



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

January 14, 2025

Notice of interpretation regarding misrepresentations by third-party service providers engaged by an institution of higher education

Dear Colleague:

The U.S. Department of Education (Department) is sending this letter to remind eligible title IV institutions (eligible institutions) of their obligations under the Higher Education Act (HEA) to comply with requirements under section 487(c)(3) of the HEA¹ and the Department's regulations (subpart F of part 668) pertaining to misrepresentation. These provisions prohibit an institution from providing false, misleading, or inaccurate information about the nature of its educational program(s), its financial charges, or the employability of its graduates. This letter reminds eligible institutions that such requirements apply with equal force to statements made by a third-party entity engaged by the eligible institution, including but not limited to an Online Program Manager (OPM), and their respective employees, contractors, or representatives (hereinafter "external service provider")²; and that institutions may be responsible for the consequences of any misrepresentation committed by any external service provider that they engage. *See* 34 C.F.R. 668.71.

Consistent with the statutory and regulatory requirements related to misrepresentation, the Department highlights three types of statements that, if made by an eligible institution and/or any external service provider, under certain circumstances discussed further below, are likely to qualify as a misrepresentation:

- (1) Inaccurately identifying an individual employed by an external service provider as being employed by the eligible institution,
- (2) Inaccurately presenting a sales representative or recruiter employed by an eligible institution or an external service provider as an academic advisor, such as by referring to them as a "counselor," and

¹ 20 U.S.C. 1094(c)(3).

² The Department's regulations related to substantial misrepresentation apply to statements made by "an eligible institution, **one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services[.]**" *See* 34 C.F.R. 668.71(c) (emphasis added).

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The Department of Education's mission is to promote student achievement and preparation for global Competitiveness by fostering educational excellence and ensuring equal access.

(3) Describing a program, or any of its components or resources, provided in substantial part by the external service provider as “the same as” a corollary residential or campus-based version of the program provided by the eligible institution.

These three types of statements may result in a finding that an eligible institution has engaged in a substantial misrepresentation and may result in the Department imposing a fine or taking action to limit, suspend, or terminate an institution’s access to title IV funds.³

Although these examples do not constitute an exhaustive list, the Department is issuing this guidance because the Department has become aware of multiple instances in which eligible institutions or their external service providers have apparently engaged in making these types of statements to misrepresent, allow to be misrepresented, or facilitate the misrepresentation of, aspects of programs offered by the eligible institutions.⁴ The Department seeks to remind institutions and their external service providers of their obligations to provide accurate and complete information to prospective and enrolled students in accordance with law, and as further clarified by the examples in this letter.

Background

Section 487(c)(3) of the HEA authorizes the Secretary to suspend or terminate an institution’s or program’s eligibility for title IV funds upon finding the institution substantially misrepresented the nature of the institution’s educational program, its financial charges, or the employability of its graduates. 20 U.S.C. 1094(c)(3). Subpart F of the Department’s title IV regulations define misrepresentation as any “false, erroneous or misleading statement an eligible institution, organization, or person with whom the eligible institution has an agreement to provide education programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public[.]” 34 C.F.R.

³ The Department considers the “totality of the circumstances in which a statement occurred, to determine whether it constitutes a substantial misrepresentation.” 81 FR 75926-01, at *75945 (Nov. 1, 2016). While each determination is fact-dependent based on the particular circumstances, this letter clarifies types of statements that have a high risk of qualifying as a substantial misrepresentation because they are likely to be false, erroneous, or have the tendency to mislead prospective and enrolled students, and upon which a prospective or enrolled student would be likely to reasonably rely to their detriment. *See* 34 C.F.R. 668.71(c) (defining substantial misrepresentation).

