



January 27, 2016

Mr. Robert Paul
President
DeVry University
3005 Highland Parkway
Downers Grove, IL 60515

Sent Via UPS
Tracking No:
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OPE ID: 01072700

Re: **NOTICE OF INTENT TO LIMIT:** *Placement Rate and Employability Advertisements and Representations for DeVry University, 3300 N. Campbell Avenue, Chicago, IL 60618 (OPE ID 01072700)*

Dear Mr. Paul:

Pursuant to 20 U.S.C. § 1094(c)(1)(F), 34 C.F.R. § 668.86, and 34 C.F.R. § 668.93, the United States Department of Education (“Department”) is hereby providing notice of its intent to impose limitations, effective February 16, 2016, on the participation by DeVry University (OPE ID: 01072700) (“DeVry”) in programs authorized pursuant to Title IV of the Higher Education Act of 1965 as amended (“HEA”), 20 U.S.C. § 1070 *et seq.*

As described more fully below, starting in at least 2008 and continuing until at least August 2015, DeVry made representations to students and prospective students regarding the post-graduation employment outcomes of students who graduated from DeVry over a cumulative period stretching more than 30 years. The specific representation that forms the basis of this action was highlighted in DeVry’s *We Major in Careers* campaign, a 2008 “career-focused brand marketing campaign” that sought to position DeVry as an institution that helped its graduates achieve career success. That campaign, which reflected more than a year’s worth of in-depth consumer, marketplace, and brand research by DeVry, represented a conscious decision by DeVry to make certain representations to students and prospective students for marketing and recruitment purposes. Yet with respect to certain representations that were made by DeVry as part of that campaign and which continued to be made until at least August 2015, DeVry is unable to substantiate the truthfulness of those representations, as is required by federal law.

Accordingly, as a condition of its continued participation in the Title IV programs and consistent with existing statutory and regulatory requirements, the Department is hereby notifying DeVry that neither it nor its agents or employees may make any representations, in advertisements or otherwise, that include statistics consisting of or based upon the post-graduation employment outcomes of students who graduated during the time that DeVry has conceded it does not possess graduate-specific information, *i.e.*, the type of information that is necessary to substantiate the truthfulness of any post-graduation employment claims. Nor may DeVry make any representations that include or are based upon post-graduation employment statistics regarding

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other time periods that cannot be substantiated with graduate-specific information. Moreover, for a period of five years following the effective date of this action, DeVry must subject all such representations to review by an independent auditor prior to the utterance (*i.e.*, oral, written, or otherwise) of such representations. The Department is also requiring DeVry to contact third parties who are repeating or re-publishing DeVry's unsubstantiated representations and demand that those entities cease doing so, to retain records used to develop and substantiate certain advertisements, to notify the Department of any legal claims, investigations, subpoenas or other inquiries regarding its post-graduation employment representations, and to notify its students of this limitation. DeVry's failure to comply with these limitations could subject DeVry to further actions pursuant to 34 C.F.R. Part 668, Subpart G, up to and including termination from its participation in Title IV programs.

PROCEDURAL BACKGROUND

On August 28, 2015, the Department sent DeVry a letter requesting information about representations made by DeVry regarding the employability of its graduates, including, *inter alia*, the following assertion made by DeVry in marketing and promotional materials:

“Since 1975, 90.1% of DeVry graduates system-wide in the active job market held positions in their fields of study within 6 months of graduation.” (the “Since 1975 Representation” or “Representation”).¹

See Exh. A. In addition to requesting a detailed description of the methodology used to derive the statistic contained in the Since 1975 Representation, the Department also requested that DeVry produce all summary charts and spreadsheets summarizing student-by-student information developed or maintained by DeVry which DeVry believes is sufficient to substantiate the statistics for graduates for a 15-year component of the Since 1975 Representation (between 1975 and 1990). The Department also requested that DeVry produce all evidence, organized by year and graduate, on which DeVry relies to substantiate job placement rates for all individuals who graduated from DeVry between 1975 and 1981.

On September 18, 2015, Thomas Babel of DeVry Education Group responded on behalf of DeVry by providing a narrative description (hereinafter “Response”), documents bearing bates

¹ For purposes of this letter and action, the Department considers the “Since 1975 Representation” to include variations that convey a similar message to an individual hearing or reading the representation. For instance, in 2010, DeVry provided a copy of materials to the U.S. Senate which contains the representation that “Since 1975 ...[o]ver 90% of graduates active in the job market were employed in career-related positions within six months of graduation.” *See* Exh. B at 10. The Department considers this representation, and other similar representations regarding the employment rates of DeVry graduates since 1975, to be within the scope of the phrase “Since 1975 Representation.”

