

## **MEMORANDUM REGARDING ASHFORD UNIVERSITY TO THE FEDERAL TRADE COMMISSION**

Veterans Education Success presents the following information for consideration by the Federal Trade Commission. Veterans Education Success is a non-profit organization that works to advance higher education success for all military-affiliated students and provides free counseling and legal assistance to students using their GI Bill and military benefits. Veterans Education Success can be contacted at [help@vetsedsuccess.org](mailto:help@vetsedsuccess.org) or (202) 838-5050.

Pursuant to the Federal Trade Commission's ("Commission") Rules, 16 C.F.R. § 2.2, Veterans Education Success respectfully requests that the Commission institute an investigation into Ashford University for violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a). Ashford University and its owner, Zovio (formerly known as Bridgepoint Education, Inc.), have likely engaged in unfair and deceptive acts and practices in or affecting commerce. Ashford has received scrutiny for defrauding consumers from whistleblowers, former students, government agencies, and its accreditor; additionally, Ashford has likely engaged in deception with students, the Department of Veterans Affairs (VA), and state approving agencies (SAAs) while attempting to secure and maintain access to GI Bill benefits.

### **I. Ashford University and Zovio have likely engaged in unfair and deceptive acts and practices**

Ashford and Zovio have likely engaged in unfair and deceptive acts and practices, in violation of the FTC Act. Evidence available to the Commission includes documents and witness interviews gathered by other government agencies; whistleblowers who have come forward to expose business practices; and more than 100 student complaints filed with Veterans Education Success and with the Department of Veterans Affairs (VA). Additional evidence about Ashford is available from its accreditor and from VA regarding Ashford's deceptions about its ability to access GI Bill benefits.

#### **A. Whistleblowers have alleged unfair and deceptive acts and practices**

Several former employees of Ashford University have spoken out about Ashford's misconduct and deception. The Commission should review the accounts of these whistleblowers, one of whom spoke on national television. We can help the Commission connect with all of the whistleblowers listed here.

Two whistleblowers who recently worked as recruiters (known as "enrollment advisors") at Ashford have come forward.<sup>1</sup> Both worked in the military recruiting division. Both can attest to the deception employed by sales representatives to get students, called "leads," to enroll, as well as the unwillingness of the school to help those students once enrolled.<sup>2</sup> They have explained that enrollment advisors would "lie about and twist the information about...facts,"

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<sup>1</sup> Interview notes on file at Veterans Education Success.

<sup>2</sup> *Wyatt Cenac's Problem Areas: The Cost of College*, HBO (May 29, 2019), <https://www.youtube.com/watch?v=xyITVXjMSOc>.

saying “whatever that agent needs to say to close that deal.” Ashford offered a military discount to get potential students to commit, but “what we’d find out is they never filed the right paperwork for the student to get the military discount. University doesn’t care after enrollment. University would not go back and honor it retroactively because they said it was the student’s responsibility.”

One of these employees, Eric Dean, told NBC News that Ashford pressured him to enroll veterans “no matter what” and to keep them enrolled for at least three weeks, at which point they would become ineligible for a refund.<sup>3</sup> The employees felt as though they were “throwing fellow veterans under the bus” by “relating to them, gaining their trust, and taking advantage of their trust.”<sup>4</sup>

Additionally and significantly, a six-year corporate director of Ashford’s compliance department states that, during his years at Ashford, he documented “a voluminous record of compliance infractions” involving “misrepresentations” by enrollment advisors.<sup>5</sup> His department was specifically tasked with reviewing enrollment advisors’ audio and documentation to see if students were misled, and his department documented significant and ongoing misrepresentations. This executive started at Ashford as an enrollment advisor, which he says was “a sales job” with “scoreboards for how many enrollments you had visible to the whole team” and “public tallies for quarterly and monthly senior leadership” including “quotas” and “explicit pressure.” This executive can provide the Commission with important information.

Another Ashford executive, who directed all paid media for the school, said, “From what I’ve been hearing, now the marketing strategy is to get as [many] leads and quick enrollments as possible. I’ve just heard it from a high level.”<sup>6</sup>

Regarding the school’s deceptions to potential students about the quality of education at Ashford, a former professor recently released a video in which he described various problems at Ashford.<sup>7</sup> First, Dr. Brewer spoke about how academic freedom is stifled by an onerous process that “restricts creativity, inhibits innovation, and demoralizes otherwise talented, motivated, and forward-thinking educators,” discouraging any changes to course content and standardizing guidance given to students. He also described how, after he made informal and formal complaints to management, he was assigned to teach courses “outside his scope of competence,” which he informed leadership was “an unethical practice for him to engage in and could risk his license as a clinical and forensic psychologist in California.” He later received poor performance reviews for these classes, which he should not have been teaching. Moreover, Dr. Brewer stated

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<sup>3</sup> Heidi Przybyla and Laura Strickler, *Veterans Could Be First to Pay as DeVos Rolls Back For-Profit College Oversight*, NBC News (Apr. 14, 2019), <https://www.nbcnews.com/politics/politics-news/veterans-could-be-first-pay-devos-rolls-back-profit-college-n985891>.

<sup>4</sup> *Supra* notes 1 and 2.

<sup>5</sup> Interview notes on file at Veterans Education Success.

<sup>6</sup> Interview notes on file at Veterans Education Success.

