisites. Another provision states that it is deceptive for a school to misrepresent that the lack of a high school diploma is not an impediment to successful completion or employment. These are useful provisions. In addition, the FTC should add provisions specifically prohibiting false or deceptive practices with respect to admissions testing and with respect to school failure to meet minimum standards for such testing. In addition, we recommend that a provision be added to the guide prohibiting schools from misrepresentation a student's suitability for a particular course.

3. Problems with Financial Aid Information

The provisions in section 254.4 regarding misrepresentations about financial assistance should be updated. The student assistance landscape has changed considerably since 1998. For example, there are many more private loan products on the market. Some of these products are originated by schools. Recent investigations have focused on improper and illegal arrangements between many schools and lenders to push particular products. Schools often use preferred lender lists. These can be very useful if offered to students as a convenience, but can also lure students improperly into more expensive products due to financial incentives for the schools. The FTC can collaborate with DOE to refer schools and in turn their students to the best available guidance for lenders about financial aid.

4. Technological Changes

The guides reference distance education and correspondence courses. This industry has also changed considerably since 1998. Distance education is much more entrenched and present at many types of schools. Regulators have struggled to keep up with the technology. We therefore do not believe that it is necessary to list particular technologies, as these are likely to change. However, section 254.4(c) should be amended to affirm that schools that offer distance education must not represent that they meet particular standards or accreditation if this is untrue.

Question 17 Conflicts with State Laws

The FTC Act has traditionally provided guidance for states, but does not preempt state laws. In addition, there is long standing precedent that FTC guides covering a particular area do not preempt state UDAP regulations that conflict with the guides or prevent states from finding UDAP violations in practices not prohibited by the guides.³¹

³¹ See generally National. Consumer Law Center, Unfair and Deceptive Acts and Practices §2.5.2 (2008).

If the FTC believes this is a concern, it could explicitly state that these guides do not preempt state law. In addition, to help consumers bringing state claims, the guides could affirm that violations of the guides are per se state UDAP violations.

APPENDIX A

Collected (and Unedited) Notes from Former McIntosh College Students

One of NCLC's clients, Zachary, is in his mid-20s and a student at Salem State College in Massachusetts. About five years ago, he saw an advertisement for a for-profit culinary school. He visited the school and was told about the "amazing" curriculum and strong job placement program. The price tag of about \$35,000, they said, would be easily repaid through lucrative earnings after graduation. Zachary was young and impressionable and eager to work in the culinary field, so he signed up. He found out almost immediately that the school's statements were empty promises. The teachers were inexperienced and the materials and equipment inferior. He asked about leaving and was told that he could not get a refund. He stayed and finished and was never given job placement assistance, despite his requests. He has since moved on and tried to put the experience behind him, but the loans will not go away. He thinks he will be able to manage the federal loans, but his two private loans with current interest rates of about 15% are unaffordable.

Zachary contacted other students who attended McIntosh College, the Career Education Corporation campus that he attended in New Hampshire. A partial list of these students' experiences, with names redacted, is attached below.

1. From Our Client Zachary

NAME- Zachary

GRADUATION DATE- June 2006

QUALITY OF INSTRUCTION- Extremely poor, the "teachers" were basically cooks/managers of local restaurants/hotels that were enticed by teachers hours and salary to try and teach. Some were better than others but none were certified teachers and lacked any formal experience or education.

JOB PLACEMENT HELP- I did not receive any job placement help but a "job fair" that basically had a few companies having you fill out applications. Most students had to contact companies themselves for the prospect of work. I landed my first job out of school without any help and quickly so how unprepared I was.

CURRENTLY WORKING IN FIELD- I am not working in the culinary field and have no desire too. About 2 months into the school I decided it might not be for me and tried to get out. They informed me that they had strict time frames something along the lines of the first 3 weeks is full refund, the next 3 is half and after that you can not receive anything. I was never informed of this

prior to signing up, I assumed like most college you can drop out and pay for the classes you have taken, not here.

HOW DID YOU OBTAIN SALLIE MAE LOANS- I received these Sallie Mae loans from the school. I was brought into a room for my first tour of the college and told I could fill out an application for the school and loans and be accepted within minutes. I found this a little strange because I thought it was somewhat a process to get all this in order. I then proceeded to have papers placed in front of me stating that the school is this much (I think 37,000) which I thought was high. They then realized this and said that out of school most are placed in jobs and start around 42,000 and easily can re-pay loans. I then felt coaxed and tricked into signing these loans and never was informed of other options, companies or ways to obtain aid for school.

