Compliance and Best Practices in Student Inquiry Generation: A Guide for Schools

Prepared by: A Taskforce of Career Education Colleges and Universities

December 2020
Where Education Inquiries Come From

PREPARED BY:
A TASKFORCE OF CAREER EDUCATION COLLEGES AND UNIVERSITIES

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PROPRIETARY ADVERTISING
When a school uses their own brand to create proprietary, school-approved ad campaigns and either internally or through an agency buy ad space on an ad channel.

3RD-PARTY AFFILIATES

Large direct-to-client aggregators

2 How contact data is captured
The prospective student called a phone number and their info was captured
Contact or inquiry info was captured by a form

3 How inquiries are made to sell to schools
Some get qualified by in-house call centers or off-shore call centers
Some do enough work up front to make a inquiry ready to sell

4 Final inquiry product

Universities & Colleges

Pay per inquiry vendors
Radio affiliates
Pay per call affiliates or WCIs

Publisher and Portals

Digital

Traditional

TV
radio
print
OOH

search engine optimization
organic social
email

search engine marketing
paid social
display

TV print
radio OOH

Other non-edu portals such as Publisher’s Clearing House
Some “publishers” just buy raw data and run numbers through off-shore call centers

Prospective Students
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A Message from the Taskforce Co-Chairs

Dear Reader,

Most private sector career education students are adult learners who have different needs than students who have recently graduated from high school. Therefore, sector schools operate very differently than most traditional colleges and universities. Different approaches to scheduling. Different approaches to learning. And different approaches to how student-service departments operate. And the primary way for adult students to learn about these different approaches is through marketing, which brings us to the reason this taskforce was convened and the purpose of this guidance.

Advancing technology, the ever-changing Internet, and sophisticated communication systems are continually adding complexities to the education marketing process. In adapting to these changes, many schools have found it easier to outsource some of their student marketing to third-party lead generation companies. Most third-party lead generation firms do a good job of accurately communicating a school’s marketing message to prospective students.

But it has become clear, some do not.

In a July 2019 settlement agreement between the Federal Trade Commission and Career Education Corporation, the FTC made it clear that schools are responsible for the actions of the third-party lead generation companies that schools employ. That settlement was the impetus for this taskforce to convene.

In September 2019, we began the latest stage of this journey. We assembled a team of experts on marketing, lead generation and sector compliance, all of whom have contributed to this report. And doing such a report in the midst of the Coronavirus pandemic makes a challenging task almost impossible. But through our collective passion, patience and persuasion, we completed the task! Over 30 professionals contributed their knowledge and expertise to this work. We cannot thank each of them enough.

Our hope is that this report’s use and endurance will serve as the most appropriate acknowledgement of their collective work. And there may not be a more appropriate time for the release and use of this report. Our politics are polarized. Our economy feels paralyzed. Yet, our citizens seek new skills and new careers in numbers unheard of since the Great Depression. We have been called, as a sector, to serve. We must do so in ways that bring success to our students, our schools, and our sector. The Best Practices included in this Guide should be seen – and used – as one tool in this important work.

Sincerely,

Mitch Talenfeld  
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MDT Marketing  
CECU Board Member

Dr. Jim Hutton  
Co-Chair  
Career Quest Learning Centers  
CECU Board Member
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The Preface

Prospective students exploring educational opportunities have the right to receive accurate and complete information that clearly articulates their educational options. Awareness of these options empowers and enables prospective students to make a decision that is right for them, and one that can help them achieve their academic and career goals. This is the ethos that is the foundation of this report.

This report is meant to provide education leaders with the information and tools necessary to evaluate and better manage third-party vendors. It also helps institutions in complying with the ever-changing marketing laws and regulations. By obtaining a better grasp on evaluating and managing third-party vendors, as well as an understanding of the requisite knowledge needed for marketing compliance, education leaders will have greater ability to provide the information that prospective students need when evaluating and making decisions about their educational opportunities.

It is essential that education leadership at all institutions recognize the vital nature of compliance, as it relates to lead generation in the higher education space. A challenge all sectors of education face is that there is no panacea that guarantees all institutions are "fully compliant" when it comes to third-party lead generation. This guide helps to inform leaders about how the lead generation ecosystem works, about relevant case law, and provides recommendations that are necessary to guide the development of a lead generation strategy.

Education leadership at each institution should review this report with their own legal counsel and consider those sections and items that are relevant and applicable to their specific institutions. That said, we view this document as largely relevant to all, critical to understanding the lead generation ecosystem, and its noting of the importance of ongoing diligence and vigilance required to ensure a lead generation plan is sound and compliant.

School leadership may find this information helpful to build a process and a set of standards that vendors must follow in order to be considered a lead generation partner. That process and set of standards should be documented and communicated to any current and future vendors. A critical element of the marketing and advertising function in the higher education space is the development of a well thought out, well documented plan with proper internal controls. This effort can enable a school to develop an environment of continuous improvement where schools can help fine-tune processes, which can lead to better outcomes for students, and reduced regulatory and legal risk for schools.
By incorporating this information into the decision-making process, it will also increase the likelihood that third-party communications with students are transparent, honest, and respectful of students' needs. This report creates a strong foundation for schools as they build their respective plans but should not be an institution’s sole resource.

Note: in this document, the terms “lead” and “inquiry” are used interchangeably, and the terms are used to mean the contact information that a prospective student has submitted as an inquiry.

**Why us? Why now?**

In July 2019, a federal district court issued a Stipulated Final Order for Permanent Injunction and Monetary Judgment against the Career Education Corporation (now Perdoceo) related to lead generation activities in a case brought by the Federal Trade Commission (“Settlement Order”). The Settlement Order recognizes the authority of the FTC's oversight of lead generation and third-party marketers. This court ruling targeted one group of schools and the schools admitted no wrongdoing. However, the policies established in the Settlement Order are relevant to all schools using third-party lead generators. The entire Court Order appears in Appendix A of this Guide.

In the next section, the material and topics are condensed into three sections:
- An Overview of the Third-Party Inquiry Generation Landscape
- The Laws and Regulations You Need to Know
- The Processes Used to Manage Third-Party Marketing

Section One shares the intricacies and nuances of the third-party lead generation marketing eco-system. The aim is to provide the reader understanding of how lead generation works. Perhaps most importantly, the guide equips school leaders with critical knowledge, so they are aware of the methods utilized by third-party lead generation companies to cultivate leads on their behalf. This section equips schools with knowledge to manage the entire lead generation lifecycle.

In Section Two, the guide familiarizes readers with a wide range of laws and regulations related to marketing compliance and inquiry or lead generation activities. We have narrowed the list to laws and regulations that are most directly applicable to lead generation. For example, in the case of the law providing the Federal Trade Commission (FTC) with authority in this area - such authority often leads to specific regulations established by the agency.
In Section Three, the guide gets into the details. This section provides schools with appropriate best practice benchmarks throughout the lifecycle of the third-party lead generation process. The section offers a detailed roadmap for school leaders in the pre-launch of third-party marketing, and the compliance needed post-launch. For many schools, there is more information here than might be required. But the section provides significant details to help a broad range of schools with varying degrees of history and interaction with lead generators to understand how they can manage this work in ways that prioritize compliance with laws and regulations. That begins with awareness.

**FTC and Lead Generation**

As noted above, the U.S. District Court, Northern District of Illinois, Eastern Division, issued an order for a permanent injunction against the Career Education Corporation related to settlement of claims regarding lead generation activities in a case brought by the Federal Trade Commission. In essence, this ruling’s importance is that it holds a school legally responsible for a third-party lead generation vendor's actions and the actions of the vendor's sub-vendors.

In December of 2019, the U.S. District Court, District of Arizona, issued a stipulated order for permanent injunction and monetary judgment against The University of Phoenix and Apollo Education Group in settlement of another case brought by the Federal Trade Commission. This judgment is related to alleged misrepresentation connected with advertising, marketing, promoting or offering for sale, or selling any educational product or service.

These settlement orders clarify that schools must take steps to ensure that they are working with reputable vendors that understand and commit to complying with the laws and regulations regarding lead generation. Additionally, because schools are ultimately responsible for their agents' actions and misrepresentations, including third-party lead generation vendors, schools must have processes to monitor their agents' activities and take immediate steps to address any deviations from compliance.
Section One: The Lead Generation Landscape

Lead generation partners can help drive broad awareness of a school and its programs, as their work generally spans multiple marketing tactics and channels. The service they provide can be appealing because it can provide a clear path to finding prospective students or those individuals who want to learn more about an institution. What makes working with third-party lead generation companies even more appealing is that they charge a pre-determined cost per lead for each prospective student inquiry they send to an institution. This may make the institutional budgeting process more manageable and assist the institution in developing a more predictive forecast of student enrollment. The following information discusses how lead generation companies accomplish this within a society that is digitally immersed.

How Lead Generation Companies Work

There are a wide variety of marketing companies that have been servicing schools for many years. Not every company categorized as a marketing or advertising company in the education sector can be considered a lead generation company. Some organizations perform as an agency working on behalf of schools to manage their advertising and marketing efforts. Other companies create marketing and communications systems to generate leads for a multitude of institutions simultaneously. Many of the companies in this second group make additional money by concurrently selling each of those leads to lead brokers (also known as aggregators) and other lead generation companies. Finally, there is a category of lead generation companies that perform as a marketing agency and lead generation company at the same time.

In this section, the report describes different types of third-party lead generation companies. This report provides details regarding how they operate to generate inquiries, service the education space, and other pertinent information related to understanding how third-party lead generation companies operate.

