



May 10, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Proposed Rulemaking on Deceptive or Unfair Earnings Claims, Earnings Claims ANPR,
R111003

To Whom it May Concern:

Thank you for the opportunity to comment on a potential rule from the Federal Trade Commission (FTC) regarding deceptive or unfair marketing using earnings claims. Veterans Education Success is a nonprofit research, policy, and student-veteran advocacy organization. We work on a bipartisan basis to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill® and other federal postsecondary education programs.

We offer this comment to address misleading earnings claims from institutions of higher education that fall under the FTC's jurisdiction.¹ Higher education has suffered from a well-documented history of deceptive earnings claims from predatory institutions attempting to enroll students.² The FTC's rulemaking offers a significant opportunity to install necessary regulations to stop these harmful practices.

¹For-profit colleges as well as nonprofit colleges that actually operate for-profit both fall under the FTC's jurisdiction. See *Piercing the Veil of Covert For-Profits*, Veterans Education Success (June 22, 2018), <https://vetsedsuccess.org/piercing-the-veil-of-covert-for-profit-colleges/>; Letter from Edith Ramirez, Chairwoman, Federal Trade Commission, to Johann N. Schneider-Ammann, Head of the Department of Economic Affairs, Education and Research, Bundeshaus Ost (Jan. 9, 2017) ("The FTC also does not have jurisdiction over most non-profit organizations, but it does have jurisdiction over sham charities or other non-profits that in actuality operate for profit. The FTC also has jurisdiction over non-profit organizations that operate for the profit of their for-profit members, including by providing substantial economic benefits to those members"), https://www.ftc.gov/system/files/documents/public_statements/1049563/ramirez_swiss_privacy_shield_letter.pdf.

² See *VA Still Not Enforcing 1974 Ban on Schools that Engage in Deceptive Advertising and Recruiting*, Veterans Education Success (Oct. 4, 2019), <https://vetsedsuccess.org/va-still-not-enforcing-1974-ban-on-schools-that-engage-in-deceptive-advertising-and-recruiting/>; For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, U.S. Senate Committee on Health,

The Student Veteran Experience with Deceptive Earnings Claims

Service members, veterans, and their families have been particularly impacted by predatory recruiting practices dating back to the inception of the GI Bill following World War II.³ Misleading earnings claims and misrepresentations about job prospects continue today and are some of the most pernicious deceptions committed by institutions to entice veterans to enroll, using up their hard-earned GI Bill and also often taking on onerous student loan debt – all on the false promise of obtaining a decent-paying job.⁴

Unfortunately, we have heard from countless student veterans about how deceptive earnings and job prospect claims have negatively impacted their lives. Dozens of student veterans recently testified at the U.S. Department of Education's negotiated rulemaking; many of these veterans detailed the consequences associated with deceptive earnings claims:

- *"I felt pressure to enroll from Phoenix recruiters who told me I needed to enroll quickly or I'd miss out, so I signed up right away. But when I arrived, I found out that new cohorts started every week. They also claimed their alumni went on to be executives and that the school had partnerships with government agencies and companies like Microsoft and AT&T, but I never saw these or any other job placement services."*⁵ – Army Veteran Alphi Coleman
- *"In 2014, I enrolled in a two-year program at Le Cordon Bleu Culinary College in Scottsdale, Arizona ... I was told that the school had a job placement program where recruiters would come to campus and hire students. The school touted top level chef training and alumni who went on to set up their own restaurants. I was also told that its graduates make \$60-70,000 per year after graduation ... After enrollment, I started going to the job fairs held on campus. I would hand out resumes to potential employers. Rarely did I get a response. When I did hear back, I was told that I would need to start out as a dishwasher or a prep-cook."*⁶ – Marine Corps Veteran Bernard Hilton
- *"After I left the service, I attended ITT Tech from 2006-2008 to study Computer and Electrical Engineering. I graduated from the program but after almost a year of looking*

Education, Labor, and Pensions, 112 Cong. 2d Sess. (July 30, 2012),

<https://www.govinfo.gov/content/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf>.