Although this Notice is based only on findings relating to the Since 1975 Representation, we note for the purposes of completeness that the August 28 letter also sought information regarding two other assertions made by DeVry.

numbers DVG-ED-0000001 to DVG-ED-0002258, and additional information in a cover letter transmitting the Response and documents (hereinafter “Cover Letter”). At the Department’s request, additional materials were produced on October 23, 2015 (DVG-ED-0002259 to DVG-ED-0002424) and on October 30, 2015 (DVG-ED-0002425 to DVG-ED-0113744).

STATUTORY AND REGULATORY REQUIREMENTS

Under the HEA, institutions that participate in the Title IV programs and that advertise job placement rates as a means of attracting students to enroll must make available to prospective students, at or before the time of application, the most recent available data concerning employment statistics and any other information necessary to substantiate the truthfulness of the advertisements. 20 U.S.C. § 1094(a)(8). *See also* 34 C.F.R. § 668.14(b)(10). Institutions that choose to participate in the Title IV programs also must agree to administer the programs in accordance with all statutory provisions of or applicable to Title IV of the HEA, *see* 34 C.F.R. § 668.16, and to act as a fiduciary in the administration of the Title IV programs, thereby administering those programs subject to the highest standard of care and diligence, *see* 34 C.F.R. §§ 668.82(a)-(b). Participating institutions must also “[e]stablish[] and maintain[] records required under [Part 668] and individual Title IV, HEA program regulations,” 34 C.F.R. § 668.16(d)(1), and must provide access to such records to the Secretary, 34 C.F.R. § 668.24(f).

FACTUAL FINDINGS

1. Starting in at least February 2008,² DeVry was using the Since 1975 Representation in marketing and advertisements in the national media. *See e.g.*, Exh. C (JET Magazine excerpt (Feb. 11, 2008) (full version *available at* <https://books.google.com/books?id=6TwDAAAAMBAJ>)) (advertising that 90% of DeVry University undergraduate graduates system-wide in the active job market since 1975 were employed in their fields within 6 months of graduation).³

² According to DeVry, in 2002, Career Services began a project to create an aggregated rate dating back to 1975. Response at 17.

³ As noted at the outset, the Department understands that the Since 1975 Representation was used as part of DeVry’s *We Major in Careers* campaign, launched in early 2008. *See, e.g.*, Press Release: *Alumni Success Forms Foundation for DeVry University Brand Campaign* (Feb. 12, 2008) (attached hereto as Exh. D) (available within: <http://investors.devryeducationgroup.com>) (“DeVry University’s ‘We Major In Careers’ campaign is based on some impressive achievements...[S]ince 1975 ... 90 percent of those in the active job market were employed in career-related positions within six months of graduation.”) (last visited January 19, 2016). This campaign, which was “developed by Chicago-based global brand-building powerhouse The Marketing Store, reflect[ed] more than a year’s worth of in-depth consumer, marketplace and brand research[.]” *Id.* The Department also understands that the Since 1975 Representation also appeared at various times on the main page at www.devry.edu. *See* Exh. E (<http://web.archive.org/web/20080218200808/http://www.devry.edu/> (showing what purports to be the www.devry.edu page as of February 18, 2008) & <http://web.archive.org/web/20110403191942/http://www.devry.edu/> (same, as of April 3, 2011)).

2. The Since 1975 Representation conveyed to prospective students that since 1975, 90% – or some close variation thereof, depending on the specific utterance – of DeVry graduates actively seeking employment in their field of study were employed within 6 months of graduation. *See, e.g.*, Exh. A (compilation of representations).
3. DeVry made the Since 1975 Representation in order to demonstrate the value of a DeVry degree and to provide information to prospective students in order to assist with their evaluation of DeVry relative to other education options or institutions. *See* Exh. F (DVG-ED-0002259); Exh. D (describing the inclusion of the representation in the *We Major in Careers* brand for DeVry).
4. The Since 1975 Representation was published by DeVry *at least* until January 23, 2014 (*i.e.*, the date by which DeVry claims it had discontinued its use of the Representation). The Since 1975 Representation remained in promotional materials available on DeVry’s website until shortly after DeVry received the Department’s August 28, 2015 letter requesting information about the Representation.⁴ Versions of the representation remain present today on websites controlled by DeVry. *See, e.g.*:
 - i. <http://newsroom.devry.edu/news/devry-university-announces-new-alhambra-location.htm> (Exh. H at 1) (last visited January 19, 2016);
 - ii. <http://newsroom.devry.edu/news/devry-university-announces-new-anaheim-location.htm> (Exh. H at 3) (last visited January 19, 2016);
 - iii. Press Release: DeVry Inc. Announces Fiscal 2009 Third-Quarter Results; Record revenues driven by favorable enrollment trends (Apr. 23, 2009) available within <http://investors.devryeducationgroup.com> (attached hereto as Exh. I) (last visited January 19, 2016)
 - iv. Press Release: Alumni Success Forms Foundation for DeVry University Brand Campaign (Feb. 12, 2008) (Exh. D)
5. The Since 1975 Representation was used repeatedly as part of DeVry’s brand marketing campaign. *See, e.g.*, Exhs. A, B at 10, G & H. *See also, e.g.*, DVG-ED-0107525; DVG-ED-0055686 (March 26, 2009 Radio Script, Titled “Good Idea”) (“Well, because since 1975, 90% of all DeVry graduates seeking employment had careers in their fields within 6 months of graduation.”); DVG-ED-0024408 at 1:07 (“We ask people to spend their

