

Memorandum

Date:

To:

From: Robert Shireman, Deputy Under Secretary

Subject: Vocational School Guides, Matter no. P097701

This responds to the Federal Trade Commission's (FTC's) request for comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC's Guides for Private Vocational and Distance Education Schools (Guides) (16 C.F.R. Part 254).

The U.S. Department of Education (Department) administers \$96 billion in federal student aid funds for 11 million students who enroll in 6,200 institutions of higher education, including schools covered by the Guides. We continue to identify instances of misrepresentation, in violation of Subpart F of the Department's Student Assistance General Provisions. 34 C.F.R. Part 668, Subpart F. The violations include such matters as misrepresenting program licensing or accreditation, costs or time needed to complete a course of study, availability of equipment needed to obtain training, and the likelihood of job placement after completion. When such violations occur, student loan recipients are often left with student loan debt and no way to repay it because the training they received was not adequate to help them obtain the employment that would, in turn, help them to repay the student loans. Therefore, we recommend that the Guides be retained and strengthened. Our recommendations are described below, and we are attaching some suggested language and supporting documentation.

- Section 254.0(a), scope and application – We question why the “Guides do not apply to resident primary or secondary schools or institutions of higher education offering at least a 2-year program of accredited college level studies generally acceptable for credit toward a bachelor's degree.” The misrepresentative and improper practices described in the Guides should be deemed inappropriate at any type of institution of higher education.
- Section 254.0(b) indicates that the Guides address practices that have to do with the advertising, promotion, marketing, and sale of courses or programs of instruction. We recommend that more specificity be added to clearly indicate that this section, and others in the Guides (e.g., 254.4), apply to recruitment sessions, which are often delivered orally, by phone or in person, and that questions asked by students during recruiting or marketing sessions must be answered truthfully.
- Section 254.3, misrepresentation of extent or nature of accreditation or approval – The Guides should be modified to address instances in which school officials or materials falsely indicate that completion of a particular program of study would qualify a student to take a state licensing exam. For example, one Department program review disclosed that a beauty school enrolled students in a program before it ever received state approval. As a result, when the students tried to take the state cosmetology exam, the state would not accept the courses completed prior to the approval date.

- Section 254.4, misrepresentation of facilities, services, qualifications of staff, status and employment prospects for students – Language is recommended to clarify the Guides and provide more specificity to address the type of findings that the Department has uncovered, such as the absence of computer equipment or Internet access for students in computer graphic design, system and network administrator and data base administrator programs, and the failure to provide assistance to overcome language barriers or problems with dyslexia, when such assistance was promised.

Language is suggested to modify 254.4(a)(4) so that students understand whether their loans are from the federal government or other sources. This is especially important as certain opportunities are created for Department loans, such as consolidation, repayment or forgiveness, that are typically unavailable with private loans, and students need to understand from the outset whether or not they will be eligible to pursue these options.

Section 254.4 could be further strengthened to protect students as consumers and to increase their chances of successful training completion and placement. The Department continues to find that in some instances students are misled not only about which of their courses can be used to transfer to another school or program upon completion at the enrolling school, but once enrolled they may find that promises made about work previously completed at another school will not be applicable toward their new program of study. Accurate data about dropout and completion rates, completion timeframes, security policies and crime statistics, and overall program completion timeframes and costs are needed to help students make good choices about where and how to spend their student aid so that they can successfully complete their training programs, realize their employment goals, and, ultimately, repay any loans received.

Thank you for the opportunity to comment. If you have any questions about our comments, please contact Ann Manheimer, Office of the Under Secretary, ann.manheimer@ed.gov (202.260.1488).

Attachments:

1. 34 CFR 254 Markup
2. Table of ED Findings of Misrepresentation in Program Review Reports

cc: Julie Lady, Staff Attorney

PART 254 -- GUIDES FOR PRIVATE VOCATIONAL AND DISTANCE EDUCATION SCHOOLS (as revised August 1998)

§ 254.0 Scope and application.

(a) These Guides apply to persons, firms, corporations, or organizations engaged in the operation of privately owned schools that offer resident or distance courses, training, or instruction purporting to prepare or qualify individuals for employment in any occupation or trade, or in work requiring mechanical, technical, artistic, business, or clerical skills, or that is for the purpose of enabling a person to improve his appearance, social aptitude, personality, or other attributes. ~~These Guides do not apply to resident primary or secondary schools or institutions of higher education offering at least a 2-year program of accredited college level studies generally acceptable for credit toward a bachelor's degree.~~

(b) These Guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These Guides specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to the advertising, promotion, marketing, and sale of courses or programs of instruction offered by private vocational or distance education schools. The Guides provide the basis for voluntary compliance with the law by members of the industry. Practices inconsistent with these Guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.

§ 254.1 Definitions.

(a) *Accredited.* An institution, school or course program of study that has been evaluated and found to meet established criteria by an accrediting agency or association recognized for such purposes by the U.S. Department of Education.

