

ConsumersUnion®

THE ADVOCACY DIVISION OF CONSUMER REPORTS

June 11, 2018

Betsy DeVos, Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

RE: Program Integrity and Improvement [Docket ID: ED-2018-OPE-0041; RIN: 1840-AD39]

Dear Secretary DeVos:

Consumers Union, the advocacy division of Consumer Reports,¹ appreciates the opportunity to comment in response to the Department's proposal to delay implementation of the state authorization rule for postsecondary distance education programs.

We strongly support the 2016 rule, and urge the Department to move forward with implementation. It adds clarity to the regulatory framework applicable to distance education providers, in recognition of the changing landscape for postsecondary education that increasingly involves distance education providers marketing their programs to students in multiple states. The 2016 rule includes these important provisions:

- It requires all providers of distance education to obtain state authorization in each state where they intend to enroll students, to ensure states conduct an active review of out-of-state education providers.
- It defines permissible uses of reciprocity agreements, and provides that a student's home state has final authority to resolve complaints and enforce its own consumer protection laws even where reciprocity agreements are present.
- It also provides important notice requirements, to ensure that students do not unwittingly enroll in career programs that do not meet the programmatic accreditation requirements necessary for the student to obtain a professional license in her home state, or which are subject to ongoing investigations that may portend trouble at the institution.

¹ Consumers Union is the advocacy division of Consumer Reports, an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumers Union works for pro-consumer policies in the areas of financial services, as well as telecommunications, health care, food and product safety, energy, telecommunications, privacy and data security, and competition and consumer choice, among other issues, in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

Our organization served on the 2014 Program Integrity and Improvement Committee, representing the interests of consumer advocacy organization. Negotiators engaged in robust stakeholder discussions over four sessions in developing this rule. The resulting 2016 final rule reflects that substantial stakeholder input. There is simply no rationale to abruptly delay the rule for another two years, allowing confusion and uncertainty to impact states, distance education providers, and – most importantly – students.

General comments

With more than 2.8 million post-secondary education students enrolled in online-only programs,² the Department must take seriously the issue of quality in online education programs with greater urgency than ever before. As the Department acknowledged in its notice of proposed rulemaking, there has been significant growth in the number of students enrolling in out-of-state online programs, a majority of whom enroll in proprietary schools' online programs.³

Despite this trend, online-only education remains largely unregulated.⁴ Unfortunately, increasing complaints about fraud at some institutions indicate that the need for clear state oversight standards is overwhelming. Online programs offered by for-profit schools are too often purveyors of fraud and debt rather than knowledge and skills. For example, in 2014, Ashford and its parent company Bridgepoint Education, Inc. paid \$7.25 million to Iowa for misleading online recruiting practices, including deceiving prospective students by leading them to believe that online education degrees would allow them to become classroom teachers.⁵ Last year, the California Attorney General also sued Ashford and Bridgepoint for widespread deception in its recruitment practices, as well as aggressive debt collection.⁶

However, Ashford continues to have an active distance education business.⁷ Ashford is not alone in doing active business despite being under investigation. For example, the University of Phoenix,⁸ Kaplan⁹ and Ashworth¹⁰ have also been the focus of complaints by state and federal agencies for their ongoing distance education programs.

² I. ELAINE ALLEN ET AL., ONLINE REPORT CARD: TRACKING ONLINE EDUCATION IN THE UNITED STATES 4 (2016), available at <http://onlinelearningsurvey.com/reports/online-report-card.pdf>.

³ Program Integrity and Improvement; Proposed Rule, 81 Fed. Reg. 48598, 48607 (proposed July 25, 2016).

⁴ ROBYN SMITH, NAT'L CONSUMER LAW CTR., ENSURING EDUCATIONAL INTEGRITY: 10 STEPS TO IMPROVE STATE OVERSIGHT OF FOR-PROFIT SCHOOLS 18 (2014), available at <http://www.nclc.org/images/pdf/pr-reports/for-profit-report.pdf>.

