May 10, 2022

RAOUL URGES FEDERAL TRADE COMMISSION TO CONSIDER STATE ENFORCEMENT EFFORTS DURING RULEMAKING TO ADDRESS FOR-PROFIT SCHOOLS' DECEPTIVE EARNINGS CLAIMS

Chicago — Attorney General Kwame Raoul today led a bipartisan coalition of 24 states urging the Federal Trade Commission (FTC) to consider the action states have taken to address misrepresentations made by for-profit colleges and universities during its rulemaking process related to schools' deceptive earnings claims. In March, the FTC issued a request for comments regarding deceptive or unfair earnings claims made by a broad range of businesses, including for-profit schools. Raoul and the coalition are calling on the FTC to take into account misrepresentations schools have made with respect to their graduates' earnings as the agency considers proposing rules governing the broad use of such earnings claims.

"Students are the ones who suffer the consequences when for-profit colleges and universities make deceptive claims about graduates' earnings and post-graduate success," Raoul said. "Illinois and states around the country have been acting to hold for-profit schools accountable for misleading students, and we are urging the FTC to take states' enforcement experiences into account as it decides how to evaluate earnings claims schools can make."

In comments to the FTC, Attorney General Raoul and the coalition highlight the negative impact of for-profit schools' misrepresentations, particularly on communities of color. The attorneys general also emphasize the outsized harm student loan debt can have on students of for-profit schools. Attorney General Raoul and attorneys general throughout the country have taken extensive actions in response to misrepresentations made by for-profit schools, which often promise graduates lucrative jobs in sought-after career fields. Unfortunately, these representations often prove to be false, and deceived students can be left with loans that can follow them for the rest of their lives.

In the comments, Raoul and the coalition note states' experiences with misrepresentations for-profit schools have made regarding the amount, source and adequacy of graduates' earnings. For instance, Attorney General Raoul and other attorneys general submitted a group discharge application to the U.S. Department of Education in April 2021 as a result of ITT Technical Institute (ITT) misrepresenting the amount of graduates' projected annual earnings by up to $100,000. Attorney General Raoul and the coalition also point to a 2015 settlement with Westwood College that resolved allegations Westwood misrepresented the ability of criminal justice students in Illinois to be employed as police officers in Illinois. Finally, the coalition notes with concern the inability of some graduates to earn sufficient income to repay the student loans they had to take out to attend for-profit schools.

The Illinois Attorney General's office has long been a national leader in investigating and enforcing consumer protection violations in the higher education field. Since entering office, Attorney General Raoul has secured over $160 million in relief for Illinois borrowers who were deceived by their school, private lender, or servicer. Earlier this year, Raoul's office announced a $1.85 billion national settlement with Navient, formerly the nation's second largest student loan servicer. Last year, Attorney General Raoul's office initiated and worked to pass "Know Before You Owe," to alert borrowers of their remaining federal student loan eligibility to help them steer clear of predatory private loans. Raoul has also overseen the rollout of the state's first Student Loan Ombudsman, a position created by the Student Loan Servicing Rights Act, to provide resources for student borrowers who are struggling to make student loan payments.

Joining Attorney General Raoul in the comments are the attorneys general of California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin, as well as the Hawaii Office of Consumer Protection.

Student borrowers who have questions or are in need of can call the Attorney General’s Student Loan Helpline at 1-800-455-2456. Borrowers can file complaints against their student loan servicer at the Illinois Attorney General’s website.