<sup>7</sup> *An Open Letter to Ashford University from Dr. Stephen Brewer* (Oct. 31, 2019), [https://www.youtube.com/watch?time\\_continue=139&v=gNe9RvWLYJg](https://www.youtube.com/watch?time_continue=139&v=gNe9RvWLYJg).

that faculty were pressured to inflate grades and to retain students who were lacking the basic competence to succeed. One month after speaking out, Dr. Brewer was laid off by Ashford.<sup>8</sup>

Finally, a recent professor and program chair shared that the directive from administrators is to “do whatever it took to let students pass,” even “at the expense of their growth.”<sup>9</sup> She felt that they were doing a “disservice to students” and “not really teaching.” She witnessed an associate faculty member be “deactivated because she was doing what was right ... reporting a student for plagiarizing.” The professor “used to also have to approve students to graduate even if they were 2 courses shy of fulfilling their program. It was so unethical.” Students were allowed to waive an important introductory course, which was designed to give them the tools to succeed in the program going forward, simply because “students will stay enrolled if they can waive it.” Even the professors at Ashford are aware that enrollment numbers matter above all else.

Ashford and Zovio’s practices are likely deceptive. Whistleblowers report that their goal during enrollment is to sign up as many people as possible, by whatever means necessary. Whistleblower accounts match what students report about their experiences at Ashford. These practices are, in fact, designed to mislead potential students. When prospective students contact colleges and speak with admissions counselors, they expect that the information they will be told is accurate, and they would not expect to have to do detailed independent research to verify an institution’s claims. School quality often determines a student’s ability to find gainful employment. A student’s education and gainful employment represent important material interests to that student.

The Commission should interview these whistleblowers, who are eager to assist the government and can attest to Ashford’s practices designed to lure students into enrolling and then providing a poor quality education, keeping them enrolled at all costs.

## **B. Students have also alleged unfair and deceptive acts and practices**

In addition to the concerns of former employees, many Ashford students have alleged they were deceived or misled by the institution. One Ashford student veteran who came to us for free help said Ashford promised that she could become a nurse with a Health and Human Services degree from the school. However, she could not sit for an exam to receive a license with this degree because Ashford did not have the proper accreditation. In 2012, the U.S. Senate Health, Education, Labor, and Pensions Committee reported similar instances of deception about programmatic accreditation for Ashford’s teaching and dental programs.<sup>10</sup> Similar misrepresentations have been found to be unfair and deceptive. For example, the New Mexico Attorney General sued ITT Educational Services for unfair or deceptive trade practices after it

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<sup>8</sup> *Ashford University Suspends Faculty Senate, Dismisses Senate Chair* (Nov. 5, 2019), <https://www.youtube.com/watch?v=9au2O18D-gs>.

<sup>9</sup> Interview notes on file at Veterans Education Success.

<sup>10</sup> *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, United States Senate Health, Education, Labor, and Pensions Committee, 306, 311-312 (Jul. 30, 2012), [https://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI.pdf](https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf).

told students that a nursing program held programmatic accreditation when it did not.<sup>11</sup> Moreover, in 2015 the Commission settled a suit against another for-profit institution, Ashworth College, for violations of the FTC Act when the school promised students they could obtain jobs after completing their programs when, in reality, the school failed to meet state requirements for licensing.<sup>12</sup> Such misrepresentations made by Ashford in the enrollment process are also likely unfair and deceptive acts or practices in violation of the FTC Act.

Many other students have complained about lies told by Ashford representatives related to programmatic accreditation, as well as other false promises made by Ashford. Our study of more than 100 student complaints made to Veterans Education Success showed that the most common student complaint was about false promises regarding accreditation and the transfer of credits, with a number of student complaints also touching on having been misled by the school about the quality of education, about loans being taken out in students' names without their permission, false promises about military grants, the true program costs being concealed, and being deceived into believing they would have job opportunities that never materialized.<sup>13</sup> These also likely amount to violations of the FTC Act. A sample of these complaints is as follows:

- “I was promised and assured that my credits would transfer but when I switched schools, none of them transferred.” -K.H.
- “During my time at Ashford, I kept noticing that the numbers were different for credits taken and credits needed and how they did not line up. I spoke to academic advisor after academic advisor concerning the discrepancy asking them if they could explain it to me. They all kept telling me that everything is fine and I will graduate on time. Nope.” -K.M.
- “I was signed up for loans I did not know about when my GI Bill ran out.” -D.S.
- “I was promised a military grant that would pay over 25% of my tuition and fees. Now I’m overwhelmed with loan debt because that grant was only 5%.” -N.G.
- “I was told that with their tuition break and my gi bill I would have no out of pocket expenses and each time a new semester came around I needed more money and was told a student loan was the best way to do it.” -M.C.

All complaints received by Veterans Education Success are inputted into VA’s GI Bill School Feedback Tool. VA previously agreed to upload its complaints into the Commission’s Consumer Sentinel complaint database, but we have reason to believe VA may not be uploading all complaints into Sentinel. We encourage the Commission to secure from VA all student complaints about Ashford and also to ensure VA uploads all complaints about all schools into Sentinel.

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<sup>11</sup> *State of New Mexico v. ITT Educational Services, Inc.*, complaint available at [https://www.insidehighered.com/sites/default/server\\_files/files/New%20Mexico%20ITT%20complaint.pdf](https://www.insidehighered.com/sites/default/server_files/files/New%20Mexico%20ITT%20complaint.pdf). Due to ITT’s bankruptcy proceedings, the legal proceedings are currently stayed.

<sup>12</sup> *Ashworth College Settles FTC Charges it Misled Students About Career Training, Credit Transfers*, Federal Trade Commission (May 26, 2015), <https://www.ftc.gov/news-events/press-releases/2015/05/ashworth-college-settles-ftc-charges-it-misled-students-about>.

<sup>13</sup> *Veteran and Servicemember Complaints about Misconduct and Illegal Practices at Ashford University*, Veterans Education Success (Dec. 2017), <https://vetsedsuccess.org/veteran-servicemember-complaints-about-misconduct-illegal-practices-ashford-university/>.

