

I. DeVry's Operational and Procedural History

A. Ownership History

1. DeVry University ("DeVry") was established in 1931 by Dr. Herman DeVry under the name DeForest Training School as a school to prepare students for technical work in electronics.¹
2. DeVry has had several name and ownership changes over the years.² Between 2008 and 2017, DeVry was owned and operated by a company known today as Adtalem Global Education ("Adtalem").³ Adtalem acquired and operated a number of education brands in addition to DeVry.⁴
3. In December 2017, Adtalem sold DeVry to Cogswell Education, LLC, ("Cogswell") through a Stock Purchase Agreement (the "Cogswell SPA").⁵
4. In the Cogswell SPA, Adtalem agreed to indemnify and hold Cogswell harmless from damages incurred related to borrower defense claims commenced within the five-year period following the sale of the school.⁶ The sale was finalized on December 11, 2018.⁷
5. DeVry currently is open and enrolling new students.

B. Scope of Operations

6. DeVry has expanded its program offerings over the years to include associate, bachelor's, and master's degree programs in technology, science, business, and the arts, both online and on campuses in the United States and Canada.⁸
7. DeVry experienced significant growth in student enrollments, federal funds collected, and profits starting in 2005.⁹

¹ Exhibit 1 (*About DeVry University and Keller*, DEVRY UNIV., <https://www.devry.edu/about.html>).

² In 1953, DeForest Training School became DeVry Technical Institute, and, in 1968, it was renamed DeVry Institute of Technology. *Id.* In 1987, it was acquired by the Keller Graduate School of Management under the parent company DeVry, Inc. *Id.* For purposes of this memorandum, the term "DeVry" refers to all iterations of DeVry University.

³ In 2013, DeVry, Inc. changed its name to DeVry Education Group, Inc. and then changed its name to Adtalem Global Education in 2017. *Id.*; Exhibit 2 (Adtalem Glob. Educ., Inc., Current Report (Form 8-K) (May 5, 2017)), at 2.

⁴ See Exhibit 3 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 1(f), FTC File No. P138402 (May 3, 2014)), at 4 (chart depicting the school brands and affiliate companies owned and operated by DeVry's parent company); Exhibit 4 (Adtalem Brands and Acquisition Dates) (on file with Department)).

⁵ See generally Exhibit 5 (Stock Purchase Agreement by and between Adtalem Global Education, Inc., and Cogswell Education, LLC (Dec. 4, 2017)).

⁶ *Id.* at 89.

⁷ Exhibit 6 (Adtalem Glob. Educ., Inc., Annual Report (Form 10-K) (Aug. 18, 2020)), at 7.

⁸ Exhibit 7 (New Operating And/Or Degree-Granting Authority For Independent Institutions, Item #II-2, Illinois Board of Higher Education (Aug. 2, 2018)).

⁹ Exhibit 8 (S. Health, Educ., Labor & Pensions Comm., 112th Cong., For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success (Comm. Print 2012)), at 435–36. See also Exhibit 9 (DeVry Educ. Grp., Inc., Annual Report (Form 10-K) (Aug. 27, 2014)), at 4, 11–14.

8. Between 2007 and 2010, DeVry's enrollment grew by over 165 percent,¹⁰ reaching a peak enrollment of 68,290 full and part-time students in undergraduate day, evening, and online programs in 2010.¹¹
9. Between 2007 and 2011, DeVry's revenue doubled from \$728.4 million to \$1.46 billion.¹² Its advertising expenses also grew 143%, from \$112.6 million in 2007¹³ to a high of \$274.2 million in 2012.¹⁴ Adtalem stated that increased advertising expenses in fiscal year 2012 were "the result of investments in marketing initiatives to increase enrollments."¹⁵

C. Administrative Actions, Investigations, Lawsuits, and Arbitrations

10. Between 2008 and 2015, DeVry was subject to a number of investigations, lawsuits, and arbitrations initiated by the Department of Education ("Department"), other government entities, and private individuals. The most significant examples are summarized below.

The Department's Program Reviews

11. The Department routinely conducts program reviews to confirm that a school is meeting its obligations of institutional eligibility, financial responsibility, and administrative capability, which are requirements to receive Title IV student loan funding. After completing a program review, a Final Program Review Determination ("FPRD") is issued. The Department initiated program reviews of DeVry in 2011¹⁶ and 2014.¹⁷
12. DeVry's 2011 program review and subsequent FPRD contained five findings, three of which resulted in Title IV liabilities totaling \$2,780,144.¹⁸ The liabilities were as follows:

¹⁰ Exhibit 10 (Adtalem Glob. Educ., Inc., Annual Report (Form 10-K) (Aug. 24, 2007)), at 43 [hereinafter 2007 Form 10-K]; Exhibit 11 (Adtalem Glob. Educ., Inc., Annual Report (Form 10-K) (Aug. 26, 2011)), at 50.

¹¹ Exhibit 12 (DeVry, Inc., Annual Report (Form 10-K) (Aug. 25, 2010)), at 7 (noting that "undergraduate" programs include both associate's and bachelor's level programs).

¹² Exhibit 10 (2007 Form 10-K), at 82; Exhibit 13 (Adtalem Glob. Educ., Inc., Annual Report (Form 10-K) (Aug. 28, 2012)), at 5 [hereinafter 2012 Form 10-K].

