



Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission

STATEMENT OF COMMISSIONER ROHIT CHOPRA

*In the Matter of University of Phoenix
Commission File Number 1523231*

December 10, 2019

Summary

- The FTC has uncovered that University of Phoenix, a massive for-profit university, scammed its students by luring them in with false job placement promises.
- Enforcement actions against bad actors in this sector can set the stage for student debt cancellation, revocation of taxpayer subsidies, and protection of hard-earned benefits for military service.
- This and other recent enforcement actions demonstrate the agency's reemergence as a critical watchdog of companies that abuse students, veterans, and taxpayers.

Introduction

Every year, roughly one million Americans default on their student loans. The consequences of default are devastating for both individuals and society. For-profit colleges enroll about 10 percent of students, but account for roughly 50 percent of defaults.¹

According to one analysis, students who attended just one of these colleges, University of Phoenix, owed nearly \$36 billion in federal loans as of 2014.² Many of them struggle deeply to repay: 72 percent of borrowers attending the school made no dent in their student loans at all three years after leaving school.³ During this time, most of them would have seen their balances balloon.

University of Phoenix is infamous for targeting servicemembers and veterans, who earn valuable benefits for their military service. These benefits translate into billions in revenues for the company and others in the sector.⁴ Just as the return of veterans from past conflicts led to an

¹ Howard R. Gold, *Who's at fault for student-loan defaults?*, Chicago Booth Review, (May 13, 2019), <https://review.chicagobooth.edu/public-policy/2019/article/who-s-fault-student-loan-defaults>.

² Adam Looney, Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults*, BROOKINGS PAPERS ON ECONOMIC ACTIVITY, (Fall 2015), <https://www.brookings.edu/wp-content/uploads/2015/09/LooneyTextFall15BPEA.pdf> at Table 5

³ See U.S. Department of Education, *Most Recent Institution-Level Data*, COLLEGE SCORECARD, (Nov. 20, 2019), <https://collegescorecard.ed.gov/data/> (three-year repayment rate calculated from most recent institution-level data).

⁴ University of Phoenix was the number one recipient of GI Bill funds from 2009 to 2017, collecting nearly \$2 billion in tuition and fees. Veterans Education Success, *Should Colleges Spend the GI Bill on Veterans' Education or Late Night TV Ads?*, (Apr. 2019), https://vetsedsuccess.org/wp-content/uploads/2019/04/VES_Instructional_Spending_Report_FINAL.pdf at 6. In 2015, the Department of Defense sanctioned the University of Phoenix for its misconduct. *DoD Letter to University of Phoenix*, MILITARY TIMES, (Oct. 7, 2015), <https://ec.militarytimes.com/static/pdfs/DoD-Letter-to-University-of-Phoenix-10-09-2015.pdf>.

explosion in for-profit college fraud,⁵ similar problems coincided with the passage of the Post-9/11 GI Bill in 2008.⁶

After the financial crisis, many wondered whether the FTC would ever act to tame the latest abuses in the industry, despite its clear and unambiguous authority to do so.⁷ Today, the FTC is demonstrating that the agency is here to stay when it comes to policing the sector. The Commission has settled charges with the University of Phoenix that it deceived students about their job prospects. The company will pay \$50 million in restitution and will cease collection of certain unpaid tuition balances.⁸

I am hopeful that this action, along with recent actions against DeVry Education Group and Career Education Corporation, mark the beginning of a more concerted effort by the FTC to safeguard students and veterans from the consequences of debt and default.

History of FTC Efforts in the For-Profit Sector

The FTC has broad authority to target unfair and deceptive practices in the for-profit school sector, but its approach has varied over the years.

In the late 1960s, the passage of the Higher Education Act, combined with benefits for those returning from Vietnam, opened the floodgates to widespread fraud.⁹ In response, the FTC undertook a major industry-wide investigation, and began bringing lawsuits against for-profit colleges – filing more than two dozen from 1970 to 1974 alone.¹⁰ The Commission also introduced a Guide for Private Vocational and Home Study Schools, which detailed practices the FTC determined were unfair or deceptive. Finally, in 1976, the FTC published a landmark 552-report laying out problems in the sector and proposing a new enforcement approach.¹¹

The FTC's report was remarkable both for its breadth and for the extent to which its findings echo across the decades. After an investigation that included 87 volumes of documents, 44 days of hearings, and testimony from more than 400 witnesses, the Commission laid out in extensive detail some of the key problems in the sector. Among the illegal tactics the Commission found to be common were deceptive lead generation, false claims of affiliation with government or major

⁵ David Whitman, *Vietnam Vets and a New Student Loan Program Bring New College Scams*, THE CENTURY FOUNDATION, (Feb. 13, 2017), <https://tcf.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/?session=1>.

