Comments of the National Association for College Admission Counseling
on the Federal Trade Commission Private Vocational and Distance Education School Guides

Submitted October 16, 2009

Matter No. P097701

The National Association for College Admission Counseling (NACAC) appreciates the efforts of the Federal Trade Commission to provide meaningful regulatory information to private vocational and distance education schools through its guides. NACAC further appreciates the opportunity to provide comments on the guides in response to the *Federal Register* notice published July 30, 2009.

We have structured our comments to conform to the questions posed in the *Federal Register* notice.

1. Is there a continuing need for the Guides as currently promulgated? Why or why not?

We believe that the need for the Guides is critical. As evidence for the need for such guidance, we have attached NACAC's testimony to the U.S. Department of Education on problems we believe to be widespread among publicly-traded for-profit colleges, particularly as they relate to marketing and recruitment (see "Attachment" below, particularly Attachment 2: "Higher Education Act Fraud Alert"). We believe that greater enforcement of the underlying regulations is also necessary to better protect consumers against potentially misleading or fraudulent recruiting and enrollment tactics in the sector.

2. What benefits have the Guides provided to consumers? What evidence supports the asserted benefits?

We are unsure what (if any) benefits are conveyed to consumers through the Guides. Since the Guides are primarily for institutions, we question whether consumers know that these protections exist. We believe that this information should be made more widely available to consumers, a recommendation that we cover in greater depth below.

3. What modifications, if any, should the Commission make to the Guides to increase their benefits to consumers?

We believe that the Guides can be of benefit to consumers, provided they are written in layman's terms and are presented in a manner that is easily located and understood. We believe that the FTC's effort to prevent scholarship scams provides a model for ways in which statutory information (the Scholarship Fraud Prevention Act of 2000) can be relayed to consumers in an effective, easily-understood manner. Our primary recommendation, therefore, is that the Commission consider developing a separate, consumer-focused outreach effort designed to ensure that consumers understand rules governing advertising and marketing at for-profit vocational and distance education institutions.

4. Should the Guides define "clearly and conspicuously," given the guidance that industry members should make certain disclosures clearly and conspicuously? If so, why and how? If not, why not?

We believe that the Guides should define "clearly and conspicuously," as we do not believe that the information intended for consumers via these regulations are, in fact, reaching consumers. Moreover, we believe that many individuals employed by covered institutions are not aware of the regulations. Defining the terms for publishing information about these regulations would help ensure that the statutory intent is realized.

Questions 5, 8, 13 and 15.

Questions 5, 8, 13 and 15, as listed in the *Federal Register* notice, all pertain to evidence of practices that may be in violation of the rules listed in the Guides, or of practices not currently covered by the Guides. In response to these questions, we again refer to the testimony submitted to the U.S. Department of Education, particularly Attachment 2 (Higher Education Act Fraud Alert). We believe there is sufficient activity to warrant the continued and expanded dissemination of the information covered in the Guides, as well as ground that may be covered additionally. The last edition of the Guides was created prior to the expansion of commerce and advertising to the Internet, which has created innumerable opportunities for advertising and marketing. We recommend that the FTC conduct a thorough review of Internet-based marketing to gain a full understanding of the scope of Internet-based marketing in this sector. We believe that such a review may well result in the identification of practices not currently covered by the Guides.

17. Do the Guides overlap or conflict with other federal, state, or local laws or regulations? If so, how?

The Guides contain information that is related to restrictions contained in the Higher Education Act on the recruitment and enrollment of students .We believe that the FTC could step up enforcement, as well as identification of deceptive practices, by working with the Department of Education as it monitors compliance with HEA rules. Such collaboration could result in significantly enhanced consumer protection.

In conclusion, we believe there is a critical need to disseminate the information contained in the Guide to consumers and to institutions covered by the regulations. Moreover, we believe that increased enforcement efforts are necessary to ensure that the regulations contained in the Guides provide meaningful protection for consumers.

ATTACHMENT TO NACAC COMMENTS
FTC MATTER NO. P097701

Testimony of the National Association for College Admission Counseling (NACAC)
Higher Education Act Statutory Ban on Incentive Compensation for Admission and Financial Aid Officers

Presented June 22, 2009
U.S. Department of Education Public Hearing, Philadelphia, PA

About NACAC

NACAC is a non-profit association of nearly 12,000 high school counselors and college admission officers across the United States. The association represents more than 1,600 high schools and 1,100 not-for-profit colleges and universities. Founded in 1937, NACAC's core mission is to provide a code of ethics for the college admission counseling profession. NACAC's *Statement of Principles of Good Practice* constitutes the guiding principles for professional college admission practice in the United States.

Ethical Admission Practice

NACAC's *Statement of Principles of Good Practice* states that members "will not offer or accept any reward or remuneration from a college, university, agency, or organization for placement or recruitment of students. Members will be compensated in the form of a fixed salary, rather than commissions or bonuses based on the number of students recruited."

Association members stress that NACAC's core principles are intended to serve the student interest in the transition from secondary to postsecondary education. Members will readily acknowledge that the number of students enrolled in a given academic year is a matter of great importance to all institutions of higher education. However, reducing the basis for compensation to the number of students enrolled in any circumstance introduces an incentive for recruiters to actively ignore the student interest in the transition to postsecondary education, and invites complications similar to those that preceded the enactment of the ban on incentive compensation under the 1992 Higher Education Act reauthorization.

Our historic concern with the treatment of admission officers as professionals, rather than salespersons, is rooted in the interest of students in transition to postsecondary education. Because the transition to higher education is an unsystematic, often opaque process that individuals possessing varying levels of 'college knowledge' must navigate, the information asymmetry between the employees in charge of recruiting and prospective students is immense. In an unregulated environment, the potential for misrepresentation and outright fraud is a clear and present threat, which can result in harm to students and, in the case of federal aid and loans, to the taxpayer. Indeed, the recognition of this asymmetrical environment and its potentially detrimental effects on students was the founding purpose for NACAC in 1937.