¹³ Exhibit 14 (DeVry, Inc., Annual Report (Form 10-K) (Aug. 26, 2009)), at 84.

¹⁴ Exhibit 13 (2012 Form 10-K), at 88.

¹⁵ *Id.* at 88.

¹⁶ From May 9 to May 12, 2011, the Department conducted a program review of DeVry's administration of Title IV programs. The FPRD was published on September 18, 2013. *See* Exhibit 15 (FED. STUDENT AID, U.S. DEP'T OF EDUC., *Final Program Review Determination, DeVry University OPEID 01072700* (Sep. 18, 2013)) [hereinafter 2011 FPRD].

¹⁷ From September 15 to September 19, 2014, the Department conducted a program review of DeVry's administration of Title IV programs. The FPRD was published on February 21, 2018. *See* Exhibit 16 (FED. STUDENT AID, U.S. DEP'T OF EDUC., *Final Program Review Determination, DeVry University OPEID 01072717* (Feb. 21, 2018)) [hereinafter 2014 FPRD].

¹⁸ Exhibit 15 (2011 FPRD), at 33–34.

- On a systemic basis, DeVry pursued institutional policies that resulted in a failure to perform Return of Title IV Funds calculations;¹⁹
- DeVry failed to return Title IV credit balances to the Department in a timely manner after attempts to pay the credit balances to students were unsuccessful;²⁰ and
- On a systemic basis, DeVry awarded and disbursed Title IV funds to enrolled students for coursework that was not part of a Title IV-eligible program.²¹

13. DeVry's 2014 program review and subsequent FPRD contained four findings, three of which resulted in Title IV liabilities totaling \$6,495,151.64.²² The liabilities were as follows:

- On a systemic basis, DeVry failed to obtain written confirmation of a student's intent to return²³ and practiced incorrect use of the mid-point of a payment period for calculating returns.²⁴
- DeVry failed to make the necessary Title IV returns within the required time frame.²⁵
- DeVry failed to adequately document a professional judgment decision.²⁶

14. DeVry paid all liabilities identified in the 2011 and 2014 FPRDs within the required forty-five-day timeframe upon receipt of each FPRD.²⁷

U.S. Federal Trade Commission Investigation and Lawsuit

15. The U.S. Federal Trade Commission (the "FTC") issued a civil investigative demand ("CID") to DeVry on January 23, 2014.²⁸

¹⁹ Exhibit 15 (2011 FPRD), at 6–17. DeVry failed to perform Return of Title IV Funds calculations for students who began attendance in a term and then withdrew at a point that the institution considered "early" in the term. *Id.* at 8–11. DeVry also did not perform Return of Title IV Funds calculations for students who surpassed the sixty percent point in a term before withdrawing. *Id.* at 10.

²⁰ Exhibit 15 (2011 FPRD), at 18–19. DeVry officials identified \$3,214,100.50 in Title IV credit balance funds that the institution was unable to return to students. *Id.* at 18.

²¹ *Id.* at 23–28 (2011 FPRD).

²² Exhibit 16 (2014 FPRD), at 2.

²³ *Id.* at 7–9 (2014 FPRD) (noting that DeVry incorrectly used a withdrawn student's enrollment as an affirmation of that student's intent to return to the institution).

²⁴ *Id.* at 9–11 (2014 FPRD) (finding that DeVry failed to properly identify and employ the last date of attendance when calculating Title IV returns).

²⁵ *Id.* at 11–16 (2014 FPRD).

²⁶ *Id.* at 17–21 (2014 FPRD).

²⁷ See Exhibit 17 (Email from ██████████ to ██████████, Branch Chief, ██████████ School Participation Division, *Re: Confirming Liabilities Paid: DeVry University FPRDs* (Sept. 2, 2021)). See generally Exhibit 15 (2011 FPRD), at 6; Exhibit 16 (2014 FPRD), at 23.

²⁸ Exhibit 18 (Civil Investigative Demand to DeVry Inc. from Fed. Trade Comm'n (Jan. 23, 2014) (No. 1:15-CV-01408)) [hereinafter FTC CID].

16. After a two-year investigation, the FTC sued DeVry in January 2016, alleging that DeVry made deceptive representations about the benefits of obtaining a DeVry degree.²⁹ The complaint alleged that DeVry misled students by representing that (1) ninety percent of DeVry graduates actively seeking employment obtained new jobs in their field of study within six months of graduation (the “90% Representation”);³⁰ and (2) DeVry graduates obtained jobs that paid significantly more than jobs that graduates of other colleges and universities obtained (the “higher income claim”).³¹
17. The complaint alleged that, beginning in at least 2008, DeVry conveyed its 90% Representation and higher income claim through widely disseminated advertising published in various media, including television, YouTube, Twitter, brochures, and other print advertising.³²
18. The FTC alleged that both DeVry’s 90% Representation and its higher income claim were false and unsubstantiated.³³ According to the complaint, DeVry’s ninety percent statistic improperly included graduates who were employed in the same jobs they had held since prior to enrolling at DeVry as well as graduates who did not obtain jobs in their field of study.³⁴ The statistic also improperly excluded certain graduates who were actively seeking employment.³⁵ Consequently, the FTC maintained that the percentage of graduates who found employment in their field at or near graduation was much lower than ninety percent.³⁶
19. The complaint further alleged that the higher income claim was unsubstantiated because the third party “income report” upon which the claim was based should have been questioned by DeVry.³⁷ A comparison between the data within DeVry’s own files and publicly available income data showed that DeVry graduates did not earn significantly more than graduates from all other schools combined.³⁸
20. On March 10, 2016, DeVry filed a motion to dismiss the complaint. DeVry argued that its 90% Representation was not misleading because its advertisements clearly encompassed both students who remained in their old jobs after graduating and students who found new jobs.³⁹ DeVry further contended that most advertisements included a disclosure statement clarifying