(b) *Approved.* A school or course has been recognized by a State or Federal agency as meeting educational standards or other related qualifications as prescribed by that agency for the school or course to which the term is applied. The term is not and should not be used interchangeably with "accredited." The term "approved" is not justified by the mere grant of a corporate charter to operate or license to do business as a school and should not be used unless the represented "approval" has been affirmatively required or authorized by State or Federal law.

(c) *Industry member.* Industry members are the persons, firms, corporations, or organizations covered by these Guides, as explained in § 254.0(a).

§ 254.2 Deceptive trade or business names.

(a) It is deceptive for an industry member to use any trade or business name, label, insignia, or designation which misleads or deceives prospective students as to the nature of the school, its accreditation, programs of instruction, methods of teaching, or any other material fact.

(b) It is deceptive for an industry member to misrepresent, directly or indirectly, by the use of a trade or business name or in any other manner that:

(1) It is a part of or connected with a branch, bureau, or agency of the U.S. Government, (including but not limited to the U.S. Department of Education), or of any State, or civil service commission;

(2) It is an employment agency or an employment agent or authorized training facility for any industry or business or otherwise deceptively conceal the fact that it is a school.

(c) If an industry member conducts its instruction by correspondence, or other form of distance education, it is deceptive to fail to clearly and conspicuously disclose that fact in all promotional materials.

§ 254.3 Misrepresentation of extent or nature of accreditation or approval.

(a) It is deceptive for an industry member to misrepresent, directly or indirectly, the extent or nature of any approval by a State agency or accreditation by an accrediting agency or association. For example, an industry member should not:

(1) Represent, without qualification, that its school is accredited unless all programs of instruction have been accredited by an accrediting agency recognized by the U.S. Department of Education. If an accredited school offers courses or programs of instruction that are not accredited, all advertisements or promotional materials pertaining to those courses or programs, and making reference to the accreditation of the school, should clearly and conspicuously disclose that those particular courses or programs are not accredited.

(2) Represent that its school or a course is approved, unless the nature, extent, and purpose of that approval are disclosed.

(3) Misrepresent the extent to which a student successfully completing a course or program of instruction can will be able to transfer the any credits earned to any other an accredited postsecondary institution of higher education.

(b) It is deceptive for an industry member to misrepresent that a course of instruction has been approved by a particular industry, or that successful completion of the course qualifies the student for admission to a labor union or similar organization or for receiving a State or Federal license to perform certain functions.

(c) It is deceptive for an industry member to misrepresent that its courses are recommended by vocational counselors, high schools, colleges, educational organizations, employment agencies, or members of a particular industry, or that it has been the subject of unsolicited testimonials or endorsements* from former students. It is deceptive for an industry member to use testimonials or endorsements that do not accurately reflect current practices of the school or current conditions or employment opportunities in the industry or occupation for which students are being trained.

(d) it is deceptive for an industry member to misrepresent that its courses fulfill a requirement that must be completed prior to sitting for a licensing examination if the program of study has not been approved by the entity administering the examination.

***Note:** The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

§ 254.4 Misrepresentation of facilities, services, qualifications of staff, status, and employment prospects for students after training.

(a) It is deceptive for an industry member to misrepresent, directly or indirectly, in advertising, promotional materials, recruitment sessions, or in any other manner, either orally, in writing, or through other communication media, the size, location, services, facilities, curriculum, books and materials, or equipment, including computer and lab equipment, of its school or the number or educational qualifications of its faculty and other personnel. For example, an industry member should not:

(1) Misrepresent the qualifications, credentials, experience, or educational background of its instructors, sales representatives, or other employees.

(2) Misrepresent, through statements or pictures, the nature, age, ~~or~~ efficacy or availability of its courses, training devices, methods, or equipment.

(3) Misrepresent the availability of employment while the student is undergoing instruction or the role of the school in providing or arranging for such employment.

(4) Misrepresent the availability, amount or nature of any financial assistance available, including any federal student financial assistance provided to students. If the cost of training is financed in whole or in part by loans, students ~~should~~ must be informed that loans must be repaid whether or not they are successful in completing the program and obtaining employment. To the extent that loans are from the institution, or a private lender affiliated with the institution, students must be advised that these loans generally carry a higher interest rate and different repayment terms than loans received from the U.S. Department of Education.

(5) Misrepresent the nature of any relationship between the school or its personnel and any government agency or that students of the school will receive preferred consideration for employment with any government agency.

(6) Misrepresent that certain individuals or classes of individuals are members of its faculty or advisory board; have prepared instructional materials; or are otherwise affiliated with the school.

(7) Misrepresent the nature and extent of any personal instruction, guidance, assistance, or other service, including placement assistance, it will provide students either during or after completion of a course.

(8) Misrepresent the extent to which a prospective student will likely receive credit for courses of instruction already completed at other postsecondary institutions.

(9) Misrepresent the percentage of students who withdraw from a course or program of instruction, or the percentage of students who complete or graduate from a course or program of instruction.

(10) Misrepresent any institutional security policies and crime statistics that the institution must maintain.

(b) It is deceptive for an industry member to misrepresent that it is a nonprofit organization or to misrepresent affiliation or connection with any public institution or private religious or charitable organization.