Examples of such information asymmetry include:

- **Lack of access to information about higher education is a well-documented challenge among under-served populations**. The lack of information about college makes low-income students particularly susceptible to misrepresentation of information about a college or course of study. Aggressive recruiters whose livelihoods depend on meeting a weekly quota will have little incentive to accurately represent the goodness of fit between a potential student's interests or qualifications and the institution's program.

- **Lack of information about financial aid is a second well-documented challenge among under-served populations.** Commissioned sales creates an incentive to obfuscate the source and nature of the financial means by which prospective students will pay for their education. The complexity of the modern financial aid system is indisputable, and unscrupulous institutions and recruiters use this complexity to their advantage. Indeed, NACAC has long argued for greater clarity in the presentation of financial aid packages at institutions of all types. In an environment where commissioned sales is accepted practice, the potential for manipulation and deception of financial aid information is far greater.

- **Potential students trust colleges as gateways to certifications, licensing, and professional education.** Understanding the level of education that is required to work in a professional field is a complicated task. A major challenge for secondary school educators, in fact, is to impart upon students the appropriate institutional fit for pursuing certain careers. Many students trust that the college they attend will steer them in the right directions. Non-traditional or under-served populations, who may be years removed from the structure of high school and/or whose high schools may not be equipped for college counseling, are often at the mercy of recruiters or admission offices for guidance. Whereas consumers may be prepared for a high-pressure sales pitch at a car dealership, home improvement store, or other commercial setting, few are aware that a college recruiter might employ the same tactics. Taking advantage of this trust enables recruiters to exploit a potential student's lack of awareness of the terms of the interaction.

Students trust postsecondary educational institutions and their admission officers because counseling—as opposed to sales or marketing—has historically been a prominent part of ethical admission practice at American colleges and universities. NACAC's commitment to the counseling component of higher education admission is contained in the association's "Statement on the Counseling Dimension of the Admission Process at the College/University Level." (See Attachment 1) According to the statement:

> *Increased recruitment efforts, the introduction of marketing concepts and the trend toward enrollment management have led to the perception, real or imagined, that recruitment and marketing techniques are taking the place of counseling. It has been suggested that while encouraging the optimum fit between student and institution was once considered important, what counts most today is using any means possible to attract students to meet enrollment and economic targets.*
>
> *NACAC stands firm in its position that counseling has been and continues to be an essential, if not the most essential, ingredient in the college admission process. The development of human resources and the assurance that each student will be helped to*

realize his/her educational potential can only strengthen and perpetuate the strong democracy we so proudly enjoy—the democracy that, in turn, encourages and supports our diverse educational system.

NACAC considers the commitment to professional admission practice as an ethical imperative that serves student interests. The additional commitment to upholding the law constitutes an obligation to protect students and the taxpayers who underwrite the aid system that offers access to the full diversity of postsecondary institutions and provides an opportunity for a diverse range of institutions to operate.

The ban on incentive compensation as a "front-end" protection for Federal student aid programs is among the last-remaining federal protections against waste, fraud and abuse. Without such a restriction, unscrupulous institutions may:

- Use aggressive and misleading recruiting tactics to bolster enrollment numbers;
- Manipulate the academic program, such as awarding inappropriately high or passing grades to students who have not successfully completed coursework;
- Manipulate output measures, such as the student loan default rate, to mask serious integrity risks that result from the inappropriate recruitment of students.[1]

Even in the absence of outright manipulation, the risks incurred by institutions that use overly aggressive marketing tactics to enroll students who are unable or unlikely to benefit from an educational program are unacceptable for proper stewardship of taxpayer funds. As such, maintaining the integrity of the incentive compensation ban is a critical last line of defense against the potential for waste, fraud and abuse in the Federal student aid programs.

Failure of Regulatory Purpose

The Higher Education Act statutory ban on incentive compensation states:

[An] institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in ensuring enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive federal student assistance. (20 USC §1094(a)(20))

This statute is worded similarly to NACAC's guidance on the same matter: "Members will be compensated in the form of a fixed salary, rather than commissions or bonuses based on the number of students recruited." In NACAC's judgment, the wording in each instance is sufficiently clear to dictate forms of practice allowable under both the law and the accepted standards of the college admission profession.

[1] See Final Audit Report ED-OIG A02H0007, U.S. Department of Education, Office of Inspector General, May 19, 2008; See also "Lawsuit Accuses U. of Phoenix of Protecting Its Default Rate at Students' Expense," *Chronicle of Higher Education*, January 14, 2009.

In 2001-02, the Department ostensibly developed the current regulatory "safe harbors" to clarify federal policy toward enforcement of the incentive compensation statute. In our opinion, as expressed in our comments at the time, most 'safe harbors' were neither necessary nor appropriate given the clarity of statute. NACAC also expressed concern that the regulatory safe harbors were enacted despite clear statements of concern from procedural and substantive standpoints. In the first instance, the Web-based Commission on Education, which issued a report in 2000, noted that the Department of Education stated that "this [incentive compensation] provision could only be changed through new legislation."[2] However, the Department subsequently embarked on a regulatory change in 2001. In the second instance, the regulations were passed over the objections of the two major associations representing admission officers (NACAC and the American Association of Collegiate Registrars and Admission Officers, or AACRAO), as well as members of the negotiated rulemaking committee.

Shortly after the regulations were finalized, the U.S. Department of Education's Office of Inspector General noted:

> *We nonconcurred with one provision to change the incentive compensation regulations. This provision would allow institutions to pay third parties based on success in securing enrollment, without limitation on the incentive nature of those payments. We do not believe that the existing statutory ban on incentive compensation allows any incentive payments to entities involved in recruiting based on their success in enrolling students.(Semiannual Report to Congress No. 45, U.S. Department of Education, Office of Inspector General, p. 9)*

NACAC sought more information about why the Inspector General's 'non-concurrence' was overridden by the Administration via the Freedom of Information Act (FOIA). NACAC's request for information about the statutory grounds for implementing the safe harbors over the objection of the Inspector General was denied, as were subsequent appeals.