⁴ *See, e.g.*, “Transcript of Virtual Listening Session,” U.S. Department of Education, Office of Postsecondary Education (March 8, 2023), at 41-43, available at <https://www.ed.gov/media/document/virilstsesstranscript3823finpdf>; “Comments from the Legal Aid Community to the U.S. Department of Education,” Docket ID ED–2021–OPE–0077 (August 12, 2022), available for download at <https://www.regulations.gov/comment/ED-2021-OPE-0077-5337>; *see also, e.g., Luna v. Univ. of Southern California*, Case No. 23STCV09981 (Cal. Super. Ct., May 4, 2023) (claiming misrepresentation based, in part, on allegations that employees of the third-party entity contracting with university misrepresented themselves as university employees); *Bradford v. George Washington Univ.*, Case No. 16-858 (D.D.C., May 6, 2026) (claiming misrepresentation based, in part, on allegations that the university’s online education program was “substantially identical” to its in-classroom equivalent when the programs was inferior) (dismissed on grounds that plaintiffs’ claims were time-barred by statute of limitations).

668.71(c).⁵ Misrepresentation “includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading.” *Id.*⁶ A “substantial misrepresentation” occurs if the misrepresentation is one “on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.” *Id.*

The Department’s longstanding position has been that misrepresentation can occur through acts or omissions that falsely, inaccurately, or misleadingly identify the entity providing a good or service related to the institution’s educational program, its financial charges, or the employability of its graduates. For example, since 2010, the Department’s misrepresentation regulations have required institutions to provide accurate statements about the source of a program’s educational services and characteristics, including statements “made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.” *See* 34 C.F.R. 668.71(b); *see also* 34 C.F.R. 668.72-74.⁷ As another example of the Department reminding institutions of obligations to be accurate in their representations about the source of educational services and characteristics, in [DCL GEN-22-07](#), the Department reminded eligible institutions that they are required by 34 C.F.R. 668.43(a)(12) to attribute accurately the portions of a program provided by the eligible institution itself, as distinct from the portions of a program provided on behalf of the eligible institution by written agreement, often by an external service provider not itself eligible for title IV participation.

1. False or misleading attribution of employment, status, or role with eligible institution

Many eligible institutions arrange for an external service provider to exclusively manage functions of online programs, such as recruitment, advising, and clinical placements. A misrepresentation can occur when an employee of an external service provider inaccurately presents themselves as an employee of the eligible institution in their communications with prospective and enrolled students, including but not limited to circumstances where the external service provider’s employees use school-associated email addresses and/or email signatures that represent or imply that the individual is employed by the eligible institution. In addition, a misrepresentation may occur if an employee of an external service provider fails to inform students during phone conversations that they are not, in fact, directly employed by the institution.

⁵ Although the Department revised its misrepresentation regulations (subpart F of part 668) in 2010 (75 FR 66832), 2016 (81 FR 75926), and 2022 (87 FR 65904), this regulatory definition of “misrepresentation” has remained the same since 2010.

⁶ The Department added this clarification to the regulatory definition of misrepresentation in 2016 to make explicit the Department’s view that misrepresentations may include omissions, which aligns with its interpretation of the 2010 regulations and longstanding position. *See* 81 FR at 75949 (explaining that this clarification in the 2016 rules aligned the definition of misrepresentation with the “the Department’s long-standing purpose for part 668, subpart F, enforcement actions” and was consistent with enforcement actions taken under the 2010 regulations).

⁷ This emphasis and regulatory language appears in the regulations promulgated in 2010 (75 FR 66832), 2016 (81 FR 75926), and 2022 (87 FR 65904). *See also* notes 4, 5, *supra* (explaining how the Department’s regulations on misrepresentation have retained key definitions and concepts for over a decade).

Misrepresenting the role of an external service provider in these manners can be deceptive, and the Department is aware of numerous instances of this type of deception reportedly occurring. For example, the Department is aware of instances in which OPM employees, using titles such as “placement specialist,” “placement manager,” “student success advisor,” “student success manager,” “student support specialist,” “admissions counselor,” and “admissions manager,” have sent emails to prospective and enrolled students in OPM-provided programs offered by eligible institutions from email addresses that implied institutional employment (@[eligible institution].edu), and do not indicate clearly their affiliation with or employment by the OPM.⁸ Depending on the particular facts, the use of such titles or email addresses is likely to contribute to students misunderstanding these employees’ roles and relying on information provided by them as if they were institutional employees.