STATUS OF LOANS- Loans are in deferment because I'm currently trying to complete a real education and receive a Bachelors degree from Salem State College.

Original loan- 30,000...Now is at 50,000 (they make over 500 a month in interest off me, around 5k a year) interest rate at 10.500%

Original Loan 7,500....Now is at 11,000...interest rate 14.875%

DID YOU RECEIEVE HELP FROM SALLIE MAE- When I went to attend Salem State College and they informed me about student loans I quickly researched my Sallie Mae loans more closely. I came across the outrageous interest rates and capitalized interest and immediately called to try and fix it to make reasonable payments. They persisted in saying that can't do anything and If I don't like the variable interest rate to consolidate elsewhere. (knowing full well that this is impossible). My parents have filed bankruptcy and cannot help and I'm trying to save for a house etc and have been crippled by loans I never wanted or understood. The company does not practice any business ethics and have no respect for customers or people as individuals.

Information Collected by Zachary From Other Former Students

NAME- STUDENT A

GRADUATION DATE- June 2003

QUALITY OF INSTRUCTION- "The quality of instruction was a joke and I agree totally with you that most of the teachers probably weren't real teachers. It was almost like they were learning as they go along. There's a lot about the staff I wont go on about but I can, everything

from favoring certain students to changing grades from F's to A's.-which I know for a FACT, not just hearsay.

JOB PLACEMENT- “They had a job placement chef who spoke to me 2-3 times and he pretty much told me it was my job to find placement which I did myself, but I have a friend whom he placed in a spot that only took 1-2 people every other year. He only did stuff like that for "promising" students which is nice way of saying kids he likes, cause I was one of the top of my class (deans list & everything) & my friend was far from it, so I don't know how he choose who to help.”

CURRENTLY WORKING IN FIELD- “I do still work as a cook/chef but since a fire claimed my Mother, house, possessions, and ruined my family financially. Due to the fire and everything legal involved with the house fire, I’ve been taking care of my father who has Early Onset Dimensia, which is a ton of work as it is. Though while I was working, I never made anywhere near the type of money they said i would be and never was able to even make the ridiculously high payments. When I started working after I got out of school, I was living on my own only making 7-8\$ hr. at ultra high class restaurants and Sallie Mae payments were more than 2&1/2 weeks of my paychecks, but after my 800\$ rent which was cheap at the time and my other bills, I never made enough to pay, and they never would work anything out or even consolidate.”

HOW DID YOU OBTAIN SALLIE MAE LOANS- “The School just said these were the loans that could help me go to school, I didn't even know anything about loans or that there were ANY other options. What a cruel lesson to learn to watch what you sign.

Just like I stated above the school pretty much did it all, I just signed the papers, which in turn signed my life away.”

STATUS OF LOANS-

“They said my total loan was more than Sallie Mae could lend at 1 time so I was forced to take 2 Sallie Mae loans out and they were:”

1. \$15,600.00 on 10/11/02-12.750% Interest
2. \$13,650.00 on 5/23/03-15.250% Interest

Total \$29,250.00

I'm in collections now for-

1. \$40,387.50

2. \$37,983.36 both includes their OWN interest and Fees for a grand total of roughly:
\$78,370.86

“What I borrowed=\$29,250.00

What it Cost me= \$78,370.86”

Close to \$50k in interest and fees

DID YOU RECEIVE HELP FROM SALLIE MAE- “Sallie Mae gave me the loans, and it was the worst lesson of my life. Their repayment plan was more than I was making and could survive on my own with. They took my tax return I’m ashamed to say, but honestly they were jerks and wouldn't even work or consolidate with me. After I had missed a couple payments they wanted it all at one time to catch up or they would impose all sorts of fees and whatnot. Soon it got out of control and now I have a huge debt over my head with no help. They wont work with me at all, what they call "working with me" is asking now for the whole sum of the loan. Which is impossible; especially after my family lost everything in a house fire last January (including my mother), and did that stop the calls? Nope.”