Despite their ostensible purpose, the safe harbors have failed to (1) provide additional clarity, and (2) satisfy statutory intent of preventing the use of incentive compensation for admission and financial aid staff. We believe that the regulations, combined with what appeared to be a de-emphasis of oversight within the Department[3], created an environment in which enforcement was effectively gutted.

Practical Effects of Regulatory Loopholes and De-Emphasis of Regulation

[2] "The Power of the Internet for Learning: Final Report of the Web-Based Education Commission," December 2000.

[3] An October 30, 2002 memo to the Chief Operating Officer of the Federal Student Aid from Deputy Secretary William D. Hansen directing that violations of the incentive compensation ban are punishable by fines, rather than return of Title IV funds, stated, "I have concluded that the preferable approach is to view a violation of the incentive compensation prohibition as not resulting in monetary loss to the Department….Improper recruiting does not render a recruited student ineligible to receive student aid funds for attendance at the institution on whose behalf recruiting is conducted." This approach fails to take into account the monetary loss to the Department incurred by student loan defaults which are likely to occur whether there is "documented misrepresentation," as the memo suggests, or simple obfuscation of the terms of enrollment or repayment of financial obligations.

In the seven years since the enactment of the regulatory safe harbors, there is evidence of widespread disregard for the incentive compensation statute. Documentation of this phenomenon is included in this written testimony as Attachment 2. This documentation provides what we believe is a critical mass of evidence to suggest that the practice of compensating admission officers via commission constitutes standard practice at many institutions of higher education, particularly in the publicly-traded for-profit sector. Our concern for compliance with this long-held ethical and legal principle extends to colleges of all types. Indeed, NACAC's *Statement of Principles of Good Practice* binds our postsecondary members (all of whom are not-for-profit institutions) to this principle in addition to their legal obligation. However, evidence that incentive compensation is more the exception than the rule in the publicly-traded for-profit sector is plentiful. Prominent examples include:

- *"Telemarketing—that's how enrollment at Lehigh Valley College often begins. Recruiters must make 125 calls and schedule five appointments a day, and enroll 10 applicants a month. Top performers get vacations to the Bahamas. Those who fail to sign up enough applicants are asked to resign." (Allentown Morning Call, April 24, 2005) Among the Morning Call's investigative findings were "aggressive and sometimes misleading sales tactics are at the center of LVC's recruiting. School officials give prospective students inaccurate or incomplete information."*

- *"Admission counselors [at Career Education Corporation's Brooks College]…were expected to enroll three high school graduates a week, regardless of their ability to complete the coursework. And if they didn't meet those quotas, they were out of a job. [Admission counselors] all say the pressure produced some very aggressive sales tactics." (60 Minutes, January 30, 2005)*

- *"Many former students say admissions representatives told them whatever they thought the applicants needed hear to get them to sign on the dotted line. The students claim admissions reps said it was a prestigious school that they would be lucky to gain admission to, when it actually accepts anyone eligible for a student loan. The graduates say they were misled about the terms of their loans; many have since realized that by the time they finish making payments, they'll have paid more than $100,000 for just 15 months of school…Two former admissions representatives who worked at [California Culinary Academy] confirm that students were misled…The two women describe a high-pressure sales environment where the reps focused solely on meeting enrollment numbers, not on finding students who would benefit from the program." (San Francisco Weekly, June 6, 2007)*

- *"[A] serious finding regarding the school's substantial breach of its fiduciary duty; specifically that the University of Phoenix (UOP) systematically engages in actions designed to mislead the Department of Education and to evade detection of its improper incentive compensation system for those involved in its recruiting activities." (U.S. Department of Education Program Review Report, February 5,*

2004, PRCN 200340922254) In the report, the Department unearthed a recruiting strategy, operating in plain view, designed to deceive the Department of Education. The Department's report found that the admission compensation structure at Phoenix was exclusively based on success in enrolling students, that methods for enforcing quotas on admission officers included a high-pressure "red room" strategy, and that the mantra for recruiters was to get "asses in classes."

Taken together, the pattern of non-compliance with statute appears to take place in a systematic fashion, in nearly complete disregard to the statute and the principles it embodies.

Conclusion

Despite the ostensible goal of 'clarifying' statute, the regulatory safe harbors promulgated in 2002 appear to have effectively gutted the incentive compensation ban contained in the Higher Education Act. Accordingly, we recommend two primary courses of action:

1.) **In light of evidence of non-compliance, make a comprehensive effort to assess the extent of compliance among higher education institutions.**

2.) **Ensure clear and consistent guidance within the Department regarding oversight of the statutory ban on incentive compensation as a critical student and taxpayer protection.**

3.) **Re-open rulemaking to craft regulations that adhere to Higher Education Act statute banning incentive compensation.**

Attachment 1
Statement on the Counseling Dimension of the Admission Process at the College/University Level

The National Association for College Admission Counseling (NACAC) has long been an advocate of the counseling dimension of the college admission process. The Association was founded in 1937 to establish a code of ethics that would guide colleges and universities in their relationships with students and secondary school counselors and, concomitantly, to promote the interests of students over those of institutions.

As the door to higher education opened wider and greater numbers of students were encouraged to seek admission, there developed a need to help students understand the differences among the variety of institutions and the array of educational programs available to them. It also became necessary to determine the quality of students' secondary school preparation and to direct them to programs of study that would enable them to continue to grow both personally and academically.

Because of the increased diversity of the American system of postsecondary education, the need continues today for helpful guidance to assist students in making decisions to best meet their individual needs among the full range of postsecondary choices. In addition, the cost of higher education today and the heightened concern regarding families' ability to pay for it place a high demand on the need for accurate, timely financial aid and planning information. Such guidance and counseling must come from both the secondary school counselor and college admission counselor.