Misrepresentations by schools in the enrollment process cause GI Bill students to frequently exhaust their education benefits with the expectation that the promises that were made to them will be kept. Students also commonly take out loans, based on false promises that they will receive a quality education and graduate with the ability to get a high-paying job. By making misrepresentations that make Ashford seem more desirable than other schools, and more desirable than it really is, Ashford and Zovio deceive students. These actions may violate the FTC Act because they are unfair and deceptive.

### **C. Ashford University has misled its students in official communications**

Another way Ashford engages in consumer deception is by sending misleading emails to students. Ashford has, at various times, reached out to its student body in emails or on the school's online portal to share information that is misleading.

One example involves communication about the status of GI Bill benefits for Ashford students after the Iowa SAA informed the school that Iowa would no longer approve it. On July 20, 2017, VA reached out to students at Ashford University who were using the GI Bill. VA's email informed the students that Ashford classes would no longer be qualified for VA education benefits if Ashford did not appeal an Iowa court decision within 30 days.<sup>14</sup> Ashford responded by sending an email to its students on July 26, 2017.<sup>15</sup> The email stated,

*“If you are concerned about the misinformation provided to you by the VA regarding certification of your benefits for attendance at Ashford University, or the threat to your educational benefits that has been spread by these miscommunications, the White House has established a hotline, available at 855-948-2311, to give veterans an outlet to voice concerns about the Federal VA and other federal programs.”*

By using the word “*misinformation*,” Ashford conveyed to its students that VA was misleading them and providing inaccurate information. Further, Ashford provided students with a White House hotline, conveying to its students that VA had engaged in behavior that should be reported for oversight.

In addition, Ashford represented in this email that it would soon have approval from the Arizona SAA. However, just a few days later, VA informed the Arizona SAA that it could not accept its notice of approval for Ashford because of insufficient information. Uncertainty regarding Ashford's approval status continued for years.

Then, on August 16, 2017, VA again emailed Ashford students who were using the GI Bill to inform them that they could continue to receive benefits because Ashford had appealed the earlier determination. Ashford responded on its online portal by again accusing VA of

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<sup>14</sup> Email to Ashford students from Curtis Coy, Deputy Under Secretary for Economic Opportunity, Department of Veterans Affairs (Jul.20, 2019),

<https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59733025bf629a8e3df731db/1500721190598/VA+Notice+to+Ashford+Students.July2017.pdf>.

<sup>15</sup> Email to Ashford students from Craig Swenson, President and CEO, Ashford University (Jul. 26, 2017), <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59fb520f27ef2df8c343720e/1509642767749/Ashford+Email+to+Students+July+26+2017.pdf>.

providing misleading information to veterans regarding the certification of GI Bill benefits at the school.<sup>16</sup>

In 2020, Ashford again sent a misleading email to its GI Bill students. On February 14, 2020, VA, acting as the California SAA, approved 71 programs at Ashford for GI Bill eligibility. In the same letter, VA determined that 20 programs of study at Ashford were not approved for GI Bill eligibility. Sixteen of the programs were education programs that do not meet licensure or certification requirement in California, and 19 of the programs were found not comparable to programs in public universities in California with recognized accepted standards.<sup>17</sup>

Ashford sent out an email on March 20, 2020, telling students that “*some... programs previously approved for VA education benefits are not currently eligible under the new California facility code.*”<sup>18</sup> The email mentioned only 17 of the 20 programs and did not mention why the programs were not eligible for benefits or how Ashford planned to improve the programs. However, the email did explain to students how they could either change their primary payment option or switch to another program at Ashford that did have VA approval. In a second, similar email sent on March 31, 2020, Ashford included, “*If you do speak with a representative from VA who provides conflicting information, please let your VA Coordinator know as soon as possible and we will work with the VA directly.*”<sup>19</sup> Ashford again seemed to convey to its students that they should distrust information that comes from VA, while withholding important details about their programs’ status.

These communications are concerning as they characterize VA as a misleading party not to be trusted when it comes to information about education benefits. Ashford’s emails may be misleading students into incurring debt they did not expect to take on when they enrolled, since Ashford is not forthcoming about its status with regard to VA education benefits. These efforts by Ashford to keep GI Bill students enrolled by misleading them about VA’s actions falls within the Commission’s jurisdiction under 15 U.S.C. § 45(a).

#### **D. Government agencies have uncovered evidence of unfair and deceptive acts and practices**

Several government entities have gathered evidence of unfair and deceptive acts and practices by Ashford and Zovio. We urge the Commission to make use of this evidence already gathered. Importantly, although other agencies have acted, Ashford has engaged in more unfair and deceptive acts and practices that have not yet been the subject of government action.

In 2017, the California Attorney General filed a lawsuit against Ashford and Bridgepoint, saying, “No school should ever steal the American Dream from its students, but that is exactly

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<sup>16</sup> *Ashford’s Fight to Maintain GI Bill Access Raises Questions about the Enforcement and the Adequacy of Statutory Requirements*, Veterans Education Success (Nov. 2017), <https://vetsedsuccess.org/report-ashfords-fight-to-maintain-gi-bill-access-raises-questions/>.

<sup>17</sup> Letter from Bill Spruce, Acting Director, VA-California State Approving Agency, to Stephanie Cowsert, AVP Financial Aid Policy and Compliance, Ashford University (Feb. 14, 2020), <https://vetsedsuccess.org/vas-approval-of-ashford-for-gi-bill-feb-2020/>.

<sup>18</sup> Email on file at Veterans Education Success.

