



December 19, 2012

David Vladeck, Director
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Director Vladeck:

We write to urge you to initiate rulemaking on the unfair competition problems that have arisen in the increased misleading advertising by private for-profit schools. As you know, in September, Senators Dick Durbin, Tom Harkin, Frank Lautenberg, and Barbara Boxer asked the FTC to investigate and increase consumer protections against marketing companies, or lead generators, that recruit for for-profit colleges, often using deceptive practices. We support that request, and we urge you to undertake a broader FTC effort that includes the for-profit higher education companies themselves. We think it is critical to consumer protection for U.S. students that you act to curb the particularly egregious abuses of this sector. We understand that you are planning to leave the FTC shortly, but we would be grateful for the opportunity to discuss this issue with you before you go in hopes that you will begin this critical work.

We would ask you to consider the following factors in weighing your decision:

- 1. Advertising within FTC Jurisdiction: Volume, Trend and National Scope.** National advertising by the for-profit college sector has increased dramatically over the past decade. It is difficult to watch any television programming or visit Web sites over several hours without now encountering it. Indeed, many large for-profit colleges spend more on lobbying and marketing than they do on educating their students. So in terms of sheer volume, the fair advertising mandate of the FTC is necessarily implicated. Further, the ads are increasingly national in scope. The online aspect to these schools and the many regional campuses they operate make the need for national standards compelling. Indeed, from the point of view of those for-profit educators who are well-intentioned, they need to know where the lines are in their marketing, and it is best provided on a national basis. They should not have to guess based on different enforcement standards coming from 50 different states or 1,500 different county prosecutors.

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2. **Irreparable Nature of Resulting Abuses.** The abuses that arise from for-profit college advertising and recruiting are unique. They involve massive boiler-room operations whose employees refer to students as “pieces of business” or even “asses in classes.” They involve reliance on representations from those employees by potential students, many of them young, low-income, and without access to reliable information, with results that are personally tragic. Students are falsely told that their course credits are transferable to traditional colleges, that a school’s national accreditation is superior to regional accreditation, that the certificate or degree they earn will qualify them for desirable positions, and that they will have no trouble obtaining high-paying jobs upon graduation. Students take out extensive federal and private loans to pay their tuition, fees, and other expenses, and then often default, ruining their credit and their lives. For-profit colleges have 13 percent of U.S. college students but 47 percent of loan defaults.
3. **The Special Obligation We Have to the Populations Affected.** A number of populations are disproportionately affected by the egregious misbehavior of many for-profit colleges. These include low-income people, people of color, immigrants, and former offenders. Two other groups are of particular concern to the Center for Public Interest Law. First are veterans. They are eligible for federal aid to pay for all of the charges of the for-profit schools – which average about three times the tuition and fees of public schools. Due to a loophole in federal rules (the 90-10 rule), veterans receive particularly aggressive targeting by these schools and their marketing operations. This population, who risk their lives for all of us, deserves better. The second population is also eligible for public support -- foster children. This is a group that the Center for Public Interest Law has been representing for the last 22 years. They have been removed from their parents due to abuse and neglect. They are also targeted and here, they have a special status among us – they are literally the legal children of state court judges, who assume full parental jurisdiction.
4. **Public Funds Lost.** As outlined below, the abuses by this economic sector have additional ramifications – they target populations eligible for special public funds, as noted above. For-profit colleges receive more than \$32 billion a year in federal student aid; the largest of them get an average of 86 percent of their revenue from taxpayer dollars. The default rates for public loans, and the waste of public funds where grants are involved – particularly GI bill funds – is now a source of national scandal.
5. **The Gap in Current Amelioration and the FTC Role.** Current efforts to police deceptive advertising by for-profit colleges are fragmented. The Department of Education has banned paying employees based on the number of students recruited, but the rules have not been strong enough, or sufficiently enforced, to end the abuses. The federal Consumer Financial Protection Bureau focuses

