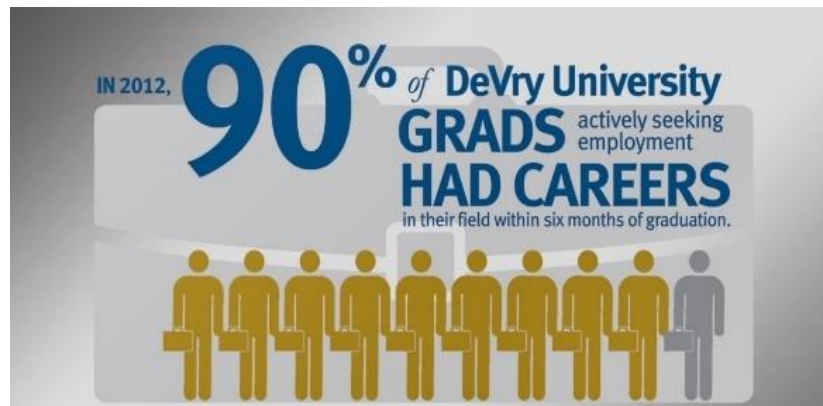


## II. Between 2008 and 2015, DeVry Misled Prospective Students to Believe that They Had a Very High Likelihood of Landing New In-Field Jobs with a DeVry Education

1. From at least January 2008 through December 2015, DeVry’s advertising and enrollment efforts prominently featured the misleading claim that ninety percent of DeVry graduates who actively seek employment obtain jobs in their fields of study within six months of graduation (the “90% Representation”).<sup>1</sup> DeVry stated the 90% Representation using the language depicted in the image below or using similar phrasing, and it typically paired the 90% Representation with claims that a DeVry education would help “start your career,”<sup>2</sup> “lead[] you straight into the professional world,”<sup>3</sup> put “the odds in your favor for career success,”<sup>4</sup> or similar claims.<sup>5</sup>



2. The 90% Representation was misleading because it conveyed that the ninety percent statistic was the percentage of *all* job-seeking DeVry graduates who obtained *new* in-field jobs as a result of attending DeVry within six months of graduating — i.e., it was presented as being the school’s job placement rate.<sup>6</sup> In reality, DeVry’s rate calculation methodology deviated

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<sup>1</sup> See *infra* § II(D) (describing DeVry’s advertisements and enrollment materials promoting the 90% Representation). Although this memorandum is limited to DeVry’s use of the 90% Representation between January 2008 and December 2015, there is evidence that DeVry used the representation outside of that timeframe. As the Borrower Defense Group (“BDG”) continues its review of evidence relating to other time periods and allegations, it may expand the scope of its findings stated herein where appropriate based on the evidence. BDG also may supplement this memorandum to address DeVry representations concerning the salaries that graduates could expect to earn as well as DeVry’s practices for determining which jobs qualified as “in-field.” Finally, BDG may expand this memorandum to address advertisements made by the Keller Graduate School of Management (“Keller”), which is not operated under the DeVry brand but which is co-owned by DeVry’s parent company. See *supra* § I(A).

<sup>2</sup> Appendix A (Collection of Website Advertisements), at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 5.

<sup>5</sup> See *infra* § II(D). Examples of DeVry advertisements and recruiting materials that included the 90% Representation are included in appendices hereto. See Appendix A (Collection of Website Advertisements), Appendix B (Collection of Printed Advertisements), Appendix C (Collection of TV, Radio, & Other Media Advertisements), and Appendix D (Collection of Enrollment Materials). The job placement rate value of ninety percent occasionally was lowered or raised by one to three percentage points and the date range used in the 90% Representation was updated over time. See *generally infra* § II(D).

<sup>6</sup> See *infra* § II(D); see also Appendix A (Collection of Website Advertisements), Appendix B (Collection of Printed Advertisements), Appendix C (Collection of TV, Radio, & Other Media Advertisements), and Appendix D (Collection of Enrollment Materials).

from the 90% Representation in two significant ways that resulted in a gross exaggeration of its job placement rate:

- *First*, DeVry counted “old jobs” held by its mid-career students towards its placement rate as long as those jobs were in-field, even though the students obtained the jobs on their own long before they graduated from DeVry and often before they even enrolled at the school.<sup>7</sup> Almost half of the graduates who DeVry counted as employed in-field began their jobs more than a year prior to graduating, and nearly a quarter began their jobs *four or more years* prior to graduating.<sup>8</sup> These students did not find new jobs within six months of graduation as the 90% Representation suggested, and DeVry privately acknowledged that the students did not obtain their “old jobs” as a result of attending DeVry.<sup>9</sup> **More than half of the jobs included in the ninety percent placement rate were “old jobs” that were not attributable to a DeVry education and whose inclusion was contrary to the plain language of the 90% Representation.**<sup>10</sup>
  - *Second*, DeVry excluded many graduates from its placement rate calculation who conducted active job searches after graduation, contrary to what it stated in the 90% Representation.<sup>11</sup> For example, DeVry excluded graduates who searched for in-field employment if their searches resulted in them accepting positions outside of their fields of study.<sup>12</sup> DeVry also excluded graduates who chose to search for jobs on their own without the help of DeVry’s Career Services department.<sup>13</sup> Finally, DeVry excluded graduates from its calculations if they chose not to use the job search tools recommended by Career Services staff or if staff deemed that they had failed to “work cooperatively[,]” even though the graduates may have been conducting their job searches independently.<sup>14</sup> **Altogether, DeVry excluded 7.5 to 15.4 percent of graduates from its placement rate calculation each year based on speculative criteria even though many of them did actively seek employment.**<sup>15</sup>
3. DeVry’s inclusions and exclusions of these groups of students were contrary to its public claims in the 90% Representation and inflated its advertised placement rate dramatically. As shown in the chart below, when these misleading inclusions and exclusions are corrected to be consistent with the 90% Representation, DeVry’s advertised placement rate drops from ninety percent to 57.9 percent on average.<sup>16</sup>