NAME- STUDENT B

DATE OF GRADUATION- June 2004

QUALITY OF INSTRUCTION- “I personally thought they just hired random chefs and they had no teaching abilities”

JOB PLACEMENT- “I have had to search for jobs myself. They have not really helped me out.”

CURRENTLY WORKING IN FIELD- “have yet to find a job in my field and was told when enrolled that it was a 98% job placement. Ask all the people I graduated with who actually have a job in the field. You won’t find many.”

HOW DID YOU OBTAIN SALLIE MAE LOANS- “They set me up to these loan, I went in tired a lot from working fulltime while attending school fulltime and I was miss lead in what the loans were and how my the interest rates were. Was under the impression none were higher then 8% turned out its 8% or so plus prime”

STATS OF LOANS- “My loans with Sallie Mae are def in collections. I cannot afford to pay them off. At one point the interest was almost 20% here are the rates they are at this moment.”

HAVE YOU RECEIVED HELP FROM SALLIE MAE- “I cannot consolidate them nor can I defer them with out paying a fee for each. I have not been able to pay a cent on these unfortunately.”

NAME-STUDENT C

DATE OF GRADUATION- “I was in school May 06 to June 07. I have not completed the externship portion of the degree because I cannot get a loan due to the amount of loans that I have already. This is preventing me from even graduating from the school.”

QUALITY OF INSTRUCTION- “The faculty was lacking to say the least, out of 15 chef instructors 3 to 4 actually made a dent in learning most just went through the motions.”

JOB PLACEMENT- “After school i went out west to CA they were no help with finding me an externship I finished and externship just not through the school the restaurant I worked at when I got to CA had there own externship plan I filled out the necessary paper work that McIntosh asked of me and even faxed them many times but no help all i get is a transfer call to financial aid telling me that I need 3,000 dollars to finish up and get a diploma, and when I was first told about how much the externship was it was \$750 now its more than 3 times as much.”

CURRENTLY WORKING IN FIELD- “I am still working in this field they also did not help with job placement or as I said before externship placement.”

HOW DID YOU OBTAIN SALLIE MAE LOANS- “When I decided to further my education in the culinary world I looked up schools online, within a half hour of sending requests of info I got a call, this should have been an inclination of what type of school that it is. When I arrived I was bombarded by financial aid and loans that I need to stay at that school. The financial aid department was the worst that I have ever seen at any college. I had been to two other school before McIntosh so I have dealt with financial aid before, late with stipend checks, almost every one, that was money to live with not play with, so you see the urgency, and never willing to work with anyone on loans. Just doing what they had to do to get loans no matter what interest rate, payment plan, ect...”

STATS OF LOANS-

“I have 4 loans

Loan 1 disbursed date 5/24/06 \$28,144 interest rate 12.25

Loan 2 6/9/06 \$2,625 interest rate 4.21

Loan 3 5/11/07 \$20,500 interest rate 9.75

Loan 4 5/11/07 \$3,500 interest rate 6.80”

Monthly rate now is \$582.99 and originally it was \$750

Principal balance 61,314.23 with interest almost \$100,000!

HAVE YOU RECEIVED HELP FROM SALLIE MAE- “My loans were in forbearance but when I asked to change my monthly payment they brought them up to current, and as of now I have to ask for another forbearance because they will not work with me ,i have tried many times but no give.”

NAME- **STUDENT D**

DATE OF GRADUATION- May 2003

QUALITY OF INSTRUCTION- “I felt the quality of the instructors was mediocre. They seemed like they were just chefs who were pulled off the street, no teaching abilities.”

JOB PLACEMENT- “I wasn't helped in the least with job placement. I had found a job on my own by the time school was done.”

CURRENTLY WORKING IN FIELD- “Yes I am still currently working in the field.”

HOW DID YOU OBTAIN SALLIE MAE LOANS- “The financial aid department had set up all my loans and just had me sign without really explaining what I was getting into. At 18 years old someone telling you to sign a piece of paper and you can go to college, thats what you do.”

SATUS OF LOANS- “I currently owe approximately \$27,000, with an interest rate of 13.875%.”

HAVE YOU RECEIVED HELP FROM SALLIE MAE- “I have not received any help and when I tried to reach them for an affordable payment they said there was nothing that could be done but a deferment, which would cost penalties and fees.