<sup>19</sup> Email on file at Veterans Education Success.

what Ashford University did. Ashford University preyed on veterans and people of modest means.”<sup>20</sup> The California lawsuit alleges that sales representatives, under intense pressure, entice students to enroll at Ashford with false promises and faulty information, related to students’ ability to get financial aid, the cost of attendance, the transferability of credits into and out of the school, and the ability of the school to prepare students for their desired careers.<sup>21</sup> The lawsuit also alleges that Ashford has misled investors and inflated the percentage of students who said that their degree prepared them for their career.<sup>22</sup>

Perhaps the most important piece of evidence revealed in the California lawsuit of Ashford’s deceiving students is Ashford’s own internal audits, suggesting that its admissions counselors engage in tens of thousands of misrepresentations each year, and that no policy is in place to ensure that Ashford corrects misrepresentations.<sup>23</sup> We strongly urge the Commission to request from Ashford its internal audits and analyze them.

Additionally, the California lawsuit alleges that Ashford engages in aggressive and illegal practices to collect student debts, which result from its own employees’ misrepresentations.<sup>24</sup> This is not the first time Ashford has engaged in potentially deceptive loan practices. In 2016, the Consumer Financial Protection Bureau (CFPB) found that Ashford and Bridgepoint deceived students into taking out private loans that cost more than advertised. Bridgepoint was required to discharge all outstanding private loans and refund loan payments made by students in a settlement with the CFPB that totaled \$31.5 million.<sup>25</sup> CFPB should readily share its findings and evidence with the Commission. CFPB uncovered significant evidence of Ashford’s deceiving students on student loans.

In addition, in 2014, the Iowa Attorney General settled with Ashford and Bridgepoint over violations of Iowa’s consumer protection laws for misleading prospective students, using “unconscionable sales practices,” failing to disclose material facts to students, misrepresenting that students could achieve teaching licensure by completing Ashford’s education degree, and charging significant upfront fees that were not refunded when they should have been. Ashford and Bridgepoint paid \$7.25 million to Ashford students in Iowa and agreed to change admission practices, but the deception continues.<sup>26</sup> The Iowa Attorney General should readily share evidence with the Commission about Ashford’s unconscionable sales practices.

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<sup>20</sup> *Attorney General Xavier Becerra Sues For-Profit Ashford University for Defrauding and Deceiving Students*, State of California Department of Justice, Office of the Attorney General (Nov. 29, 2017), <https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-sues-profit-ashford-university-defrauding-and>.

<sup>21</sup> Complaint at 1, *People v. Ashford University*, No. RG17883963 (Cal. Super. Ct. Nov. 29, 2017), [https://oag.ca.gov/system/files/attachments/press\\_releases/Complaint\\_8.pdf](https://oag.ca.gov/system/files/attachments/press_releases/Complaint_8.pdf).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices*, Consumer Financial Protection Bureau (Sept. 12, 2016), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices/>.

<sup>26</sup> Press Release, Iowa Attorney General, Ashford University and Parent Company Bridgepoint Education Agree to \$7.25 Million Payment and Major Changes after Miller Alleges Consumer Fraud (May 16, 2014), *available at*

In 2016, the Department of Justice began investigating Ashford and Bridgepoint over allegations that they misstated Title IV refund revenue or overstated revenue associated with private secondary loan programs, misrepresenting its compliance with the 90/10 rule of the Higher Education Act.<sup>27</sup>

In 2014, the Securities and Exchange Commission opened an investigation into Ashford and Bridgepoint, and the Massachusetts, North Carolina, and New York Attorneys General have also investigated Ashford for possible violations of consumer protection laws, but have not taken any legal action against them.<sup>28</sup>

The Department of Education (ED) has taken a number of actions towards Ashford and Zovio over the last few years. In 2015, ED requested information to aid in an investigation into representations made to potential and enrolled students to determine if Ashford was in compliance with the prohibition on substantial misrepresentations.<sup>29</sup> Also in 2015, ED informed Ashford that it had not fully responded to disclosures required under ED's gainful employment rules and that failure to do so could result in further administrative action.<sup>30</sup> In 2017, an audit determination by ED found that Ashford owed ED \$300,000 for incorrect refund calculations and refunds that were not made or were made late.<sup>31</sup> Finally, in October 2019, ED required Zovio to post a \$103 million, irrevocable letter of credit in response to the plan to spin Ashford off into a nonprofit institution (the requirement was later dropped).<sup>32</sup>

Additionally, in February 2020, VA (acting as the SAA for the state of California) disapproved 20 Ashford University programs from receiving GI Bill benefits. Sixteen of those programs violated the Career Ready Student Veterans Act of 2016, which makes ineligible programs in licensed occupations that do not leave the student eligible for the license. Nineteen of the programs were not "consistent in quality, content and length with similar courses in the California public university systems, with recognized accepted standards."<sup>33</sup>

All of the government action outlined above indicates that Ashford and Zovio have been engaging in misleading and deceptive acts and practices. Many of these practices have not been penalized, and students in many states have not received any restitution. Moreover, even in the

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<https://www.iowaattorneygeneral.gov/newsroom/ashford-university-and-parent-company-bridgepoint-education-agree-to-7-25-million-payment-and-major/>.

<sup>27</sup> Bridgepoint Education, Inc., Form 8-K (Jul. 7, 2016),

<https://www.sec.gov/Archives/edgar/data/1305323/000130532316000114/form8-kxitem801.htm>.

<sup>28</sup> *Supra* note 13.

<sup>29</sup> Bridgepoint Education, Inc., Form 8-K (Dec. 10, 2015),

<https://www.sec.gov/Archives/edgar/data/1305323/000130532315000073/form8-kxdoedecember2015.htm>.

<sup>30</sup> Bridgepoint Education, Inc., Form 10-Q (Sep. 30, 2015), 45,

<https://www.sec.gov/Archives/edgar/data/1305323/000130532315000066/bpi093015form10-q.htm>.