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<sup>7</sup> DeVry often referred to jobs held by its mid-career students as “old jobs” in internal correspondence. *See infra* ¶ 38.

<sup>8</sup> *See infra* ¶ 42.

<sup>9</sup> *See infra* § II(B)(2) (describing how DeVry’s inclusion of “old jobs” inflated its actual placement rate).

<sup>10</sup> *See infra* ¶¶ 41–42.

<sup>11</sup> *See generally infra* § II(B)(3) (describing how DeVry’s internal characterizations of graduates seeking employment led to a misleading and inflated placement rate).

<sup>12</sup> *See infra* § II(B)(3)(a).

<sup>13</sup> *See infra* § II(B)(3)(b).

<sup>14</sup> *See infra* § II(B)(3)(c).

<sup>15</sup> *See infra* § II(B)(4), at ¶ 87 (showing the percentage of all graduates coded as inactive).

<sup>16</sup> *See infra* § II(B)(4) (describing the calculations used to correct DeVry’s advertised job placement rate).

<b>Impact of Correcting DeVry's Calculations to Be Consistent with the 90% Representation</b>						
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Average</b>
DeVry's typical advertised job placement rate <sup>17</sup>	90%	90%	90%	90%	90%	90%
Job placement rate if "old jobs" are removed <sup>18</sup>	80.6%	73.9%	75.3%	73.1%	80.2%	76.6%
Job placement rate if excluded graduates are added <sup>19</sup>	82.4%	77.0%	77.6%	71.8%	73.4%	76.4%
<b>Job placement rate if "old jobs" are removed and excluded graduates are added<sup>20</sup></b>	<b>66.4%</b>	<b>55.6%</b>	<b>59.7%</b>	<b>53.4%</b>	<b>54.3%</b>	<b>57.9%</b>

4. These corrected figures are consistent with DeVry's own internal tracking of its true job placement rate. For example, DeVry's Director of Regulatory Compliance admitted in an internal email chain that, "[i]n reality, only about 60 percent of *all* DeVry graduates are employed within 6 months of graduation."<sup>21</sup> DeVry's Director of Career Services similarly observed that the ninety percent statistic was so high largely because "our stats include grads that held the[ir] positions prior to graduation (and our research shows that this group is actually the majority in many cases)."<sup>22</sup>
5. DeVry has argued that the 90% Representation was not misleading because, in DeVry's view, it clearly advertised the school's overall *employment rate* — i.e., the percentage of its graduates who held in-field jobs irrespective of when or why they were hired.<sup>23</sup> Further, DeVry has argued that this *employment rate* has been endorsed by a labor economist that DeVry hired as an expert witness for arbitration hearings.<sup>24</sup> However, this report only speaks to how DeVry calculated its rate, not the impression the rate gave as a part of DeVry's advertising campaign.<sup>25</sup>

<sup>17</sup> See *infra* § II(D) (showing DeVry's advertisements and enrollment materials using the 90% Representation); see also Appendices A–D (collections of advertisements and enrollment materials).

<sup>18</sup> See *infra* § II(B)(4). These corrected rates were calculated by removing "old jobs" from both the numerator and denominator of DeVry's employment rate formula. This approach errs in DeVry's favor, as explained *infra*. See *id.*

<sup>19</sup> See *id.* These rates were corrected by adding "inactive" graduates back into the denominator of DeVry's employment rate formula. See *id.*

<sup>20</sup> See *infra* § II(B)(4).

<sup>21</sup> Exhibit 60 (Email from ██████████, Dir. of Regulatory Compliance, to Jay Pauer, *RE: Career Positioning Next Steps*, (Feb. 23, ████████)), at 1 (emphasis in original).

<sup>22</sup> Exhibit 61 (Email from ██████████, Univ. Dir. of Career Servs., DeVry Univ., to ██████████ ██████████, et. al., DeVry Univ., *Re: Big Bang Career Stats* (Sept. 16–23, 2008)), at 2.

<sup>23</sup> See Exhibit 62 (Letter from DeVry Univ. via Alston & Bird to BDG, *Re: DeVry University's Response to Borrower Defense Application* ██████████ (Mar. 24, 2021)), at 2–3 [hereinafter DeVry Response to BD Application, Mar. 24, 2021]. DeVry also has taken the position that its exclusion of "inactive" graduates was proper and consistent with the 90% Representation. *Id.* at 3–4.

<sup>24</sup> *Id.* at 3–4. See also Exhibit 63 (██████████, *Report in the matter of [Redacted] v. Adtalem Global Educ. Inc. et al.* (May. 29, 2020)) [hereinafter ██████████ Report].