Misrepresenting the role of an external service provider can deprive prospective and enrolled students of the ability to make fully informed decisions about their education and can undermine the effectiveness of the Department's existing regulations. Prospective and enrolled students report that they believe it is important to understand whether they are speaking to an employee of an external service provider rather than an employee of the institution. The status of the person they are talking with affects their evaluation of the services that the institution will provide, allowing students to make better-informed decisions about whether to undertake the significant cost of enrolling.⁹

As another example of how such conduct can undermine the Department’s accountability requirements, eligible institutions are required to “make readily available” certain program information to enrolled and prospective students, including information about written arrangements the institution has entered into, to ensure students are aware of an external service provider’s particular role in providing the educational programs, the costs incurred, and other key aspects of the program. 20 U.S.C. § 1092(a)(1)(G); 1094(a)(7); 34 C.F.R. 668.43(a)(12). However, a student will not know to request this critical information if an eligible institution or its external service provider either fails to inform a student of the existence of a contracted external service provider or makes false, misleading, or inaccurate representations about the role of the external service provider.

The Department’s view that this type of conduct can be deceptive is consistent with other Federal and State consumer protection laws. For example, the Federal Trade Commission (FTC), in its guide for private vocational and distance education schools, 16 C.F.R. part 254, identifies as a deceptive act the misrepresentation that certain individuals are members of the institution or

⁸ The Department recognizes that financial aid offices may temporarily use additional contractors to assist with during the busiest financial aid processing periods. Generally, the Department's concern relates to the use of contracted staff for recruitment purposes, when such relationships are not properly disclosed, which could impact a student’s ability to make an informed decision, as discussed further below.

⁹ See, e.g., “Transcript of Virtual Listening Session,” U.S. Department of Education, Office of Postsecondary Education (March 8, 2023), at 41-43, available at <https://www.ed.gov/media/document/virilstsessrtranscript3823finpdf>; see also, “Comments from the Legal Aid Community to the U.S. Department of Education,” Docket ID ED-2021-OPE-0077 (August 12, 2022), available for download at <https://www.regulations.gov/comment/ED-2021-OPE-0077-5337>.

school, 16 C.F.R. 254.4(a)(7), and in its rule on impersonation, 16 C.F.R. Part 461, prohibits falsely posing as government or business entities or officials. In addition, the FTC has filed numerous enforcement actions involving false or unsubstantiated affiliation claims.¹⁰ Under the rules enforced by the FTC, representations are deceptive if necessary, qualifications are not made, if material facts are not disclosed, or if these disclosures or qualifications are confusing or inconspicuous.¹¹ The touchstone is whether the overall net impression of the representation is deceptive, not its literal truth or falsity. *See, e.g., FTC v. Cyberspace.com, L.L.C.*, 453 F.3d 1196, 1200 (9th Cir. 2006); *see also FTC v. Med. Billers Network, Inc.*, 543 F. Supp. 2d 283, 304 (S.D.N.Y. 2008) (listing cases). “‘Deception may be made by innuendo rather than outright false statements,’ . . . and statements can ‘create deceptive impression on purchasers even though they may be technically interpreted as true or partially true.’” *FTC v. Bay Area Bus. Council, Inc.*, No. 02 C 5762, 2004 WL 769388, at *10 (N.D. Ill. Apr. 9, 2004), *aff’d*, 423 F.3d 627 (7th Cir. 2005) (quoting *National Bankers Services, Inc. v. FTC*, 329 F.2d 365, 367 (7th Cir.1964); *L.G. Balfour Co. v. FTC*, 442 F.2d 1, 17 (7th Cir.1971)).