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

May 10, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave. NW, Suite CC-5610
Washington, DC 20580

Via Electronic Submission

RE: Earnings Claims ANPR, R111003

Dear Federal Trade Commission:

We, the undersigned Attorneys General of Illinois, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin, as well as the Hawaii Office of Consumer Protection, write in response to the Federal Trade Commission's ("FTC" or the "Commission") call for written comments regarding deceptive marketing using earnings claims, as set forth in 87 Fed. Reg. 13951 (the "Request"). As the Request notes, a variety of different industries rely heavily on earnings claims. Undoubtedly, each industry is different. However, we write today specifically regarding earnings-related claims by for-profit schools to aid in the Commission's determination of the requirements and scope of such a rule, given the unique issues posed by for-profit schools. In our investigation and enforcement experience, misrepresentations by for-profit schools can be broad and especially harmful for students who may carry the burden of student loan debt for the rest of their lifetimes. In the course of this rulemaking, we strongly encourage the Commission to consider the variety of misrepresentations historically made by many for-profit schools as to the amount, source, and adequacy of earnings, as well as the targets of such misrepresentations and the impact of such misrepresentations.

Higher education has long been synonymous with advancing a career and achieving life goals. In many ways, then, schools providing access to higher education use marketing tactics strikingly similar to those used by businesses selling "business opportunities" which, those businesses claim, can provide a career and plentiful income. For-profit schools in particular have relied heavily on marketing related to future earnings, including job and career advancement.[1]

As a part of the regulatory triad of higher education, state regulators have an important role to play in overseeing higher education. Our offices are charged with enforcing our respective state consumer protection statutes, which, like the FTC Act, prohibit deceptive acts and practices. In that role, we have investigated and brought enforcement actions against numerous for-profit schools,[2] including for misrepresentations relating to those schools' earnings claims. Many of our states also maintain a robust regulatory role in overseeing for-profits, including requiring disclosures relating to jobs and salaries. We urge the Commission to make clear that any requirements imposed by this rulemaking will not replace such local requirements.[3] While the Request seeks to cover a variety of industries, we also urge the Commission to consider the harm for-profit schools can and often do inflict on students, as well as the variety of ways in which for-profit schools can misrepresent the amount, source, and adequacy of future earnings, in any proposed rule.

I. The Harm: A Lifetime of High Student Loan Debt

For-profits, as the name suggests, operate to maximize profit for their owners and shareholders. To do so, for-profits spend large portions of their budgets on marketing to entice students to enroll and typically charge higher tuition than at community colleges and public universities charge for comparable programs.[4] In fact, average tuition for certificate programs at a for-profit college is on average four and a half times more than at a comparable program at a

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[1] *See*, for example, Westwood College, Inc., Complaint, People of the State of Illinois v. Westwood College, Inc. *et al.*, No. 12 CH 01587 (Cir. Ct. Cook County Jan. 18, 2012).

[2] Including, for instance, Career Education Corporation (including the Sanford Brown schools), Assurance of Discontinuance *available at* https://ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit; The Career Institute, LLC, Final Judgment *available at* http://www.mass.gov/ago/docs/consumer/aci-consent-judgment.pdf; Corinthian Colleges, Inc., Judgment *available at* https://oag.ca.gov/system/files/attachments/press_releases/Corinthian%20Final%20Judgment_1.pdf; DeVry University, Assurance of Discontinuance *available at* https://ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-devry-university-providing-225-million-restitution; Education Management Corporation, Consent Judgment, People of the State of Illinois v. Education Management Corporation *et al.*, No. 2015 CH 16728 (Cir. Ct. Cook County Nov. 16, 2015); Lincoln Technical Institute, Inc., Consent Judgment *available at* http://www.mass.gov/ago/docs/press/2015/lincoln-tech-settlement.pdf; ITT Educational Services, Inc., Complaint, Massachusetts v. ITT Educ. Servs. Inc., No. 16-0411 (Mass. Super. Ct. Mar. 31, 2016), borrower defense application *available at* https://coag.gov/press-releases/4-1-21/; Kaplan Higher Education, LLC, Assurance of Discontinuance *available at* http://www.mass.gov/ago/docs/press/2015/kaplan-settlement.pdf; Minnesota School of Business, Inc. and Globe University, Inc., Findings of Fact, Conclusions of Law and Order, Minnesota v. Minnesota School of Business *et al.*, No. 27-CV-14-12558 (Minn. Dist. Ct. September 8, 2016); The Salter School, Judgment by Consent *available at* http://www.mass.gov/ago/docs/press/2014/salter-judgment-by-consent.pdf; Westwood College, Inc., Complaint, People of the State of Illinois v. Westwood College, Inc. *et al.*, No. 12 CH 01587 (Cir. Ct. Cook County Jan. 18, 2012).