²⁹ Exhibit 19 (Complaint, *Fed. Trade Comm’n v. DeVry Educ. Grp., et al.*, 2016 WL 6821112 (C.D. Cal. Dec. 15, 2016) (No. 2:16-CV-00579)) [hereinafter FTC Complaint], at ¶¶ 14–15. The suit was filed against DeVry Education Group, Inc., DeVry University, Inc., and DeVry/New York, Inc. (collectively included in the term “DeVry” as used herein). *Id.* at 1.

³⁰ *Id.* at ¶ 17.

³¹ *Id.* at ¶ 18.

³² *Id.* at ¶¶ 20–38.

³³ *Id.* at ¶¶ 17–18.

³⁴ Exhibit 19 (FTC Complaint), at ¶ 45.

³⁵ *Id.* at ¶ 46.

³⁶ *Id.* at ¶ 47.

³⁷ *Id.* at ¶¶ 48–49 (“In fact, [DeVry] personnel expressed concerns over whether the data sufficiently supported the higher-income claim,” but DeVry continued to make the same higher income claim).

³⁸ *Id.* at ¶ 50.

³⁹ Exhibit 20 (Order Denying Def.’s Mot. to Dismiss, *Fed. Trade Comm’n v. DeVry Educ. Grp., Inc., et al.*, No. CV-16-00579-MWF-SSx (C.D. Cal. May 9, 2016)) [hereinafter Order Denying Def.’s Mot. to Dismiss], at 7.

that the ninety percent statistic was based not only on graduates who obtained new jobs but also those who “were employed at graduation.”⁴⁰

21. The court denied DeVry’s motion to dismiss. The court noted one of DeVry’s social media advertisements that stated that “90% of #DeVry grads active in the job market **find employment** in their field of study within 6 months.”⁴¹ The court also looked at other online advertisements that represented that “90 percent of graduates ‘**quickly land jobs** . . . within six months of graduation’ without clarifying that the statistic includes those who had landed jobs well before graduating.”⁴²
22. The court held that “[t]he graphics and language surrounding [DeVry’s] advertisements at least plausibly create the impression that the 90 percent figure relates to new jobs.”⁴³ The court further noted that:

In one television advertisement, for instance, the meaning of the 90 percent statistic is illustrated by a graduate obtaining a new job. Another commercial depicts images of graduates holding offer letters from employers, thereby strongly implying that the 90 percent language refers to graduates who receive new employment opportunities as a result of graduating from DeVry University. Indeed, nothing besides small print in [DeVry’s] advertisements suggests that the employment statistic includes people who obtained their jobs prior to attending DeVry University.⁴⁴

23. In December 2016, DeVry entered into a settlement agreement with the FTC, which was recorded in a Stipulated Order for Permanent Injunction and Monetary Judgment entered by the Court. That Order committed DeVry to the following terms and conditions, among others:

- Refraining from making misrepresentations about graduate employment rates;
- Refraining from making misrepresentations about graduate compensation;
- Maintaining any and all documentation relating to any representation made about graduate employment rates or graduate compensation, whether or not that documentation was used to substantiate the representation;
- For twenty years, maintaining a training program about the trainee’s duty not to use or make any representation prohibited under the Order for all DeVry staff involved in the promotion or sale of any educational product or service product or service;
- Cooperating with all reasonable requests for information or documents relating to enrollment or billing from any current or former student, including requests for transcripts or diplomas; and

⁴⁰ *Id.* at 7–8.

⁴¹ *Id.* at 2, 7 (emphasis in original).

⁴² *Id.* at 7.

⁴³ *Id.* at 8.

⁴⁴ *Id.*

- Paying \$100,000,000 as follows: (1) \$49,400,000 to the FTC (to be used for equitable relief including consumer redress); (2) \$30,351,019 in forgiveness of unpaid private student loans that DeVry issued directly to current or former DeVry students; and (3) \$20,248,981 in forgiveness of other debts of former DeVry students.⁴⁵
24. The FTC used DeVry’s records to identify students eligible for a portion of the \$49,400,000 of equitable relief.⁴⁶ Eligible students received a partial refund based upon how much the student paid to DeVry.⁴⁷ The FTC defined an eligible student as one who met all four of the following conditions:
- Enrolled for the first time in a bachelor’s or associate degree program at DeVry between January 1, 2008 and October 1, 2015;
 - Paid at least \$5,000 with cash, loans, or military benefits;
 - Did not get debt or loan forgiveness as part of the settlement; and
 - Completed at least one class credit.⁴⁸

The Department’s Limitation Action

25. On August 28, 2015, the Department sent a request for documents to DeVry asking about the school’s representations regarding the employability of its graduates.⁴⁹ The Department specifically asked for documents to substantiate DeVry’s assertion that, “Since 1975, 90.1% of DeVry’s graduates system-wide in the active job market held positions in their fields of study within 6 months of graduation” (“Since 1975 representation”).⁵⁰
26. In January 2016, the Department issued a Notice of Intent to Limit (“Notice”) the participation of DeVry in Title IV programs, which would impact its ability to accept federal student loan funding.⁵¹ The Notice was based on DeVry’s inability to substantiate its Since 1975 representation, which DeVry conveyed to prospective students between at least 2008 and August 2015.⁵²

⁴⁵ Exhibit 21 (Stipulated Order for Permanent Injunction and Monetary Judgment, *Fed. Trade Comm’n v. DeVry Educ. Grp., Inc., et al.*, No. CV-16-00579-MWF-SSx (C.D. Cal. Dec. 19, 2016)), at 4–12.