Types of Marketing and Lead Generation Companies

Marketing Firms
Marketing firms and advertising agencies are generally not identified as lead generation companies. They are neither inquiry aggregators, nor affiliates that sell inquiries. Instead, they are an extension of a school’s marketing department working on a fee-for-service and/or commission structure. These firms may manage school-owned assets, such as their paid digital assets (Google Ads such as Search or Display, Social ads such as Facebook, Instagram, and Twitter), school websites, Search Engine Optimization (SEO) Strategy and/or TV, Radio, and Out of Home (billboard) media buying. They may develop and place other forms of media ads on the school’s behalf or help the school develop lead nurturing strategies, including direct mail or email. Some also manage the purchase of third-party lead generation inquiries, also known as PPL (pay per lead).
Marketing Firms that also Operate as Lead Generation and Lead Aggregation Companies

These companies also handle all aspects of a school’s marketing as a marketing firm or advertising agency would do. Still, they also generate inquiries and operate as an online education publisher (i.e., a school matching site) that owns and manages websites and/or call centers while playing the affiliate role and generating inquiries to sell to schools. These companies may also act as an inquiry aggregator managing multiple third-party lead generation affiliates on the school’s behalf and may earn a broker’s fee which is included in the cost of the inquiries the company sells to their clients.

Publisher and Directory Websites

Numerous third-party lead generation companies own and manage lead generation websites. These websites provide prospective students with relevant information that is helpful for people considering additional education. The information on these websites include degrees and education requirements for various careers, scholarships, grants and federal financial aid data, veteran-specific information, and much more. Directories also contain school-specific information, which enables students to discern the differences between various schools. The sites also have information-request forms for students interested in learning more about specific schools, which is how these informational website companies generate revenue.

It is important to note that only schools willing to pay for student inquiries are typically listed on these directories. These websites are advertised throughout the Internet, via email blasts, social media ads, and on search engines such as Google and Bing. Thus, competing for prospective students’ attention on the Internet can be difficult for educational institutions without utilizing the services of third-party lead generation companies.

Some publishers and directory companies sell inquiries generated on their websites directly to schools, and others sell them to lead brokers, known as lead aggregators (see below) on a pay-per-inquiry or paid subscription listing basis.
**Contact Centers**
Inquiries generated by contact centers typically are generated by calling a list of people who previously inquired about education opportunities and have given their explicit written permission to be called by the call center (see Telephone Consumer Protection Act (TCPA) and Do Not Call regulation information in Section Two).

The lists of people called are often comprised of various lists, including sweepstakes lists, job board lists, lists of people incentivized to fill out consumer surveys, people who clicked on ads, or other lists that were developed utilizing various other methods. To ensure compliance, a properly generated lead must have all required consents and opt-ins to permit the school to call the student in response to the inquiry.

The lists of people are called by call center agents to confirm the intention of going to school, levels of education previously attained, programs of interest, and preferred delivery method of education. Finally, call center agents direct prospective students to the institution(s) that may fit the students’ interests. Call centers also gain permission/consent for schools to call the students who have inquired. Once agents attain explicit consent from the prospective student indicating that they want to be contacted by one or more schools, they send the person’s contact information to each school and charge the schools on a cost-per-lead or cost-per-phone-transfer basis.

**Live Transfers:** Once call center agents call the prospect and receive explicit permission for multiple schools to call the prospective students, the call center agents then attempt to make a live transfer to a participating school. The call center is paid for each lead submission.

**Lead Aggregator**
Another term for a lead aggregator is a lead broker. A lead aggregator purchases leads from multiple publishers and provides some level of quality control, monitoring, distribution, and management of leads on behalf of their clients. The aggregator generates revenue from management fees, such as a percentage of the amount spent on each lead, and/or on the spread between what they pay for the leads and the cost per lead that a school pays.

It is a school’s responsibility to contractually obligate the lead generation partner or aggregator to an appropriate level of transparency. Further, each school has an obligation to continually monitor their partners, to build relationships with them to drive a co-commitment to authenticity and compliance. It can be worthwhile to consider third-party vendors to assist in monitoring lead partners so a school and its partners can work together to ensure compliance. Likewise, the lead aggregator has an obligation to their institutional clients to be transparent in their business practices and how aggregators make money and bill their clients. Since some lead aggregators, publishers, directory website companies and contact centers operate within the same business entity, education school leaders must be conscientious in their ongoing efforts to gain clarity on how the leads their schools receive are generated.
Data cleansing services – such as fixing typos like "@gmial.com" to "@gmail.com," removing excessive spaces, or fixing formatting errors within the data.

PII appending – finding other phone numbers/emails using existing PII. Caution: this practice is problematic due to privacy and permissions concerns if these prospective students did not agree to be emailed or called on any emails or phone numbers he or she did not supply (see Section Two).

Data Insight – many companies ingest names, emails, phones, and/or addresses to generate statistical likelihoods for data insight purposes. By using this data, marketers can find out which inquiries are most likely to be interested in attending a college or taking various programs.

Data Brokers
Data brokers are companies that create/collection Personally Identifiable Information (PII) such as name, email, and phone number, or buy from a source such as information from Publishers Clearing House or job boards, and resell to a Contact Center or Email-centric inquiry generation company.

Companies take the "raw materials" of PII and create an inquiry (again, either via phone, email, text, etc.). These companies often outsource the initial calls/emails/texts to centers in other countries with less expensive labor costs. Or, they may conduct these activities internally to have more control of their lead generation operations.

To use a real example of the most commonly used inquiry generation and student experience path: once those outsourced or in-house callers/texters/emailers have found someone interested in education (with PII data-to-inquiry creation rates as low as .001% to 1% depending on the quality of the original data), these inquiries can be sold directly to the school. The data can also be sold to a larger inquiry generation company that has direct allocation from the school and is brokering inquiries. Nearly every lead seller does this, regardless of how many leads they generate themselves.

A prospective student inquiry can either be sold as a data inquiry or, if it is a phone-based contact center process, they can be warm-transferred to a school. Many times, prospective students, while on the phone, will be transferred from one call-center to other call center(s) before the student talks to a school’s admissions representative.

Data Enhancement Services
Many colleges and inquiry generators use data appending services to improve the quality of their data. Data appending services include:

1. Data cleansing services – such as fixing typos like "@gmial.com" to "@gmail.com," removing excessive spaces, or fixing formatting errors within the data.
2. PII appending – finding other phone numbers/emails using existing PII. Caution: this practice is problematic due to privacy and permissions concerns if these prospective students did not agree to be emailed or called on any emails or phone numbers he or she did not supply (see Section Two).
3. Data Insight – many companies ingest names, emails, phones, and/or addresses to generate statistical likelihoods for data insight purposes. By using this data, marketers can find out which inquiries are most likely to be interested in attending a college or taking various programs.
4. Inquiry Scoring – data enhancement services noted above can be utilized to enhance an inquiry scoring process to determine the quality of an inquiry using statistical regressions and models. This gives marketers the ability to figure out who is most likely to start college. This information will help them determine where to focus more of their efforts. The problem is that one school’s “good” candidate is also suitable for other schools. This makes inquiry scoring somewhat ineffective for third-party lead generators, but it may be useful for the schools.

Cookies, Pixels, and Tags
Anonymous online tracking has become commonplace for every website in every industry – higher education and third-party inquiry generation is no exception. Cookies are generally used to personalize a user’s website experience. They make it possible for websites to “remember” a previous website visitor by logging the user in automatically, directing the user to previously viewed pages, or otherwise facilitating a user’s visit.

Pixels and tags are methods to track specific behavior on a website. Typically, inquiry generators that utilize “Clicks” products (website traffic on a pay-per-click model, rather than pay-per-inquiry) ask institutions to put their pixel or tag into the college or university website so that the third-party lead generator can see how traffic behaves on the institutional website. Inquiry generators use this process to measure the number of inquiries generated from clicks.
Section Two: Laws and Regulations

Institutions and their marketing partners are subject to a wide variety of laws, regulations, and standards. This section divides these requirements into three general categories:

- Part I. Laws and regulations regarding the content of advertising and other representations;
- Part II. Laws regulating unwanted contacts by marketers; and
- Part III. Other privacy laws.

This section concludes with Part IV, which provides a discussion of considerations for paying marketing partners.

Part I: Laws and Regulations Regarding Content

Federal Trade Commission (FTC)

Section 5(a) of the FTC Act creates the law that prohibits “unfair or deceptive acts or practices in or affecting commerce.” This legal authority is codified in 15 U.S.C. § 45(a)(1). Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a).

The FTC most recently used its enforcement authority under Section 5(a) against a for-profit institution in an enforcement action against the University of Phoenix. The FTC alleged that the University of Phoenix ran advertising campaigns that gave students the false impression that the institution worked with certain high-profile companies to employ its students. The University of Phoenix paid $50 million to settle the government’s claims and did not admit wrongdoing.

Earlier in 2019, the FTC agreed with Career Education Corporation (CEC) to settle claims that CEC used sales leads obtained from lead generators that falsely told consumers that they were affiliated with the US military and other unlawful tactics to generate leads. CEC paid $30 million to settle these claims and did not admit wrongdoing.

The FTC has also issued industry guides that describe practices that are likely to be found to be unfair and deceptive. These can be found in 16 C.F.R. Part 254 (Code of Federal Regulations): Guides for Private Vocational and Distance Education Schools. The Vocational School Guides are intended to advise proprietary businesses that offer vocational training courses on how to avoid deceptive practices in connection with the advertising, promotion, marketing, or sale of — and recruitment of students for — courses or programs.

The Vocational School Guides do not apply to “institutions of higher education offering at least a 2-year program of accredited college-level studies generally acceptable for credit toward a bachelor’s degree.” However, the FTC has warned that for-profit institutions of higher education that are not subject to the Vocational School Guides are nevertheless covered by the FTC Act’s general proscription of deceptive and unfair conduct. 16 C.F.R. § 254.0(b) (as revised Nov. 18, 2013).
The following bullets describe sections of the Vocational School Guides that are particularly relevant to student inquiry generation:

- Section 254.3 relates to misrepresentations about the extent or nature of accreditation or approval. This provision reiterates the FTC’s concern about misrepresentations of industry recognition by explaining that it is deceptive to misrepresent that an institution or program of instruction has been approved by a particular industry or that its courses or programs of instruction are recommended by members of a particular industry.