While the traditional college-going population remained stable in recent years and the predictions of dramatically declining numbers remained largely unrealized, we are now beginning to experience real demographic shifts in the population that may have a significant influence on college and university enrollment in the coming years. Increased recruitment efforts, the introduction of marketing concepts and the trend toward enrollment management have led to the perception, real or imagined, that recruitment and marketing techniques are taking the place of counseling. It has been suggested that while encouraging the optimum fit between student and institution was once considered important, what counts most today is using any means possible to attract students to meet enrollment and economic targets.

NACAC stands firm in its position that counseling has been and continues to be an essential, if not the most essential, ingredient in the college admission process. The development of human resources and the assurance that each student will be helped to realize his/her educational potential can only strengthen and perpetuate the strong democracy we so proudly enjoy—the democracy that, in turn, encourages and supports our diverse educational system.

NACAC believes that precollege guidance and counseling is a developmental process that begins early in the educational experience and continues through secondary school and on into college. College admission counselors stand with school counselors at the juncture between secondary and postsecondary education and together they play a pivotal role in helping to ease students' transition from one level to the next. We also believe in the dignity and worth of every human being and in the right to develop their full potential. Counseling individual students about postsecondary plans and during the school to college transition is a fundamental aspect of the admission process of institutions of higher learning.

The College Admission Counseling Initiative

The foundation for counseling students for college admission is the emphasis on meeting students' needs. This perspective assumes the availability of individual and group counseling aimed at helping students understand their personal aptitudes, abilities, interests, and values in relation to the offerings of a particular college or university. Appropriate counseling interventions can occur during college day/night programs, college fairs, interview sessions, campus tours, and student/parent information sessions on campus.

Institutions that promote a counseling perspective provide assurance that the admission staff includes trained professionals with appropriate counseling and related skills, and there is a willingness to assume responsibility for all institutional personnel who may become involved in the process of counseling students for admission (e.g. alumni, coaches, faculty, and students on campus). Further, effective linkages with secondary schools, community agencies, other campus student services offices, and the college faculty are developed and lead to open communication, understanding, and cooperation. Such programs are also characterized by the following:

• A clearly defined institutional mission, including written goals and objectives of the admission program, and an evaluation component that seeks to understand what is being done and that serves as a basis for major institutional decisions.

• Availability of clear, accurate information about the institution, including admission requirements, educational programs, costs and financial assistance that will enable students to reach sound decisions.

• Emphasis on equity and accessibility and a commitment to the needs of underrepresented students. This assumes the presence of positive attitudes that promote student development regardless of race, sex, or disability and support the inclusion of role models among the staff and faculty who reflect these characteristics.

• Delivery of services according to ethical practices developed by NACAC and other similar education groups.

• Referral of students to other institutions when it is determined that students' needs can be better met elsewhere.

• Emphasis on student retention, including the existence of adequate academic and other support services to insure the success of admitted students.

• A supportive administration and campus environment that promotes student growth and development.

NACAC encourages all collegiate institutions to review their admission programs from this perspective. The entire process is predicated on the ability of professionals to relate to and respond to student needs. This is done in collaboration with other counselors and educators who share these beliefs and place the highest value on student development and the realization of student potential

Attachment 2
Higher Education Act Fraud Alert

Recent evidence suggests widespread disregard for Congressional oversight of the integrity of student aid programs, putting students and taxpayers at risk. In a time of tight budgets, safeguarding the integrity of student aid funds should be the top priority for Congress and the Administration to ensure the most efficient and effective use of taxpayer funds for student aid.

Federal Investigations

- Corinthian Colleges ordered to repay $776,241 to the Department of Education for violations of student aid procedures at Bryman College (CA). (*Chronicle of Higher Education*, May 16, 2005)

- The University of Phoenix paid $9.8 million to settle an investigation by the Department of Education into recruiting practices that violate the ban on "commissioned sales" of admissions. The Department found that Phoenix "bases [recruiters'] salaries solely on the number of students they enroll." According to testimony in a later lawsuit by the former CFO, UOP had held back this report because of the fear of negative news coverage. (U.S. Department of Education, Program Review Report, PRCN 200340922254, 2004, *Inside Higher Ed*, January 17, 2008)

- The U.S. Department of Education's OIG found that seven institutions, working with the Apollo Group's Institute for Professional Development, violated the Higher Education Act ban on "commissioned sales" of admissions from 1999-2001, resulting in the OIG's recommendation that more than $70 million in federal funds be returned. (OIG Semiannual reports to Congress, 2002-2003)

- The National Consumer Law Center found that in 2003, the Department of Education's Office of Inspector General (OIG) made public seven audits documenting serious fraud and abuse in school administration of federal student aid programs. In decisions that required the return of more than $18 million in federal student aid, the Department found widespread evidence of the following: (1) schools closing without warning; (2) Routine fabrication of financial aid documents; (3) Falsification of ability-to-benefit tests; (4) Failure to comply with the 90/10 rule; (5) Overstating program length; (6) Disbursement of funds to ineligible students.

- The Securities and Exchange Commission has launched an informal inquiry into stock-option granting practices at Corinthian Colleges, Inc., the company announced. (Yahoo! Finance News, August 18, 2006)

- Apollo Group, Inc., was notified in June 2006 that the Securities and Exchange Commission was conducting an informal investigation relating to the company's stock option grants. (APOL Form NT 10-Q, Filed July 10, 2006, p. 2)

- The U.S. Department of Education New York Regional Office (NYRO) has determined that Interboro, through its parent company to EVCI Career Colleges Holding Corporation, must reimburse the DOE as a result of the program review pointing to failure to correctly follow the procedures of the Ability to Benefit admission exams (ABT) regarding some 79 graduates and liability for TAP grants received by these students. Also, NYRO has indicated it is referring the program review to the responsible division in DOE for possible administrative action against Interboro including suspension, fines or termination. Interboro closed on December 21, 2007, due to comply with the New York Board of Regents regulations regarding ABT. (Press Release from EVCI Career Colleges, December 17, 2007).