<sup>25</sup> Exhibit 63 (██████████ Report), at 17–21.

6. DeVry disagrees that the 90% Representation gave the impression that it reflected only the percentage of its graduates who obtained *new* jobs using their DeVry education, which would make it a job *placement rate*.<sup>26</sup> However, its position is contradicted by the plain language of the 90% Representation, especially when read in context with the “career-obtaining” language that DeVry paired it with.<sup>27</sup> DeVry’s advertisements and enrollment materials used the 90% Representation with claims that a DeVry degree was “proven to deliver career success[,]”<sup>28</sup> enabled graduates to “land a career in your field of study[,]”<sup>29</sup> and “prepares [students] for a lifetime of career success.”<sup>30</sup> These words and phrases gave the clear impression that ninety percent of all graduates who actively *sought* new jobs successfully *found* them within six months of graduation, which was not remotely true between 2008 and 2015.<sup>31</sup>
7. DeVry’s position also is contradicted by overwhelming evidence that DeVry *intended* its advertisements to give the impression that almost all DeVry students obtained new careers upon graduating and that DeVry *knew* its advertisements were giving that false impression.<sup>32</sup>
8. Despite knowing that the 90% Representation was misleading to students, DeVry continued to advertise it widely because it knew that if the 90% Representation were corrected, prospective students would be less enticed to enroll.<sup>33</sup>
9. The applications of DeVry borrowers seeking borrower defense relief show that borrowers were misled by DeVry’s 90% Representation and enrolled at DeVry in reliance on that misrepresentation.<sup>34</sup> More than half of all borrower defense applicants sampled who enrolled at DeVry between 2008 and 2015 base their request for relief on the misleading nature of the 90% Representation.<sup>35</sup>
10. Finally, the additional written disclosure statements that DeVry sometimes included with its 90% Representation did not change the misleading nature of the representation. The written

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<sup>26</sup> See Exhibit 64 (DeVry Response to BD Application, Mar. 24, 2021), at 2–3. Because DeVry’s advertisements portrayed the 90% Representation as a job placement rate — the rate at which graduates enter new jobs in their fields of study — this memorandum will refer to it as a placement rate rather than an employment rate.

<sup>27</sup> See *supra* § II, at ¶ 1; see also *infra* § II(D).

<sup>28</sup> Appendix A (Collection of Website Advertisements), at 8, 9.

<sup>29</sup> *Id.* at 3.

<sup>30</sup> *Id.* at 16.

<sup>31</sup> See *infra* § II(A)(2).

<sup>32</sup> See *infra* § II(A)(1) (describing evidence that DeVry intended its advertisements to convey that DeVry allowed graduates to launch new careers); see also *infra* § II(C)(1) (describing evidence that senior DeVry employees knew graduates were interpreting the 90% Representation as a job placement rate reflecting the *new* jobs that graduates were obtaining).

<sup>33</sup> See *infra* § II(C)(2) (describing DeVry documentation reflecting its reasons for continuing to use the 90% Representation).

<sup>34</sup> See *infra* § II(E) (showing that the 90% Representation was important to borrowers when deciding to enroll); see also Appendix F (Statements of Borrower Applicants that They Relied on DeVry’s Misrepresentations).

<sup>35</sup> *Id.* BDG analyzed a random sample of 1,100 DeVry borrower defense applications out of the approximately 20,000 applications received as of August 26, 2021. Using standard formulas for estimating proportion from a simple random sample with a finite population and a ninety-five percent confidence level, between fifty-three and sixty percent of all borrower defense applicants who enrolled at DeVry between 2008 and 2015 have based their request for relief on the misleading nature of the 90% Representation. See *infra* § II(B)(4).

statements did not explain DeVry's inclusion of "old jobs" and exclusion of certain groups of job-seeking graduates from its calculation, and the language was presented in fine print where it was unlikely to be read.<sup>36</sup>

**A. DeVry Based Its Marketing and Recruiting Efforts on the Misleading Claim that Ninety Percent of All Job-Seeking Graduates Obtained New Jobs in Their Fields of Study Within Six Months of Graduating**

11. In 2008, DeVry launched an advertising campaign called "We Major In Careers" that prominently featured the misleading 90% Representation.<sup>37</sup> DeVry's internal records show that the school purposefully designed its advertisements to create the false impression that the 90% Representation was the school's job placement rate and that it demonstrated DeVry's success in helping its job-seeking graduates obtain new careers.<sup>38</sup>

**1. Job Placement Was the Key Message of DeVry's Advertising and Recruiting Efforts**

12. In 2007, DeVry conducted brand tracking studies using on-going surveys of prospective students.<sup>39</sup> DeVry used the studies to "examin[e] how we measure up against our competitors, not only in reality, but in the eyes of the consumer."<sup>40</sup> DeVry intended to use the results of the studies to "build[] DeVry University's competitive brand position and to increase its market share."<sup>41</sup>

13. Through the surveys, DeVry believed it had identified the three "key drivers of prospective students who are in the market for post-secondary education" — in other words, "what students are seeking."<sup>42</sup> Two of the three key drivers related to finding employment: "degrees employers value" and "job/career opportunities."<sup>43</sup>

14. To capitalize on these findings, DeVry designed a new branding and advertising campaign called "We Major in Careers."<sup>44</sup> The campaign included new television advertisements, print advertisements, and direct mail advertisements, among other types of marketing.<sup>45</sup> DeVry

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<sup>36</sup> See *infra* § II(F) (analyzing written statements included in DeVry advertisements).