⁵ Press Release, Iowa Dep't of Justice, Office of the Attorney General, Ashford University and Parent Company Bridgepoint Education Agree to \$7.25 Million Payment Major Changes after Miller Alleges Consumer Fraud (May 16, 2014), <https://www.iowaattorneygeneral.gov/newsroom/ashford-university-and-parent-company-bridgepoint-education-agree-to-7-25-million-payment-and-major/>.

⁶ Press Release, Calif. Dep't of Justice, Attorney General Xavier Becerra Sues For-Profit Ashford University for Defrauding and Deceiving Students (Nov. 29, 2017), <https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-sues-profit-ashford-university-defrauding-and-deceiving-students>.

⁷ Press Release, Bridgepoint Educ., Bridgepoint Education Reports Second Quarter 2016 Results (Aug. 2, 2016), <http://www.prnewswire.com/news-releases/bridgepoint-education-reports-second-quarter-2016-results-300307777.html>.

⁸ Apollo Education Group, Inc., Current Report (Form 8-K), at 2 (Aug. 7, 2015).

⁹ Press Release, North Carolina Dep't of Justice, Office of Attorney General, Unlicensed Medical Institute Shut Down for Offering Faulty Classes (Oct. 9, 2015) <http://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/Unlicensed-medical-institute-shut-down-for-offerin.aspx>.

For these reasons, it is crucial that states conduct an active review of schools seeking authorization to operate under their jurisdiction, to prevent schools with poor track records from putting students into debt for questionable programs. Without proper oversight of these schools, the Department, states, students and taxpayers will continue to bear the cost.

To address these problems, the 2016 rule clarified that distance education providers must obtain authorization in every state where it seeks to operate, and set forth crucial new standards in two specific areas: (1) state authorization reciprocity agreements; and (2) disclosures to students about authorization, accreditation, and other important information measures of school quality.

State authorization reciprocity agreements

The 2016 rule's provisions regarding interstate reciprocity agreements are critical to resolve longstanding confusion as to which standards and processes apply to distance education programs authorized through such agreements, and to ensure that states can still enforce their own consumer protection laws when their residents are harmed by out-of-state actors. Absent clear and final authority for a student's home state to enforce its applicable laws, such agreements, if they seek to preempt laws in a student's home state, could result in a two-tiered oversight system that encourages schools to engage in "forum shopping," seeking to headquarter in a state with more lax consumer protection laws. This in turn results in weaker protections for students taking distance education courses with out-of-state providers.

The 2016 rule clarifies that a state can enforce its own laws, including consumer protection laws of general applicability as well as those specific to higher education, in order to protect students. This is a crucial change that must be implemented without delay, to improve distance education standards preserve states' rights to protect their residents.

Accreditation and Disclosures

The 2016 rule also provides important disclosures to students enrolled in programs that are meant to lead to obtaining a professional license, the requirements of which can vary substantially from one state to another – unbeknownst to the student. Without adequate information regarding a distance education program's current accreditation status, students seeking to become teachers, nurses, and other professionals can find themselves in debt for a program that does not qualify them to sit for the exams they need to pass in order to embark on their intended careers.

To address this issue, the 2016 rule requires schools to inform prospective students if the program does not meet licensure or certification requirements in the state where the student resides. It also requires distant education providers to promptly notify all prospective and enrolled students when there are any adverse actions being taken by a

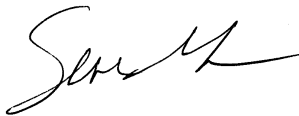
¹⁰ Press Release, Fed. Trade Comm'n, Ashworth College Settles FTC Charges it Misled Students About Career Training, Credit Transfers (May 26, 2015), <http://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/Unlicensed-medical-institute-shut-down-for-offerin.aspx>.

state agency or an accreditor, as well as any determination that the program fails to meet licensure or certification prerequisites.

Conclusion

Students enrolled at distance education programs need fair treatment from their schools, and proper oversight from state and federal government, in order to realize the opportunities they seek through postsecondary education. It is crucial that the Department set ground rules to promote the best interests of students, not simply to ease friction in the authorization process for schools. We strongly urge the Department to implement the 2016 rule, to provide clarity to schools and protect our nation's students.

Sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne Martindale', written in a cursive style.

Suzanne Martindale
Senior Attorney