- Federal officials raided the National School of Technology in Miami and two campuses of Florida Career College in October 2007. Although the Department of Education would not comment on the substance of the investigation, media reports noted that 90 percent of National School of Technology's students are paying for their education with some sort of loan. The school's student loan default rates reached almost 49 percent in 1989 but stands at 12.7 percent in 2005, according to the federal government. (*The Sun-Sentinel,* October 17, 2007)

- On January 17, 2008, an Assistant U.S. Attorney in the Civil Division of the U.S. Attorney's Office for the Eastern District of Pennsylvania contacted Kaplan Higher Education Division's CHI-Broomall campus and made inquiries about the Surgical Technology program, including the program's eligibility for Title IV federal financial aid, the program's student loan defaults, licensing and accreditation. The inquiry is presently proceeding on an "informal, voluntary basis." (Kaplan 10-K report to the SEC, 2008)

- The Technical Career Institute has been found to have improperly paid $440, 487 to FFEL lenders to reduce the institutions cohort default rate in order to continue to participate in the FFEL and Direct Loan programs. To avoid listing students as defaulting on their loans, TCI returned all student funds to FFEL lenders then proceeded to collect debt directly from students with stricter terms than those under FFEL loans. (United States Department of Education, Office of Inspector General, Final Audit Report, *Technical Career Institutes, Inc.'s Administration of the Federal Pell Grant and Federal Family Education Loan Programs*, May 19, 2008)

State Investigations

- The Washington State Higher Education Coordinating Board required the Business Career Training Institute (BCTI) to repay $63,000 in state need grants for low-income students after the school admitted falsifying enrollment tests to admit unqualified students. (*Portland Oregonian,* March 15, 2005)

- The California attorney general's office examining allegations of fraud against a number of for-profit institutions, including ITT and Corinthian. (*Chronicle of Higher Education*, October 1, 2004)

- The Oregon Department of Education placed the Business Career Training Institute (BCTI) on probation after it found that the school was "unfair and deceptive" in how it recruited, admitted, and enrolled students. (*Portland Oregonian*, 2/5/2005) The state found that recruiters were paid on the basis of the number of students enrolled, which is a violation of the Higher Education Act. (OAR-581-045-0061, "Private Career School Agents, February 2005, Oregon Department of Education) BCTI subsequently suspended classes with no warning to students or state administrators. (*Portland Oregonian,* March 15, 2005) The Accrediting Council for Continuing Education and Training revoked the Business Career Training Institute's accreditation on March 15, 2005. In April 2005, the Council barred two BCTI presidents, Tom Jonez and Morrie Pigott, from ever again operating a school accredited by that council. BCTI had closed just days before, on March 11, 2005, after years of allegations of non-compliance with federal education and auditing regulations and several student lawsuits.

- The New Jersey Department of Labor and Workforce Development issued a letter to the Sanford Brown Institute-Iselin, owned by Career Education Corporation, expressing concerns regarding allegations against SBI-Iselin raised in the January 2005 CBS News *60 Minutes* report on for-profit colleges. DLWD requested that the school provide justification for continued operation of the school in light of the allegations raised in the report. SBI-Iselin submitted a written explanation in July 2005, and school administration met with DLWD officials in September 2005. At this meeting, SBI-Iselin received confirmation that it could continue with the submission of its license application, a process which had been delayed by DLWD. (CECO SEC Form 10-Q, Filed November 2, 2005, p. 20)

- In January 2003, the New York State Comptroller's Office began an audit of DeVry New York's compliance with the New York State Tuition Assistance Program Grant ("TAP") requirements for the three

year period ending June 2002. Fieldwork was completed in June 2003 and a preliminary report was issued in July 2003. The Company responded to the preliminary report, disagreeing with some of the findings in the report. Subsequently, the Company received an amended report and responded again. In the first quarter of fiscal 2005, the Company received the final report and determination of disallowance that resulted in financial liability to the Company. The final liability was in an amount for which the Company had previously accrued. The Company has remitted the required claim of disallowance and the matter is now closed. (DeVry, Inc., SEC Form 10-Q, Filed May 11, 2005, p. 35)

- The Florida Attorney General's Office widened its investigation of Florida Metropolitan University in June 2006, seeking school records involving job-placement rates, grading, instructor qualifications, financial aid and course prices. The AG Office had announced in November 2005 that it was investigating FMU, owned by Corinthian Colleges, over the company's "advertising and marketing practices." At that time, the Florida AG subpoenaed documents from the last five years related to advertisements, training of FMU admissions officers, complaints, compensation and identity of admission representatives, and other documents. (*Tampa Bay Business Journal*, November 22, 2005; *Wall Street Journal* Online, June 22, 2006)

- Kentucky's Attorney General has asked a court to strip Decker College, a for-profit institution, of its charter, thus prohibiting it from doing business in Kentucky. Investigations by Kentucky officials revealed widespread fraud and abuse, forcing the institution to close temporarily. The investigation and court procedures in this case are ongoing. (*Louisville Courier-Journal*, November 5, 2005)

- In New York, investigations into for-profit college activities lead to a moratorium on the establishment of new programs by for-profit colleges while policymakers examined ways in which rules protect against fraud and abuse. The New York State Board of Regents has approved new regulations on for-profit institutions, including a transition period before new for-profit colleges are authorized to award degrees and a requirement that institutions enact stronger and more transparent admissions policies. (*Inside Higher Education*, May 24, 2006)

- In June 2006, California legislators considered a bill that would require for-profit institutions to report graduation and job-placement rates to the state. This bill was introduced after activists argued that weak reporting rules give for-profit colleges an open door for false advertising practices. The reporting bill, however, was amended so that it will merely establish a working group on the issue. This legislation follows an earlier law, the Private Postsecondary and Educational Reform Act, that required non-Western Association of Schools and Colleges accredited institutions to report program data to the California Bureau for Private Postsecondary and Vocational Education. A law passed in 2003, however, weakened that act by exempting regionally accredited institutions. (*Inside Higher Education*, June 22, 2006)