⁶ More than two decades ago, through the so-called 90/10 rule, Congress capped the percentage of revenue that for-profit schools can earn from U.S. Department of Education programs at 90%. See 20 U.S.C. § 1094(a)(24). This was a market test designed to ensure programs would meet quality standards that would attract students paying out of pocket. Many bad actors found a loophole and instead decided to engage in predatory recruiting of those with federal military benefits. See Veterans Education Success, *What is the 90/10 Loophole?*, <https://veteranseducationuccess.org/90-10-loophole>.

⁷ For example, in 2009, the National Consumer Law Center noted that “the FTC has mostly ignored the proprietary school sector” since the early 1990s. Deanne Loonin, *Comments in Response to Federal Trade Commission Request for Public Comments on Vocational School Guides Review*, NATIONAL CONSUMER LAW CENTER, (October 16, 2009), https://www.ftc.gov/sites/default/files/documents/public_comments/16-c.f.r.part-254-private-vocational-and-distance-education-schools-vocational-school-guides-543519-00008/543519-00008.pdf.

⁸ This settlement will not affect a borrower's federal loan obligations. Those who have been deceived should consider exercising their legal right to apply for discharges, as discussed further below.

⁹ See Whitman, *supra* note 5. As noted in the report, before he gained fame exposing the Watergate scandal, Carl Bernstein penned a groundbreaking report on vocational schools in Washington, D.C. that were defrauding students.

¹⁰ *Id.*

¹¹ Federal Trade Commission, *Proprietary Vocational and Home Study Schools. Final Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 438)*, (Dec. 10, 1976), <https://files.eric.ed.gov/fulltext/ED134790.pdf>.

employers, misrepresentations about transferability of credits, and “an appalling lack of substantiation for the job and earnings claims that are made.”¹²

The report criticized not only unscrupulous schools but also the efficacy of the FTC’s enforcement strategy. In particular, the report found that the industry was failing to comply with the Commission’s voluntary guides, and that “case-by-case adjudication was not achieving the requisite prophylactic effect.”¹³ As a result, the Commission turned to rulemaking, an effort it had begun in 1974, to establish industry-wide requirements backed by stiff civil penalties.

The Commission’s proposed rule required affirmative disclosure of placement and graduation outcomes, mandated a cooling-off period before enrollment, and laid out procedures for refunds for students withdrawing early. However, the rule was vacated in 1980,¹⁴ and the Commission returned to the approach that the agency’s report concluded was ineffective.

The last two decades have laid bare the problems with the FTC’s post-1980 approach. In the 2000s, for-profit enrollment surged, and a comprehensive Senate report showed that many of the problems highlighted by the FTC in the 1970s had reemerged.¹⁵ Veterans returning from Iraq and Afghanistan faced particularly problematic recruitment, and publicly traded companies like DeVry, University of Phoenix, and Career Education Corporation took in billions in veterans benefits. My former colleague at the Consumer Financial Protection Bureau, Holly Petraeus, noted that many colleges saw these students as “nothing more than dollar signs in uniform.”¹⁶

Recent FTC Actions

The latest epidemic of job placement misrepresentations and other forms of deception led to scores of actions by state Attorneys General. In spite of this renewed surge in for-profit college fraud, the FTC largely stayed on the sidelines – until more recently.

In 2016, the FTC charged DeVry with blatantly misrepresenting job placement outcomes to potential students.¹⁷ The company claimed 90 percent of its graduates obtained jobs in their field within six months of graduation, and that graduates earned 15 percent more than graduates of other colleges and universities. As alleged in the FTC’s complaint, these claims were unsubstantiated, and the company agreed to a multimillion dollar judgment settling charges.¹⁸

¹² Id. at 123 (lead generation); 381 (false claims of governmental or employer affiliation); 97 (transferability); 385 (placement).

¹³ Id. at 2. The Washington Post weighed in that “the FTC’s investigations have been necessarily tedious, its proceedings ponderous, and its penalties limited.” Id. at 2-3.

¹⁴ In 1980, the Second Circuit vacated the rule on the ground that the Commission failed to define with specificity the practices determined to be unfair and deceptive, among other grounds cited. See *Katherine Gibbs School v. FTC*, 612 F.2d 658 (2nd Cir. 1980).

¹⁵ For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success. Volume 4 of 4, 112th Cong., S. PRT. 112-37, (July, 30, 2012). https://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf.