[3] We note with concern misrepresentations made by for-profit schools providing distance education programs, as some of those schools claim not to be subject to certain state regulations under the policies of the National Council for State Authorization Reciprocity Agreements, a private organization.

[4] *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, United States Senate, Health, Education, Labor and Pensions Committee, at 1-2 (July 30, 2012) ("Senate Report") *available at* https://www.help.senate.gov/imo/media/for_profit_report/ExecutiveSummary.pdf

community college.[5] Bachelor's degree programs at for-profits averaged 20% more than analogous programs at public universities, and associate degree programs at for-profits averaged four times the cost at traditional public colleges.[6]

Importantly, federal student loans afford an easily-accessible source of funding for these high tuitions, further enabling for-profits to take advantage of consumers. For instance, in 2009, 15 publicly-traded for-profit education companies received over 86% of their revenues from taxpayers.[7] Moreover, 71% of students at for-profit schools take out student loans, compared to only 49% at public four-year schools.[8] Given higher tuition at for-profits, students attending these schools also end up borrowing more – $2,000 more on average per year than students at four-year, public colleges and over $5,000 more on average per year than students at public community colleges.[9] Moreover, for-profits have lower completion rates than other higher education institutions: in 2019, for instance, the 6-year completion rates for students seeking bachelor degrees at 4-year degree granting institutions was "62 percent at public institutions, 68 percent at private nonprofit institutions, and 26 percent at private for-profit institutions."[10] As a result, many for-profit students will end up with a large amount of debt and no diploma or other credential.

Therefore, a higher percentage of students at for-profit colleges are borrowing more money than at other institutions. For-profit students also make up a disproportionate share of defaulting borrowers.[11] The effects of such borrowing can last a lifetime for such students:

> The vast majority of the students left with student loan debt that may follow them throughout their lives, and can create a financial burden that is extremely difficult, and sometimes impossible, to escape.[12]

Unlike other debts, including, for example, debts accrued to pursue a business opportunity, student loans are often not dischargeable in bankruptcy. Federal direct loans have some limited protections that may help a borrower discharge their loans over time, for instance under an income driven repayment plan or public service loan forgiveness. However, usually private student loans have no such protections. Because these educational debts can follow borrowers forever, then, earnings misrepresentations made to prospective students are especially damaging.

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5 *See* Senate Report, *supra* note 4, at 42, available at https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf.
6 *Id*.
7 *See* Senate Report, *supra* note 4, at 2.
8 *The for-profit college system is broken and the Biden administration needs to fix it*, Ariel Shiro and Richard Reeves, Brookings Institute, Jan. 12, 2021, available at https://www.brookings.edu/blog/how-we-rise/2021/01/12/the-for-profit-college-system-is-broken-and-the-biden-administration-needs-to-fix-it..
9 *Different degrees of debt: Student borrowing in the for-profit, nonprofit, and public sectors*, Stephanie Cellini and Rajeev Darolia, Brown Center on Education Policy, June 2016, available at https://www.brookings.edu/wp-content/uploads/2016/07/cellini.pdf.
10 *Fast Facts: Graduation Rates*, National Center for Education Statistics, available at https://nces.ed.gov/fastfacts/display.asp?id=40#:~:text=The%206%2Dyear%20graduation%20rate,at%20both%20public%20(65%20vs (last visited April 21, 2022).
11 "[s]tudents who attended a for-profit college already account for 47 percent of all borrowers in default" *See* Senate Report, *supra* note 1, at 115, available at https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf.
12 *See* Senate Report, *supra* note 4, at 1.