necessarily on the non-federal private student loan aspect of the abuses described above. The unfair competition and advertising features of current practice that underlie abuses are no longer easily addressable by private class action suit because of *Concepcion* and other cases allowing the offenders to implant adhesive arbitration clauses that now practically preclude effective remedy. A number of state offices of attorney general have addressed several narrow abuses – *e.g.*, focusing on the practice of paying recruiters a “bounty” based on those signed up for (publicly funded) tuition and fees – whatever promises may be made. But all of these efforts suffer from narrow scope and fragmentation. In contrast, an FTC trade regulation rule rises above state variations and sets up a preventive national floor of required honest disclosure.¹ Such a trade regulation rule may then be used to set up an industry wide standard for FTC enforcement, but perhaps more important, establish the lines enforceable by district attorneys and state attorneys general who are able to exercise more telling sanction under numerous state “little FTC acts.” In many states, violation of an FTC cease and desist order is *ipso facto* “unlawful” under their often more powerful state versions of the federal statute. Hence, a trade regulation rule can leverage compliance beyond the offices of the FTC itself.

The factors enumerated above explain why the comprehensive report on the sector issued last summer by Senator Harkin’s HELP committee referenced needed FTC action in its recommendations. And it is additionally underlined by the President’s recent Executive Order commanding federal attention to these abuses with respect to education for U.S. servicemembers and veterans.

Summary of Underlying Problem

To amplify the points made above, we present some basic facts about disturbing trends – most of them relevant to central FTC jurisdiction. Large numbers of private for-profit educational institutions aggressively market to students eager to obtain gainful employment. Enrollment at private for-profit schools has nearly tripled over the past 10 years, reaching 1.8 million by 2008. These schools charge high tuition and are cross-subsidized by federal (and some state) school finance programs designed to enhance opportunity. Tuition at a private for-profit school averages about five times the level at state schools. Most students at these schools do not graduate. For those who do, a low percentage are able to obtain employment related to their area of education — contrary to the advertising and believed outcomes promised. Half of the graduates of these schools leave these schools with \$31,000 or more in student debt. The former students are then unable to repay federally guaranteed loans, with repayment of loans for

¹ The historical FTC role in similarly addressing funeral home abuses and in other areas where adhesion and abuse were rife is a useful example and lesson. The FTC can create a national floor of required disclosures that will prevent practices that currently jeopardize and have, in fact, ruined the futures of so many of our veterans and our own – state parented – foster children.

for-profit schools at an abysmal 36% in 2009.² The result is not only loss of public funds, but student default and credit disparagement leading to tragic personal consequences.

Those making public policy must acknowledge that even in a model system, not every student will succeed from every school. And a varied array of higher education options is important for American employment in the increasingly flat world of commerce. But the current level of misleading advertising, sunk cost investment, and credit ruination is unacceptable. The revenue from many current for-profit educators is primarily directed not to education, but to marketing and profit.³ A third major expense account has become campaign contributions, heavy lobbying (using former government officials), and political action committee activity. Industry profits are cross-subsidized from public resources.⁴ Goldman Sachs owns 41 percent of one of the largest for-profit colleges, EDMC, and others seeing profit opportunity will add to that political imbalance *vis-a-vis* the unorganized, impoverished, and future interests who are too often their victims.⁵ As has been documented, veterans are among the most vulnerable of populations suffering immediate and future loss from regrettably widespread practices.

² See Julie Love, Los Angeles Times, *For Profit Colleges Slammed by Student Repayment Data* (August 16, 2010), at <http://www.latimes.com/business/la-fi-for-profit-colleges-20100816,0,1949022.print.story>.

³ For example, a December 2011 filing by the U.S. Securities and Exchange Commission revealed that Gary McCullough, former CEO of Career Education Corporation, received \$5 million in a golden parachute after resigning in the face of disclosed falsification of job placement rates. This perk came on top of \$4.6 million in compensation received in 2010. Career Education is the parent of the California School of Culinary Arts sued by attorney Ray Gallo representing 800 individual plaintiffs – who obtained a \$40 million settlement. See Erica Perez, California Watch, *For Profit College Firm to pay \$5 Million to ex-CEO* (December 5, 2011).