³ The Century Foundation, *Truman, Eisenhower, and the First GI Bill Scandal* (Jan. 17, 2017),

<https://tcf.org/content/report/truman-eisenhower-first-gi-bill-scandal/>.

⁴ See *Veterans with Student Loans They Never Authorized or Wanted*, Veterans Education Success (Mar. 15, 2022), <https://vetsedsuccess.org/veterans-with-student-loans-they-never-authorized-or-wanted/>.

⁵ Alphi Coleman's Testimony to the Department of Education, Feb. 14, 2022,

<https://vetsedsuccess.org/student-veteran-submission-alphi-coleman-testimony-to-the-department-of-education/>.

⁶ Bernard Hilton's Testimony to the Department of Education, Mar. 15, 2022,

<https://vetsedsuccess.org/student-veteran-submission-bernard-hilton-testimony-to-the-department-of-education/>.

for a job, I was never able to get one in the field that I studied. When the school recruited me, they told me that 90% of its graduates were guaranteed jobs right out of the gate, with average salaries starting around \$60-\$70,000 a year. That was not true.”⁷ – Army Veteran Brian Whitehead

- “DeVry recruiters said I would get a job as a cop within 6 months of graduating from the criminal justice program. I felt strong-armed to sign up immediately, and recruiters had me pose for photos in a cap and gown as if I already graduated. They made it sound like graduating and getting a job was guaranteed.”⁸ – Army Veteran Paola Santiago

Law Enforcement Actions Related to Misleading Earnings and Job Prospect Claims

Law enforcement actions further reinforce these student veterans’ stories about misleading earnings claims. While the record of predatory behavior from colleges is voluminous,⁹ we have chosen to highlight a few institutions where we have received significant student veteran complaints that have also been subject to law enforcement actions:

- In 2019, the FTC obtained a \$191 million settlement from the University of Phoenix after Phoenix allegedly used deceptive advertisements that falsely advertised their relationships and job opportunities with employers such as Yahoo!, Microsoft, and Twitter.¹⁰
- In 2016, the FTC reached a \$100 million settlement with DeVry University for claims it “misled prospective students with ads that touted high employment success rates and income levels upon graduation.”¹¹

⁷ Brian Whitehead’s Testimony to the Department of Education, Oct. 7, 2021, <https://vetsedsuccess.org/student-veteran-submission-brian-whitehead-testimony-to-the-department-of-education/>.

⁸ Paola Santiago’s Testimony to the Department of Education, Mar. 16, 2022, <https://vetsedsuccess.org/student-veteran-submission-paola-santiago-testimony-to-the-department-of-education/>.

⁹ See Law Enforcement Actions by Predatory Colleges, Veterans Education Success (Jan. 1, 2021), <https://vetsedsuccess.org/law-enforcement-actions-against-predatory-colleges/>.

¹⁰ FTC Obtains Record \$191 Million Settlement from University of Phoenix to Resolve FTC Charges It Used Deceptive Advertising to Attract Prospective Students, Federal Trade Commission (Dec. 10, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/12/ftc-obtains-record-191-million-settlement-university-phoenix-resolve-ftc-charges-it-used-deceptive>. See also Yale Law School Report: Student Veteran Complaints Alleging Illegal Practices at University of Phoenix, Veterans Education Success (May 1, 2017), <https://vetsedsuccess.org/student-veteran-complaints-university-of-phoenix/> (over 100 complaints were about job opportunities).

¹¹ DeVry University Agrees to \$100 Million Settlement with FTC, Federal Trade Commission (Dec. 15, 2016), <https://www.ftc.gov/news-events/news/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc>; See also Veteran and Servicemember Complaints about Misconduct and Illegal Practices at DeVry University, Veterans Education Success (Aug. 1, 2016), <https://vetsedsuccess.org/trends-veteran-servicemember-student-complaints-about-devry-university/> (27% of the complaints we received were about post-graduate job opportunities).