⁴ Although DeVry claims that the representation ceased being made at an uncertain date before January 23, 2014, in August 2015, the Department independently located the Representation in numerous marketing and recruitment pieces on DeVry’s website. DeVry appears, however, to have removed those pieces from its website shortly after receiving the Department’s August 2015 request letter. In addition, DeVry has also produced to the Department what appears to be a printout dated February 14, 2014 (*i.e.*, after January 23, 2014) of a DeVry University website page containing the Since 1975 Representation. *See* Exh. G (DVG-ED-0113737). Thus, the Department finds DeVry’s claim that it ceased making the Representation prior to January 23, 2014 to lack credibility.

time and money with us. And we give them a return on their investment it would be hard to get anywhere. The simple fact of the matter is, since 1975, 90 percent of our graduates system-wide seeking employment had a career in their fields within six months. 90 percent.”); DVG-ED-0011119 (video showing former DeVry University President David Pauldine making the Since 1975 Representation at time stamp 1:55-2:15 and including the Representation as part of DeVry’s “Manifesto” at time stamp 8:14); DVG-ED-0024409 (similar, but noting that the return on student investment is one that students “can’t get anywhere else” and asserting the veracity of the 90 percent figure “even in a recession”). As a consequence of DeVry’s decision to make the Representation, the Representation remains in visible publication today in forms that appear to not be under DeVry’s direct or continuing control.⁵

6. DeVry cannot provide the Department with all graduate-specific data that form the basis of the Since 1975 Representation. Specifically, DeVry has stated that it is “unable to locate” student-by-student career services data that forms the basis of the Since 1975 Representation for the period between 1975 and October 1980. *See* Response at 17. With respect to the period between October 1980 and 1990, only “*certain* student-by-student” records exist, suggesting that some records do not exist. *Id.* at 18 (emphasis added). Accordingly, with respect to at least a period of nearly six years, and likely a period of fifteen years, DeVry is unable to produce all student-by-student (or graduate-by-graduate) data that forms the basis of the Since 1975 Representation.
7. The Since 1975 Representation was developed, at least in part, through the compilation and aggregation of annual “By-Campus Rollup Reports” that DeVry asserts were contemporaneously created and which summarized the employment results of each class. Response at 17.
8. DeVry’s practices and procedures with respect to reporting graduate employment information and calculating graduate employment statistics are contained in Career Services Policy Manuals. Response at 16. DeVry has only been able to locate such written policies back to 1983, but asserts that “for over 40 years,” such policies “controlled” the calculation of the graduate employment rates. *Id.*
9. The practices and procedures used by DeVry to calculate annual graduate employment rates changed, or “evolved,” over time. *See* Response at 16. For instance, in August 1989, DeVry changed the methodology by which it calculated (and thus presented) the

⁵ The Since 1975 Representation is in matters of public record, for example in the record of proceedings of the United States Senate and in filings with the U.S. Securities and Exchange Commission. *See, e.g.,* Written Testimony of Ms. Sharon Thomas Parrott, Senior Vice President, Government and Regulatory Affairs & Chief Compliance Office of DeVry Education before the Senate Committee on Health, Education Labor, and Pensions (June 24, 2010) *available at* <http://www.help.senate.gov/imo/media/doc/Parrott.pdf> (attached hereto as Exh. B); DeVry University’s 8-K, filed July 15, 2010, at Exh. 99.1 *available at* <http://www.sec.gov/Archives/edgar/data/730464/000115752310004049/a6361777ex99-1.htm>. Moreover, the Representation can be found on third-party websites. *See, e.g.,* Exh. J.

post-graduation employment rates of its students, with the result of enabling DeVry to “present a much higher percentage of placed students.” *See* Exh. K (DVG-ED-0002129).

10. Because the “By-Campus Rollup Reports” were created contemporaneously and annually, and because the practices and procedures used by DeVry changed over time, the methodology underlying the Since 1975 Representation may vary with respect to the component years.

CONCLUSIONS

1. Having chosen to advertise job placement rates as a means of attracting students to enroll, and as a participating institution in the Title IV programs, DeVry is required to be able to make available all information necessary to substantiate the truth of advertisements made. 20 U.S.C. § 1094(a)(8); 34 C.F.R. § 668.14(b)(10). When an institution chooses to use job placement rates as a means of attracting students to enroll, the institution must be able to provide “the most recent available data concerning employment statistics *and ... any other information necessary to substantiate the truth of the advertisements.*” 20 U.S.C. § 1094(a)(8); 34 C.F.R. § 668.14(b)(10) (emphasis added).