⁴⁶ *Id.* at 10; Exhibit 22 (Bridget Small, *DeVry Refund Update*, FTC CONSUMER INFO. BLOG (May 1, 2017), <https://www.consumer.ftc.gov/blog/2017/05/devry-refund-update>).

⁴⁷ *Id.* (Bridget Small).

⁴⁸ *Id.* (Bridget Small). The FTC sent letters to roughly 173,000 DeVry borrowers regarding the settlement agreement. *See* Exhibit 23 (Letter from Fed. Trade Comm’n to [REDACTED], *Re: FTC v. DeVry University* (2017)).

⁴⁹ Exhibit 24 (Letter from [REDACTED], Division Director, Multi-Regional & Foreign School Participation Division, Dep’t of Educ., to [REDACTED], President, DeVry Univ. (Aug. 28, [REDACTED])) [hereinafter [REDACTED] Letter].

⁵⁰ *Id.* at 2.

⁵¹ Exhibit 25 (Notice of Intent to Limit from [REDACTED], Director, AAASG, to [REDACTED], President, DeVry Univ. (Jan. 27, [REDACTED])) [hereinafter Notice Letter] at 1.

⁵² *Id.* at 1.

27. The Department explained in its Notice that DeVry made its Since 1975 representation as part of its “We Major in Careers” campaign, a “career focused brand marketing campaign” that sought to recruit prospective DeVry students based upon the promise of career success.⁵³
28. DeVry could not substantiate the Since 1975 representation because DeVry could not provide graduate-by-graduate data between 1975 and October 1980 and could only provide certain graduate-by-graduate data between October 1980 and 1990.⁵⁴
29. In October 2016, the Department and DeVry entered into a settlement agreement (the “Department Settlement”).⁵⁵ DeVry agreed to measures including:
- Cease publishing or otherwise using the Since 1975 representation and remove any past publications;⁵⁶
 - Refrain from making representations concerning post-graduation employment outcomes based on graduates from 1975 to October 1980;⁵⁷
 - Maintain graduate specific data to substantiate any future representations involving graduate employment rates and its methodology for such calculations;⁵⁸
 - For six years, engage a third party to issue an annual report confirming that DeVry has maintained the required information to substantiate any graduate employment rate;⁵⁹
 - For six years, provide a certification attesting to its compliance with the agreement;⁶⁰
 - Include disclosure language concerning the 90% employment rate representation in all enrollment agreements or other enrollment-related documents; and
 - Post a letter of credit in the amount of \$68,435,908.⁶¹

⁵³ *Id.* at 1.

⁵⁴ *Id.* at 5, ¶ 6.

⁵⁵ Exhibit 26 (Settlement Agreement between DeVry Univ. and the U.S. Dep’t of Educ. (Oct. 13, 2016)) [hereinafter Department Settlement].

⁵⁶ *Id.* at 1, ¶ 1(a).

⁵⁷ *Id.* at 2, ¶ 1(b).

⁵⁸ *Id.* at 2, ¶ 1(c).

⁵⁹ *Id.* at 3, ¶ 1(g). *See also* Exhibit 27 (KPMG, LLP, *Third Report of the Independent Third Party for DeVry University: Department of Education DeVry University Graduate Outcome Assessment* (Oct. 11, 2019)); Exhibit 28 (KPMG, LLP, *Second Report of the Independent Third Party for DeVry University: Department of Education DeVry University Graduate Outcome Assessment* (Oct. 10, 2018)); Exhibit 29 (KPMG, LLP, *First Report of the Independent Third Party for DeVry University: Department of Education DeVry University Graduate Outcome Assessment* (Oct. 12, 2017)).

⁶⁰ Exhibit 26 (Department Settlement), at 3, ¶ 1(h). In each certification on record, DeVry certified its compliance with Paragraphs 1(d) and 1(e) of the Settlement Agreement and that it had implemented record retention policies in compliance with Paragraph 1(f) of the Settlement Agreement. *See, e.g.*, Exhibit 30 (2017 Certification, DeVry Univ., (Oct. 13, 2017)), at 1; Exhibit 31 (2018 Certification, DeVry Univ., (Oct. 12, 2018)), at 1; Exhibit 32 (2019 Certification, DeVry Univ., (Oct. 11, 2019)), at 1.

⁶¹ Exhibit 26 (Department Settlement), at 5, ¶ 2. *See also* Exhibit 33 (Irrevocable Standby Letter of Credit with U.S. Department of Education and DeVry University, (Nov. 9, 2016, expired Nov. 9, 2021)).