<sup>37</sup> See *infra* § II(A)(1).

<sup>38</sup> See *infra* § II(A)(2).

<sup>39</sup> Exhibit 65 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 54, FTC File No. P P138402 (Aug. 27, 2014)), at 3.

<sup>40</sup> Exhibit 66 (Email from David Pauldine, President, DeVry Univ., to Employee Communications, *Re: Have You Seen It?* (Jan. 31, 2008)), at 1.

<sup>41</sup> Exhibit 65 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 54, FTC File No. P P138402 (Aug. 27, 2014)), at 4.

<sup>42</sup> Exhibit 67 (Email from [REDACTED], DeVry Univ., to All Marketing Personnel, DeVry Univ., *Re: New DeVry Marketing Campaign* (Jan. 2, 2008)), at 1 [hereinafter Jan. 2, 2008 Email to All Marketing Personnel].

<sup>43</sup> *Id.* The third key driver was "accreditation (real degrees)." *Id.*

<sup>44</sup> Exhibit 68 (DEVRY UNIV., *DeVry University's "We Major in Careers" Brand Campaign Launch Key Message Q&A* (Feb. 11, 2008)), at 1. This memorandum is not limited to advertisements and marketing materials that DeVry created specifically for the "We Major in Careers" campaign. It relates to all uses of the 90% Representation in the years 2008–2015, whether they were part of that campaign or not.

<sup>45</sup> Exhibit 67 (Jan. 2, 2008 Email to All Marketing Personnel), at 1.

also reworked its recruiting materials to “reflect [DeVry’s] new messaging and imaging[,]” which included the initial interview process, academic catalogs, brochures, graduate employment statistic flyers, and its online presence.<sup>46</sup>

15. As DeVry explained to its marketing department, the school intended its new advertisements and recruiting materials to convey the central message that DeVry was *the* school to enroll in for people who wanted to launch new careers:

So by being able to deliver on what students are seeking, we have arrived at the following positioning: At DeVry, we have a single purpose: to help our students get into the careers of their choice in high-demand fields.<sup>47</sup>

16. DeVry intended the campaign to make it “crystal-clear” that DeVry had an “unmatched track record in establishing career paths and proactively helping our graduate students find highly competitive jobs within six months after graduation each year.”<sup>48</sup>
17. The campaign was designed to reflect what DeVry described as its “phenomenal success in employment statistics for its graduates, with a national average of 93 percent of DeVry graduates securing jobs in their field of study.”<sup>49</sup>
18. To demonstrate its focus on helping its students start new careers, DeVry nicknamed itself “*Career Placement University*.”<sup>50</sup> It also adopted a “business vision ‘[t]o be the pre-eminent career focused university.’”<sup>51</sup> Its goal was to “[d]emonstrate dominance in the career space” as “THE Career University” and “take [market] share” from competitor schools.<sup>52</sup>
19. DeVry assigned its outside marketing consultants to “[d]evelop a creative/brand idea that captures the essence of [its] new brand positioning of *Career Placement University* to life in a unique way.”<sup>53</sup> The “most important idea” it wanted prospective students to take away from the campaign was that “DeVry is holding my place in the professional world.”<sup>54</sup>

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<sup>46</sup> *Id.*; see also Exhibit 69 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 3, FTC File No. P138402 (Aug. 18, 2014)), at 1 (noting that DeVry published its 90% Representation through “television, digital, radio, and ‘Out of Home’ billboard/transit advertisements and promotional materials,” “flyers and handouts,” and “outreach to individual prospective students”).

<sup>47</sup> Exhibit 67 (Jan. 2, 2008 Email to All Marketing Personnel), at 1 (citing the 90% Representation as the basis for DeVry’s new “positioning” through the advertising campaign).

<sup>48</sup> Exhibit 68 (DEVRY UNIV., *DeVry University’s “We Major in Careers” Brand Campaign Launch Key Message Q&A* (Feb. 11, 2008)), at 1.

<sup>49</sup> *Id.* (emphasis removed).

<sup>50</sup> Exhibit 70 (DEVRY UNIV., *We Major in Careers 2.0* (Apr. 28, 2008)), at 18 (emphasis in original) [hereinafter *Careers 2.0 Presentation*].

<sup>51</sup> Exhibit 71 (DEVRY UNIV., *Brand Evolution Research What We Learned About DeVry University Advertising: Considerations for Future Creative Development* (July 28, 2008)), at 26.

<sup>52</sup> Exhibit 72 (DEVRY UNIV., *Lightning Round Creative Review Round 3* (Feb. 4, 2013)), at 2–3.

<sup>53</sup> Exhibit 70 (*Careers 2.0 Presentation*), at 18.