2. An institution is capable of satisfying part of its burden under 20 U.S.C. § 1094(a)(8) and 34 C.F.R. § 668.14(b)(10) if it can produce copies of all graduate-specific data that underlie any statistical representations.⁶ Indeed, DeVry has informed the Department that it has maintained such information with respect to 2012 graduates and has made those records available to the Department. *See* Response at 12 (“Student-by-student substantiation is available for the class of 2012 should the Department wish to review it.”). But with respect to the Since 1975 Representation, which DeVry chose to make starting in at least 2008, DeVry does not have, or cannot locate, the graduate-by-graduate records necessary to substantiate the veracity of that representation.⁷ Response at 17 (“[W]e have been unable to locate the underlying student-by-student Career Services data relating to [1975-October 1980] despite a diligent, ongoing search.”).

⁶ The mere retention (and ability to produce) graduate-specific data does not suffice to meet the statutory and regulatory requirements. The information retained must still substantiate the truthfulness of the advertisements. Moreover, the Department is not suggesting that graduate-specific data should be made available to all prospective students upon request, as such information would contain personally identifiable information, the disclosure of which would be prohibited under 20 U.S.C. § 1232g(b) and other federal laws. Rather, to be administratively capable of complying with 20 U.S.C. § 1094(a)(8) and 34 C.F.R. § 668.14(b)(10), graduate-specific information must be retained by the institution if the institution opts to advertise job placement rates that are based on the post-graduation employment outcomes of those graduates. *Cf. In re Macomb Community College*, Dkt. No. 91-80-SP (June 28, 1993) (“Undoubtedly, the purposes of Title IV could easily be defeated if institutions could not be taken to task for failure to maintain records which could substantiate that an institution was entitled to the Federal funds that it was given.”). *See also, e.g.* 34 C.F.R. § 668.16(d)(1); 34 C.F.R. § 668.24.

⁷ Although DeVry reports of having conducted a diligent search for student-by-student materials, DeVry has alternatively claimed that, if such records are available, they are “likely” stored on microfiche/microfilm format at local campuses.

3. DeVry asserts that “graduate-specific information is [not] necessary to substantiate its claim.” Cover Ltr. at 2. Instead, DeVry maintains that it has satisfied its statutory and regulatory burden by producing three types of information: (i) a series of historical “compilation reports” that DeVry asserts were contemporaneously prepared between 1975 and 1990 in the ordinary course of business and which summarize student-by-student information, Response at 17; Cover Ltr. at 2 (citing to DVG-ED-0001656-2254); (ii) “student-by-student data extracted from a legacy database relating to the period 1980 to 1990, which demonstrates the[] reliability” of the compilations for the period between 1980 and 1990, Cover Ltr. at 2; and (iii) recently prepared affidavits from two individuals who were employed by DeVry in career-services related positions at two DeVry campuses between at least 1975 and 1979. *See* DVG-ED-0001644-1654.

The Department has reviewed and analyzed DeVry’s submissions and has concluded that DeVry has failed to meet the substantiation requirement with respect to the Since 1975 Representation.

As an initial matter, neither the HEA, 20 U.S.C. § 1094(a)(8), nor the Department’s regulations, 34 C.F.R. § 668.14(b)(10), permit a school to “substantiate the truthfulness” of advertisements regarding job placement rates by relying on summary compilations of data without having retained, and without being able to provide to the Department for verification, the backup documentation necessary to substantiate the truth of the compilations (and, by extension, the truth of the advertisements). Substantiation requires more than the offering of some evidence or support for a proposition.⁸ The reason for this is clear: prospective students are likely to rely upon claims regarding employment prospects in order to evaluate the relative value of a particular institution. Generally, prospective students will not be in a position to verify the accuracy of representations made by an institution prior to enrollment, and must therefore rely upon the truthfulness of representations made by the institution. Institutions must, therefore, be able to “substantiate the truthfulness” of representations they make – *i.e.*, not merely provide some evidence to generally support the representations.

As it relates to the Since 1975 Representation, DeVry is implicitly suggesting that Department (and, by extension, a prospective student) trust that the compilations were made both accurately and in a methodologically sound manner. Although DeVry has offered argument and affidavits to support its assertion that the compilations are both accurate and methodologically sound, the affidavits do not suffice to “substantiate” the truthfulness of the compilations or the representations made that were based on those compilations. That can only be done with underlying data.