<sup>31</sup> Bridgepoint Education, Inc., Form 10-K (Dec. 31, 2016), 96,

<https://www.sec.gov/Archives/edgar/data/1305323/000130532317000016/bpi201610k.htm>.

<sup>32</sup> Hallie Busta, *Zovio: \$103M Letter of Credit Required to Spin Off Ashford U*, Education Dive (Oct. 8, 2019),

<https://www.educationdive.com/news/zovio-103m-letter-of-credit-required-to-spin-off-ashford-u/564549/>.

<sup>33</sup> Letter to Stephanie Cowser, AVP Financial Aid Policy and Compliance, Ashford University, from Bill Spruce, Acting Director, VA-California State Approving Agency (Feb. 14, 2020), <https://vetsedsuccess.org/vas-approval-of-ashford-for-gi-bill-feb-2020/>.

face of federal and state law enforcement actions, Ashford continues to get caught for misleading and deceptive acts and practices. Ashford is a repeat offender.

These state and federal agencies have important evidence to share with the Commission. If the agencies are not willing to share evidence, then at the least the agencies have given clear indication of the facts the Commission should request of Ashford directly – starting with Ashford’s internal audits about its own findings of rampant deceptions of students, and including student complaints, accreditor actions, and evidence of financial instability. We believe that the Commission can stop further damage from being done to GI Bill students in the future.

## **II. Ashford and Zovio have given rise to additional concerns that deserve scrutiny**

We urge the Commission to consider other factors while undertaking an investigation under 15 U.S.C. § 45(a). Specifically, there are significant financial, academic, and other concerns that are relevant in determining whether Ashford and Zovio are deceiving consumers in violation of 15 U.S.C. § 45(a).

### **A. Ashford has been accused of deception in its attempt to secure and maintain access to GI Bill benefits**

In addition to providing misinformation to students in email notices, Ashford has also continually provided misinformation to VA and SAAs in attempts to keep receiving students’ GI Bill funds. Ashford’s behavior can arguably be categorized as unfair and deceptive acts and practices designed to keep GI Bill students enrolled, which would violate the FTC Act. During Ashford’s fight to seek approval to remain eligible to receive GI Bill benefits (following its loss of approval from Iowa’s SAA in 2015), Ashford misled VA and several SAAs, and it failed to provide adequate information to the relevant parties.<sup>34</sup>

First, Ashford misled the California SAA by providing inadequate information for approval. Since Ashford’s administrative headquarters is in San Diego, California, Ashford must seek approval from the California SAA. The application Ashford submitted in June 2016 was incomplete, lacking information regarding the suitability of the San Diego campus for educating students.<sup>35</sup> Despite frequent correspondence and in-person meetings with the California SAA, Ashford withdrew its application by the end of the month and did not refile a complete application.<sup>36</sup> Then, in 2018, Ashford again sought approval from the California SAA, which determined twice that it could not act on Ashford’s application because of Ashford’s failure to comply with standards and requirements for approval and because of concerns about Ashford’s advertising practices.<sup>37</sup>

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<sup>34</sup> A full timeline and description of the relevant events can be found in the following report: *Ashford’s Fight to Maintain GI Bill Access Raises Questions about the Enforcement and the Adequacy of Statutory Requirements*, Veterans Education Success (Nov. 2017), <https://vetsedsuccess.org/report-ashfords-fight-to-maintain-gi-bill-access-raises-questions/>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Letter to Stephanie Cowser, AVP Financial Aid Policy and Compliance, Ashford University, from Shane Ferrebee, Senior Education Specialist, California State Approving Agency for Veterans Education (Feb. 21, 2018),

Second, Ashford misled VA and the SAAs by attempting to claim Arizona as the site of its main campus<sup>38</sup> through “legal maneuvering and political lobbying.”<sup>39</sup> In June 2017, Ashford applied for approval from the Arizona SAA after opening a small office in Phoenix, “roughly the size of a Chipotle restaurant.”<sup>40</sup> Multiple checks on the facility by VA showed that the lights were off in the office and it was not being regularly staffed.<sup>41</sup> A small, unused office space does not meet any recognized definition of a “main campus.”<sup>42</sup>

Ashford’s communications with the Arizona State Board for Private Postsecondary Education also demonstrate “political maneuvering” meant to deceive the SAAs and VA about where Ashford’s main campus is. The state board’s guidelines call for a 90-day administrative review and a 90-day substantive review of license applications. Nevertheless, the board approved Ashford’s license in just three weeks. The board held a special conference call to discuss only the Ashford license, and during that meeting the board stated that it planned to hold California responsible for any serious problems that might arise with the school, as California was still Ashford’s “home state.” One official said:

“To us, that basically means that student complaints will be referred to California unless it’s an Arizona resident. If, by unfortunate circumstance, the institution would close, we would not be the one responsible for taking the student educational records.”<sup>43</sup>

Arizona was willing to license the school, but only because the state of California would retain responsibility as the site of Ashford’s main campus. This shows that even Arizona doubted the validity of Ashford’s claims that California was no longer its main campus.

Following a news report<sup>44</sup> that exposed Ashford and the Arizona SAA’s misleading claims to VA about its main campus and the “campus” in Arizona, in August 2017, VA informed

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<https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5a8e2580419202db3237db9b/1519265152485/CA+SAA+Denial+Ashford.21Feb2018.pdf>; Letter to Stephanie Cowser, AVP Financial Aid Policy and Compliance, Ashford University, from Shane Ferree, Senior Education Specialist, California State Approving Agency for Veterans Education (Dec. 14, 2018), [https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5c34e8c61ae6cfc3bbde242/1546971338376/12\\_2018+CSAAVE+rejection.pdf](https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5c34e8c61ae6cfc3bbde242/1546971338376/12_2018+CSAAVE+rejection.pdf).