<sup>54</sup> *Id.* at 6

20. To that end, it designed advertisements to tell the “story” that “you’ll actually have a career with a DeVry education.”<sup>55</sup> The “key messages” of the campaign would be that “DeVry is uniquely able to prepare you for a career”<sup>56</sup> and that there was “Demand for DeVry graduates from employers.”<sup>57</sup> Convincing prospective students that DeVry had an “Excellent Job Placement record” was another “Communication Priorit[y].”<sup>58</sup>
21. These advertisements were designed to lead the public to view DeVry as “a university that is solely focused on placing you in a high demand field.”<sup>59</sup> They also were designed to leave prospective students feeling “a sense of . . . assuredness (that it will pay off),” meaning prospective students actually would obtain the jobs they wanted if they attended DeVry.<sup>60</sup>

## **2. DeVry Used the 90% Representation as the “Reason To Believe” Its Job Placement Message**

22. DeVry’s creative team believed that, in order for viewers to believe the job placement claims of the new campaign, DeVry’s advertisements needed to include a “reason to believe” or “RTB” — a term used in the branding and marketing industry referring to the evidence that will convince consumers to trust the promise or message presented in advertising.<sup>61</sup>
23. DeVry chose the 90% Representation — which it frequently referred to as a job *placement* rate<sup>62</sup> — as the “reason to believe” that would cause prospective students to believe that they had a high likelihood of obtaining new career positions if they enrolled at DeVry.<sup>63</sup> DeVry saw the inclusion of the 90% Representation as particularly important because it would provide the “credibility of proof” needed to differentiate DeVry’s career-focused advertisements from those of its competitors.<sup>64</sup>
24. For these reasons, DeVry made the 90% Representation a “mandatory copy point” in new advertisements, as shown in the image below from one of its campaign planning documents:<sup>65</sup>

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<sup>55</sup> *Id.* at 7; *see also id.* at 11 (showing a proposed advertisement for the accounting program that claimed DeVry was “your #1 path to an accounting career”).

<sup>56</sup> *Id.* at 14 (emphasis in original). [Careers 2.0 Presentation]

<sup>57</sup> Exhibit 70 (Careers 2.0 Presentation), at 14.

<sup>58</sup> *Id.* at 19.

<sup>59</sup> *Id.* at 18.

<sup>60</sup> *Id.*

<sup>61</sup> *See, e.g., id.* at 6, 10, 14; Exhibit 73 (MOXIE SOZO, *Reason to Believe*, <https://moxiesozo.com/dictionary/reason-to-believe-rtb/> (defining “reason to believe” as “[t]he proof and reasons why consumers should trust a brand mission, promise, or other emotional appeals”) (last accessed Sept. 2, 2021)).

<sup>62</sup> *See, e.g.,* Exhibit 70 (Careers 2.0 Presentation), at 6; Exhibit 74 (INFOSURV, INC., *DeVry Concept Testing Insights Report* (July 7, 2009)), at 5.

<sup>63</sup> *See, e.g.,* Exhibit 70 (Careers 2.0 Presentation), at 6, 10, 14; *see also* Exhibit 74 (INFOSURV, INC., *DeVry Concept Testing Insights Report* (July 7, 2009)), at 5 (characterizing the 90% Representation as expressing “the theme of *securing employment* within 6 months of graduation from DeVry”) (emphasis added).

<sup>64</sup> Exhibit 70 (Careers 2.0 Presentation), at 6; *see also* Exhibit 74 (INFOSURV, INC., *DeVry Concept Testing Insights Report* (July 7, 2009)), at 5.

<sup>65</sup> *Id.* at 6 [Careers 2.0]; *see also* Exhibit 67 (Jan. 2, 2008 Email to All Marketing Personnel), at 1 (identifying the 90% Representation as the basis of the “We Major in Careers” campaign because it meant that DeVry was “able to deliver on what students are seeking”).

<b>MOST IMPORTANT IDEA WE WANT THEM TO TAKE OUT OF THE ADVERTISING:</b>	"DeVry is holding my place in the professional world."
<b>MAIN BENEFIT:</b>	"DeVry is able to prepare me for a <u>career</u> in the technology field. With a technology degree from DeVry, I can hit the ground running."
<b>KEY MESSAGES:</b>	<ul style="list-style-type: none"> <li>• DeVry does technology well</li> <li>• Technology is diverse, offers a lot of opportunity and is here to stay</li> </ul>
<b>MANDATORY COPY POINTS:</b>	<ul style="list-style-type: none"> <li>• 90% job placement</li> <li>• Degree employers value</li> </ul>
<b>REASONS TO BELIEVE:</b>	<ul style="list-style-type: none"> <li>• 90% job placement</li> <li>• Credibility of testimonials</li> <li>• Authenticity of real people</li> </ul> <p><b>Versus our competitors:</b></p> <ul style="list-style-type: none"> <li>• vs. University of Phoenix: DeVry has the credibility of proof</li> <li>• vs. ITT Tech: Plain-spoken, credibility from better production values</li> </ul>
<b>FORMAT (:60): MULTI-ALUMNI</b>	<p><u>Role of VO:</u> Sell DeVry</p> <p><u>Role of Alumni:</u> Deliver credibility and DeVry experience</p>

25. Another marketing document asked, "Why should our target believe us (RTB)" that "DeVry is **THE CAREER UNIVERSITY**" and then answered this question by reciting the 90% Representation.<sup>66</sup>
26. DeVry also stated that the "communication objective" for its new advertisements was to "[d]rive preference for [DeVry]" by using "ou[r] own statistics and data" and then recited the 90% Representation.<sup>67</sup>
27. DeVry began the rollout of the "We Major in Careers" campaign featuring the 90% Representation in January 2008.<sup>68</sup>

**B. DeVry's 90% Representation Was Misleading Because It Exaggerated the Percentage of Job-Seeking Students Who Successfully Found Jobs Within Six Months of Graduating**

28. The 90% Representation gave the impression that ninety percent of the school's graduates who actively searched for a new job in their field of study successfully obtained one within six months of graduating.<sup>69</sup> This was misleading because it misrepresented how DeVry was calculating its employment rate in two major respects.