⁸ *See, e.g.*, Webster’s Third New International Dictionary, Unabridged (1979) (defining “substantiate” as “to establish the existence or truth of by proof or competent evidence”); *Godwin v. Sec’y of Health & Human Servs.*, No. 94-CV-72386-DT, 1995 WL 871199, at *5 (E.D. Mich. May 2, 1995) (“Webster’s ... provides that to substantiate is to establish the existence or truth of an object or idea by proof or competent evidence.”); Webster’s II New Riverside University Dictionary (1984) (defining “substantiate” as “[t]o support *and verify* with proof or evidence”) (emphasis added); *Minnesota Lawyers Mut. Ins. Co. v. Larson*, No. 06-CV-074-WDS, 2007 WL 2688443, at *3 (S.D. Ill. Sept. 11, 2007) (“Larson would need more facts to actually ‘substantiate’ a claim than he would simply to ‘support’ one.”).

A. With respect to DeVry's assertion that the accuracy of, and methodology underlying, the compilation reports are "corroborate[d]" by "student-by-student graduate information ... extracted from its earliest legacy computer database" relating to the period from October 1980-1990 which demonstrates the reliability of the historical compilations, including those covering the period between 1975 and October 1980, *see* Cover Ltr. at 2; Response at 19, any such corroboration is limited to the period *after* October 1980. DeVry's assertions that the legacy database corroborates the accuracy of the historical compilation reports do not speak to the accuracy of those compilations from *before* October 1980.

B. With respect to the accuracy of, and methodology underlying, the historical compilation reports, DeVry has also provided two recently prepared affidavits from individuals employed by DeVry in the 1970s. *See* DVG-ED-0001644-1654. Assuming the veracity of the statements contained in the affidavits, the affiants only have personal knowledge of certain policies followed by the campuses on which they worked. Neither affidavit speaks to the process by which DeVry's "Home Office" compiled the reports submitted by the individual campuses. For instance, although the first affiant makes certain representation about the processes used by the Kansas City campus of DeVry, he affirmed that the campus "made reports to Home Office" on a periodic basis, and that the "Home Office," *i.e.*, not the Kansas City campus, "compiled these reports in order to prepare a graduate employment statistic every year." DVG-ED-0001646-47 at ¶¶ 20-21. Similarly, although the second affiant was "confident that the statistics reported by DeVry Institute Chicago in the Home Office's yearly summary spreadsheets are accurate," she did not make affirmations about the processes used by other campuses or the generation of the system-wide employment rate by the Home Office. DVG-ED-0001653 at ¶ 31. Accordingly, even accepting the truth of the statements in affidavits for purposes of determining whether DeVry has satisfied 20 U.S.C. § 1094(a)(8) and 34 C.F.R. § 668.14(b)(10), the affidavits do not provide sufficient information.⁹

C. With respect to the methodology underlying the compilation reports, information provided by DeVry in response to the Department's request establishes that the compilation reports are insufficient to substantiate the truthfulness of the representations made. As noted above, the practices and procedures used by DeVry to derive annual job placement statistics changed over time. *See* Response at 16. For instance, in August 1989, with the stated result of giving DeVry "the opportunity to present a much higher percentage of placed students," DeVry

⁹ Nor does the Department consider sufficient to substantiate (or support the substantiation of) the truthfulness of the Since 1975 Representation the fact that DeVry placed advertisements in the 1970s which advertised, without substantiation, a graduate of employment rate in excess of 90%. *See* Response at 18 & n.33. Nor does the Department find a 1980 Consent Order between the FTC and a DeVry predecessor, Bell & Howell, persuasive evidence that DeVry can substantiate the truthfulness of the Since 1975 Representation. There is no evidence that the FTC ever included within the scope of its investigation an analysis of DeVry's graduate employment rate, apart from a 2015 recollection of a review, by the FTC, of graduate employment rates in 1974. *See* DVG-ED-0001653 at ¶¶ 32-36. But even if that recollection is accurate, (i) that analysis would have been of data that predates the Since 1975 Representation; and (ii) the decision by a federal agency not to take action against a company is certainly not conclusive evidence that the company was making only truthful, and substantiated, representations in its advertising.

changed the methodology by which it calculated (and thus presented) the post-graduation employment rates of its students. *See* Exh. K (DVG-ED-0002129). Moreover, DeVry has only been able to produce the Career Services Policy Manuals (which contain DeVry's practices and procedures with respect to reporting job placement information and calculating job placement statistics) dating back to 1983. Accordingly, because the compilations were created contemporaneously, the practices changed over time, and DeVry cannot produce the methodologies used before 1983, the Since 1975 Representation may be based on internally inconsistent methodologies. For example, a particular 1979 DeVry graduate may (or may not) not have counted as "employed" for statistical purposes in 1979, a graduate in identical circumstances in 1989 may have counted as "employed," or may have been omitted from the calculation altogether. But the Department has no way to assess whether this is a pure hypothetical, nor does it have any way to assess *at all* the methodology used between 1975-1983.