- Section 254.4 relates to misrepresentations about facilities, services, qualifications of staff, status, and, notably, employment prospects for students after training. This section states that an institution should not “[m]isrepresent that a private entity providing any financial assistance to the students is part of the Federal government or that loans from the private entity have the same interest rate or repayment terms as loans received from the U.S. Department of Education.”

- Section 254.5 relates to misrepresentations of enrollment qualifications or limitations. This section specifies that it is deceptive for an institution to misrepresent the time required to complete a course or program of instruction.

**U.S. Department of Education (ED)**

In 2010, the Department of Education established a new set of regulations known as the Program Integrity Rules, which included new misrepresentation standards. The current definition of misrepresentation is found at 34 C.F.R. § 668.71(c):

> Any false, erroneous, or misleading statement 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 makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to mislead the circumstances. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.

As part of this regulatory package, ED prohibited substantial misrepresentations by postsecondary institutions and their agents. Substantial misrepresentation is any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person’s detriment.

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1. 16 C.F.R. § 254.3(b).
2. 16 C.F.R. § 254.3(c).
3. 16 C.F.R. § 254.4(e).
4. 16 C.F.R. § 254.4(a)(5).
5. 16 C.F.R. § 254.5(c).
6. 34 C.F.R. § 668.71(c).
The Department of Education’s regulations regarding misrepresentation apply to marketing, advertising, and recruiting activities, including activities undertaken by an institution’s representatives or vendors. Specifically, an institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any institution, organization, or person with whom the institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, makes a substantial misrepresentation about the nature of its educational program, its financial charges, or the employability of its graduates. ⁷

The penalties for violating these regulations can be severe. In 2015, ED issued a $30 million fine to Corinthian Colleges on the basis of substantial misrepresentation allegations. In that case, ED “determined that Heald’s inaccurate or incomplete placement rate disclosures were misleading or false; that they overstated the employment prospects of graduates of Heald’s programs; and that current and prospective graduates of Heald could reasonably have been expected to rely to their detriment upon the information in Heald’s placement rate disclosures.”

In addition to direct penalties arising from misrepresentation, student borrowers may assert a defense to repayment of their federal student loans based on misrepresentation by the institution or its employees, agents, or vendors engaged in advertising, marketing, recruiting, or enrollment activities. Institutions may be liable to compensate the federal government for all discharged loans. ⁸

**Accrediting Agencies**

Most accrediting agencies have general standards requiring marketing and recruiting activities to be ethical and conducted with integrity. The standards promulgated by the Accrediting Commission of Career Schools and Colleges (ACCSC) are similar to those enacted by other agencies, although some provide more detail than others. ACCSC requires institutions to “describe themselves fully and accurately to prospective students and permit prospective students to make well-informed and considered enrollment decisions without undue pressure.” ⁹

Institutions must ensure that “[a]ll advertising, promotional materials, statements, and claims are truthful and accurate and avoid leaving any false, misleading, misrepresenting, or exaggerated impressions with respect to the school, its location, its name, its personnel, its training, its services, or its accredited status.” ¹⁰

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⁷ 34 C.F.R. § 668.71(b).
⁸ Detailed borrower defense regulations were promulgated by the Obama Administration on November 1, 2016, that apply to loans first disbursed between July 1, 2017, and June 30, 2020. 34 C.F.R. § 685.222 (2019). Revised regulations promulgated by the Trump Administration apply to loans first disbursed on or after July 1, 2020. 34 C.F.R. § 685.206(e), as published at 84 Fed. Reg. 49788, 49926 (Sept. 23, 2019).
⁹ ACCSC Standards of Accreditation, Chapter 2, Section IV (July 1, 2020).
¹⁰ Id. at Chapter 2, Section IV(B)(1).
State agencies and state attorneys general (State AGs) typically review recruiting activities through the prism of consumer protection and consumer fraud. Enforcement is done through the state unfair and deceptive trade practices laws. States require schools to provide consumers with truthful and accurate information that is not misleading expressly or misleading by omission of material information critical to an enrollment decision. Allegations of deceptive recruiting practices have focused on issues such as total costs of enrollment, transferability of credits, accreditation status, cost, and employability and projected income of graduates. State AGs also are interested in recruiting efforts aimed at veterans.  

As an example of State AG interests, in November 2015, the U.S. Department of Justice and a consortium of State AGs announced a settlement with EDMC to resolve ongoing investigations regarding high-pressure sales tactics, deceptive and misleading recruiting practices, and violations of the incentive compensation ban. EDMC agreed to pay nearly $100 million to settle the allegations and did not admit any wrongdoing.

Part II: Laws Regarding Unwanted Contacts

The Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) both regulate telemarketing calls in several manners. Portions of their regulations overlap, but they also have important distinctions.

The FTC’s telemarketing regulations are contained in the Telemarketing Sales Rule (16 C.F.R. Part 30). The FCC’s regulations implement the Telephone Consumer Protection Act (TCPA) (47 C.F.R. Part 64, Subpart L).

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12 See U.S. Department of Justice news release entitled “For-Profit College Company to Pay $95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations,” (Nov. 16, 2015)
Both the FTC’s and the FCC’s regulations prohibit the initiation of calls that transmit prerecorded messages containing advertisements or solicitations (i.e., robocalls) unless the consumer has provided the consumer’s prior express written consent to receive such calls. To constitute prior express written consent, the consumer must specifically authorize the seller to transmit recorded messages for sales or marketing purposes to a specific telephone number.

Both sets of regulations prohibit calls to telephone numbers on the national Do-Not-Call Registry, require companies to maintain an internal do-not-call list, set a limit on abandoned calls (which relates to the speed at which dialing equipment may operate), require the transmission of caller ID information and prohibit the transmission of prerecorded messages. The FCC’s regulations also prohibit the initiation of calls to cell phones using an automatic telephone dialing system. The government can initiate an enforcement action seeking more than $40,000 per violation from companies that fail to comply with the regulations. The TCPA also gives individual consumers the ability to file lawsuits in their own name and recover up to $1,500 for each violation committed. Moreover, plaintiffs often bring these lawsuits as class actions that have resulted in multi-million dollar settlements and judgments. Both sellers and their marketing vendors (“telemarketers”) are jointly liable for violations.

Consumers can register their telephone numbers on the national Do-Not-Call Registry without charge either through a toll-free telephone call or over the Internet at donotcall.gov. Both sets of regulations prohibit the initiation of marketing calls to telephone numbers on the national Do-Not-Call Registry, but there are two exceptions. Telemarketers may initiate calls to numbers on the Do-Not-Call Registry if the seller either has obtained the consumer’s express written agreement to receive such calls or has an established business relationship with that consumer and the consumer has not stated that he or she does not wish to receive such calls. Valid written consent to receive a live telemarketing call to a number on the national Do-Not-Call Registry requires (i) a writing signed by the consumer, (ii) clearly evidencing authorization to receive calls placed on behalf of a specific seller, and (iii) stating the phone number to which such calls may be placed.

An established business relationship can be based upon a consumer’s inquiry into the seller’s products or services, or a consumer’s previous transaction with the seller. Sellers can call numbers on the Do-Not-Call Registry for three months after the consumer inquired into the seller’s products or services, or for eighteen months after a consumer’s purchase of the seller’s product or services. The FCC’s regulations implementing the TCPA contain similar restrictions.

Both sets of regulations also require sellers to maintain an internal do-not-call list of individuals who specifically request not to receive telemarketing calls by or on behalf of a particular seller. Calls by the seller to these numbers are prohibited whether or not the telephone number is on the national Do-Not-Call Registry.

Both the FTC’s and the FCC’s regulations prohibit the initiation of calls that transmit prerecorded messages containing advertisements or solicitations (i.e., robocalls) unless the consumer has provided the consumer’s prior express written consent to receive such calls. To constitute prior express written consent, the consumer must specifically authorize the seller to transmit recorded messages for sales or marketing purposes to a specific telephone number.

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The consumer must be told that granting consent is not a condition to being able to purchase the product or service. Lastly, the consumer must sign the document. Electronic signatures are permissible, including forms such as online click opt-ins and digital voice recordings.\textsuperscript{15}

As noted above, the FCC’s regulations also prohibit the initiation of sales and non-sales calls and texts\textsuperscript{16} using an \textit{automatic telephone dialing system} (or “autodialer”) to cell phones. The TCPA defines an autodialer as equipment that has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers. The US Supreme Court recently clarified this interpretation to mean that equipment is an autodialer if it stores or produces telephone numbers using a random or sequential number generator.\textsuperscript{17} Based upon this recent precedent, merely loading a list of telephone numbers to be called into a dialer and dialing those telephone numbers does not implicate the autodialer restrictions. It is important to note that this precedent does not alter or affect the prohibitions on initiating calls with prerecorded messages; schools and lead generators must have the applicable type of consent to initiate these calls (i.e., prior express consent for non-sales/recruiting calls and prior express written consent for sales/recruiting calls).

