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February 2014

### Private Sector Schools and Third-Party Student Recruitment under FTC and CFPB Scrutiny

The Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) are intensifying their regulatory and enforcement focus on proprietary schools and third-party marketing companies.

In the fall of 2013, the FTC released revised **Vocational School Guides** (School Guides), which advise against deceptive marketing practices by businesses that offer vocational training. While only a guide and not directly written for all degree-granting schools, the FTC's discussion provides a useful roadmap for educational institutions for the type of conduct it may find objectionable.

The School Guides address questionable practices regarding misrepresentation of accreditation, the transferability of credit to other schools, government or employment agency affiliation, and testimonials or endorsements. The Guides also warn against misrepresenting teacher or enrollment qualifications, the nature of courses, the availability of financial aid, and the availability of jobs for graduates. In addition, the School Guides address the use of deceptive diplomas or certificates or placing classified ads that appear to be "help wanted" ads.

The FTC has also released guidelines for servicemembers, veterans, and their families regarding questions to ask when choosing a college. The guidance, "**8 Questions to Ask When Choosing a College**," put consumers on notice that terms such as "veteran" or "military-approved" may not necessarily equate to "better" education and support.

The foregoing guidance reflects the FTC's continued broad focus on the for-profit education sector and companies that assist in recruitment. In 2012, several U.S. Senators called on the FTC to take action "concerning unscrupulous for-profit colleges that engage in deceptive and abusive recruitment practices, including their use of third-party, online-marketing companies, or 'lead generators,' to mislead prospective students." In response, the FTC has said: "[t]he Commission is actively engaged in examining issues related to the for-profit education industry." (**Letter from FTC Secretary to Senator Durbin**, dated October 22, 2012).

The FTC is not the only federal enforcement agency focused on for-profit education and third-party student recruitment. The CFPB also has been focused on advertising and marketing of student loans, including by lead generators; origination of student loans; and servicemembers and veterans' issues. The Bureau, along with the U.S. Department of Education, has studied the private student loan market. The Bureau will soon begin supervising student loan servicers and is taking complaints about student loans. Moreover, the FTC, CFPB, the Department of Education, state Attorneys General, and other governmental agencies are increasingly coordinating in unprecedented ways.

Private sector colleges and universities and third-party marketers, including online lead generators, need to be prepared to respond to increased scrutiny. Below is a list of several relevant articles and presentations from our attorneys, which may be of assistance to your organization in this environment of enhanced scrutiny.

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*To view any of these articles, alerts, or presentations, please click on the title.*

**Student Recruitment, Third-Party Vendors, and the Federal Trade Commission** (Presentation)

**What to Look for in 2014 – CFPB Regulatory Outlook** (Recording and Presentation)

**Preparing for a CFPB Examination or Investigation** (Article)

**CFPB Compliance Myths That Deserve Debunking** (Article)

**Advertising and Marketing Law Fundamentals for Consumer Financial Products and Services** (Presentation)

**The FTC's Revised .com Disclosures Guide: What Third Party Advertisers and Lead Generators Need to Know** (Presentation)

**CFPB Examination Procedures for Student Lenders** (Article)

**Senators Push FTC to Investigate Online "Lead Generators"** (Article)

**Consumer Financial Protection Bureau Investigations and FTC Coordination Tips and Techniques** (Presentation)

**Telemarketing, E-mail, and Text Message Marketing: Tips to Avoid Lawsuits** (Presentation)

**Understanding New Restrictions on Advertising GI Bill Benefits** (Article)