<sup>38</sup> The Department of Education defines a main campus as the primary entity holding the program participation agreement. Ashford’s is the San Diego location. The Department of Veterans Affairs defines a main campus as the location where the primary teaching facilities of an educational institution are located, or, if unclear, the location of the primary office of the CEO. Ashford is primarily an online school, and its CEO is located at the headquarters in San Diego. *Supra* note 16.

<sup>39</sup> Michael Vasquez, *Inside the Scramble to Save Ashford U.*, *The Chronicle of Higher Education* (Nov. 10, 2017), <https://vetsedsuccess.org/wp-content/uploads/2018/11/inside-scramble-to-save-ashford-university-for-profit-school-scam.pdf>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> As defined in VA regulations (38 CFR 21.4266), “main campus” means the location where the primary teaching facilities of an educational institution are located. If an educational institution has only one teaching location, that location is its main campus. If it is not clear which of the educational institution’s teaching facilities is primary, the main campus is the location of the primary office of its Chief Executive Officer.

<sup>43</sup> *Supra* note 39.

<sup>44</sup> *Id.*

the Arizona SAA that it could not accept its approval of Ashford. Ashford was asked to provide additional information, including whether the Phoenix location offered a course of education, whether it contained adequate resources, whether a certifying official was onsite, and whether the Phoenix location met the definition of a main campus.<sup>45</sup> The director of the Arizona SAA allowed Bridgepoint's (Ashford's parent company at the time) top lobbyist to rewrite Arizona's response to VA.<sup>46</sup> Ashford again failed to provide adequate information in the approval process, and VA ruled that Ashford's definition of a main campus did not follow VA regulation.<sup>47</sup>

Ashford repeatedly failed to act in good faith during its attempt to retain GI Bill eligibility. Ashford has withheld information from VA and SAAs, and Ashford has attempted to circumvent seeking approval in California, the state of Ashford's main campus. Ashford did all of this in an attempt to retain access to consumers with GI Bill benefits. This deceptive behavior should be considered by the Commission in its investigation of Ashford.

### **B. Ashford's accreditor has raised concerns that student performance does not match Ashford's promises to prospective students**

Ashford's accreditor also has evidence about Ashford's unfair and deceptive practices, and we encourage the Commission to contact the accreditor. Specifically, the accreditor has raised concerns that student performance and retention does not match up to what Ashford promises consumers during the enrollment process. Such false promises also likely violate the FTC Act as an unfair or deceptive practice. Ashford is accredited by the Western Association of Schools and Colleges (WASC). In July 2019, the WASC Senior College and University Commission (WSCUC) issued a Formal Notice of Concern to Ashford in response to WSCUC's Accreditation Visit earlier that year.<sup>48</sup> This notice reflected "longstanding concerns regarding Ashford University's student persistence and completion rates and performance on other student metrics."<sup>49</sup> WSCUC told Ashford it is in danger of being out of compliance with its terms if it does not make significant improvements in the near future.<sup>50</sup>

Only 25% of full-time, first-time undergraduates return to Ashford University after their first year at the school. Among full-time and part-time students, and including transfers, only 25% of students graduate within eight years of entering Ashford University, while 44% of students withdraw and 30% transfer. Ten years after entering Ashford University, the median earnings of students who had received federal financial aid is between \$20,300 and \$53,700 with median total debt of between \$27,308 and \$48,125.<sup>51</sup> These student outcomes and accreditor

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<sup>45</sup> Letter to Leanna DeKing, Program Director, Arizona State Approving Agency, from Suzanne Swafford, Education Liaison Representative, Department of Veterans Affairs (Aug. 3, 2017), <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59a0b98dccc5c5e77ddfe027/1503705486484/AZ+SAA+Ashford+%26+VA+response.Aug2017.pdf>.

<sup>46</sup> *Supra* note 39.

<sup>47</sup> *Id.*

<sup>48</sup> Commission Action Letter, Accreditation Visit, to Craig Swenson, President, Ashford University, from Jamieenne S. Studley, President, WSCUC (Jul. 12, 2019), <https://www.wscuc.org/institutions/ashford-university>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> All of this data is provided by the US Department of Education (May 11, 2020), <https://collegescorecard.ed.gov/school/?154022-Ashford-University>.

concerns shed light on the likelihood that promises made in the enrollment process are deceptive, in violation of the FTC Act.

### **C. Ashford’s attempted conversion into a non-profit institution should not deter the Commission from acting**

Over the last year, Zovio has planned to convert Ashford into a non-profit institution. WSCUC initially approved Zovio’s plan to convert Ashford into a nonprofit university, subject to certain conditions.<sup>52</sup> However, ED required Zovio to post a \$103 million letter of credit in order to proceed with the conversion.<sup>53</sup> Zovio only “had \$104.6 million in cash at the end of its most recent financial quarter,” so Zovio pursued the option of selling Ashford to another university instead.<sup>54</sup> Upon hearing of ED’s letter of credit decision, WSCUC sought new information from Ashford and informed the school that it would have to approve any transaction that would change ownership of Ashford.<sup>55</sup>

In January 2020, it was reported that Zovio stopped pursuing a sale and was moving forward with the original attempted non-profit conversion.<sup>56</sup> Nevertheless, on August 3, 2020, Zovio announced that Ashford would become the University of Arizona Global Campus. Despite the new name and non-profit status, the University of Arizona Global Campus intends to maintain its own leadership, faculty, academic programs, and accreditation (distinct from the University of Arizona), and Zovio will remain deeply involved in running operations. Zovio will receive 19.5% of the Global Campus’s tuition revenue.<sup>57</sup> Indeed, the agreement has been characterized as “effectively an affiliation and trademark licensing agreement.”<sup>58</sup> According to news reports, the agreement has not yet been finalized and would essentially amount to a long-term partnership – at the cost of \$1 - instead of an acquisition.<sup>59</sup>

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<sup>52</sup> Structural Change Commission Action Letter, Change of Control and Legal Status, to Craig Swenson, President, Ashford University, from Jamiene S. Studley, President, WSCUC (Jul. 12, 2019), <https://www.wscuc.org/institutions/ashford-university>.