- In March 2022, a California Superior Court found Ashford University (owned by Zovio Inc.) guilty of violating state consumer protection laws and issued a fine of \$22.37 million.¹² Among other findings, students were misled about their ability to obtain careers that require licensure after graduating from Ashford, such as teaching, nursing, and social work.¹³
- In 2019, 48 states plus the District of Columbia sued Career Education Corporation (now known as Perdoceo Education Corporation) and settled for close to \$500 million.¹⁴ The investigation alleged that “CEC misrepresented the potential for students to obtain employment in their field by failing to adequately disclose that some programs lacked necessary programmatic accreditation.”¹⁵

Many of the colleges utilizing deceptive tactics not only have poor student outcomes but also are more likely to precipitously close down and leave student veterans stranded.¹⁶ Taken together, the totality of the harm caused by these predatory practices is so large as to necessitate a rule from the FTC.

We recommend that rulemaking by the FTC make clear to postsecondary institutions of education that any earnings claims must be substantiated by the outcomes at the institution’s particular programs (and not be exaggerated by focusing on outliers), and that job placement claims be substantiated by placements of students in the field for which the program purported to prepare them (rather than, for example, jobs for which no higher degree is required). Disclaimers and disclosures alone would fall short of the FTC’s goal of ending deceptive practices and misrepresentations. We hope the FTC will consider these recommendations during the rulemaking process.

We also thank the FTC for its role in assisting the Department of Veterans Affairs in rooting out unfair and deceptive college recruiting practices under 38 USC § 3696 and urge the FTC to continue collaborating with VA to investigate and share findings of deceptive practices in higher

¹² Attorney General Bonta: Ashford University must pay \$22 Million in Penalties for Defrauding California Students, California Office of the Attorney General (Mar. 7, 2022), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-ashford-university-must-pay-22-million-penalties>.

¹³ *People of the State of California v. Ashford University, LLC; Zovio, Inc*, Case No- 37-2018-0046134-CU-MC-CTL (Cal. Sup. Ct. San Diego 2022), https://oag.ca.gov/system/files/attachments/press-docs/37-2018-0046134-CU-MC-CTL_ROA-696_03-03-22_Statement_of_Decision_164666968827.pdf.

¹⁴ Stacy Cowley, *For-Profit Chain Cancels \$494 Million in Student Debt to End State Investigations*, New York Times (Jan. 3, 2019), <https://www.nytimes.com/2019/01/03/business/student-debt-career-education-corporation.html>; See also Yale Law School Report: Student Veteran Complaints Alleging Illegal Practices at Colorado Technical University, Veterans Education Success (May 1, 2017), <https://vetsedsuccess.org/student-veteran-complaints-colorado-technical-university/> (more than 50 student veterans complained about misrepresentations about job opportunities).

¹⁵ Attorney General Shapiro Announces For-Profit College Will Provide \$493 million in Debt Relief For Over 179,000 Students, Pennsylvania Office of the Attorney General (Jan. 3, 2019), <https://www.attorneygeneral.gov/taking-action/attorney-general-shapiro-announces-for-profit-college-company-will-provide-493-million-in-debt-relief-for-over-179000-students-nationwide/>.

¹⁶ E.g., Jamal Eric Watson, *ITT Tech’s Closing Leaves Many Veterans in Limbo*, Diverse Issues in Higher Education (Oct. 19, 2016), <https://www.diverseeducation.com/students/article/15099311/itt-techs-closing-leaves-many-veterans-in-limbo>.

education. Further, we thank the FTC for its important actions against the copycat military websites,¹⁷ and for its notice to colleges last October about its “Penalty Offense Authority.”¹⁸ It is imperative that student veterans receive truthful information from institutions when deciding whether to pursue higher education.

Sincerely,

A handwritten signature in blue ink that reads "James Haynes".

James Haynes
Federal Policy Director

¹⁷ FTC Takes Action against the Operators of Copycat Military Websites, Federal Trade Commission (Sept. 6, 2018), <https://www.ftc.gov/news-events/news/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites>.

¹⁸ FTC Targets False Claims by For-Profit Colleges, Federal Trade Commission (Oct. 6, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-targets-false-claims-profit-colleges>.