(c) It is deceptive for an industry member to misrepresent that a course has been recently revised or instructional equipment is up-to-date, or misrepresent its ability to keep a program current and up-to-date.

(d) It is deceptive for an industry member, in promoting any course of training in its advertising, promotional materials, or in any other manner, to misrepresent, directly or by implication, whether through the use of text, images, endorsements,* or by other means, the availability of employment after graduation from a course of training, the specific type of employment that is likely available to a student after graduation from a course of training, the success that the member's graduates have realized in obtaining such employment, including the percentage of students who have received employment, or the salary, or range of salary, that the member's graduates have received, or can be expected to receive, in such employment.

(e) It is deceptive for an industry member, in promoting or recruiting for any course of training, to fail to respond timely and accurately to a student or prospective student's queries, including those about cost, completion rates or timeframes, placement rates or potential earnings.

***Note:** The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

§ 254.5 Misrepresentations of enrollment qualifications or limitations.

(a) It is deceptive for an industry member to misrepresent the nature or extent of any prerequisites or qualifications for enrollment in a course or program of instruction.

(b) It is deceptive for an industry member to misrepresent that the lack of a high school education or prior training or experience is not an impediment to successful completion of a course or obtaining employment in the field for which the course provides training.

(c) It is deceptive for an industry member to misrepresent the time required to complete the program of study.

§ 254.6 Deceptive use of diplomas, degrees, or certificates.

(a) It is deceptive for an industry member to issue a degree, diploma, certificate of completion, or any similar document, that misrepresents, directly or indirectly, the subject matter, substance, or content of the course of study or any other material fact concerning the course for which it was awarded or the accomplishments of the student to whom it was awarded.

(b) It is deceptive for an industry member to offer or confer an academic, professional, or occupational degree, if the award of such degree has not been authorized by the appropriate State educational agency or approved by a nationally recognized accrediting agency, unless it clearly and conspicuously discloses, in all advertising and promotional materials that contain a reference to such degree, that its award has not been authorized or approved by such an agency.

(c) It is deceptive for an industry member to offer or confer a high school diploma unless the program of instruction to which it pertains is substantially equivalent to that offered by a resident secondary school, and unless the student is informed, by a clear and conspicuous disclosure in writing prior to enrollment, that the industry member cannot guarantee or otherwise control the recognition that will be accorded the diploma by institutions of higher education, other schools, or prospective employers, and that such recognition is a matter solely within the discretion of those entities.

§ 254.7 Deceptive sales practices.

(a) It is deceptive for an industry member to use advertisements or promotional materials that misrepresent, directly or by implication, that employment is being offered or that a talent hunt or contest is being conducted. For example, captions such as, "Men/women wanted to train for * * *," "Help Wanted," "Employment," "Business Opportunities," and words or terms of similar import, may falsely convey that employment is being offered and therefore should be avoided.

(b) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, the total cost of the program and the school's refund policy if the student does not complete the program.

(c) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, all requirements for successfully completing the course or program and the circumstances that would constitute grounds for terminating the student's enrollment prior to completion of the program.

Partial Listing of Schools with Findings of Misrepresentation by the U.S. Department of Education

No.	Type of Training	Yr Reviewed	Nature of Misrepresentation ¹
1.	Training in automotive, medical, office admin & travel	1999	<ul style="list-style-type: none"> • No documentation to support advertised placement rates for certain types of jobs • No documentation to support that externship sites would be available as advertised • Incorrect average program cost data published in news article shared with students • Job market chart provided to students with data that could not be supported • Students unable to transfer credits to another school as promised • Students misled about program content and credentials of teachers
2.	Tractor trailer training	2003	<ul style="list-style-type: none"> • Student not provided assistance, as promised, to overcome language barrier • Students enrolled in programs qualifying them for permits prohibited by age requirements; programs appropriate for their ages available at less cost • Student not provided assistance, as promised, to help overcome difficulty due to dyslexia
3.	Community college	2002	<ul style="list-style-type: none"> • False information about student loan eligibility published in student catalog
4.	Barbering	2003	<ul style="list-style-type: none"> • School enrolled students in program before authorized by the State
5.	Medical specialties, other	2004	<ul style="list-style-type: none"> • School published average program completion times that could not be supported • Before school was accredited, it claimed students could use federal student aid to attend • Misrepresentations made regarding medical specialties program – students informed they would qualify for nonexistent exams, qualify for exams that required different training, qualify for jobs that required completion of study at different schools, and have ability to transfer credits when in fact, they could not
6.	Cosmetology	2004	<ul style="list-style-type: none"> • Published materials falsely implied that both schools owned by company were Title IV eligible
7.	Technology	2004	<ul style="list-style-type: none"> • Misrepresentation of training devices available to students <ul style="list-style-type: none"> ○ Graphic design, system and network administrator, and database administrator programs offered, but no equipment or network capability available
8.	Technology	2006	<ul style="list-style-type: none"> • School provided student aid to enrollees at some of its campuses before campus eligibility approved

¹ Findings have since been resolved, often with schools correcting their policies, procedures or practices.