Schools and their vendors must understand the level of consent required for different types of telemarketing calls and texts:

<table>
<thead>
<tr>
<th>Cell Phone</th>
<th>Landline</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Voice call containing advertisement (autodialer)</strong></td>
<td>\textit{Prior express written} consent required if telephone number is randomly generated or sequentially dialed. 47 C.F.R. § 64.1200(a)(2) (2019).</td>
</tr>
<tr>
<td><strong>Text message containing advertisement (autodialer)</strong></td>
<td>\textit{Prior express written} consent required if telephone number is randomly generated or sequentially dialed. 47 C.F.R. § 64.1200(a)(2) (2019).</td>
</tr>
<tr>
<td><strong>Live operator</strong></td>
<td>\textit{No consent required – subject to do- not-call.}</td>
</tr>
</tbody>
</table>

\textit{Note: This chart presents TCPA consent rules applicable to for-profit entities.}

\textsuperscript{15} See 47 C.F.R. § 64.1200(f)(8) (2019).
\textsuperscript{16} FCC Declaratory Ruling and Order (July 10, 2015), CG Docket No. 02-278 and WC Docket No. 07-135, paragraphs 107-122.
\textsuperscript{17} Facebook, Inc. v. Duguid, 209 L.Ed.2d 272 (U.S. 2021)
Part III: Other Privacy Laws

The federal landscape is a patchwork of sector-specific laws, and Congress has enacted no comprehensive federal privacy and data security law. For example, privacy protections are included in the Gramm-Leach-Bliley Act (protection financial information), the Family Educational Rights and Privacy Act (FERPA), the Telemarketing Sales Rule (protects consumer’s right to be left alone), the Truth in Lending Act (protects against inaccurate and unfair credit billing and credit card practices), the Fair Credit Reporting Act (protects consumer information) and the Fair Debt Collection Practices Act (protects against abusive debt collection practices). Also, the FTC has been given broad authority to enforce privacy laws and to protect data privacy. 18

In the absence of comprehensive federal regulation, however, most regulation takes place at the state level. Enforcement is typically handled by the State attorneys general (AGs). The laws in the 50 states are varied in scope and often not compatible. But, state laws are changing as part of a global trend to provide greater privacy protection for individuals concerning the collection, storage, processing, and use of personal data. The most well-known and prominent example of what is happening at this time at the state level is the California Consumer Privacy Act (CCPA) 19 which has been a catalyst for legislative action in other states such as Maryland, Nevada, and Maine. The CCPA itself was inspired by the General Privacy Data Protection Regulation (GDPR) promulgated by the European Union (EU), which is discussed in more detail further below. 20

The CCPA went into effect on January 1, 2020, although enforcement was delayed for six months to July 1, 2020. CCPA gives California consumers the right to know what personal information is collected, used, shared or sold, both as to categories and specific pieces of personal information; the right to know the business purpose to collect or sell the personal information; the right to delete personal information held by a business and the business’s service provider; the right to opt out of the sale of personal information; and the right to non-discrimination when a consumer exercises privacy right under CCPA. The CCPA prescribes requirements for receiving, processing and satisfying these requests from consumers.

19 Cal. Civil Code Title 1.81.5 (1798.100-1798.199)
20 Regulation (EU) 2016/679 repealing Directive 95/46/EC (Data Protection)
The CCPA applies to any business for which one or more of the following are true: it has gross annual revenues in excess of $25 million; it buys, receives or sells the personal information of 50,000 or more consumers, households or devices; or it derives 50% or more of its annual revenues from selling consumers’ personal information. As proposed by the draft regulations, businesses that handle the personal information of more than 4 million consumers will have additional obligations. Penalties collected from businesses by the California Attorney General will be deposited into a Consumer Privacy Fund that will be available for enforcement under the CCPA. California residents have a limited private right of action with modest fines for unauthorized access to unencrypted or unredacted personal information.

Businesses such as inquiry generation companies anywhere that gather information from prospective students in California to generate interest in higher education or a particular program or institution that are otherwise subject to the CCPA thresholds for jurisdiction must provide notice to consumers at or before data collection. Among other things, they must create procedures to respond to requests from consumers to opt-out, know or delete, and they must respond within specific timeframes.

Companies have 30 days to cure violations. Failure to cure leads to a civil penalty of up to $7,500 for an intentional violation and $2,500 for each unintentional violation. Institutions should thoroughly assure themselves that companies they contract with for inquiry generation are compliant with the CCPA and have a deep understanding of the requirements.

This is equally true with respect to other state laws if the businesses are generating information from prospective students for distance education programs and, likewise, if they are generating information from prospective international students, especially from Europe.

The EU’s GDPR was enacted on April 14, 2016, and became effective May 15, 2018. The law imposes obligations on businesses and organizations anywhere, so long as they target or collect data related to people in the EU. If the business processes the personal data of EU citizens or residents, or if the business offers goods or services to such people, then GDPR applies to the business even if it is not in the EU. As with CCPA, fines can be imposed for violations, although the fines under the GDPR are much higher. In addition, consumers have a right to seek compensation for damages from GDPR violations.

Under the GDPR, consumers have a right of access to their personal data, the right to transfer their data, a right to delete personal data, and a right to object to the processing of the data for marketing, sales or non-service related purposes. Interestingly, non-EU organizations subject to the GDPR are required to have an EU representative to serve as point of contact for their obligations. Failure to designate an EU representative may itself be a violation of the GDPR subject to fines of up to €10 million or 2% of total revenues of the preceding fiscal year. Willful failure may constitute an aggravating factor. More generally, the fines for violating the GDPR fall into two tiers, which are capped at €20 million or 4% of global revenue.
As noted above in the case of the CCPA, inquiry generation companies that are collecting personal information on prospective students from Europe must be compliant with the GDPR and, among other things, should designate an EU representative as their point of contact. Institutions seeking international students should be familiar with the GDPR in order to assure themselves that the business is compliant with the GDPR requirements.

Postsecondary institutions also are subject to the privacy standards promulgated by their accrediting agencies, as discussed earlier. Another example is the Higher Learning Commission, which requires its accredited institutions to promptly honor student requests to remove names from phone, email, or other contact lists. Further, student information collected through the admissions, recruiting, or lead process must be maintained as outlined in the institution’s data privacy policy, which must be prominently posted on the institution’s website.

**Part IV: Other Legal Considerations for Postsecondary Institutions**

The entire higher education community (public, private non-profit, and proprietary) should be familiar with the Higher Education Act’s prohibition against any incentive compensation to any person based, in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid. Therefore, this prohibition applies not only to the institution but also to any person or business with which the institution contracts to perform recruiting services for the institution. Violations of the prohibition by a third party can be enforced against the institution by ED, which is one reason why the institution needs to be confident in the practices of any third party with which it might contract.

Notably, there are some contexts in which this prohibition does not apply. One is marketing activities, including the collection of contact information about a prospective student. For this activity to be exempt from the prohibition, the contractor must not make any effort to persuade the prospective student to enroll at an institution or in a program, including scheduling a campus visit or appointment. The incentive compensation regulation also requires the lead generator to be paid for the contact information only, on a per-lead basis, regardless of whether the prospect applies, enrolls, or starts. Another context is a contract with a business for what is called “bundled services.” Under a bundled services contract, the contractor provides multiple services to the institution, including recruiting prospective students, and receives compensation from tuition payments. ED issued specific requirements for the bundled services exception in its Dear Colleague Letter GEN-11-05 (March 17, 2011) (last updated February 2, 2012 via [https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/compensation.html](https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/compensation.html)).

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Section Three: Best Practices with Third-Party Lead Generation Procedures

An Introduction to Best Practices

CECU has provided its membership with information throughout this Guide. The Guide has been compiled to assist institutions in managing the third-party lead generation channel, in filtering out vendors who use questionable practices, and to help institutions better understand the practices used to generate leads, as well as the potential risks involved.

While third-party lead generators can assist institutions in building awareness of individual schools and in identifying prospective students who want to consider attending school, there are inherent complexities in education and consumer protection laws and regulations that require serious attention. There are also nuances within each education institution’s offerings which need to be considered. Institutional-level operational decisions need to be made by a school’s leadership, including processes, technologies, and systems that are a part of managing and monitoring vendor performance and vendor compliance.

The systems, processes and technology detailed in this comprehensive best-practice section may be more than is required for some institutions. But being cognizant of the required tools for maintaining compliance in all marketing practices is essential for all educational institutions. The FTC indicated that institutions are responsible for all marketing activity done on their behalf by third parties and their sub-vendors, so institutions should review these processes, consult with their own legal counsel and determine a plan that fits their specific institution’s needs.

Best Practices in the Pre-Launch of Inquiry and Leads

Inquiry Vendor Selection

Business Model Analysis, Processes and Procedures
Each marketing vendor operates differently, and uses a variety of processes and procedures, different technology systems, and different affiliates, which periodically change. As a result, every vendor an institution uses needs to be vetted to make certain that its business practices and models conform to its students’ and its institution’s needs. Here are a few sample questions, which leadership might find helpful in these efforts:
1. **Depth of Information and Experience**
   How long have vendors been in business and serving the education sector?
   What is their level of experience in compliance dedicated to the education sector?

2. **Training**
   How do vendors train and communicate school requirements with their staff and with their affiliates, including the specifics on misrepresentation prohibitions and rules?

**Traffic Sources**
How do vendors find and identify prospective students that would be good fits for institutions?

1. Do they own websites and directories to attract students? If so, have vendors provided their URLs for each site, so schools can review them for compliance, content and suitability.

2. Do vendors use questionable sites that may be misleading or illegal, such as job boards and websites, student loan websites, Medicaid, or anything schools think might be misleading or concerning? Have institutions spent time looking over those sites to make certain that prospective students were not misled or in any other way directed to them using inappropriate methods?

**School Brand and Advertising Guidelines**
How will an institution’s brand image and messaging be portrayed?

1. How will vendors be adhering to brand and advertising guidelines? (Schools should provide third-party lead generation companies with their advertising guidelines ahead of contracting their services to gain its agreement to use an institution’s standards as a part of the agreement.)

2. Will the vendor agree to prior approval for all marketing and recruitment communications that use the school brand, or that are otherwise utilized in the lead generation path? (Remember, institutions are responsible for all third-party lead generation companies’ actions)

**Affiliates**
Do vendors use outside marketing affiliates to generate traffic for their websites? If so:

1. **Affiliate Compliance**
   How do they evaluate their marketing affiliates and monitor that they are complying with a school’s requirements, regulations, and the law? (See Section Two)
2. **Affiliate Contracts**

   Has the school seen and reviewed sample contracts third-party lead generation companies have with their affiliate vendors to make certain they adhere to the school’s standards?