<sup>53</sup> Hallie Busta, *Zovio: \$103M Letter of Credit Required to Spin Off Ashford U*, Education Dive (Oct. 8, 2019), <https://www.educationdive.com/news/zovio-103m-letter-of-credit-required-to-spin-off-ashford-u/564549/>.

<sup>54</sup> Mike Freeman, *Owner of San Diego’s Ashford University Explores Sale to Another Higher Education Institution*, San Diego Union-Tribune (Oct. 8, 2019), <https://www.sandiegouniontribune.com/business/technology/story/2019-10-08/owner-of-san-diegos-ashford-university-explores-sale-to-another-higher-education-institution>.

<sup>55</sup> Lindsay McKenzie, *The Next Purdue-Kaplan Deal?*, Inside Higher Ed (Oct. 9, 2019), <https://www.insidehighered.com/digital-learning/article/2019/10/09/ashford-university-could-be-sold-nonprofit-university>.

<sup>56</sup> Mike Freeman, *Ashford University is No Longer For Sale, Preferring Instead Conversion Into a Not-For-Profit College*, San Diego Union-Tribune (Jan. 8, 2020), <https://www.sandiegouniontribune.com/business/technology/story/2020-01-08/ashford-university-is-no-longer-for-sale-preferring-instead-conversion-into-a-not-for-profit-college>.

<sup>57</sup> Lindsay McKenzie, *University of Arizona’s Big Online Push*, Inside Higher Ed (Aug. 4, 2020), <https://www.insidehighered.com/news/2020/08/04/university-arizona-acquires-ashford-university>.

<sup>58</sup> Jeffrey R. Young, *U. of Arizona Bought a For-Profit U. for \$1? Actually, the For-Profit Paid Millions to Be Acquired*, EdSurge (Aug. 6, 2020), <https://www.edsurge.com/news/2020-08-06-u-of-arizona-bought-a-for-profit-u-for-1-actually-the-for-profit-paid-millions-to-be-acquired>. A redacted version of the acquisition contract was recently made public, <https://www.documentcloud.org/documents/7202039-Ashford-Asset-Purchase-Agreement-With-Exhibits.html>.

<sup>59</sup> Lindsay McKenzie, *University of Arizona Makes Ashford Contract Public* (Sep. 4, 2020), <https://www.insidehighered.com/quicktakes/2020/09/04/university-arizona-makes-ashford-contract-public>; Kevin

Because Zovio will still be running the Global Campus’s operations and receiving revenue from the Global Campus, the Commission should not be deterred from investigating Ashford and Zovio’s actions even if the agreement does get finalized. In analogous scenarios, the Commission “pierced the veil” of a covert for-profit entity. The Commission focused on the structure and financial dealings of the individual school and found that where the non-profit entities amounted to “mere shells without substance” and the school was “using the guise of the nonprofit corporation to further [its] own finance and comfort” that “piercing the non-profit corporate veil and recognizing the [school] for what it [was] – a device by which individuals for private gain, seek to deceive the public – does no violence.”<sup>60</sup> The Commission should similarly pierce the non-profit corporate veil of Ashford University should it convert to a non-profit. This is especially important because, “This deliberate, complex blurring of entities makes it harder for students to know what they’re getting into when they enroll in an online college. And students who think they’re enrolling in trusted public universities may encounter an arrangement that obscures the lines between public and private interests.”<sup>61</sup>

#### **D. Zovio is hiring hundreds of new recruiters during the COVID-19 crisis, making it important the Commission act soon**

On March 26, 2020, Zovio announced that it plans to hire more than 200 “enrollment advisors.”<sup>62</sup> The announcement stated that “these services meet an especially critical need during this time of social distancing and self-quarantine.”<sup>63</sup> Given the school’s history of deceiving and misleading students, the idea that Zovio plans to ramp up its enrollment suggests the company may deceive and mislead even more students presently and in the coming months. Since the school has recorded such poor student outcomes, it is a concern that Ashford is intending to capitalize on mass unemployment and ramp up recruitment while people are spending more time at home this year than they had planned. Given that there is so much evidence of unfair and deceptive acts and practices in Ashford’s recruitment process, the Commission’s attention is more important now than ever, as Zovio seeks to expand its reach.

### **III. Legal Analysis**

Ashford University and Zovio are likely engaged in unfair and deceptive acts or practices in or affecting commerce, within the meaning of Section 5(a) of the FTC Act.

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Carey, *Proposed Merger Blurs the Line Between For-Profit Colleges and Public Universities* (Aug. 11, 2020) <https://www.nytimes.com/2020/08/11/upshot/university-of-arizona-ashford-zovio-online-college.html>.

<sup>60</sup> Sean Marvin, *Precedent for FTC’s Piercing of Nonprofit Corporate Veils*, Veterans Education Success (Jun. 22, 2018), <https://vetsedsuccess.org/piercing-the-veil-of-covert-for-profit-colleges/>.

<sup>61</sup> Kevin Carey, *Proposed Merger Blurs the Line Between For-Profit Colleges and Public Universities* (Aug. 11, 2020) <https://www.nytimes.com/2020/08/11/upshot/university-of-arizona-ashford-zovio-online-college.html>.