⁴ For example, about 82% of Career Education's \$1.7 billion in tuition revenue in 2010 comes from federal financial aid sources. That does not include substantial state scholarship funding. *Id.*

⁵ See New York Times, *With Lobbying Blitz, For-Profit Colleges Diluted New Rules* (December 9, 2011) at <http://www.nytimes.com/2011/12/10/us/politics/for-profit-college-rules-scaled-back-after-lobbying.html?pagewanted=all> Lobbyists for for-profit colleges have included former Senate Majority Leader Trent Lott, former House Majority Leader Dick Gephardt, and Obama communications director Anita Dunn. Heavy industry lobbying led to a major dilution of a key Obama reform aimed at holding for-profit colleges accountable, the gainful employment rule. Having weakened the rule, the sector is now aggressively challenging the final provision in federal court.

Within the past three years, the Harkin Committee,⁶ the General Accounting Office,⁷ the U.S. Department of Education,⁸ the National Consumer Law Center,⁹ and others¹⁰ have released reports outlining various aspects of the problem outlined above, including huge industry profit levels, disproportionate expenditure on promotion, and — increasingly — political influence. Many of the most comprehensive — and devastating — reports have been released within the last six months. They document strikingly high loan default rates, with bad outcomes for veterans and others.

Note that the for-profit schools' efforts to recruit veterans, in particular, increased markedly after the 2008 passage of enhanced veteran GI Bill vocational education funding. The so-called "90/10 rule" requires that at least 10% of for-profit college revenue must come from non-federal student aid — but the 2008 change meant that GI Bill revenues can be counted toward the non-federal 10%, allowing completely federally subsidized tuition and increasing incentives for unproductive education and stimulating unprecedented levels of drop-outs, unemployed former students, and federal loan defaults. The University of Phoenix went from \$77 million to \$218 million in 2010-11 in GI bill funds. However, graduation completion and employment success data indicate marginal success. For example, 68% of Kaplan University student veterans failed to graduate, compared to the highest veteran drop-out rate at public colleges of 26% (at the University of Texas). On September 23, 2011, PBS produced a Report focusing on veterans and private for-profit colleges entitled "Educating Sergeant Pantzke."¹¹ The recent report of the Senate HELP committee found that the top seven recipients of GI bill funds last year were all for-profit colleges.

⁶ U.S. Senate Committee on Health, Education, Labor, and Pensions, *Benefitting Whom? For-Profit Education Companies and the Growth of Military Education Benefits* (December 8, 2010).

⁷ U.S. General Accounting Office, *For-Profit Schools: Experiences of Undercover Students Enrolled in Online Classes at Selected Colleges* (October 21, 2011), at <http://www.gao.gov/products/GAO-12-150>.

⁸ U.S. Department of Education, at <http://www2.ed.gov/about/pubs/publications-reports.html>,

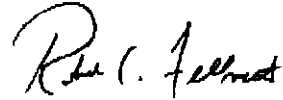
⁹ National Consumer Law Center, *State Inaction: Gaps in State Oversight of For-Profit Higher Education* (December 2011) (including appendix detailing availability of student relief within the 50 states).

¹⁰ See, e.g., Mamie Lynch, Jennifer Engle, and Jose L. Cruz, *The Education Trust, Subprime Opportunity: The Unfulfilled Promise of For-Profit Colleges and Universities*, Cruz, Lynch and Engle (November 2010); see also an analysis of this report in the CHRONICLE OF HIGHER EDUCATION (November 23, 2010).

¹¹ See <http://www.pbs.org/wgbh/pages/frontline/educating-sergeant-pantzke/>. See also the April 19, 2011 report on "60 Minutes" by correspondent Martin Smith, discussed at <http://www.pbs.org/wgbh/pages/frontline/programs/info/2912a.html>.

This is an area of national priority. It is central to FTC jurisdiction and purpose. We strongly urge you to take action, and we respectfully request a meeting with you to discuss as soon as you are able.

Very Sincerely,

A handwritten signature in black ink that reads "Robert C. Fellmeth". The signature is written in a cursive style with a large initial 'R'.

Robert C. Fellmeth
Director, Center for Public Interest Law

A handwritten signature in black ink that reads "David Halperin". The signature is written in a cursive style with a large initial 'D' and a long horizontal line extending to the right.

David Halperin
Consultant to the Center for Public Interest Law