LIMITATION

An institution participating in the Title IV programs must, at all times, act in the nature of, and with the competency and integrity necessary to qualify as, a fiduciary in the administration of those programs. 34 C.F.R. § 668.82. As a fiduciary, an institution "is subject to the highest standard of care and diligence in administering [Title IV] programs," 34 C.F.R. § 668.82(b)(1), and the failure by an institution to administer such programs in accordance with that standard may be subjected to, *inter alia*, a limitation on the institution's participation in that program. *See* 34 C.F.R. § 668.82(c). *See also* 20 U.S.C. § 1094(c)(1)(F) (permitting the imposition of a "limitation" by the Secretary whenever the Secretary "has determined, after a reasonable notice and opportunity for hearing, that such institution has violated or failed to carry out any provision" of Title IV). More specifically, the Department "may limit ... an institution's participation" in the Title IV programs if an institution "[v]iolates any statutory provision of or applicable to Title IV of the HEA," or "any regulatory provision prescribed under that statutory authority." 34 C.F.R. § 668.86. "A limitation may include, as appropriate to the Title IV, HEA program in question ... [any] conditions as may be determined by the Secretary to be reasonable and appropriate." 34 C.F.R. § 668.93(i).

Because of the facts and conclusions stated above, the Department, consistent with the substantive and procedural requirements in 34 C.F.R. Part 668, Subpart G, is hereby providing notice that the following limitations are being placed on DeVry's continued eligibility to receive Title IV funding. Notwithstanding any other applicable requirements, as a condition of receiving Title IV funds:

- (1) DeVry must immediately cease making any representations that are based, in whole or in part, on graduate employment rates for the period between 1975 and October 1980.
- (2) DeVry may not make representations that are based, in whole or in part, on graduate employment rates, unless:
 - a. DeVry can substantiate such representations with graduate-specific information, which shall be made available to the Department upon request; and

- b. with respect to any such representation made during the five (5) years following the effective date of the limitation, DeVry obtains the report of an independent auditor conducting an examination-level attestation engagement of the veracity of such representation. The audit must be performed by the independent auditor in accordance with Generally Accepted Government Auditing Standards (“GAGAS”) issued by GAO and attestation standards issued by the American Institute of Certified Public Accountants (“AICPA”). The report of such audit must be issued before a representation is made, and DeVry Education Group must provide the Department with a copy of the report within 60 days of the representation being made.
- (3) DeVry must comply with the following student notification requirements:

- a. Within 60 days of the effective date of this limitation, DeVry must notify all students who are enrolled at DeVry on the effective date of the limitation, that the Since 1975 Representation was not substantiated to the extent required by law. Such notification must be made to each enrolled student at the most recent e-mail address that DeVry has for each of these students. Within 60 days of the effective date of this limitation, DeVry must provide the Department with a copy of the message issued to each student, and a list (with names and email addresses) of all recipients who were provided the message. The e-mail must contain, verbatim, the following language (hereinafter “Disclosure Language”):

Following a final Department of Education action effective [INSERT DATE], DeVry was determined to have made marketing representations to current and prospective students that were unsubstantiated to the extent required by law. Specifically, DeVry was not able to adequately substantiate the truthfulness of its marketing claim that, in effect, “Since 1975, 90% of DeVry graduates system-wide in the active job market held positions in their fields of study within 6 months of graduation.” Please be advised that DeVry has ceased making such representations and is making outreach efforts to outside entities that made such representations and is requesting those entities to cease repeating DeVry’s prior representations.

- b. Within 60 days of the effective date of this limitation, and for a period of five (5) years, DeVry must (i) prominently post the Disclosure Language on the home page of its Website in a simple and meaningful manner; (ii) provide a prominent and direct link on any other Web page containing any information or representations about the post-graduation employment outcomes of DeVry students and (iii) prominently include the Disclosure Language in a simple and meaningful manner in all other marketing or recruiting materials containing

representations about post-graduation employment outcomes. Within 60 days of the effective date of this limitation, DeVry must also provide the Department with proof of its compliance with this limitation, including by providing a document listing all URLs to which the Disclosure Language has been posted and a copy of all other marketing materials to which the Disclosure Language has been included.