30. The Department Settlement covered only DeVry's inability to substantiate the Since 1975 representation with documentary records.⁶² The settlement explicitly left open the possibility of future action relating to the potentially misleading nature of the Since 1975 representation and other representations made by DeVry relating to its graduates' employment outcomes.⁶³ The Department Settlement further clarified that the Department may consider the lack of substantiation for the Since 1975 representation when devising or implementing a remedy for any other conduct by DeVry that violates Title IV.⁶⁴
31. In addition to the requirements imposed by the Department Settlement, DeVry was placed in a Heightened Cash Monitoring status ("HCM1") in 2016 and given a provisional recertification from 2016 to 2018.⁶⁵

New York Office of the Attorney General

32. The New York Office of the Attorney General ("New York AG") sent an initial *subpoena duces tecum* to DeVry on October 6, 2009, as well as a letter on July 9, 2014, requesting cooperation regarding its investigation of DeVry's advertisements.⁶⁶ The letter requested information on recent television advertisements and website marketing regarding whether DeVry may have violated federal and state laws prohibiting false advertising and deceptive practices.⁶⁷
33. The New York AG investigation concerned three representations made by DeVry to prospective students: "(1) 90% (additionally represented as 87% or 92% in some instances) of DeVry graduates who are actively seeking employment obtain employment in their field of study within six months of graduation ('90% [Representation]')";⁶⁸ "(2) DeVry bachelor's degree graduates earned 15% more one year after graduation than all graduates with bachelors' degrees from all other colleges and university ('15% Claim')";⁶⁹ and (3) "DeVry graduates 'nearly doubled their earnings' within 20 years of graduation ('20 Year Claim')." ⁷⁰

⁶² Exhibit 26 (Department Settlement), at 6, ¶ 2(d).

⁶³ *Id.*

⁶⁴ *Id.* at 8, ¶ 5.

⁶⁵ See Exhibit 34 *Heightened Cash Monitoring*, FED. STUDENT AID, <https://studentaid.gov/data-center/school/hcm> ("Heightened Cash Monitoring is a step that FSA can take with institutions to provide additional oversight for a number of financial or federal compliance issues, some of which may be serious and others that may be less troublesome." HCM1 status applies in the following circumstance: "After a school makes disbursements to eligible students from institutional funds and submits disbursement records to the Common Origination and Disbursement (COD) System, it draws down FSA funds to cover those disbursements in the same way as a school on the Advance Payment Method.").

⁶⁶ Exhibit 35 (Subpoena Duces Tecum from the Office of the Att'y Gen. for the State of N.Y. to [REDACTED], Pres. and CEO, DeVry Educ. Grp. (Oct. 6, [REDACTED])); Exhibit 36 (Letter from [REDACTED], Asst. Att'y Gen., State of N.Y., to [REDACTED], Pres. and CEO, DeVry Educ. Grp. (July 9, [REDACTED])).

⁶⁷ Exhibit 36 (Letter from [REDACTED], Asst. Att'y Gen., State of N.Y., to [REDACTED], Pres. and CEO, DeVry Educ. Grp. (July 9, [REDACTED])).

⁶⁸ Exhibit 37 (Assurance of Discontinuance, *In the Matter of Investigation by [REDACTED], Att'y Gen. of the State of N. Y., of DeVry Educ. Grp., Inc. et. al.*, No. 17-009 (Jan. 27, [REDACTED])) [hereinafter NY Assurance of Discontinuance], at 2, ¶ 6.

⁶⁹ *Id.* at 4, ¶ 12.

⁷⁰ *Id.*

34. On January 27, 2017, the New York AG concluded its investigation and entered into an Assurance of Discontinuance (“NY AOD”) agreement with DeVry, which contained the findings of New York AG investigation and the relief to which the State of New York and DeVry agreed.⁷¹
35. The New York AG alleged that from 2008 to 2015 DeVry made numerous claims concerning its graduates’ employment outcomes in its advertising materials. The advertisements were presented on DeVry’s website, in print advertisements, in television commercials, and during in-person presentations to prospective students.⁷²
36. The New York AG made the following findings: (1) DeVry’s 90% Representation had the capacity to be misleading because many graduates included in the figure were graduates who were already employed prior to graduating from DeVry, the claim did not distinguish differences in the outcomes for certain programs, and DeVry mischaracterized certain unsuccessful job seeking graduates as “inactive”;⁷³ (2) the 15% claim was inconsistent with other data DeVry had concerning graduates’ salaries, such as data derived from alumni surveys;⁷⁴ and (3) the 20 Year Claim was predicated on the flawed assumption that DeVry’s student-body composition remained the same over a twenty-year period, when in fact the proportion of engineering students decreased during that time and thus, may have inflated DeVry’s graduates’ salary outcomes.⁷⁵
37. As a result of the NY AOD, DeVry agreed to three terms: prospective relief,⁷⁶ restitution,⁷⁷ and a penalty.⁷⁸
38. As prospective relief, DeVry was barred from the following:
- making any misrepresentations concerning the student employment outcomes, including likely success in obtaining a job or a certain level of compensation;⁷⁹
 - making misrepresentations that any employment statistic reflects the success of graduates in obtaining employment when the statistic includes employment that graduates obtained (1) before enrolling at DeVry, or (2) at any time more than six months prior to graduating;⁸⁰
 - classifying a graduate as “inactive” in their job search when DeVry has information to show that the graduate was still actively searching for a job;⁸¹

⁷¹ *Id.* at 1.