These principles also apply to representations about the source of goods and services. For example, in *Waltham Watch Co. v. FTC*, 318 F.2d 28 (7th Cir. 1963), the Court held that a company’s advertisements were knowingly false and misleading where it claimed that its products were from a “famous 150-year-old company” without disclosing that the manufacturer of these products had nothing to do with the original company, which had authorized the use of its name under a licensing agreement. *Id.* at 31. *See also Waltham Precision Instrument Co. v. FTC.*, 327 F.2d 427, 431 (7th Cir. 1964) (“Any right petitioners have to use the tradename ‘Waltham’ does not permit its use in a manner designed to deceive the public, and those who put into the hands of others the means by which they may mislead the public, are themselves guilty of a violation of Section 5 of the Federal Trade Commission Act.”) (cleaned up); *Warner-Lambert Co. v. FTC*, 562 F.2d 749, 761 (D.C. Cir. 1977) (where a product has built up a widespread reputation over a period of years, it is false and deceptive to continue advertising on the “strength of the impression” without disclosing material changes to the product.)

Additionally, the Department’s enforcement approach is consistent with a number of State rules related to misrepresentation. For example, California’s prohibition on unfair, deceptive, unlawful, and unconscionable commercial practices in connection with the sale of educational services to consumers specifically prohibits “passing off goods or services as those of another,” “misrepresenting the source...of goods and services,” and “misrepresenting the affiliation, connection, or association with another.” California Consumer Legal Remedies Act (CLRA), Civil Code 11/70 et seq. As another example, Texas’s prohibition on deceptive trade practices

¹⁰ *See, e.g., FTC v. Career Educ. Corp.*, No. 1:19-cv-05739 (N.D. Ill., July 9, 2019) (alleging school’s lead generators misrepresented that its schools were recommended or endorsed by U.S. military); *FTC v. Sunkey Publ’g, Inc.*, No. 3:18-cv-01444 (N.D. Ala. Sept. 6, 2018) (alleging lead generators misrepresented that schools were recommended or endorsed by U.S. military); *FTC v. Capitol Network Distance Learning Programs, LLC*, No. 2:16-cv-00350 (D. Ariz., Feb. 8, 2016) (misrepresenting that defendants were accredited by an independent, third-party accrediting body independent from defendants’ online schools); *FTC v. Stepping Stonez Dev., LLC*, No. 2:16-cv-00351 (D. Ariz., Feb. 8, 2016) (same); *FTC v. Diversified Educ. Res., LLC (Jefferson High School Online)*, No. 14-cv-62116 (S.D. Fla., Sept. 16, 2014) (alleging diploma mill misrepresented that it was accredited by an independent, third party accrediting body).

¹¹ *See* Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-83 (1984).

specifies that the term “false, misleading, or deceptive acts or practices” includes, but is not limited to “passing off goods or services as those of another,” “causing confusion or misunderstanding as to affiliation, connection, or association with, or certification of goods or services,” “causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another,” and “representing that goods or services have sponsorship, approval, [or] characteristics...which they do not have or that a person has a sponsorship, approval, status, affiliation or connection which the person does not [have].” Tex. Bus. & Com. Code § 17.46. And the District of Columbia’s prohibition of unfair and deceptive trade practices prohibits “represent[ing] that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have” and “pass[ing] off goods or services as those of another.” District of Columbia Consumer Protection Procedures Act (CPPA), D.C. Code § 28-3904.

2. Deceptive or misleading statements about an individual’s role in student recruitment

The Department also notes that presenting a sales representative or recruiter as an “academic counselor” or similar position can be deceptive and misleading if it is not an accurate description of their position. For example, the Department is aware of circumstances in which individuals who have been awarded distinction based on their level of “sales” have reportedly described themselves as admission “counselors” of an eligible institution. Such practices create a high risk of misrepresentation since rewarding an individual based on sales indicates that individual’s role is not focused on impartially counseling prospective or enrolled students, but rather on securing a financial transaction. The Department’s interpretation is consistent with many States’ laws. *See, e.g.,* NY Comp Codes R. & Regs, tit. 8, sec. 126.12(e) (BPPS regs) (“Agents shall not identify themselves or be identified as counselors or by other titles which mislead the prospective student”), MA CMR, tit. 940 sec. 31.06(10) (“It is an unfair or deceptive act or practice for a school to refer to salespersons or recruiters as ‘counselors’ or ‘advisors’ or to imply that a salesperson or recruiter is an academic adviser or counselor”).¹² The FTC has also charged entities for deceptively claiming to be independent from the programs they advertise or not influenced by compensation received from those programs.¹³