- c. Effective immediately, and for five (5) years following the effective date of the limitation, DeVry must include the Disclosure Language in any and all enrollment agreements or other such documents memorializing the enrollment of a student at DeVry University.
- (4) Within 60 days of the effective date of this limitation, DeVry shall provide to the Department an exact copy of the notice attached hereto as Attachment A, showing the date of delivery, to all persons or entities who DeVry believes (after a reasonable, good faith investigation) to be continuing to publish the Since 1975 Representation to the public, regardless of whether the representation is being made under an arrangement with DeVry. The notice required by this paragraph shall not include any document or enclosures other than those referenced in the notice and may be sent to the principal place of business or registered agent of each entity so identified. In addition, DeVry must provide documentation to the Department of the investigation and methodology it used to identify the recipients of this notice.
- (5) Effective immediately, and for five (5) years following the effective date of the limitation, if DeVry makes any representation that is based, in whole or in part, on graduate employment rates, DeVry must preserve the following information in its possession, custody, or control, without regard to whether it was relied upon to develop or to substantiate the representation. Such information must be preserved for a period of five (5) years following the last utterance or publication of the representation.
- a. All student files relating to the students or graduates whose graduate employment information serves as a basis for the representation;
 - b. All documentation relating to the employment of any such student before, during, and after the student's graduation from DeVry;
 - c. All communications with any such student or graduate regarding post-graduation employment;
 - d. All documents relating to any audit, survey, or other review by any person or entity affiliated with or retained by DeVry Education Group, of any statistic underlying any representations that are based, in whole or in part, on graduate employment rates;
 - e. All documents, including, without limitation, Career Services Manuals, that describe, refer, or relate to the methodology used by DeVry to calculate or create a representation based, in whole or in part, on graduate employment rates; and
 - f. To the extent not included above, all evidence on which DeVry relies to substantiate any representation it makes about the employability of its graduates

(including representations that are based, in whole or in part, on graduate employment rates).

- (6) Effective immediately, and for five (5) years following the effective date of the limitation, DeVry must submit to the Department, no later than 10 days after the event described below, written notice of the occurrence of any of the following:
- a. Any adverse action whatsoever, including, without limitation, written warnings, adverse factual determinations, show cause orders, probation and similar actions, taken against DeVry by its accrediting agency, State authorizing agencies, a Federal agency, or a private party relating to representations made by DeVry regarding the employability of its graduates (including representations that are based, in whole or in part, on graduate employment rates); or
 - b. DeVry's receipt of a subpoena, civil investigative demand, or other inquiry by its accrediting agency, State authorizing agencies, or a Federal agency, relating to representations made by DeVry regarding the employability of its graduates (including representations that are based, in whole or in part, on graduate employment rates).

RIGHTS

Consistent with 34 C.F.R. § 668.86(b)(1)(ii), the effective date of the above stated limitations shall be February 16, 2016, unless we receive by that date a request for a hearing or written material indicating why the limitation should not be imposed. 34 C.F.R. § 668.86(b)(1)(iii). DeVry may submit either a written request for a hearing or written material indicating why this limitation action is inappropriate. 34 C.F.R. § 668.86(b)(1)(iii). If DeVry chooses to request a hearing or to submit written material, you must write to me, via overnight mail, at:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/PC
830 First Street, NE, UCP-3
Room 84F2
Washington, DC 20002-8019

If DeVry requests a hearing, the case will be referred to the Office of Hearings and Appeals. That office will arrange for the assignment of the institution's case to an official who will conduct an independent hearing. 34 C.F.R. § 668.86(b)(3). DeVry is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If DeVry does not request a hearing, but submits written materials instead, I shall consider that material and notify DeVry whether the limitation will become effective, will be modified, or will be dismissed. 34 C.F.R. § 668.86(b)(2).

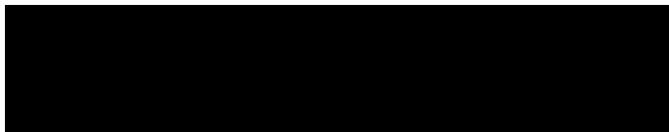
ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT DEVRY SUBMITS MUST BE RECEIVED BY FEBRUARY 16, 2016. OTHERWISE THE LIMITATION WILL BE EFFECTIVE ON THAT DATE.

If you have any questions or desire any additional explanation of the institution's rights with respect to this action, please contact me at (202) 377-4647 or via email at susan.crim@ed.gov.

CONCLUSION

The Department continues to investigate and consider DeVry's use of job placement rates and other employment-related statistics as a means of attracting prospective students. The Department is also cognizant of other actions and investigations by other governmental agencies regarding DeVry's advertisements. The action herein stated should not be read as an indication that the Department has concluded that aspect of its investigation, or made any final determinations about the veracity of any advertisement made by DeVry. Moreover, although DeVry appears to have removed the "Since 1975" representation from recruiting and marketing materials on its website, should DeVry make any representation that is based on unsubstantiated data, including the "Since 1975" representation, the Department may seek to impose additional sanctions. The Department reserves the right to take additional action against DeVry pursuant to 34 C.F.R. Part 668, Subpart G or other applicable regulations.