¹⁶ Hollister K. Petraeus, *For-Profit Colleges, Vulnerable G.I.’s*, THE NEW YORK TIMES, (Sep. 21, 2011), <https://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html>.

¹⁷ The case followed the FTC’s 2015 action against Ashworth College, which is not eligible to receive federal funds. Federal Trade Commission, *Ashworth College Settles FTC Charges it Misled Students About Career Training, Credit Transfers*, (May 26, 2015), <https://www.ftc.gov/news-events/press-releases/2015/05/ashworth-college-settles-ftc-charges-it-misled-students-about>.

¹⁸ Federal Trade Commission, *DeVry University Agrees to \$100 Million Settlement with FTC*, (Dec. 15, 2016), <https://www.ftc.gov/news-events/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc>. This case was brought almost exactly four decades after the Commission charged DeVry’s then-parent, Bell & Howell Company, with similar misconduct, a case that settled in 1980. See *In the Matter of Bell & Howell Co., et al.*, 95 FTC 761 (1980).

Earlier this year, the FTC brought an enforcement action against Career Education Corporation (“CEC”) for recruiting students who were lured to the school based on false pretenses. As alleged in the FTC’s complaint, the company used lead generators who falsely claimed to be affiliated with the U.S. military, tricking students who were looking to serve their country.¹⁹ This action followed FTC prosecution of lead generators like Sun Key that enabled CEC’s fraud.²⁰

Today’s action involves an industry giant, the University of Phoenix. The company launched a major “Let’s Get to Work” marketing campaign promising consumers a career fast-track to “partner” companies like Microsoft and Twitter. In the years after the recession when good jobs were scarce, this message surely held a lot of appeal for struggling Americans. But – as alleged in the complaint – it was false. No such partnerships existed. As the complaint details, a senior manager sounded the alarm that this marketing was misleading, but the company’s top executives ignored the warning, hoping the campaign would differentiate Phoenix from its competitors.²¹ Today’s order returns millions of dollars to students deceived by this campaign.

Moving Forward

I am glad to see the Commission renewing, on a bipartisan basis, its commitment to tackling fraud in this sector, and I thank our staff for taking on large industry players who flouted the law and exploited both taxpayers and students. The Commission should commit to several steps as it continues its work in this sector:

(1) End Wasteful Government Subsidies for Bad Actors

Taxpayers should not be subsidizing fraud. The Departments of Veterans Affairs, Defense, and Education have mechanisms to suspend participation of bad actor schools from their programs, and the Federal Trade Commission plays an important role. For example, the Secretary of Veterans Affairs can deny GI Bill participation to any program that “utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading.”²² The law specifically contemplates a role for the Federal Trade Commission to produce findings from its investigations so that the Secretary of Veterans Affairs can act on them.²³ The FTC has significant expertise in identifying unlawful, deceptive practices, and the conduct outlined in the

¹⁹ Federal Trade Commission, *Operator of Colorado Technical University and American InterContinental University Will Pay \$30 Million to Settle FTC Charges it Used Deceptive Lead Generators to Market its Schools*, (Aug. 27, 2019), <https://www.ftc.gov/news-events/press-releases/2019/08/operator-colorado-technical-university-american-intercontinental>.

²⁰ Federal Trade Commission, *FTC Takes Action against the Operators of Copycat Military Websites*, (Sep. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites>. The FTC has brought actions against both lead generators, like Sun Key, and those who purchase leads, like CEC. This sends a clear message that schools cannot outsource fraud to third parties with impunity.

²¹ Complaint ¶¶ 18-29.

²² 38 U.S.C. § 3696. See also Federal Trade Commission and Department of Veteran Affairs, *Memorandum of Agreement Between the Federal Trade Commission and the Department of Veteran Affairs*, (Nov. 29, 2018), https://www.ftc.gov/system/files/documents/cooperation_agreements/ftc-va_memorandum_of_agreement_2018_1.pdf.

²³ Baldwin, E. and Meyer, C., *Memorandum RE: Veteran Affairs’ Failure to Protect Veterans From Deceptive Recruiting Practices*, THE JEROME N. FRANK LEGAL SERVICES ORGANIZATION, (Feb. 26, 2016), https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59fa600671c10b386ab1d1f9/1509580807045/Yale_Law_School_Analysis_of_VA_Authority.pdf (analyzing VA authority to cut off GI Bill funds, and the role of the FTC in coordinating efforts).