⁷² *Id.* at 2, ¶ 6.

⁷³ *Id.* at 2–3.

⁷⁴ Exhibit 37 (NY Assurance of Discontinuance), at 4.

⁷⁵ *Id.* at 3–4.

⁷⁶ *Id.* at 5.

⁷⁷ *Id.* at 9.

⁷⁸ *Id.* at 10.

⁷⁹ Exhibit 37 (NY Assurance of Discontinuance), at 5.

⁸⁰ *Id.* at 6.

⁸¹ *Id.* at 6.

- classifying a graduate as employed in the graduate's field of study unless DeVry has a reasonable basis to conclude that the graduate uses the knowledge, skills, and/or abilities acquired through the degree program of study in the majority of the graduate's regular job duties;⁸² and
- making any representations concerning graduate compensation where DeVry possesses material information that (1) is inconsistent with such representations or (2) otherwise suggests that the representation may be inaccurate.⁸³

39. As restitution, DeVry agreed to pay the State of New York \$2.25 million for consumer restitution for (1) graduates of associate and bachelor's degree programs at DeVry campuses located in New York State who began their program between July 2008 and September 2015; and (b) New York residents that graduated from DeVry online associate or bachelor's degree programs and who began their program between July 2008 and September 2015.⁸⁴

40. As a penalty, DeVry agreed to pay the State of New York \$500,000 in penalties, fees, and costs.⁸⁵

Office of the Attorney General of the Commonwealth of Massachusetts

41. The Office of the Attorney General of the Commonwealth of Massachusetts ("Massachusetts AG") also investigated DeVry. On April 4, 2013, the Massachusetts AG issued a CID to DeVry.⁸⁶ The CID was issued in connection with an investigation into whether DeVry Group caused false claims and/or false statements to be submitted to the Commonwealth of Massachusetts relating to student loans, guarantees, and grants provided to DeVry's Massachusetts students. Additionally, the CID required DeVry to answer interrogatories and to provide documents relating to periods on or after January 1, 2007.⁸⁷

42. In July 2016, the Massachusetts AG issued a second CID to DeVry requesting information regarding advertising, admissions materials, placement rates, and credit/transferability agreements.⁸⁸

43. The Massachusetts AG alleged that, from 2011 through 2015, DeVry represented that between eighty-seven and ninety-two percent of DeVry graduates who actively sought employment had careers in their field within six months of graduation through statements on DeVry's website, in social media, print advertisements, television commercials, telephone calls, and in-person presentations to prospective students.⁸⁹

⁸² *Id.* at 8.

⁸³ *Id.* at 8.

⁸⁴ Exhibit 37 (NY Assurance of Discontinuance), at 9.

⁸⁵ *Id.* at 10.

⁸⁶ Exhibit 38 (Civil Investigative Demand from the Office of the Att'y Gen. for the Commonwealth of Massachusetts to DeVry, Inc., No. 13-IFS-013 (Apr. 4, 2013)).

⁸⁷ *Id.*

⁸⁸ Exhibit 39 (Adtalem Glob. Educ., Inc., Annual Report (Form 10-K) (Aug. 24, 2017)) [hereinafter 2017 Form 10-K], at 131.

⁸⁹ Exhibit 40 (Assurance of Discontinuance, *In the Matter of DeVry Univ., Inc.*, Civil Action No. 17-2073H (Suffolk Super. Ct. June 30, 2017)) [hereinafter MA Assurance of Discontinuance], at 1–2.

44. The Massachusetts AG alleged that DeVry “presented this 90% placement rate as proof that obtaining a DeVry degree leads to finding a career job in one’s field of study.”⁹⁰
45. The Massachusetts AG alleged that DeVry’s 90% Representation was misleading because: (1) “some of the graduates included in the 90% [statistic] were graduates who were already employed in their field prior to either enrolling into or graduating from DeVry”;⁹¹ (2) “some of the graduates included in the 90% [statistic] were employed in jobs that would not reasonably be considered in their field of study because they were not using the skills obtained in their program of study to perform a significant portion of their daily duties”;⁹² (3) “DeVry excluded graduates from its statistics by classifying these graduates as ‘inactive’ based on the graduates’ failure to fulfill certain Career Services requirements, and despite other efforts made by the graduates to obtain in-field employment”;⁹³ and (4) “the footnotes of advertisements containing information about the graduates who were excluded from the 90% placement rate were unclear and inadequate to counteract the net impression that the 90% advertisements conveyed to prospective students.”⁹⁴
46. The Massachusetts AG alleged that “DeVry also represented that, as a result of attending DeVry, one year after graduation the median earnings of its graduates with bachelor’s degrees were fifteen percent higher than the median earnings of graduates with bachelor’s degrees from all other colleges and universities.”⁹⁵
47. The Massachusetts AG alleged that the fifteen percent salary claims were misleading because the “salary-related representations were not adequately substantiated” and there were flaws in the methodology used in the calculation.⁹⁶
48. The Massachusetts AG alleged that because of the alleged representations, DeVry unfairly or deceptively induced Massachusetts students to enroll in its programs and take on associated student loan debt.⁹⁷
49. On June 30, 2017, the Massachusetts AG and DeVry settled the dispute and agreed to an Assurance of Discontinuance (“MA AOD”). The MA AOD did not “constitute an admission or finding of wrongdoing by DeVry, of any fact alleged by the Massachusetts AG, or non-compliance with any state or federal law, rule or regulation.”⁹⁸

50. Pursuant to the MA AOD:

⁹⁰ *Id.* at 2.