3. **Affiliate Website Audits**

   Schools should consider asking for a list of affiliates and affiliate websites. Although the work involved in reviewing those websites is extensive, to avoid potential issues in the future, it must be done by either the school, its agency or the vendor themselves, depending on an institution’s comfort level with the vendor.

   a. If a vendor is resistant to passing this information along, schools should consider whether they have appropriate protections in place in their contracts with that vendor that will protect the institution and its students. **Important Note: Each school is ultimately responsible for its marketing compliance.**

**Number of Times Students Are Contacted**

Student information is often distributed by vendors and their affiliates to multiple institutions, with each institution following up with each student numerous times. Ask your vendors to detail their policies and each institution must decide whether it is comfortable participating. Each school should consider paying extra for student inquiries that are **exclusive** to its institution.

**Video Website Monitoring Software**

Several vendors are offering video Website Monitoring systems in the marketplace. It is used to monitor and keep a record of a prospective student’s path and actions from the moment they click on an ad to when they fill out a request-for-information form on the vendor’s website. These records are extremely helpful in managing marketing content and compliance, as well as helpful for when an institution is required to produce evidence that shows that the institution is adhering to legal requirements.

1. Institutions should ask vendors if they are using this kind of software on their websites and whether they require affiliates to do the same. Also, schools should find out how vendors will provide them with the proof they need, during their audits of vendor-generated inquiries.

**Contact Centers**

Do the vendors or their affiliates own or utilize contact center services to call or text prospective students to discuss their educational needs or verify their interest in school? If so:

1. **Compliance Procedures**

   How are the vendors managing and auditing affiliates for compliance and adherence to school-specific requirements?
2. **Call Center Agent Training**  
   Are vendors monitoring how affiliate call center agents are being trained?

3. **Call Center Scripts**  
   Will vendors provide copies of call center scripts? Are the scripts compliant, and is the institution comfortable with what is being said? And if the scripts change as they often do, will vendors keep schools informed and send copies of the altered scripts before using them?

4. **Recorded Calls**  
   Are calls recorded and shared with schools? How long are recordings maintained?

5. **TCPA and Do Not Call Compliance**  
   Are call center vendors **Telephone Consumer Protection Act (TCPA)** and **Do Not Call** compliant?  
   (See Section Two for more information)

6. **Permissions to Call or Text**  
   Do agents have the requisite permissions to make calls on an institution’s behalf? How is the proof of each student’s permissions stored, and how will schools be assured that the call centers will send those records upon an institution’s request? Keep in mind, this information is vital if an institution is sued or audited.

7. **Rescinding Permissions**  
   After original permissions have been given to an institution by prospective students, they have the legal right to rescind those permissions, which means an institution may never call or send text messages to those students again. So, if prospective students contact the vendor’s call center to rescind permission, how will the vendor relay that information to an institution to honor those requests? And equally as important, what processes are set up so an institution includes that information in their databases to ensure that those students will no longer be called or sent text messages in the future?

8. **Laws and Regulations**  
   There are numerous consumer laws protecting the rights of individuals. Institutions must get assurances from their vendors that they are complying with the laws (see Section Two). Also, this information has been provided to assist schools in the training of their staff.

**Data Capture, Security, Privacy, and Usage**

1. How is prospective student data being transferred, stored and safeguarded?  
2. Are vendors using out-of-country affiliates and are they complying with U.S. laws?
3. California recently instituted the **California Consumer Protection Act (CCPA)**, which adds additional complexities to the management of consumer data. Institutions must make certain that their third-party lead generation vendors are compliant and are willing to help schools adhere to the requirements contained in the CCPA (see Section Two).

**Customer References**
What other schools with the same accreditors are vendors working with? Questions that could be asked of those references include:

1. **Bad Inquiries:**
   a. How do vendors deal with bad or questionable inquiries?
   b. Some vendors accept inquiry returns more readily than others. How does the vendor compare with other vendors the school is using?
   c. How many inquiries may be returned each month and what are the reasons for those returns?
   d. Are returned/rejected leads replaced or credited? This specific component of the process is important to understand up front when considering a vendor. This should be well considered by institutional decision makers.
   e. What are the standard rules around “invalidating” a lead and returning it to the vendor? Standard reasons may include:

   1. Out of the specified geography
   2. Not a high school graduate
   3. Prospect was looking for a job, and never agreed to be contacted about a training program or furthering their education.
   4. Never requested information
   5. Person is deceased
   6. Invalid contact information
   7. Not interested in a program of study offered at the institution

2. **Inquiry to Student Rate**
   It is important that institutions track conversion rates by inquiry source. There are multiple ways to track conversion rate such as inquiry to appointment, inquiry to application, and/or inquiry to student attendance. Conversion is a measure of the quality of the intent of the prospective student, a quality of the lead vendor, and the efficiency of an institution’s marketing and admissions processes.

3. **Credit References**
   Is the vendor behind in their payments to their affiliates, which could have significant implications in the way they do business?

4. **Legal History**
   What is the history of this vendor regarding lawsuits, investigations and complaints?
• **FTC Settlement Agreements**

As noted above, in 2019, the FTC settled disputes with two major institutions, Career Education Corporation (CEC) and the University of Phoenix (UoP). The settlements made it clear what the FTC expects from schools and schools’ marketing vendors in the future.

1. Has each third-party lead generation company an institution utilizes received copies of both settlements and sent confirmation to the school that the vendors and their affiliates comply with the settlements’ requirements? (See Appendix A and B to view copies of the settlements), such requirements should be part of the contract with each vendor.
2. Is each school and its vendors compliant with these requirements?

• **Contracts**

A good contract with a lead vendor is one which includes strong language regarding performance expectations, ethical practices, a commitment to compliance, and provides protective measures for a school. A sample vendor contract is available to CECU members via the CECU Member Resource Center. Some of the elements to consider in a contract include:

1. **Representations and Warranties**
   Vendors should agree to comply with relevant laws. See Section Two for a summary of relevant laws.

2. **Inquiry Acceptance**
   Acceptable and non-acceptable inquiry criteria, provisions for returning unacceptable inquiries, and a timeframe for making returns to finalize monthly billables.

3. **Brand Term Usage**
   Restrictions on vendors and sub- affiliates bidding on the school’s brand terms.

4. **Prohibited and Negative Keywords**
   A list of words that should not be contained in vendors’ or their affiliates’ advertising.

5. **Source Limitations**
   Restrictions on certain types of inquiries and sources that the vendor cannot use, such as job sites, surveys promising rewards, etc.

6. **Quality Control**
   Advertising requirements, source approval and removal requirements, auditing procedures, vendor assistance requirements, and expectations of actions if a problem is uncovered.

7. **Exclusive Inquiries**
   Many vendors sell the same lead multiple times to competing institutions. Will the inquiries an institution are buying be exclusive to that institution? Or will they be sold/shared with other schools? And if so, how many?
8. **Payment Terms and Dispute Policies**
   Terms dealing with disputes. Disputes are common when dealing with bad inquiries that have been returned.

9. **Data Ownership, Licenses and Rights**
   Data and intellectual property dispute protections.

10. **Documentation and Recordkeeping Requirements**
    It is critical to have access to proof of permissions that prospective students gave to vendors and the institution before prospective students were ever contacted. Therefore, agreements should include stipulations of vendor responsibilities related to the retention of records, including:
    a. Student Information.
    b. Permissions people gave to vendors in advance of the original contact by the vendors and contact centers. Requirements that those permissions contained requisite language as spelled out by various government entities.
    c. Permissions people subsequently provided which permitted the institution to contact the prospective students, as required by law.

11. **Insurance Requirements**
    The institution should seek to have the vendor agree to name the institution as an 'additional insured' in the vendor's insurance policy. The institution should consider whether the vendor's insurance cap is appropriate based on the contract's size and prevailing industry standards. Additionally, before negotiating the contract, the institution should ensure it understands what its insurance covers. Many policies do not cover TCPA damages, for instance.

12. **Indemnifications**
    The institution should insist on being indemnified by the vendor against all demands, claims, actions, penalties, damages, losses, liabilities, and expenses, including attorney's fees, asserted by a third party resulting from the following:
    a. Any act or omission related to the vendor's failure to perform its obligations under the contract, including any performance or failure to perform by any of the vendor's sub-vendors or subcontractors.
    b. Any wrongful act, omission, or misrepresentation by the vendor or any of its sub-vendors or subcontractors.
    c. Infringement by the vendor or any of its sub-vendors or subcontractors of the intellectual property rights of any third party, including copyright, trademark or patent claims.

13. **Assignments**
    The institution should consider a contract provision that limits the vendor's ability to transfer or assign the contract's performance to a third party without the institution's prior permission. Such limitation may include a provision obligating the vendor to contractually require any sub-vendors or subcontractors to comply with both the terms and requirements of the institution's contract with the vendor and all applicable laws and regulations.
14. **Specific Requirements for Adherence to the FTC Settlements with CEC and UoP**

The FTC Settlement/Legal Orders (See Appendix A and B) list a series of prohibited actions. Please review these orders for further details.

**Best Practices in Vendor Set Up**

Once a vendor is selected, setting that vendor up correctly is key to a successful outcome. The institution is responsible for the messaging that the students receive on the institution’s behalf and complying with all Federal, State, and local laws and regulations. Also, the experience students have when they request information from the institution impacts how they perceive an institution’s brand. Brand standards, including brand identity and messaging, should be provided to vendors as required guidelines. All creative and materials developed by a vendor for use with prospective students must be approved by the school prior to use. It is imperative that the institution clearly articulates what can and cannot be said and done on its behalf as it relates to prospective students.

1. **Insertion Order**

   Insertion Orders are instructions that change from time-to-time, which are not included in the agreement. They can include areas of emphasis, special requests that were not articulated on the contract, and more, such as:
   
   a. Monthly budget allowances by program and campus.
   b. Required fields for each accepted inquiry.
   c. Cost per valid inquiry.
   d. Geographical requirements for acceptable inquiries (by campus or program).
   e. Data delivery requirements.
   f. Data requirements such as, address standardization, phone number verification, email standardization, or others.
   g. Any additional requirements.