II. The Harmed: Predominantly Black and Latino Populations

While for-profit schools harm a broad swath of individuals, they especially harm communities of color. Black and Latino students constitute nearly half of all for-profit students, compared to all undergraduate institutions where these groups constitute only one-third of students.[13] In fact, one zip code mapping analysis found that for-profits often locate themselves in predominantly minority neighborhoods:

> Nationally, and in city after city, we found that for-profit schools cluster in and around Black and Latino neighborhoods, a stark contrast to their relatively thin presence in predominantly white neighborhoods. These findings make clear that the disproportionate enrollment of people of color at for-profit colleges is likely a consequence of these firms' intentional targeting of Black and Latino neighborhoods. At the national level, we found that neighborhoods that are majority Black or Latino are significantly more likely—over 75 percent and 110 percent, respectively—to have at least one for-profit school than communities that are not.[14]

In Chicago, for instance, "[t]here are 11x more for-profits in the 10 percent of Chicago zip codes with the largest Latino populations than in those with the largest white populations."[15] Moreover, nearly two-thirds of Black and Latino student borrowers end up dropping out of four-year for-profit schools.[16] Black borrowers also have to borrow more to attend schools across all sectors.[17] As a result, these communities can be especially harmed by the misconduct of predatory for-profits, including by income misrepresentations.

III. The Fraud: Misrepresentations Relating to the Amount, Source, and Adequacy of Earnings

Through a variety of state investigations and enforcement actions, the states have uncovered a wide array of predatory practices by abusive for-profit schools. These practices include harassing, high pressure recruitment tactics and false and misleading representations to consumers, among other things. We have seen some for-profit schools employ misrepresentations regarding the amount, source, and adequacy of earnings that prospective students should expect after enrollment.

a. For-Profits Misrepresent the Amount of Future Earnings:

For-profit schools often make representations regarding the dollar amount of increased earnings that students might expect to receive upon graduation. These numbers are often

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[13] *Mapping Exploitation*, Student Borrower Protection Center, July 2021, at 9, available at https://protectborrowers.org/wp-content/uploads/2021/07/SBPC-Mapping-Exploitation-Report.pdf
[14] *Id.* at 11
[15] *Id.* at 20.
[16] *The Debt Divide*, Demos, at 15-16, *available at* http://www.demos.org/sites/default/files/publications/Mark-Debt%20divide%20Final%20(SF).pdf.
[17] *See* Mapping Exploitation, *supra* note 12, at 6.

fundamentally false and fail to take into account the often abysmal program completion rates at these schools. In April 2021, a group of 25 states submitted a group discharge application ("ITT Group Discharge Application") for certain ITT borrowers outlining this type of conduct. As set forth in that application, and as evidenced by the Expert Report of Dr. Jordan Matsudaira, ITT misrepresented the projected annual earnings for ITT graduates "at $100,000 more than the average earnings of workers with the same credentials."[18] There, the Value Proposition Chart used by ITT wrongly represented that earnings would constantly rise and deceptively represented high base salary levels for ITT graduates. ITT also misleadingly aggregated earnings outcomes across majors and locations, instead of providing students with a more accurate sense of the financial benefit of a student's enrollment at a specific program in a specific location.

ITT's Value Proposition Chart also failed to take into account other relevant information, such as low graduation rates. For instance, the ITT Group Discharge Application notes that the average graduation rate across all programs was only 36%. Thus, "[o]nly around one-third of borrowers who enrolled at ITT could expect to be paid the wages of an ITT graduate."[19] Importantly, the ITT Group Discharge Application notes that borrowers should have been informed about the earnings outcomes for all borrowers who enrolled – not just those who graduated – due to the substantial likelihood of non-completion. Given the low completion rates across all for-profit schools, we encourage the FTC to consider completion rates and their impact on expected earnings in its rulemaking process, in addition to other misrepresentations regarding the amount of expected future earnings.

b. For-Profits Misrepresent the Source of Future Earnings:

Our offices have uncovered for-profit schools misrepresenting whether programs of instruction would lead to employment in a specific industry. While these misrepresentations do not explicitly target the amount of expected earnings, they deceptively represent the *source* of earnings.