- The New York State Education Department ordered Taylor Business Institute, a commercial two-year business college, to close as of January 2007. The school was highly criticized for its poor curriculum, absence of leadership, high staff turnover, and high attrition rate of 80 percent. The Department also mentioned that more than 90 percent of students at Taylor had never received a high school degree. (*New York Times*, September 28, 2006)

- The Florida Attorney General's Office has settled with Florida Metropolitan University, a for profit school that was accused of misrepresenting transfer value of credits to former students. Under the $99,900 agreement, FMU (which changed its name on November 5, 2007 to Everest University) says it will maintain a "transfer center" and work out transfer agreements with other colleges and universities. Even though no wrong doing was admitted, the settlement touched on the students' main complaint that they were not clearly told by school officials that credits earned may not be accepted at other schools. There are still over 100 pending lawsuit by former FMU students. (*St. Petersburg Times*, November 5, 2007)

- Career Education Corporation (CEC) was forced to pay $200,000 to the State of Pennsylvania after the Attorney General reached an Assurance of Voluntary Compliance with the Lehigh Valley College (LVC) operated by a subsidiary of CEC, Allentown Business School after a state-led investigation. The

investigation finds LVC guilty of violating the Consumer Protection Law by failing to provide explanation and individual attention as promised to students regarding financial aid repayment guidelines and interest rates, using quotas for enrollment as well as incentive-based compensation for admission counselors and steering students towards one lender. The suit also finds that the students were misled in regards to post-graduation employment, compensation and transferability of credits to other institutions. (Assurance of Voluntary Compliance settlement, Court of Common Pleas for Lehigh County, PA, February 20, 2008)

- Texas Attorney General filed suit under the Texas Deceptive Trade Practices Act against Kaplan Higher Education Corp. which operates Career Centers of Texas alleging that the "electricians" program being offered by this school misled students. Allegedly, the school was claiming in market and recruitment material that the students could obtain a full license to conduct a range of resident and commercial electrical work with a 900 hour course for a fee of $10,000.00. Texas claims, however, that this program is not at all in line with the actual regulations to get an electricians license which requires testing under the Texas Electrical Safety and Licensing Act and a specified number of hours of on-the-job training with a licensed electrician rather than coursework at a college. The court asks to halt the misleading promotion, refund tuition paid by the students who were misled and request civil penalties of $20,000.00 per violation of the law. (Attorney General of Texas press release, October 16, 2006)

Media Reports

- CBS News reported that recruiters for Career Education Corporation's (CEC) Brooks College employed high pressure sales tactics, and were expected to meet quotas of enrolled students. At other CEC campuses, reporters revealed that recruiters admitted clearly unqualified students, presumably to meet sales quotas. (*60 Minutes*, January 30, 2005)

- 60 Minutes' report resulted in a hearing of the House Education & Workforce Committee on March 1, 2005, during which evidence of continued improprieties were provided by a former admission officer at one of Career Education Corporation's campuses.

- In Oregon, former employees of American InterContinental University Online (owned by Career Education Corporation) described the institutions "admission" tactics as little more than "high pressure sales," as recruiters were dogged by supervisors with constantly escalating enrollment targets, misleading sales scripts, and the belief that managers wanted enrollees regardless of their ability to pay tuition. (*Portland Oregonian*, February 20, 2005)

- Lehigh Valley College, owned by Career Education Corporation, is reported to have practiced illegal recruiting, enrollment, and grade reporting in Pennsylvania. Five complaints were submitted to the Pennsylvania Department of Education, which did not act on the complaints as they were "out of its purview." (Allentown *Morning Call*, April 25, 2005)

- In early February 2007, the *New York Times* ran a story chronicling the latest troubles for the University of Phoenix. According to the article, current and former students of the university both online and on campuses in Arizona, California, Colorado, Florida, Michigan, Texas, and Washington have complained of recruiting abuses, unqualified professors, and low academic standards. The university's stock fell greatly at the end of 2006 amidst resignations of top officials at Apollo Group. The article mentions a 16% graduation rate among all Phoenix students, and 4% rate among online students. About 95% of Phoenix instructors are part-time. (*New York Times*, February 11, 2007).

- In interviews with both former admission officers and students, *San Francisco Weekly* pointed out the deceptive practices of the California Culinary Academy (CCA) since Career Education Corporation took ownership of the school in 1999. These anonymous former admission officers tell the paper that they would tell the applicants anything they needed to hear to sign on the dotted line and admits anyone eligible for a student loan and a pulse. The students said that there were misled with high placement rates and

unattainable salaries in the application material and conversations with admission officers. (*San Francisco Weekly*, June 6, 2007)

- In an article dated July 14, 2007, *The Kansas City Star* pointed to many struggles University of Phoenix is having regarding increasing its profits. Among the quotes, Trace Urdan, a senior analyst with the investment bank Signal Hill, says that the parent company Apollo is sending a message that they are "chasing after growth for growth's sake" in order to increase their stock value. (*The Kansas City Star*, July 14, 2007)

- A wrongful termination lawsuit against the University of Phoenix revealed evidence of the continuing use of recruiting practices in violation of the incentive compensation prohibition. Although the university claims to use an intricate system for evaluating recruiters taking into account enrollment numbers, but not solely using these numbers as a measure performance, several documents surfaced suggesting that enrollment numbers were the key factor in determining job performance. A recruiter received credit for an enrolled student was only if that student attended at least three classes or three weeks. In addition, failure to meet certain quotas set for a month would result in decreases in salary and possibly termination. (New America Foundation, February 19, 2009)

Lawsuits

- A group of students have filed suit against the ECPI College of Technology in Greenville, SC, alleging that the school is a "fraud and a sham," and alleging that training at the school is "severely deficient." (*Greenville News*, August 11, 2005)