<sup>66</sup> Exhibit 75 (DEVRY UNIV., *Project DEW - Discover Education Working* (July 14, 2009)), at 2 (emphasis in original) [hereinafter DeVry Marketing Plan].

<sup>67</sup> Exhibit 72 (DEVRY UNIV., *Lightning Round Creative Review Round 3* (Feb. 4, 2013)), at 2–3.

<sup>68</sup> Exhibit 67 (Jan. 2, 2008 Email to All Marketing Personnel) at 1.

<sup>69</sup> See *supra* § II(A); see also *infra* § II(D) (showing how DeVry presented the 90% Representation and paired it with language indicating that a DeVry education would lead to a new career).

29. First, DeVry counted jobs that its mid-career students obtained on their own long before graduating from, or enrolling at, DeVry.<sup>70</sup> Their inclusion was inconsistent with the 90% Representation because DeVry characterized it as reflecting only graduates who found new jobs within six months of graduation.<sup>71</sup>
30. Second, DeVry excluded graduates who actively searched for new jobs but accepted jobs outside of their fields of study as well as graduates who elected to search for new jobs independently from DeVry's Career Services office.<sup>72</sup> DeVry also excluded graduates who declined to use the job search tools recommended by Career Services staff or who staff believed remained unemployed due to the graduate's "failure to work cooperatively" for other, subjective reasons.<sup>73</sup> These exclusions were inconsistent with the 90% Representation, which stated that it reflected the outcomes of all graduates who conducted active job searches.<sup>74</sup>
31. When these inclusions and exclusions are corrected to reflect the outcomes of all graduates conducting active job searches, DeVry's calculated placement rate drops from an average of approximately ninety percent to a maximum of 57.9 percent on average.<sup>75</sup> Thus, the 90% Representation misled prospective students by vastly overstating DeVry graduates' actual job prospects.

### **1. DeVry's Mischaracterization of Graduates' Employment Outcomes and Calculation of the Ninety Percent Statistic**

32. DeVry's placement rate calculations were based on a complicated series of codes that were assigned to graduates according to their employment status after graduation. The codes were defined in DeVry's Career Services Manual, which also instructed career services staff on how to calculate DeVry's graduate employment statistics using the assigned codes.<sup>76</sup> The codes and calculations that DeVry used were of its own creation and were not prescribed by its accreditors or by any regulatory body.<sup>77</sup>

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<sup>70</sup> See *infra* § II(B)(2) (detailing how DeVry inflated the 90% Representation by including outcomes from students who merely maintained their "old jobs").

<sup>71</sup> See *supra* § II(A)(2); see also *infra* § II(D) (providing examples of DeVry's promotion of the 90% Representation in advertisements and enrollment materials).

<sup>72</sup> See *infra* § II(B)(3).

<sup>73</sup> See *infra* § II(B)(3)(c).

<sup>74</sup> See *supra* § II(A)(2).

<sup>75</sup> See *infra* § II(B)(4) (discussing calculations correcting DeVry's advertised job placement rate).

<sup>76</sup> See, e.g., Exhibit 76 (DEVRY UNIV., *Career Services Policy Manual* (June 2008)) [hereinafter 2008 Manual]; Exhibit 77 (DEVRY UNIV., *Career Services Policy Manual* (Jan. 16, 2015)) [hereinafter 2015 Manual]. DeVry has confirmed that its "general approach to measuring graduate employment . . . remained fundamentally the same" over the relevant time period. Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015)), at 4.

<sup>77</sup> See *infra* ¶ 48 (describing how DeVry's method of calculating employment statistics was different from, and more self-serving than, the methods required by major accreditors).

33. DeVry utilized up to twenty-nine different employment codes, which were grouped into the following four code types:

- E (employed) codes were assigned to graduates who held employment, whether in their fields of study or not. Significantly, employed graduates were assigned E codes even if they remained in the same “old jobs” they had held since long before graduating from or even enrolling at DeVry.<sup>78</sup>
- I (inactive) codes were assigned to graduates who did not obtain in-field employment and who DeVry considered to have not actively searched for employment. DeVry labeled graduates inactive if they delayed their job search by at least sixty to ninety days, affirmatively refused career services assistance, or failed to “work cooperatively” in the opinion of Career Services staff for example.<sup>79</sup>
- N (net out) codes were assigned to graduates who DeVry believed were not available to work for various reasons. Graduates were deemed unavailable if, for example, they were active-duty military or if they had decided to continue their education. N codes were designated as “netouts,” referring to the fact that DeVry excluded graduates with N codes from its rate calculations.<sup>80</sup>
- S (seeking) codes applied to graduates who still were actively pursuing employment.<sup>81</sup>

34. The formula that DeVry used to calculate the ninety percent statistic for the 90% Representation was called the “Active Employment Rate %.”<sup>82</sup> The formula divided the total number of graduates who DeVry found to be employed in their fields of study by the

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<sup>78</sup> Exhibit 76 (2008 Manual), at 22; Exhibit 79 (DEVRY UNIV., *Career Services Policy Manual* (Feb. 2009)) at 22 [hereinafter 2009 Manual]; Exhibit 80 (DEVRY UNIV., *Career Services Policy Manual* (Feb. 2010)), at 22 [hereinafter 2010 Manual]; Exhibit 81 (DEVRY UNIV., *Career Services Policy Manual* (June 2011)), at 13 [hereinafter 2011 Manual]; see also Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015)), at 60–61.