⁹¹ *Id.* at 2.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Exhibit 40 (MA Assurance of Discontinuance), at 2–3.

⁹⁶ *Id.* at 3.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 3.

- DeVry agreed to pay \$455,000 to the Commonwealth of Massachusetts;⁹⁹
- DeVry agreed to not make any representation — expressly or by implication — about the earnings that graduates of DeVry can be expected to receive;¹⁰⁰
- DeVry agreed to calculate its future job placement rates¹⁰¹ without including students who completed the program with the same job that they had when they entered the school, or students who were still actively seeking employment;¹⁰² and
- When calculating employment outcome statistics, DeVry agreed that it would not classify a graduate as employed in the graduate’s field of study unless DeVry has a reasonable basis to conclude that the graduate uses the knowledge, skills, and/or abilities acquired in the degree program of study to perform a majority of the graduate’s regular job duties. Additionally, DeVry agreed it would not classify a graduate as “inactive” if DeVry has or is able to obtain other information that the graduate is actively seeking employment.¹⁰³

Student Class Action Lawsuits and Arbitration Proceedings

51. There have been a number of class action complaints filed against DeVry with claims and allegations similar to those made by the FTC, New York AG, and Massachusetts AG.¹⁰⁴ The

⁹⁹ *Id.*

¹⁰⁰ Exhibit 40 (MA Assurance of Discontinuance), at 4.

¹⁰¹ Massachusetts was omitted from the 2017 through 2020 DeVry University Employment Outcome Disclosures. Exhibit 41 (DEVRY EDUC. GRP., INC., *DeVry University Employment Outcome Disclosures* (Mar. 26, 2020)) (showing generally that employment outcomes were not reported to Massachusetts and that this data set included students who graduated between 2017 and 2019); Exhibit 42 (DEVRY EDUC. GRP., INC., *DeVry University Employment Outcome Disclosures* (June 25, 2021)) (showing generally that employment outcomes were not reported to Massachusetts and that this data set included students who graduated between 2018 and 2020). The 2013 through 2015 disclosure notes a placement rate of zero percent based on the Massachusetts requirement to verify employment, “DeVry does not verify employment data with employers and instead relies on the information gathered [from students and other sources], for the purpose of this disclosure, DeVry discloses a *graduate placement rate* and *total placement rate* of 0% for all programs.” Exhibit 43 (DEVRY EDUC. GRP., INC., *DeVry University Disclosures Regarding Placement Rate Source, Methodology & Timeframe* (Undated)), at 25 (emphasis in original) (showing throughout that this data set included students who graduated between 2013 and 2015).

¹⁰² Exhibit 40 (MA Assurance of Discontinuance), at 4.

¹⁰³ *Id.* at 4–5.

¹⁰⁴ Exhibit 44 (Class Actions and Arbitration Proceedings Chart) (on file with Department)); *see also, e.g.*, Exhibit 45 (Pls.’ Class Action Compl. for Inj. and Equitable Relief, *Rayter v. DeVry Educ. Grp., Inc.*, No. 3:16-CV-00507 (N.D. Cal. Jan. 29, 2016)); Exhibit 46 (Stipulation of Settlement, *Pension Trust Fund for Operating Eng’rs v. DeVry Educ. Grp., Inc. et al.*, No. 1:16-CV-05198 (N.D. Ill. Aug. 30, 2019)) [hereinafter Pension Stipulation]; Exhibit 47 (Class Action Compl., *Robinson v. Adtalem Glob. Educ., Inc.*, No. 1:19-CV-01505-CC (N.D. Ga. Apr. 3, 2019)) [hereinafter Robinson Complaint]; Exhibit 48 (Summons, *Petrizzo et al v. DeVry Educ. Grp., Inc. et al.*, No. 1:16-CV-09754 (N.D. Ill. Oct. 18, 2016)) [hereinafter Petrizzo Summons and Jury Trial Demand]; Exhibit 49 (Class Action Compl., *Versetto v. Adtalem Glob. Educ., Inc.*, 2018 WL 2007235 (Cir. Ct. Cook Cnty. Apr. 13, 2008) (No. 2018-CH-04872)) [hereinafter Versetto Complaint]; Exhibit 50 (Order, *Brown v. Adtalem Glob. Educ., Inc. et al.*, 421 F. Supp. 3d 825 (W.D. Mo. Oct. 9, 2019) (No. 4:19-CV-00250)) [hereinafter Brown Order].

class actions have been filed on behalf of both DeVry students¹⁰⁵ and DeVry investors.¹⁰⁶ At least one class action is still ongoing, having survived DeVry's motion to dismiss.¹⁰⁷