- Institutions owned by Corinthian Colleges and Career Education Corporation face lawsuits across the country from current and former students. Lawsuits present allegations of "systemic deceptive trade practices," including: (1) Falsification of grades to maintain enrollment; (2) Misleading information about transferability of credit; (3) Illegal recruiting and compensation practices (*Chronicle of Higher Education*, 10/1/2004; *Miami Herald*, 3/11/2005; Tacoma *News-Tribune*, 4/12/2005)

- Former students of the Sanford-Brown Institute in Landover, Maryland issued a complaint in March 2006 alleging that SBI broke the MD consumer fraud act by "misrepresenting or failing to disclose, among other things, details regarding instructors' experience or preparedness, availability of clinical externship assignments, and estimates for the dates upon which the plaintiffs would receive their certificates. The complaint also states the institution failed to provide promised instruction, training, externships and placement services. (Career Education Corporation, SEC Filing 10-Q Form, November 7, 2006, p. 76)

- Shareholders of ITT and Career Education Corporation are attempting to file class action suits against the companies for allegedly using misleading financial information to artificially inflate the value of their stock. (*Chronicle of Higher Education*, October 1, 2004)

- On March 21, 2005, a class action complaint was filed in the Superior Court for the State of California against Brooks College, a school owned by Career Education Corporation. The complaint alleges that the college violated California Business and Professions Code and Consumer Legal Remedies Act by allegedly misleading potential students regarding the admission criteria, transferability of credits and retention and placement statistics as well as engaging in false and misleading advertising. (Career Education Corporation, SEC Form 10-K, Filed May 3, 2007)

- A wrongful termination suit by a former professor and "educator of the year" at American InterContinental University (AICU) against Career Education Corporation in Los Angeles indicates that fraudulent enrollment practices enabled that institution to receive federal student aid funds. According to the lawsuit, AICU enrolled clearly unqualified students, enrolled "imaginary" students, falsely advertised job placement rates, and falsified reports to sustain enrollments. (*New York Times*, May 15, 2005)

- In January 2002, a graduate of one of DeVry University's Los Angeles-area campuses filed a class-action complaint on behalf of all students enrolled in the post-baccalaureate degree program in Information Technology. The suit alleges that the program offered by DeVry did not conform to the program as it was presented in the advertising and other marketing materials. In March 2003, the complaint was dismissed by the court with limited right to amend and re-file. The complaint was subsequently amended and re-filed. During the first quarter of the Company's fiscal year 2004, a new complaint was filed by another plaintiff with the same general allegations and by the same plaintiff's attorneys. Discovery continues but there is no determinable date at which this matter may be brought to conclusion. (DeVry, Inc., SEC Form 10-Q, Filed May 11, 2005, p. 25)

- In November 2000, three graduates of one of DeVry University's Chicago-area campuses filed a class-action complaint that alleges DeVry graduates do not have appropriate skills for employability in the computer information systems field. The complaint was subsequently dismissed by the court, but was amended and re-filed, this time including a then current student from a second Chicago- area campus. Discovery continues but there is no determinable date at which this matter may be brought to conclusion. The Company has accrued $0.5 million representing the estimated minimum amount to resolve the two class-action claims. (DeVry, Inc., SEC Form 10-Q, Filed May 11, 2005, p. 25)

- On August 25, 2005, a class action was filed against Career Education Corporation (CEC) through its subsidiaries by eight former students allege that defendants made fraudulent misrepresentations and violated the Missouri Merchandising Practices Act by misrepresenting or failing to disclose, among other things, details regarding instructors' experience or preparedness, estimates for starting salaries of graduates and curriculum, that credits earned were transferable at Sanford-Brown College (subsidiary of CEC). The plaintiffs also allege that admissions representatives had sales quotas for enrolling new students, directly in opposition to the Higher Education Act. The plaintiffs, through the complaint, accuse the defendants of failing to provide the promised instruction, training and placement services. This matter has been settled as of May 2007. (Career Education Corporation, SEC Form 10-Q, Filed May 3, 2007)

- In December 2005, former students commenced a putative class action against DeVry University and DeVry Inc. ("Defendants") in Los Angeles Superior Court, alleging that the defendants failed to comply with disclosure requirements under California Education Code relating to the transferability of academic units earned. This case was settled in 2007. (DeVry, Inc., SEC Form 10-K, Filed August 24, 2007, p. 36)

- On July 21, 2006, a class-action securities fraud complaint was filed in Federal District Court in the Southern District of New York against EVCI Career Colleges Holding Corporation, parent of Interboro Institute. The complaint alleged that the company had cheated in determining whether student were eligible for federal and state financial aid and had fired employees for failing to meet enrollment quotas. The complaint indicated that unethical practices at the corporation went even further than those outlined in a 2005 NY State Education Department investigation. (*New York Times*, July 24, 2006)

- The *Seattle Times* reported in early August 2006 that Crown College of Tacoma would pay over $87,000 to settle claims by six students who alleged the school misled them about whether their credits would transfer to other colleges or universities. The settlement involved the third such lawsuit against the school. In January 2006, Crown College was ordered to pay almost $77,000 in a case that involved a student who said the college had told her she could transfer her credits to Gonzaga University. (*Seattle Times*, August 5, 2006)

- On September 6, 2006, the Ninth U.S. Circuit Court of Appeals reinstated a lawsuit against the University of Phoenix that alleges the institution obtained federal funds under false pretenses by paying recruiters on the basis of how many students they enrolled. The case, brought against the University of Phoenix by two former recruiters, was dismissed by a U.S. District Court in California in 2004. (*Chronicle of Higher Education* and *Inside Higher Education*, September 6, 2006) In May 2007, The U.S. Supreme Court declined a request from University of Phoenix to intervene in this lawsuit, letting the lawsuit proceed despite the institution's objections. (*Chronicle of Higher Education*, May 4, 2007)

- The University of Phoenix has been sued by the Equal Employment Opportunity Commission for employment discrimination. The EEOC charged the University of Phoenix preferred hiring admission counselors who belonged to the Church of Jesus Christ of Latter-day Saints over those who did not. The suit was filed on behalf of four current or former non-Mormon University of Phoenix enrollment officers. It alleges that after these four men complained internally, the University of Phoenix transferred all of them and terminated one of them. The suit was filed as a class action. (*Inside Higher Ed*, September 29, 2006).