In Illinois, for instance, one for-profit school, Westwood, misrepresented that its criminal justice program in Illinois could lead students to employment as police officers.[20] In fact, the Chicago Police Department, Illinois State Police, and other law enforcement agencies would not accept Westwood credits or degrees. As the Department of Education has itself now concluded: "This advertising and marketing was misleading because most police officer positions in the Chicago area required credits or a degree from a regionally accredited school, and Westwood was not regionally accredited."[21] Similarly, CEC, a primarily online for-profit, allegedly misrepresented the rates at which graduates became employed in their field of study, claiming that graduates were "placed" in jobs in the advertised fields. In fact, many graduates were employed only temporarily in those fields. In some egregious instances, graduates were even placed in

[18] AG Group Discharge Application on Behalf of ITT Students, April 1, 2021, *available at* https://illinoisattorneygeneral.gov/pressroom/2021_04/2021_States_Group_BD_Application_ITT.pdf.
[19] *Id*. at 4.
[20] *See* Westwood Complaint, *supra* note 1.
[21] *See* Westwood Statement of Facts, Parts 1 and 2, available at https://studentaid.gov/announcements-events/borrower-defense-update (last visited March 28, 2022).

unrelated jobs.[22] As these cases illustrate, misrepresentations regarding the source of earnings can be just as problematic as misrepresentations regarding the amount of those earnings.

c. For-Profits Misrepresent the Adequacy of the Future Earnings:

Most students attend institutions of higher education to improve their lives and careers. Whether or not a student's earnings will be sufficient to cover the cost of those institutions significantly impacts many prospective students' decision regarding whether to attend a specific institution. As we have noted, the few students who do graduate from for-profits often end up not making enough money to repay the large amount of debt they accrued. The Department of Education has noted these poor outcomes. Under the currently-rescinded Gainful Employment Rule, the Department attempted to hold schools accountable for the amount of students' debt incurred compared to those students' earnings upon graduation. The Department did so by cutting off schools from Title IV loans if the school repeatedly graduated students who did not earn enough to repay those loans. When the Department released the first debt-to-earnings rates for applicable programs over 800 programs were "failing" – in other words, graduating students could not repay their loans. While the majority of programs covered by the Gainful Employment Rule were at public colleges,[23] of the 800 failing programs, *ninety-eight percent* were offered by for-profit institutions.[24]

Given this, in formulating any rule, the Commission should take into account the massive cost of student loans and whether the likely earnings would provide enough income to allow borrowers attending for-profit schools to climb out of the debt many of them have to accrue to attend these institutions in the first place.

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Similar to other businesses making earnings claims, for-profit schools sell consumers on lofty dreams and often market themselves as a means to achieve career advancement and a comfortable livelihood. In reality, many consumers who attend for-profit schools end up with limited employment prospects and crippling debt. However, for-profits are also different from other businesses in that their students – often, targeted minorities – take on significant debt loads that can follow these borrowers for a lifetime. We strongly urge the Commission to consider for-profits' historical misrepresentations regarding the amount, source, and adequacy of likely future earnings, as well as the magnitude and nature of the resulting harms, in formulating any rule regarding earnings claims.

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[22] *Attorney General Madigan Reaches $493.7 Million Settlement with For-Profit Education Company*, Jan. 3, 2019, available at https://www.illinoisattorneygeneral.gov/pressroom/2019_01/2019103.html.
[23] *Why Students Need a Strong Gainful Employment Rule*, TICAS, Feb. 3, 2021, available at https://ticas.org/wp-content/uploads/2021/02/Why-Students-Need-a-Strong-Gainful-Employment-Rule.pdf.
[24] *Overburdened with Debt,* Andrew Kreighbaum, Inside Higher ED, Jan. 10, 2017, *available at https://www.insidehighered.com/news/2017/01/10/federal-data-show-hundreds-vocational-programs-fail-meet-new-gainful-employment.*

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