Commission’s complaints suggests that the Secretary of Veterans Affairs may need to disqualify or sanction companies subject to recent FTC enforcement actions.²⁴

(2) Facilitate Student Loan Cancellation for Victims

Under the Higher Education Act, borrowers with federal student loans who were subjected to unlawful conduct may be eligible for student loan cancellation by the Secretary of Education, who can then recoup funds for taxpayers from bad actors.²⁵ When our investigations determine that deception has taken place, we should aim to publish evidence that supports borrowers seeking to exercise their rights, which ultimately increases the cost of violating the law. This will further our goal of deterrence, while also leading to more substantial relief for borrowers.²⁶

(3) Ban the Worst Practices and Quickly Attack Emerging Risks

Given the decades-long problem of deception regarding job placement misrepresentations, the Commission should seek to eradicate the problem more systemically. By noticing market players of previous Commission orders on job placement misrepresentation, the Commission can trigger stiff civil penalties for those who repeat that conduct.²⁷ The Commission should also consider putting into place clear rules to clean up the market, such as a ban on placement or accreditation misrepresentations, given the limitations of case-by-case enforcement.²⁸ Finally, the Commission must work hard to quickly address emerging risks that are the root causes of student loan distress – such as those posed by unscrupulous online program managers signing up students for online education²⁹ – rather than expending our limited resources on scams spawned by these bad actors.³⁰

²⁴ To be eligible for federal aid, institutions must be accredited. It is worth noting that each of the institutions charged by the FTC since 2016 is accredited by the Higher Learning Commission, which is supposed to be ensuring that its members treat students “ethically, respectfully, and professionally” in recruitment. Higher Learning Commission, HLC Policy: Recruiting, Admissions and Related Institutional Practices, (Nov. 2017), <https://www.hlcommission.org/Policies/recruiting-admissions-and-related-institutional-practices.html>. The FTC’s lawsuits indicate they did not.

²⁵ 20 U.S.C. § 1087e(h).

²⁶ The principle of canceling loans that were extended on a fraudulent basis goes back decades, and has earned bipartisan support. In 1975, former FTC Chairman and then-Secretary of Health, Education, and Welfare Caspar Weinberger made clear that his Department would recognize fraud as a valid defense to repayment, and he underscored the need for vigorous oversight. See David Whitman, Vietnam Vets and a New Student Loan Program Bring New College Scams, THE CENTURY FOUNDATION, (Feb. 13, 2017), <https://tcf.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/?session=1>.

²⁷ See 15 U.S.C. § 45(m)(1)(b) (authorizing civil penalties against firms that knowingly engage in conduct determined by the FTC, in a litigated order, to be unlawful.) In 1971, the Commission upheld a finding (Initial Decision Fndg. 17) that a school violated the FTC Act when it falsely claimed “hundreds” of its graduates obtained jobs in their chosen field after graduation. See *In the Matter of E. Detective Acad., Inc., et al.*, 78 FTC 1428, 1461 (1971). The FTC should notify schools about this and any other applicable orders, which can trigger civil penalty liability for those that engage in similar misrepresentations.

²⁸ These limitations are outlined in detail in the Commission’s 1976 report, which concluded that, in contrast to litigation, “rulemaking sets bright-line standards for all to see and follow in the future, [thereby allowing] each industry member to fashion its behavior accordingly and to be assured that all his competitors are subject to similar requirements.” Federal Trade Commission, *Proprietary Vocational and Home Study Schools. Final Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 438)*, (Dec. 10, 1976), <https://files.eric.ed.gov/fulltext/ED134790.pdf> at 540. The Second Circuit’s concerns with the Commission’s previous proposal could be easily remedied.

²⁹ Hall, S. and Dudley, T., *Dear Colleges: Take Control of Your Online Courses*, THE CENTURY FOUNDATION, (Sep. 12, 2019), <https://tcf.org/content/report/dear-colleges-take-control-online-courses/>.

³⁰ The Commission is at its most effective when it targets the causes of borrower distress, and not just the symptoms. Through “Operation Game of Loans,” the Commission has devoted substantial resources to shutting down student debt relief scams, but these actions may not have been necessary had there been more effective oversight of for-profit colleges and student loan servicers by the FTC and other federal regulators. In contrast, Commission initiatives like the Holder Rule and enforcement efforts against deceptive lead generators target the core incentives driving fraud.

Conclusion

Today's action is an important milestone for the Commission. It concludes a years-long investigation of a massive for-profit college owned by influential investors, and it returns money to students who have been harmed. This and other recent actions finding unlawful, deceptive conduct will lay the groundwork for additional recoveries by student loan borrowers and taxpayers. Moving forward, it will continue to be critical to identify emerging unlawful practices in this sector *before* they inflict pain on individuals, honest businesses, and the country.