

# **U.S. Government Reminds Colleges and Universities to be Prepared to Defend Advertised Statistics**

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The Federal Trade Commission (“FTC”) and U.S. Department of Education (“ED”) recently reminded all colleges and universities to review their online and print materials not only for the accuracy of any employment statistics listed, but to ensure they have the evidence to substantiate any published statistics.

Specifically, the FTC sued DeVry, a regionally accredited for-profit university, and ED imposed immediate sanctions, in large part because the university was unable to substantiate its graduate employment and salary claims. DeVry, had for several years highlighted in its admissions materials, on its website and in other advertising that 90% of its graduates obtained employment in their field of study. For example: “[s]ince 1975, 90.1% of DeVry graduates system-wide in the active job market held positions in their fields of study within 6 months of graduation.”

As ED noted in its letter to DeVry: “When an institution chooses to use job placement rates as a means of attracting students to enroll, the institution must be able to provide ‘the most recent available data concerning employment statistics and ... any other information necessary to substantiate the truth of the advertisements’.” 20 U.S.C. § 1094(a)(8); 34 C.F.R. §668.14(b)(10) (emphasis added). The FTC lawsuit challenges, among other things, the methodology DeVry used to count graduates as employed. It questions reasons DeVry excluded students from the calculation and certain categories of graduates DeVry reported as employed. The lawsuit also challenges DeVry’s claim that its graduates with bachelor’s degrees earned 15% more than graduates with bachelor’s degrees from all other colleges and universities.

Regardless of the reason that a school publishes employment outcomes, it is “advertising” its graduate employment and must stand ready to substantiate any statistics presented. Compliance

issues that colleges need to address, include:

The accuracy of the statistics published;

Use of a consistent methodology (a change in methodologies could mean statistics may not be comparable from year to year);

Disclosure of the school's methodology and in particular what graduates may have been excluded from the calculation; and

Maintenance of backup documentation necessary to substantiate the statistics published.

The DeVry situation is another reminder to all schools (not just for-profit colleges) that they must use an appropriate methodology to determine published graduate employment rates and have substantiation of those statistics. Students increasingly have turned to litigation as a means to avoid repayment of student debt. Law schools recently faced a rash of such lawsuits, some of which remain pending. All schools need to exercise care with respect to the representations they make regarding employment of their graduates.

Conducting a self-audit or having an independent third party perform the audit of your school's employment statistics can help ensure compliance.

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