Sincerely,



Susan D. Crim, Director
Administrative Actions & Appeals Service Group

Encl.

cc: (w/out exhibits)

Karen Solinski, Executive Vice President for Legal and Governmental Affairs, The Higher Learning Commission, via ksolinski@hlcommission.org

Zach Waymer, Coordinator for Legal and Governmental Affairs, The Higher Learning Commission, via zwaymer@hlcommission.org

Teri Stanfill, School Compliance Associate, Arizona State Board for Private Postsecondary Education, via teri.stanfill@azppse.gov

Yvette Johnson, Enforcement Chief, California Bureau for Private Postsecondary and Vocational Education, via Yvette.johnson@bppe.ca.gov

Heather DeLange, Academic Policy Officer, Colorado Department of Higher Education, via heather.delange@dhe.state.co.us

Joey Smith, Operations and Program Manager, Florida Commission for Independent Education, via joey.smith@fldoe.org

Carl Camann, Deputy Director, Georgia Postsecondary Education Commission, via ccam@gnpec.org

Dan Cullen, Deputy Director of Academic Affairs, Illinois Board of Higher Education, via cullenb@ibhe.org

Ross Miller, Executive Director, Indiana Commission on Proprietary Education, via rmiller@che.in.gov

Jay Morgan, Vice President of Academic Affairs, Kentucky Council on Postsecondary Education, via jay.morgan@ky.gov

Tonya Johnson, Executive Associate, Maryland Higher Education Commission, via tonya.johnson@maryland.gov

Mike Beamish, Proprietary School Manager, Michigan Department of Education, via beamishm@michigan.gov

Larry Pogemiller, Commissioner, Minnesota Office of Higher Education, via larry.pogemiller@state.mn.us

Leroy Wade, Deputy Commissioner, Missouri Coordinating Board for Higher Education, via Leroy.wade@dhe.mo.gov

Kelly Wuest, Director, Nevada Commission on Postsecondary Education, via kdwuest@cpe.state.nv.us

Gregg Edwards, Director of Higher Education, New Jersey Commission on Higher Education, via Gregg.edwards@oshe.nj.gov

Leslie Templeman, Director of Higher Education, New York State Education Department, via leslie.templeman@nysed.gov

Terrence Scarborough, Director of Licensure, University of North Carolina General Administration, via trscarborough@northcarolina.edu

John Carey, Chancellor, Ohio Board of Regents, via chancellor@regents.state.oh.us

Glen Johnson, Chancellor, Oklahoma State Regents for Higher Education, via chancellorjohnson@osrhe.edu

Hilda Rosselli, Office of Degree Authorization, Oregon Student Assistance Commission, via hilda.roselli@state.or.us

Wil Del Pilar, Director of Compliance, Pennsylvania Department of Education, via widelpilar@pa.gov

Stephanie Bellard-Chase, Associate Executive Director, Tennessee Higher Education Commission, via Stephanie.bellard@tn.gov

Raymund Paredes, Commissioner, Texas Higher Education Coordinating Board, via raymund.paredes@thecb.state.tx.us

D. Buhler, Commissioner, Utah System of Higher Education, via dbuhler@utah.sbr.edu

Sylvia Rosa-Casanova, Director of Higher Education, Virginia State Council of Higher Education, via sylviarosacasanova@schev.edu

Michael Ball, Director for State Approving Agency and Degree Authorization, Washington Student Achievement Council, via michaelball@wsac.wa.gov

Anna Fosdick, Director of School Administration, Wisconsin Educational Approval Board, via anna.fosdick@eab.wisconsin.gov

Department of Defense, via osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil

Mr. Robert Paul
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Department of Veterans Affairs, via incoming.vbavaco@va.gov
Consumer Financial Protection Bureau, via [cfpb enf students@cfpb.gov](mailto:cfpb_enf_students@cfpb.gov)

ATTACHMENT A

[ON DEVRY EDUCATION GROUP LETTERHEAD]

**IMPORTANT NOTICE ABOUT DEVRY UNIVERSITY'S
ADVERTISING AND MARKETING MATERIALS**

[insert addressee name]

[insert addressee address]

To whom it may concern:

As a result of action taken by the United States Department of Education (“ED”), DeVry University (“DeVry”) has been ordered not to make certain representations in advertisements or otherwise concerning the employability of its graduates (including representations regarding graduate employment statistics).

It has come to our attention that your company has been retransmitting a representation previously made by DeVry, but which is being prohibited by ED. Specifically, that representation is:

[INSERT PRECISE TEXT OF SINCE 1975 REPRESENTATION USED BY ENTITY]

That representation is currently being broadcast by your company in the following manner:

[INSERT WEB URL OR OTHER DESCRIPTION OF WHERE REPRESENTATION IS BEING USED]

DeVry requests that you stop using or repeating this representation. This should be done immediately. DeVry will make revised marketing materials available to you shortly, which do not contain representations that have been prohibited by ED.

Should you have any questions about compliance with this notification, please contact

[insert contact person].

Sincerely,

Robert Paul
President
DeVry University