2. **Form Set-up, Pictures, Videos, Copy and Requisite Permissions**

   This is the institution’s chance to make sure vendors are adhering to the institution’s brand guidelines, using appropriate pictures, graphics (and videos if applicable), and that the copy utilized conforms with its requirements of tone and content. The form must contain the requisite permissions, so staff members and representatives can call and send text messages.
3. **Call Center Script Approval (if applicable)**

If the vendors are utilizing a contact center, what they say to prospective students directly impacts how prospects think about the institution. **Note: The institution should bear in mind that it is the institution that is held responsible by regulators for any misrepresentations by its agents.** Make sure the scripts accurately reflect the facts about the institution and its programs, and that the agents are not attempting to persuade prospects to enroll. The call center staff must obtain prior, express, written consent, as defined by TCPA legal guidelines (see Section Two), from the student for college and university representatives to call or send text messages to the prospective students. The school is responsible for approving the call center script which will eventually be utilized for gaining this permission.

4. **Data-Flow, API Integrations, Compliance Software and Follow-up Procedures**

Any institution that incorporates the third-party lead generation channel in their marketing must have systems, processes, and procedures to be successful and compliant with this channel. When a prospective student requests information from the institution by filling out an inquiry form or asking for more information from a call center representative, they expect the school to follow up immediately. These requests need to be digitally transferred into the institution's systems, and the admissions team should follow up immediately. The information requested can automatically be sent via email, direct mail, and other marketing channels to ensure that students receive information. The school must comply with all regulatory requirements. This necessitates the school to use systems such as:

   a. **Inquiry Management Systems**

   There are cloud-based systems designed to help organizations manage the third-party inquiry channel. They have APIs that enable third-party lead generation companies to transfer inquiry-data in real-time. The systems can be set up to automatically reject inquiries that do not meet the criteria the institution has set up with individual vendors, and send data into the CRM, to call centers, email management software, direct mail companies, and more. They also create an easy way for the institution to return and document bad leads, manage invoicing and inquiry-flow by program, campus, and any other variations the school desires.
b. **CRM and Student Information Systems**
   Some student information systems incorporate CRM systems, while others do not. CRM systems are cloud-based software programs that enable data to be transferred directly into the system and set up so various follow-up procedures can be employed. Some systems include comprehensive inquiry management systems, while others include basic third-party system management. Most enable the school to set up automated email deployment, text messaging, and alerts for the admissions team to call prospective students.

c. **Compliance Monitoring Systems**
   There are many compliance monitoring systems available. Some of these are cloud-based compliance platforms that automatically monitor the web for regulatory (e.g., TCPA) and brand compliance. Some systems require one to upload or send over a banned list and required terms to be monitored. When an infraction is flagged on a landing page, an alert is created for follow-up, depending on the system.

d. **Inquiry Certification, Validation Systems, Recording Programs and More**
   As noted above, institutions must require that third-party vendors track, monitor, and provide evidence of consumer consent for each engagement with the consumer back to the time when the consumer initially submitted their information. Cloud-based systems are available to record and monitor consent compliance as prospective students are completing online request-for-information forms. Also, institutions should require that any call center engagement with the consumer must also be recorded and provided to the institution within a specified time of a request. Institutions should also ask third-party vendors what their retention policy is for storing recorded calls.

**Best Practices for Post-Launch of Inquiry Campaigns**

It is advised that the institution monitor campaigns, including the methods, used to drive traffic to information pages and request-for-information forms. The permissions and documentation of those permissions given by each prospective student regarding how the school may contact them become vital elements of each campaign’s adherence to rules, laws, and regulations.

In addition to compliance monitoring systems and certification vendors, random mystery shopping is an approach many institutions leverage to audit vendor performance. Mystery shopping can be done in house by the marketing or admissions teams, or the school can leverage one of the many outside vendors that will perform this function on the institution’s behalf.
Monitoring third-party vendors post-launch is the most time-consuming and challenging aspect of managing this channel. The FTC will hold the institution accountable for third-party vendors' actions while they are representing the institution; therefore, constant monitoring and communication is necessary.

Institutions should monitor vendors for compliance with relevant laws and regulations. As a best practice, the institution could consider implementing the terms of the FTC / CEC settlement (see Stipulation Order at Appendix A of this Guide) for every PPL the institution purchases. The institution can fulfill some of the more important FTC / CEC settlement terms by demonstrating the following:

- The institution and its vendors comply with the specific prohibitions on misrepresentations covered in Section I of the Stipulation Order
- The institution reviews each specific “Lead Path” (i.e., consumer-facing text, graphics, video, audio, photographs, and scripts) and ensures there are no misrepresentations (see Stipulation Order, Section II.C.1.a)
- The institution reviews materials that the vendor used in order to obtain personal information of the consumer (see Stipulation Order Section II.C.1.b)
- The institution investigates complaints about lead vendors (see Stipulation Order, Section II.D)
- The institution monitors lead provider compliance with rules governing phone calls (see Stipulation Order, Section III for a non-exhaustive listing of these rules).

Most institutions do not rely on a single monitoring action but instead utilize numerous tactics to keep abreast of vendor activities. Monitoring strategies may include:

- Mystery shopping.
- Compliance monitoring by external vendors - Obtain a copy of any email or banner creative students responded to if either of these channels were incorporated. Acquire video recordings showing the student filling out inquiry forms and the URLs where these forms were housed, and any additional information that is believed to be relevant.
- Auditing call center recordings for language and permissions - Collect all call recordings between prospective students and call centers where applicable. Listen to make sure agents are not trying to persuade prospects to enroll at the school, which could be construed as recruiting, and enhances the possibility of violating the incentive compensation regulation (see Section Two of this guidance).
- Analyzing performance data - This includes taking a selection of returned inquiries and sending them back to the vendors to gather all details surrounding how that prospective student inquiry was generated.
- Analyzing lead disposition data.
- Monitoring internet search ads - search for the institution’s brand terms to see if any affiliate vendors appear in brand-term search results. If so, have them remove the listings.
- Auditing permission data.
- Reviewing certification status of lead data.
• Reviewing the content and ads against recent regulations to ensure they are compliant. Reviewing disclosures on digital advertising used by third-party lead generation companies to ensure that disclosures are clear and conspicuous according to FTC guidance (see https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf for further information.) An example of a proper disclosure might be if a third-party affiliate directory purports to list “the best” school of a kind. The importance of disclosing that a school’s name listed on that directory as a sponsor or an advertiser is magnified since the FTC would likely conclude that a reasonable person relied on this pronouncement.

This auditing process is very time-consuming, and one may want to limit the number of permissions required of vendors. The goal is to make certain vendors are complying with the law. The more work one is requiring of vendors, the more money it will cost the institution to manage this process.

**Be aware of red flags.** Any prospective students who said they filled out a form for a free iPad, asking about free tuition, etc. should be investigated immediately.

If a vendor is identified, which puts the school in a compromising situation and does not help students get the straight-forward information they are looking for, immediately suspend/terminate the relationship with that vendor.

Additionally, schools should notify all other vendors not to utilize the suspended/terminated vendor’s services. Keep a blacklist of all terminated vendors and advise any new vendor not to purchase leads from these sources.

**Note: Regardless, of an institution’s marketing or admissions’ projections or forecasted expectations, there is never a reason to consider vendors or inquiry-generation sources that are not fully compliant with legal, compliance, and brand standards.**

**LeadsCouncil Lead Generation Standards and DataSource**

If you are seeking more information, the LeadsCouncil ([www.leadscouncil.org](http://www.leadscouncil.org)), according to its website, “is an independent association, whose members are companies in the online lead generation industry from buyers to sellers, technology solution providers, and investment professionals. All members are united in a common goal of promoting best practices and fostering trust regardless of vertical.” Further lead generation and data source information and guidance are available on the LeadsCouncil website.
APPENDICES
The Commission and Defendants stipulate to the entry of this Stipulated Final Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. “Clear(ly) and Conspicuous(ly)” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it
appears, and other characteristics, must stand out from any accompanying
text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be
delivered in a volume, speed, and cadence sufficient for ordinary consumers
to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the
Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary
consumers and must appear in each language in which the representation
that requires the disclosure appears.

6. The disclosure must comply with these requirements in each medium
through which it is received, including all electronic devices and face-to-
face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent
with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as
children, the elderly, or the terminally ill, “ordinary consumers” includes
reasonable members of that group.

B. **“Covered Information”** means information from or about an individual consumer,
including, but not limited to (a) first and last name; (b) a home or other physical
address, including street name and name of city or town; (c) an email address or
other online contact information, such as an instant messaging user identifier or a
screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s
license or other government-issued identification number; (g) a financial institution
account number; (h) credit or debit card information; (i) precise geolocation data of
an individual or mobile device, including but not limited to GPS-based, WiFi-
based, or cell-based location information; or (j) an authentication credential, such as
a username and password.

C. **“Defendants”** means all of the Defendants, individually, collectively, or in any
combination.

D. **“Established Business Relationship”** means a relationship between the Seller and
a person based on: (a) the person’s purchase, rental, or lease of the Seller’s goods or services or a financial transaction between the person and Seller, within the 18 months immediately preceding the date of the Telemarketing call; or (b) the person’s inquiry or application regarding a product or service offered by the Seller, within the 3 months immediately preceding the date of a Telemarketing call.

E. “Lead Aggregator” means any Lead Generator from which Defendants directly purchase Covered Information.

F. “Lead Generation” means providing, in exchange for consideration, Covered Information to a Seller, Telemarketer, or other marketer, or assisting others in providing such information, including through Telemarketing, but excluding solely hosting or displaying advertising and marketing content created by Defendants.

G. “Lead Generator” means any person who provides, in exchange for consideration, Covered Information to a Seller, Telemarketer, or other marketer, or who assists others in providing such information, including through Telemarketing but excluding persons solely hosting or displaying advertising and marketing content created by Defendants.

H. “Lead Path” means information sufficient to identify each Lead Source with which a consumer interacted prior to the sale of that consumer’s Covered Information to Defendants.