- A class action lawsuit has been filed by Kahn Gauthier Swick, LLC in the United States District Court for the District of Arizona on behalf of shareholders who acquired Apollo Group stock and securities between November 28, 2001 and October 18, 2006. The suit charges violations of federal securities laws, including backdating of stock options.

- An insurance company for the Business Computer Training Institute, which closed in July amidst allegations of federal student-loan fraud and other improper practices, has agreed to pay $9 million to former students in a class action lawsuit. The students had accused the institute of fraud, breach of contract, and of breaking Washington State's consumer-protection laws. The settlement could benefit as many as 28,000 students, and negotiations were underway for a second settlement in the amount of $55 million. (*Chronicle of Higher Education,* May 14, 2007)

- Oakland City University, a nonprofit college in Indiana, agreed to pay $5.3-million to settle a complaint by a whistle blower that maintained the institution offered improper incentives to student recruiters. The former admissions director at Oakland City claimed that he and others were paid in commissions and bonuses based on their ability to enroll students. (*Chronicle of Higher Education,* July 31, 2007)

- Corinthian Colleges, a large vocational school chain based in California, has agreed to pay $6.5-million to settle a lawsuit alleging they engaged in unlawful business practices by exaggerating record of placing students in well-paying jobs and forcing their recruiters to meet a pre-set quota of new enrollments. (*LA Times,* August 1, 2007)

- A class action suit was filed against Career Education Corporation alleging that their California Culinary Academy misrepresented that its admissions were selective, its program elite and its degree prestigious. Also, alleging CCA was erroneously saying that upon graduation well-paying jobs would be waiting and students' education loans would be readily repayable. The plaintiffs allege that none of this information was true when they were informed of it or even when they went to look for jobs. They also seek to prove that CEC, or CCA, accepted undisclosed benefits from lenders to place students in loans that exceed market rates. (*Chronicle of Higher Education,* October 1, 2007)

- Chubb Institute, a chain of career schools owned by High Tech Institute, has lost its accreditation in Chicago by the Accrediting Council for Continuing Education and Training (ACCET) and is being sued by former students in New Jersey and Pennsylvania alleging they misrepresented job placement figures. A branch of Chubb is also closing in Virginia due to financial problems due to alleged mismanagement and an unresponsive administration. The ACCET claims the Chicago school did not have "required prerequisite courses" and instructors adjusted test scores by deleting questions that were not covered so that most students in the class had an 'A'. (*The Washington Post*, August 13, 2007)

- The Apollo Group was forced to pay an estimated $277.5 million to shareholders who sued for securities fraud alleging that the company officials withheld a harshly critical U.S. Department of Education report in February 2004 that accused the company of violating a federal prohibition against paying recruiters based on the number of students they enrolled. Former CFO Kenda Gonzalez, also a defendant in the case, admitted in testimony that they did hold the report back out of fear of negative news coverage. (*Inside Higher Ed*, January 17, 2008)

- Three former academic officers at Kaplan University have filed a wide-ranging lawsuit alleging the for-profit institution of defrauding the U.S. Government of more than $4 billion. The lawsuit alleges that

Kaplan enrolled unqualified students, inflated their grades so they could stay enrolled and falsified documents for accreditation purposes. They also accuse the company of paying its own employees to enroll in classes so they meet the requirement of 10 percent of revenue coming from sources other than federal loans and grants. In addition, the complaint also accuses Kaplan of providing incentives to its college recruiters based on the number of students they enroll, in violation of federal regulations. (*The Chronicle of Higher Education*, March 13, 2008)

- A class actions suit was filed against Apollo Group Inc. and The University of Phoenix alleging that they artificially deflated their cohort default rates in order to remain eligible for Title IV funds. By returning students' federal loan money to lenders once they had withdrawn from classes during the first term, UOP avoided listing these students as defaulting on their loans. UOP then proceeded to collect the debt directly from the students under more rigid terms, devoid of a six month grace period and low interest rates, than those agreed upon between the student the original lender resulting in debt being passed on to collection agencies and adversely affecting students' credit. (The United States District Court Eastern District of Arkansas. Shawn Martin, Angela Russ and Nitisha Ingram vs. Apollo Group, Inc. and The University of Phoenix. Filed December 9, 2008)

- In July 2008, former employees of American InterContinental University (AIU, owned by Career Education Corporation) filed a whistle-blower suit against the university for violating the HEA incentive compensation ban and for falsifying records relating to HEA eligibility and accreditation. (*Atlanta Journal-Constitution*, August 24, 2009) According to the lawsuit, AIU "compensates enrollment counselors based directly on their recruiting activities" and requires enrollment counselors to meet quotas for enrollment or lose their jobs. Among other alleged violations of HEA eligibility, AIU reportedly did not collect 'ability to benefit' information such as proof of graduation from high school, falsified employment records to mislead accreditation officials, and hid large boards tracking enrollment counselor progress toward enrollment quotes when accreditation officials visited. (Civil case #08-CV-2277, United States District Court, Northern District of Georgia)

Other

- Career Education Corporation's American InterContinental University was recently placed on a one-year probation by its accrediting agency, the Southern Association of Colleges and Schools. If AIU's accreditation is withdrawn, students attending would no longer be able to receive federal financial aid. The latest action has prompted shareholders to again question the commitment to regulatory compliance on the part of the company's governing board. (*Wall Street Journal*, December 12, 2005)

- For-profit college activities in Canada have recently prompted the Canadian legislature to consider legislation tightening rules for private career colleges. Complaints have been submitted by students from across Canada against institutions such as CDI College, owned by Corinthian Colleges. (*Canadian Press* (via Canada.com), November 5, 2005)