<sup>79</sup> See Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015)), at 81; see, e.g., Exhibit 81 (2011 Manual), at 56–59 (noting that evidence of a graduate's lack of cooperation included their unresponsiveness to their advisor's contact attempts, failure to log on to HireDeVry, failure to show for scheduled interviews and other career services events, inability to pass a drug screening, and unrealistic career salary expectations, among others).

<sup>80</sup> See Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015)), at 43–55; Exhibit 81 (2011 Manual), at 38–55.

<sup>81</sup> See Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015) (citing 2011 Manual)), at 85–86; Exhibit 76 (2008 Manual), at 69; Exhibit 81 (2011 Manual), at 60–61. In 2013, DeVry reduced the number of employment codes to fifteen. Exhibit 82 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 16, FTC File No. P138402 (May 13, 2014)), at 6–7. The codes still were grouped into four overarching types, with the E, I, N, and S categories updated to become “Employed,” “Inactive,” “Waived,” and “Seeker” categories, respectively. See Exhibit 83 (DEVRY UNIV., *Career Services Policy Manual* (July 12, 2013)), at 9–11 [hereinafter 2013 Manual]; Exhibit 84 (DEVRY UNIV., *Career Services Policy Manual* (Feb. 3, 2014)) at 9–13 [hereinafter 2014 Manual]; Exhibit 85 (DEVRY UNIV., *Career Services Policy Manual* (Jan. 16, 2015)) at 10–14 [hereinafter 2015 Manual]. For consistency, this memorandum will use the E, I, N, and S code designations, including for the years 2013–2015.

<sup>82</sup> See Exhibit 76 (2008 Manual), at 78; Exhibit 79 (2009 Manual) at 78; Exhibit 80 (2010 Manual), at 79; Exhibit 81 (2011 Manual), at 70.

total number of graduates who the school deemed to have actively sought such positions.<sup>83</sup> Mathematically, the formula was as follows, as of June 2008:<sup>84</sup>

$$\frac{(E1A + E1B + E1C + E2)}{(\text{Total \# of Grads} - \text{Netout} - \text{Inactive})} = \text{Active Employment Rate \%}$$

35. The E codes in the numerator were assigned to students who held jobs related to their fields of study, whether acquired before or after they enrolled at DeVry.<sup>85</sup> The Netout and Inactive designations in the denominator refer to graduates who DeVry removed from the calculation because it categorized them as unavailable to work or unwilling to actively seek in-field employment.<sup>86</sup>
36. DeVry updated the formula periodically to correspond with updates it made to its graduate coding system. Although the mathematical terms used in the formula changed slightly, the formula remained essentially the same as described in the preceding paragraph.<sup>87</sup>
37. As demonstrated below, DeVry inflated its placement rate calculation to approximately ninety percent by assigning numerator E codes to graduates who remained in “old jobs” they had obtained on their own without DeVry’s assistance or contribution as well as by aggressively coding graduates as “inactive” to remove them from the denominator of the formula. These practices were contrary to DeVry’s 90% Representation, which gave the impression that it included only *new* jobs and reflected the employment outcomes of *all* graduates who conducted active job searches.<sup>88</sup>

## 2. DeVry Inflated the 90% Representation by Counting Mid-Career Students Who Remained Employed in the Same “Old Job” They Had Held Since Long Before Graduation

38. DeVry was aware from at least 2008 that a large portion of its advertised ninety percent statistic was made up of mid-career students who had obtained their jobs long before

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<sup>83</sup> Exhibit [76](#) (2008 Manual), at 78; Exhibit [79](#) (2009 Manual), at 78; Exhibit [80](#) (2010 Manual), at 79; Exhibit 81 (2011 Manual), at 70.

<sup>84</sup> Exhibit [76](#) (2008 Manual), at 78; Exhibit [79](#) (2009 Manual), at 78; Exhibit [80](#) (2010 Manual), at 79; Exhibit 81 (2011 Manual), at 70.

<sup>85</sup> Specifically, the numerator codes referred to graduates who were employed in a full-time in-field position (E1A), graduates who were employed in two parttime in-field positions (E1B), graduates who were employed in only one part-time in-field position as a matter of choice (E1C), and graduates who were employed in a full-time in-field position, but some details about the position could not be confirmed (E2). *See, e.g.*, Exhibit 76 (2008 Manual), at 28–31, 35–36.

<sup>86</sup> *See infra* § II(B)(3).

<sup>87</sup> *See* Exhibit 83 (2013 Manual), at 6; Exhibit 84 (2014 Manual), at 6; Exhibit 85 (2015 Manual), at 7. *See also* Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 4 (noting that DeVry’s “general approach to measuring graduate employment remained fundamentally the same” over the relevant time period).