I. “Lead Source” means any platform operated by a Lead Generator involving Lead Generation, including a website or call center.

J. “National Do Not Call Registry” means the National Do Not Call Registry, which is the “do-not-call” registry maintained by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

K. “Outbound Telephone Call” means a telephone call initiated by a Telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

L. “Seller” means any person who, in connection with a Telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration whether or not such person is under the jurisdiction of the Commission.

M. “Student” means any natural person who is or was enrolled in a program of study at an institution of higher education operated by Defendants.
N. “Telemarketer” means any person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor, whether or not such person is under the jurisdiction of the Commission.

O. “Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.

ORDER

I. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or sale of any educational product or service, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

A. That Defendants or Lead Generators acting on their behalf are, represent, are affiliated with, or are endorsed by the United States Department of Defense or its Military Departments, or any other branch or agency of the United States federal government;

B. That the United States Department of Defense or its Military Departments or any other branch or agency of the United States government endorses or recommends a post-secondary school;

C. That Defendants or Lead Generators acting on their behalf are neutral and independent educational advisors that endorse or recommend a post-secondary school;

D. That consumers who submit Covered Information to Lead Generators, acting on Defendants’ behalf, are applying for open job positions or government benefits;

E. That Lead Generators, acting on Defendants’ behalf, represent prospective employers;

F. With respect to Defendants’ products or services, any material benefits, including the likelihood of consumers finding employment, of those products or services;
and

G. With respect to Defendants’ products or services, the total costs, or any other material restrictions, limitations, or conditions, of those products or services.

II. INJUNCTION CONCERNING LEAD GENERATION

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or sale of any educational product or service, are permanently restrained and enjoined from:

A. Failing to, as a condition of doing business with any Lead Aggregator: (a) provide each such Lead Aggregator a copy of this Order within 7 days of entry of this Order; and (b) either (i) obtain from each such Lead Aggregator a signed and dated statement acknowledging receipt of this Order and expressly agreeing to comply with this Order within 30 days of entry of this Order or (ii) cease purchasing Covered Information from such Lead Aggregator until such time as the Lead Aggregator has provided a signed and dated statement acknowledging receipt of this Order and expressly agreeing to comply with this Order;

B. Failing to, within 14 days of the appearance of a Lead Source in a Lead Path, provide a copy of this Order by a trackable delivery method with return receipt to every Lead Generator associated with such Lead Source;

C. Using or purchasing Covered Information:

1. Unless Defendants have established, implemented, and thereafter maintained a system to monitor and review Lead Sources, which system shall include procedures sufficient to:

a. Obtain the Lead Path associated with such Covered Information, and information sufficient to permit Defendants to review: (i) copies of all materials created or used by a Lead Generator displayed or contained within a Lead Source in the Lead Path, including text, graphic, video, audio, and photographs; (ii) the location of any Lead Source in the Lead Path; and (iii) the URL of any hyperlink contained in a Lead Source in the Lead Path;
b. Review, directly or through a non-Lead Generator agent, all materials used to obtain such Covered Information, prior to Defendants’ use or purchase of that Covered Information; and
c. Preclude payment of any amounts to the Lead Aggregator or Lead Generator for such Covered Information and to inform the Lead Aggregator that approval is denied if such material contains a misrepresentation prohibited by this Order or otherwise does not comply with this Order;

2. If Defendants know or should know that any material associated with the Lead Path of the Covered Information, including any material identified in Subsection II.C.1.a, contains a misrepresentation prohibited by this Order or otherwise does not comply with this Order.

D. Failing to promptly and completely investigate any complaints or other information that Defendants receive about whether any Lead Generator is engaging in acts or practices prohibited by this Order. If any Lead Generator is engaging in acts or practices prohibited by this Order, Defendants shall inform the Lead Aggregator that approval is denied and shall not pay any amounts to the Lead Aggregator or Lead Generator for such Covered Information.

III. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with Telemarketing are permanently restrained and enjoined from engaging in, or assisting and facilitating others in engaging in, any of the following practices:

A. Initiating any Outbound Telephone Call to any person at a telephone number on the National Do Not Call Registry unless the Seller or Telemarketer proves that:

1. The Seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person’s authorization that calls made by or on behalf of that Seller may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person. Such
written agreement shall fully disclose the identity of the Seller and must be obtained prior to the Seller or Telemarketer placing a call to a telephone number on the National Do Not Call Registry; or

2. The Seller has an Established Business Relationship with such person, and that person has not stated that he or she does not wish to receive Outbound Telephone Calls made by or on behalf of the Seller.

B. Initiating any Outbound Telephone Call to a person when that person has previously stated that he or she does not wish to receive an Outbound Telephone Call:

1. Made by or on behalf of the Seller whose goods or services are being offered; or

2. Made on behalf of a charitable organization for which a charitable contribution is being solicited.

C. Initiating any Outbound Telephone Call that delivers a prerecorded message, unless the Seller or Telemarketer can demonstrate that:

1. Prior to making any such call to induce the purchase of any good or service, the Seller has obtained from the recipient of the call an express agreement, in writing, that:
   
a. The Seller obtained only after a Clear and Conspicuous disclosure that the purpose of the agreement is to authorize the Seller to place prerecorded calls to such person;

   b. The Seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

   c. Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of the specific Seller; and

   d. Includes such person’s telephone number and signature; and

2. In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the Seller or Telemarketer:
a. Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

b. Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly and in a Clear and Conspicuous manner discloses to the person receiving the call: (i) the identity of the Seller or the charitable organization; (ii) that the purpose of the call is to sell goods or services or solicit a charitable donation: and (iii) if the purpose of the call is to sell goods or services, the nature of the goods or services, followed immediately by a disclosure of one or both of the following:

i. In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call Request at any time during the message. The mechanism must:

   (a) Automatically add the number called to the Seller’s Entity-Specific Do Not Call List;

   (b) Once invoked, immediately disconnect the call; and

   (c) Be available for use at any time during the message; and

ii. In the case of a call that could be answered by an answering machine or voicemail service that the person called can use a toll free-number to assert a Do Not Call Request. The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

   (a) Automatically adds the number called to the Seller’s Entity-Specific Do Not Call List;

   (b) Immediately thereafter disconnects the call; and

   (c) Is accessible at any time throughout the duration of the Telemarketing campaign.

D. Initiating any Outbound Telephone Call to a telephone number within a given area code unless the Seller, either directly or through another person, has paid the
annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry;

E. Initiating any Outbound Telephone Call in which the Telemarketer fails to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call:
   1. the identity of the Seller whose goods or services are being offered for sale or the charitable organization on behalf of which a request for a charitable contribution is being made;
   2. that the purpose of the call is to sell goods or services or solicit a charitable contribution; and
   3. if the purpose of the call is to sell goods or services, the nature of the goods or services.

F. Initiating any Outbound Telephone Call in which the Seller or Telemarketer fails to transmit or cause to be transmitted to any Caller Identification Service in use by a recipient of a Telemarketing call either:
   1. the Telemarketer’s telephone number and, when made available by the Telemarketer’s carrier, the name of the Telemarketer making the call; or
   2. the name of the Seller or charitable organization on behalf of which a telemarketing call is placed, and that Seller’s or charitable organization’s customer or donor service telephone number, which is answered during regular business hours.

G. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as Appendix A.

IV. MONETARY JUDGMENT FOR EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Thirty Million Dollars ($30,000,000) is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief, including for the purposes of restitution subject to Section V.

B. Defendants are ordered to pay the Commission Thirty Million Dollars ($30,000,000), which, as Defendants stipulate, their designated agent holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in
accordance with instructions previously provided by a representative of the Commission.

V. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

D. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers) may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants’ practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.
VI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from directly or indirectly:

A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress, to the extent permitted by and in compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. Part 99 (“FERPA”). If a representative of the Commission requests in writing any information related to redress, Defendants must provide such information to the extent permitted by and in compliance with FERPA, in the form prescribed by the Commission, within 14 days; and

B. disclosing, using, or benefiting from customer information, including the name, address, telephone number, and email address, obtained from Edutrek, LLC, Day Pacer, LLC, SoftRock, Inc., Sunkey Publishing, Inc.; Sun Key Publishing, LLC; Wheredata, LLC; or Fanmail.com, LLC prior to entry of this Order in connection with the advertising, marketing, promoting, offering for sale, or sale of any educational product or service, unless (i) the customer information is associated with a Student, or (ii) Defendants also received the same consumer information from another source.

VII. COOPERATION

IT IS FURTHER ORDERED that Defendants shall cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendants shall provide truthful and complete information, evidence, and testimony. Defendants shall, upon a reasonable request from a Commission representative with a minimum of 10 days’ notice, cause their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings at such reasonable places and times as a Commission representative may designate, without the service of a subpoena.
VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 20 years after entry of this Order, each Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for advertising, marketing, promoting, offering for sale, or sale of any educational product or service, and all agents and representatives who participate in the advertising, marketing, promoting, offering for sale, or sale of any educational product or service; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order pursuant to this Section VII, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant’s businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a
copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; or (b) the structure of any Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: ____________________________” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Career Education Corporation.
X. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendants in connection with Telemarketing or the advertising, marketing, promoting, offering for sale, or sale of any educational product or service, must create and retain the following records:

A. accounting records showing the revenues from all goods or services sold, including revenues attributable to consumers whose Covered Information was provided to Defendants by Lead Aggregators, and to the extent practicable, broken down by Lead Generator;

B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. records of all consumer complaints and refund requests concerning the subject matter of the Order, whether received directly or indirectly, such as through a third party, and any response;

D. records identifying all Lead Generators that Defendants use since entry of this Order;

E. records relating to all websites and marketing materials that have been reviewed to ensure compliance with Section II of this Order;

F. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants’ compliance with this Order and any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission’s lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-l.
I. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this ____ day of ___, 2019.