52. There also have been several arbitration proceedings, which have resulted in damages awards for students in some instances.¹⁰⁸
53. In one arbitration proceeding involving a student who enrolled at DeVry from 2010 to 2014, the arbitrator found that “the 90% employed information provided to [the student] before and continuing after her original enrollment was not accurate.”¹⁰⁹
54. In another arbitration proceeding, a former student who was enrolled at DeVry from 2010 to 2015 used an expert to support the contention that DeVry's 90% Representation “could not possibly be accurate[.]”¹¹⁰ The arbitrator found credible the expert's conclusion that DeVry's 90% Representation could not possibly be accurate based on the underlying data and research into other schools' employment claims.¹¹¹ The arbitrator also found that the expert's estimate of damages as the total amount of tuition the claimant paid on the whole was credible.¹¹² Finally, the arbitrator agreed with the allegation made in the FTC's complaint against DeVry that the “student records do not support a reasonable basis that substantiates the defendant's 90% [Representations].”¹¹³
55. In a separate arbitration proceeding involving a student who enrolled at DeVry from 2014 to 2017, the arbitrator, in response to the claim that the disclaimers used in DeVry's representations prevented them from being “unfair or deceptive,” noted that:

We spent several days during our hearing listening to the meticulous procedures created by DeVry to try to justify its 90% [Representation]. If it takes several days to explain what ‘90% of graduates seeking employment are employed in their field of study within six months’ means, the claim is inherently very confusing and, therefore, unfair and deceptive.¹¹⁴

¹⁰⁵ See, e.g., Exhibit 48 (Petrizzo Summons and Jury Trial Demand); Exhibit 49 (Versetto Complaint); Exhibit 50 (Brown Order).

¹⁰⁶ See, e.g., Exhibit 46 (Pension Stipulation).

¹⁰⁷ Exhibit 51 (Order Granting In Part And Denying In Part Defs.' Mot. To Dismiss, [REDACTED], et al. v. Adtalem Glob. Educ., Inc., No. 4:19-cv-04079-JSW (N.D. Cal. Dec. 16, 2019)).

¹⁰⁸ Exhibit 44 (Class Actions and Arbitration Proceedings Chart) (on file with Department); see also Exhibit 52 (Final Award, *In the Matter of the Arbitration between [REDACTED] v. DeVry Univ., et al*, Ref. No. [REDACTED] (Oct. 28, 2020)) [hereinafter [REDACTED] Final Award]; Exhibit 53 (Final Award, *In the Matter of the Arbitration between [REDACTED] v. DeVry Univ., et al*, Ref. No. [REDACTED] (Mar. 12, 2021)) [hereinafter [REDACTED] Final Award]; Exhibit 54 (Final Award, *In the Matter of [REDACTED] v. DeVry Univ., et al*, No. [REDACTED] (Mar. 12, 2021)) [hereinafter [REDACTED] Final Award].

¹⁰⁹ Exhibit 55 (Final Award, *In the Matter of the Arbitration between [REDACTED] v. DeVry Univ., et al*, Ref. No. 1340016284 (Mar. 22, 2021)), at 7, 22.

¹¹⁰ Exhibit 53 ([REDACTED] Final Award), at 17.

¹¹¹ *Id.* at 17.

¹¹² *Id.* at 17.

¹¹³ *Id.* at 18–19.

¹¹⁴ Exhibit 54 ([REDACTED] Final Award), at 4, 7–8 (noting also that the job classifications were “not consistent with the common sense understanding that potential students might use to interpret the ad.”)

56. The arbitrator went on to find that “DeVry’s decisions as to which jobs actually met the ‘within their field of study’ claim seem random and stunningly broad,” and that DeVry’s policies regarding “within field of study” determinations “resulted in apparently absurd decisions to include many jobs for which only high school or even no formal education is required.”¹¹⁵
57. The arbitrator further noted that “[w]e will never know just how many jobs were classified in a manner not consistent with the common sense understanding that potential students might use to interpret the ad, but I’m sure that these classifications enabled DeVry to keep the number up at the intentionally dramatic 90% level.”¹¹⁶

D. Borrower Defense Notification to DeVry

58. On June 23, 2020, BDG notified DeVry that, as of that date, the Department had received several thousand borrower defense applications seeking relief based on allegations of misconduct by DeVry.¹¹⁷ BDG sent a follow-up letter on April 19, 2021 notifying DeVry of over two thousand additional borrower defense applications received since the June 23, 2020 communication.¹¹⁸
59. On June 30, 2020, the Department also began providing DeVry with notification letters regarding individual borrower defense applications that contained allegations against DeVry.¹¹⁹
60. DeVry provided individual responses to some, but not all, individual notification letters, with the first received on September 15, 2020.¹²⁰
61. As set forth in Section II of this memorandum, the Department agrees with the FTC, New York AG, Massachusetts AG, and others above that DeVry’s advertised 90% Representation was misleading and grossly overstated DeVry’s job placement rate.

¹¹⁵ *Id.* at 7–8.

¹¹⁶ *Id.* at 8.

¹¹⁷ Exhibit 56 (Letter from U.S. Dep’t of Educ. to [REDACTED], Interim Pres. and CEO, DeVry Educ. Grp., et al. (June 23, 2020)), at 1.

¹¹⁸ Exhibit 57 (Letter from U.S. Dep’t of Educ. to [REDACTED], Interim Pres. and CEO, DeVry Educ. Grp., et al. (Apr. 19, 2021)), at 2.

¹¹⁹ *See, e.g.*, Exhibit 58 (Letter from U.S. Dep’t of Educ. to [REDACTED], Interim Pres. and CEO, DeVry Educ. Grp. (June 30, 2020)).

¹²⁰ Exhibit 59 (Email from [REDACTED] to Borrower Def. Grp. (Sept. 15, 2020)).