¹² The Department observes that there are additional legal reasons why an individual employed by an external service provider that engages in recruitment under a revenue-sharing bundled services arrangement could not represent themselves as an admissions counselor to prospective or enrolled students. Per governing statutory and regulatory law, and consistent with DCL GEN-11-05, the Department views the incentive compensation ban as prohibiting revenue-sharing for recruitment unless the external service provider provides a bundle of services and certain conditions are met, including that the eligible institution determines admission and program enrollment independent of the external service provider. *See* DCL GEN-11-05; *see also* 20 U.S.C. § 1094(a)(20); 34 C.F.R. § 668.14(b)(22). Under this type of permitted bundled services arrangement, to maintain the necessary level of independence, an eligible institution cannot contract out to the external service provider the counseling function, and hence also cannot allow employees of an external service provider to represent themselves as counselors.

¹³ *See, e.g., In re Shop Tutors, Inc. (LendEDU), No. 182 3180 (May 26, 2020)* (alleging that student loan website misrepresented that its rankings and ratings of student loan companies was not influenced by compensation from those companies); *In re Victory Media, Inc.*, No. 162-3210 (Jan. 12, 2018) (alleging that respondent’s website promoting for-profit colleges misrepresented that it promoted these schools based on them being “military friendly,” and also misrepresented that respondent’s endorsements were independent, when respondent was paid by schools

3. False or misleading statement creating equivalency or identity between an eligible institution's program provided by an external service provider and a corollary campus-based or residential program

The Department is aware of instances in which the resources available to students enrolled in a program provided by an external service provider are entirely distinct and substantively different from those available to students in a corollary residential program. Such resources can include instructors, curriculum, advisors, placement coordinators, and registrars.

Absent specific evidence of actual parity with respect to each advertised aspect, it is highly likely to be misleading and deceptive to describe a program offered by the external service provider as the same as a campus-based program, or to otherwise imply an equivalent identity between the two if they are not equivalent in substantive ways. Such substantive items include differences in the degrees awarded (including the name of the school and college awarding the degree), the criteria for admissions, or the qualifications of faculty across both programs. Programs may not be equivalent if they have meaningful differences in rates of completion, job placement, earnings, or licensure. Stating that programs are equivalent when there are meaningful differences between them is highly likely to meet the statutory and regulatory definition of a misrepresentation. Institutions should also be clear if the credentials awarded in programs supported by an external service provider are different from the credentials students earn in the campus-based version of the program. For example, eligible institutions should be clear if the degree is awarded by an online division or campus of the institution that does or does not certify completion of the same curriculum taught by the same faculty as the campus-based degree.

In sum, eligible institutions and their external service providers are prohibited from providing false, misleading, or inaccurate information about the nature of their educational programs. See 20 U.S.C. 1094(c)(3); 34 CFR Part 668 Subpart F. This prohibition applies equally to circumstances where an institution has arranged for an external service provider to exclusively manage functions of online programs, such as recruitment, advising, and clinical placements. See 34 C.F.R. 668.71. As set forth in detail above, the Department's interpretation is consistent with the applicable statute and regulations, as well as State consumer protection laws.

Conclusion

Based on the evidence and support described in this letter, the Department provides these examples to clarify the type of statements made by an eligible institution or its external service provider that are likely to qualify as a misrepresentation under existing law. The Department reminds eligible institutions that they are responsible for statements made by an external service provider that amount to substantial misrepresentation, and that eligible institutions could, as a

listed); *FTC v. Expand, Inc. (Gigats)*, No. 6:16-cv-00714-CEM-TBS (M.D. Fla., Apr. 27, 2016) (alleging lead generator misrepresented that its employees were "independent" educational advisors, when it only recommended schools or programs that agreed to pay it for leads).

result, be subject to remedial action such as imposing a fine or limiting the institution's participation in the title IV programs.

If you have any questions or comments, please submit through the [Contact Customer Support form](#) link in Federal Student Aid's Help Center.

Sincerely,

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