______________________________
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF: FEDERAL TRADE COMMISSION

LEAH FRAZIER, ESQ.
QUINN MARTIN, ESQ.
Federal Trade Commission 600 Pennsylvania, Ave., NW
Washington, DC 20580
Telephone: (202) 326-2187 (Frazier)
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FOR DEFENDANTS:

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COUNSEL for Career Education Corp.; American InterContinental University, Inc.; AIU Online, LLC; Marlin Acquisition Corp.; Colorado Tech., Inc.; and Colorado Technical University, Inc.

DEFENDANTS:

JEFFREY D. AYERS, ESQ., as
Senior Vice President & General Counsel,
Career Education Corporation;
Vice President, American InterContinental University, Inc.; Manager, AIU Online, LLC; Vice President, Marlin Acquisition Corp.; Vice President, Colorado Tech., Inc.; and
Vice President, Colorado Technical University, Inc.
Appendix B: University of Phoenix Settlement

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

FEDERAL TRADE COMMISSION,
Plaintiff

v.
THE UNIVERSITY OF PHOENIX, INC., an
Arizona Corporation;

Plaintiff, the Federal Trade Commission ("Commission"), filed its Complaint for Permanent Injunction and Other Equitable Relief ("Complaint"), for a permanent injunction and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Commission and Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment ("Order") to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in the advertising, marketing, and selling of their educational products and services.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. “Competent and Reliable Evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.

B. “Defendants” means The University of Phoenix, Inc., Apollo Education Group, Inc., and their successors and assigns, individually, collectively, or in any combination.

C. “Covered Consumer Debt” means debt owed to University of Phoenix by former students who first enrolled during the period starting October 1, 2012 and ending December 31, 2016 that Defendants could collect, recall, purchase, or otherwise obtain, including all unpaid interest and fees related to that debt, whether possessed by Defendants or referred, sold, assigned, or otherwise transferred to any collection agency or other party.
ORDER

I. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or sale of any educational product or service, are permanently restrained and enjoined from:

A. making any misrepresentation, or assisting others in making any misrepresentation, expressly or by implication, regarding:

1. Defendants’ relationships with any companies or employers, or any benefit to students from such relationships, including:
   a) That any of Defendants’ relationships creates career or employment opportunities for Defendants’ students; or
   b) That Defendants’ students receive special access to, or preference for, employment opportunities at any such companies, including job listings or announcements.

2. The curricula or content of Defendants’ educational products or services, or any benefit to students from such curricula or content, including:
   a) That Defendants work with companies to develop educational curricula or content;
   b) That any educational product or service is designed to meet the needs of specific companies or industries;
   c) That any educational product or service prepares students for careers at specific companies or in specific industries; or
   d) The likelihood that students will be hired by a specific company or in a specific industry as a result of any educational product or service.

3. The employment, hiring, or career prospects for any of Defendants’ students, including:
   a) The likelihood that Defendants’ students will be hired: (i) by particular companies or employers, including leading or top
companies or any Fortune 1000 companies; or (ii) in any specific field, industry, or type of employment.

b) Whether any individual was employed, hired, or obtained a job or career, as a result of Defendants’ educational products or services.

4. Any other fact material to consumers concerning any such products or services.

B. Making any representation, or assisting others in making any representation, expressly or by implication, about the benefit or outcome of any such product or service, including any representation enumerated in Section I.A.1-3, unless the representation is non-misleading, and, at the time such representation is made, Defendants possess and rely upon competent and reliable evidence that is sufficient in quality and quantity to substantiate that the representation is true.

C. This Section I shall not prohibit Defendants from disclosing or reporting information as required by any federal, state, or local governmental laws.

II. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of One Hundred Ninety Million Nine Hundred Sixty-Six Thousand Eight-Hundred and Six Dollars ($190,966,806) is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief, including for the purposes of restitution subject to Section II.F. This judgment consists of:

1. Payment of Fifty Million Dollars ($50,000,000) to the Commission.
   a) Defendants are ordered to pay to the Commission Fifty Million Dollars ($50,000,000).
   b) Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

2. Ceased collection of a minimum of One Hundred Forty Million Nine Hundred Sixty-Six Thousand Eight-Hundred and Six Dollars ($140,966,806) in Covered Consumer Debt as follows:
   a) Defendants, Defendants’ officers, agents, employees, and
attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently enjoined from attempting to collect, collecting, or assigning any right to collect any Covered Consumer Debt.

Defendants shall not refer, sell, assign, or otherwise transfer any Covered Consumer Debt.

b) Within 10 business days after entry of this Order, Defendants shall cease collecting on all Covered Consumer Debt and notify any collection agency or other third party collecting Covered Consumer Debt to cease such collection efforts. Within 60 business days after entry of this Order, Defendants shall (1) recall, purchase, or otherwise obtain any Covered Consumer Debt that Defendants have referred, sold, assigned, or otherwise transferred to any collection agency or other third party, and (2) clear all Covered Consumer Debt from Defendants’ financial systems.

c) For any Covered Consumer Debt that has been reported to a Consumer Reporting Agency (“CRA”), Defendants shall, within 10 business days of clearing all Covered Consumer Debt as required by subsection A.2.b request that each CRA delete the Covered Consumer Debt from the consumer’s credit reporting file.

d) To the extent Defendants receive any payments for Covered Consumer Debt after September 30, 2019, Defendants shall, within 30 days of receipt or entry of this Order, refund any such payments.

e) Defendants shall, within 10 business days after entry of this Order, provide a signed declaration to the FTC attesting that they have ceased collection of Covered Consumer Debt as required by this Section III.A.2.

B. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

C. The facts alleged in the Complaint will be taken as true, without further proof, in
any subsequent civil litigation by or on behalf of the Commission in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

D. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

E. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

F. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants’ practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

III. CONSUMER NOTIFICATION

IT IS FURTHER ORDERED that Defendants shall:

A. Within 15 business days of entry of this Order, provide notification to each consumer with Covered Consumer Debt, using the notification provided as Attachment A to this Order. Notification shall be given:

1. By electronic mail to the most recent electronic mail address known to the Defendants; and

2. By written notice sent to the most recent address of the consumer known to the Defendants.
B. Provide the FTC, within 10 business days after providing consumer notice pursuant to subsection III.A., with a signed declaration identifying the name of each consumer required to be notified, including, to the extent known: (i) mailing address; (ii) email address; (iii) telephone number; (iv) the method or methods of notification; and (v) whether any electronic mail or written notice was returned undelivered.

IV. CONSUMER ACCESS TO DIPLOMAS OR TRANSCRIPTS

IT IS FURTHER ORDERED, that Defendants are prohibited from denying access to any diploma or transcript on the basis of any Covered Consumer Debt.

V. CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order are permanently restrained and enjoined from directly or indirectly failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 30 days, as permitted under and in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g; 34 C.F.R. Part 99).

VI. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, each Corporate Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives having managerial responsibilities for conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled
Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury. Each Defendant must:
   1. identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant;
   2. identify all of that Defendant’s businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
   3. describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant;
   4. describe in detail whether and how that Defendant is in compliance with each Section of this Order; and
   5. provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 10 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
   1. any designated point of contact; or
   2. the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or
affiliate that engages in any acts or practices subject to this Order.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: ___” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. The University of Phoenix, Inc.
VIII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendants, in connection with advertising, marketing, promotion, offering for sale, or sale of any educational products or services, must create and retain the following records:

A. accounting records showing the revenues from all goods or services sold;
B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
E. a copy of each unique advertisement or other marketing material.

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants’ compliance with this Order and any failure to transfer any assets as required by this Order:

A. Within 30 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants
or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission’s lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

X. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this _____ day of ______________________, 2019.

UNITED STATES DISTRICT JUDGE

__________________________

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION

/s/ Thomas J. Widor
Thomas J. Widor
Stephanie E. Cox
Adam M. Wesolowski
Federal Trade Commission
600 Pennsylvania Ave., NW
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Washington, DC 20580
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COUNSEL FOR FEDERAL TRADE COMMISSION
FOR DEFENDANTS:

[Signature]
Gil M. Soffer, Esq.
Katten Muchin Rosenman LLP

COUNSEL FOR UNIVERSITY OF PHOENIX, INC.

[Signature]
Gil M. Soffer, Esq.
Katten Muchin Rosenman LLP

COUNSEL FOR APOLLO EDUCATION GROUP, INC.

DEFENDANTS: UNIVERSITY OF PHOENIX, INC.

[Signature]
Daniel P. Littoral, Senior Vice President, General Counsel, and Secretary

APOLLO EDUCATION GROUP, INC.

[Signature]
Daniel P. Littoral, Senior Vice President, General Counsel, and Secretary
Appendix B: Attachment A - University of Phoenix Letterhead

[UNIVERSITY OF PHOENIX LETTERHEAD]

**Subject Line of Notice:** University of Phoenix Settlement

Dear [consumer’s name]:

University of Phoenix and the Federal Trade Commission (FTC), the nation’s consumer protection agency, have resolved a lawsuit alleging that University of Phoenix advertised deceptively through the “Let’s Get to Work” ad campaign. As part of this settlement, University of Phoenix has agreed to stop collecting the outstanding account balance you owe directly to the University.

You no longer owe any money to University of Phoenix. You don’t have to do anything to get this relief. Your account balance will be cleared within 45 business days.

Within 55 business days, University of Phoenix will ask credit reporting agencies Experian and Equifax to delete this debt from your credit report.

This settlement covers only the outstanding balance you owe directly to University of Phoenix. It doesn’t cover other federal or private student loans. Contact your loan servicer for more information.

The University will automatically release any holds on your account caused by this outstanding balance, and will make official transcripts available upon request. You must pay the published transcript fee.

Whether you are a graduate or a former student, there will be no other impact to you beyond the terms of the settlement. Any degrees, credits, or credentials you earned from the University will remain unchanged.

If you have questions, please contact us at [email address] or [phone number]. For more information about the FTC settlement, visit [FTC alias URL] and/or [UOPX micro site URL].

[Include a complimentary close] [Include a person’s name]