<sup>62</sup> David Halperin, *Beware: For-Profit College Scammers Will Exploit the COVID-19 Crisis*, Republic Report (Mar. 29, 2020), <https://www.republicreport.org/2020/beware-for-profit-college-scammers-will-exploit-the-covid-19-crisis/>.

<sup>63</sup> *Id.*

### A. Ashford and Zovio are likely engaged in unfair practices

According to Commission policy, a trade practice is unfair if it (1) causes or is likely to cause substantial injury to consumers, (2) is not reasonably avoidable by consumers themselves, and (3) is not outweighed by countervailing benefits to consumers or to competition.<sup>64</sup>

With respect to the first requirement, “substantial injury” usually involves monetary harm.<sup>65</sup> With respect to the second prong, the Commission is limited to act in situations where seller behavior “unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decision making.”<sup>66</sup> Sellers may not withhold from consumers important price or performance information, engage in coercion, or unduly influence highly susceptible classes of consumers.<sup>67</sup> With respect to the third requirement, the Commission will not find a practice unfair “unless it is injurious in its net effects.”<sup>68</sup>

Additionally, the Commission will look at “whether the conduct violates public policy as it has been established by statute, common law, industry practice, or otherwise.”<sup>69</sup> Public policy is used to “test the validity and strength of the evidence of consumer injury, or, less often, it may be cited for a dispositive legislative or judicial determination that such injury is present.”<sup>70</sup>

Ashford and Zovio’s practices are likely unfair. First, their practices are likely causing substantial injury to consumers, often monetary in nature. Misrepresentations in the enrollment process cause consumers to incur a substantial financial burden, with the expectation that the promises that were made to them will be kept. Students take out loans and use up their hard-earned GI Bill benefits, based on false promises that they will receive a quality education and graduate with the ability to get a high-paying job. A number of government agencies have already determined that Ashford and Zovio did not keep these promises to students and that students were entitled to financial compensation as a result.

Second, the practices employed by Ashford and Zovio are likely not reasonably avoidable by consumers. Students, whistleblowers, and government agencies have alleged that Ashford provides a variety of inaccurate information during the enrollment process, including about the price of the school and the performance of students. These are confirmed by the complaints Veterans Education Success has received from Ashford students. By making misrepresentations that make Ashford seem more desirable than other schools, and more desirable than it really is, Ashford and Zovio unreasonably create an obstacle to the free exercise of consumer decision making.

Third, Ashford and Zovio’s practices likely are not outweighed by benefits to consumers or competition. Students who incur student debt or use up their GI Bill benefits in reliance on Ashford and Zovio’s promises do not receive any countervailing benefit that outweighs the harm

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<sup>64</sup> Federal Trade Commission, “FTC Policy Statement on Unfairness” (1980), available at <http://www.ftc.gov/bcp/policystmt/ad-unfair.htm>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

they have faced. Most often, they end up having lost a large amount of money and are in no position to earn an amount of money that can help them pay off their debts or living expenses. As reported by ED data, Ashford students often do not graduate, often cannot earn much more than they could before attending Ashford, and often cannot pay down their student loan debt. In other words, they are worse off than before they started attending Ashford.

Finally, Ashford and Zovio's practices likely violate public policy. State and federal agencies have taken action against Ashford and Zovio for these practices, and some have already held them financially responsible for injuries done to student consumers. Yet, more remains to be done to stop these practices.

Taken all together, it is likely that Ashford and Zovio are engaging in unfair acts and practices.

### **B. Ashford and Zovio are likely engaged in deceptive practices**

According to Commission policy, a trade practice is deceptive if (1) there is a representation, omission, or practice that is likely to mislead the consumer, (2) the act or practice is considered from the perspective of a reasonable consumer, and (3) the representation, omission, or practice is material.<sup>71</sup> With respect to materiality, the Commission determines whether consumers would have chosen another product if the deception had not occurred; express claims are presumed material.<sup>72</sup> Materiality is also presumed for claims and omissions involving "health, safety, or other areas with which the reasonable consumer would be concerned."<sup>73</sup>

Ashford and Zovio's practices are likely to mislead consumers. Whistleblowers report that their goal during enrollment is to sign up as many people as possible, by whatever means necessary. These alleged practices were, in fact, designed to mislead consumers. A reasonable consumer would likely consider the practices to be deceptive. When prospective students contact colleges and speak with admissions counselors, they expect that the information they will be told is accurate, and they would not expect to have to do detailed independent research to verify an institution's claims. Finally, the practices are likely material. Often, Ashford employees make express claims to prospective students, which means that the claims should be presumed to be material. Additionally, higher education is an area with which a reasonable consumer would be concerned. Post-secondary and graduate degree programs require students to invest thousands of dollars and to dedicate years of study for successful completion. School quality often determines a student's ability to find gainful employment. A student's education and gainful employment represent important material interests to that student.

Taken all together, it is likely that Ashford and Zovio are engaging in deceptive acts and practices.

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<sup>71</sup> *Matter of Cliffdale Assocs., Inc.*, 103 F.T.C. 110 app. at 46 (1984); see also *Kraft, Inc. v. F.T.C.*, 970 F.2d 311, 314 (7th Cir. 1992); see also *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

<sup>72</sup> *Matter of Cliffdale Assocs.*, 103 F.T.C. at 49-50.

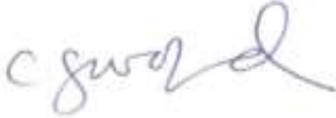
<sup>73</sup> *Id.*

#### IV. Request for Action

As the country's leading consumer protection agency, the Commission has a critical leadership role to play in this important marketplace. Ashford University and Zovio likely violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Veterans Education Success respectfully requests that the Commission institute an investigation of these businesses.

Respectfully Submitted,

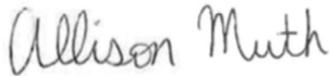
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