<sup>88</sup> *See supra* § II(A)(2) (describing DeVry’s messaging surrounding the 90% Representation in its new advertising campaign, “We Major in Careers”); *see also infra* § II(D) (providing examples of advertisements and enrollment materials where DeVry used the 90% Representation in tandem with career-obtaining language).

graduating from, or even enrolling at, DeVry and without DeVry's assistance.<sup>89</sup> Internally, DeVry often referred to these as "old jobs," which it defined as jobs acquired by graduates more than 120 days before their graduation dates.<sup>90</sup>

39. DeVry's University Career Services Manager explained in an internal email that "[t]he thought behind this [120-day cutoff] is that a student who gets a job within the last semester before graduating is likely leveraging the degree they are about [to] complete and should therefore be included with the group of grads who find employment after graduation."<sup>91</sup>
40. On the other hand, DeVry acknowledged that "old jobs" with an "[a]ccept date more than 4 months [120 days] prior to graduation" were "likely obtained without Career Services Assistance."<sup>92</sup>
41. From 2008 to 2012, between 55.0 percent and 62.4 percent<sup>93</sup> of the graduates DeVry classified as being employed in-field were employed in "old jobs" that were not attributable to their DeVry education, as recognized by DeVry personnel.<sup>94</sup>
42. Many of these graduates obtained their "old jobs" much earlier than 120 days prior to graduation. DeVry has admitted that, between 2010 and June 2014, almost half (47.8%) of the graduates that DeVry counted as employed in-field began their jobs more than one year prior to graduating.<sup>95</sup> DeVry also has admitted that nearly a quarter (23.7%) of graduates in that timeframe began their jobs *four or more years* prior to graduating, yet DeVry counted them towards its placement rate.<sup>96</sup>
43. For example, the chart below contains examples of students who were counted as placed in DeVry's job placement calculation based on positions they held years before graduating from DeVry:

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<sup>89</sup> See *infra* § II(C)(1) (demonstrating that DeVry knew the 90% Representation was inflated).

<sup>90</sup> Exhibit 86 (Emails between [REDACTED], VP Operational Excellence, DeVry Univ., and [REDACTED], Manager, University Career Services, DeVry Univ., *Re: More data needed* (June 12–27, [REDACTED])), at 5.

<sup>91</sup> *Id.* [Emails between [REDACTED] and [REDACTED]]

<sup>92</sup> Exhibit 87 (*Employed in Field Analysis: (additional analysis considering grad's final term)* (June, Oct. 2006; Feb. 2007) (DVG-FTC-1592539)).

<sup>93</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department), at Tab 2; see also Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015)), at 5.

<sup>94</sup> See Exhibit 86 (Emails between [REDACTED] VP Operational Excellence, DeVry Univ., and [REDACTED], Manager, University Career Services, DeVry Univ., *Re: More data needed* (June 12–27, [REDACTED])), at 5; see also Exhibit 87 (*Employed in Field Analysis: (additional analysis considering grad's final term)* (June, Oct. 2006; Feb. 2007) (DVG-FTC-1592539)) (showing that only forty-four percent of graduates from DeVry's Alpharetta, Georgia campus who were classified as employed in in-field jobs received that classification based on a new job; only fifty-one percent of graduates from DeVry's Chicago campus who were recorded as employed in-field had obtained new jobs).

<sup>95</sup> Exhibit 89 (DeVry Educ. Grp., Inc., *Resp. to Civ. Investigative Demand Interrog. 27*, FTC File No. P138402 (Aug. 19, 2014)), at 4.

<sup>96</sup> *Id.*

Job Start Date	Job Title (from Start Date through Graduation)	Graduation Year	Bachelor's Program at DeVry
2004	Systems Analyst Programmer	2007	Technical Management <sup>97</sup>
2003	Reservation Manager	2008	Business Administration <sup>98</sup>
2007	Legal Assistant	2009	Technical Management <sup>99</sup>
2008	Fraud Analyst	2010	Business Administration <sup>100</sup>
2008	Dock Operations	2011	Business Administration <sup>101</sup>
2009	Bookkeeper	2012	Business Administration <sup>102</sup>

44. While DeVry publicly lumped together students with “old jobs” and new jobs in the 90% Representation, DeVry internally calculated two different placement rates:
- one rate that included “old jobs” — this calculation was the basis for the 90% Representation; and
  - a second, private, placement rate that excluded “old jobs” from the calculation altogether and reflected only those job-seeking graduates who obtained *new* in-field employment in the period beginning 120 days before graduation and ending six months after graduation.<sup>103</sup>
45. The two rates differed significantly. DeVry’s calculations show that, between 2009 and 2012, the advertised rate that included “old jobs” fluctuated around ninety percent, while the private rate that excluded “old jobs” from the calculation averaged just 75.3 percent.<sup>104</sup>

<sup>97</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department)), at Tab 1, Row 91523.

<sup>98</sup> *Id.* at Tab 1, Row 97942.

<sup>99</sup> *Id.* at Tab 1, Row 106682.

<sup>100</sup> *Id.* at Tab 1, Row 113800.

<sup>101</sup> *Id.* at Tab 1, Row 122991.

<sup>102</sup> *Id.* at Tab 1, Row 134322.

<sup>103</sup> Exhibit 86 (Email from [REDACTED], Manager, University Career Services, DeVry Univ., to [REDACTED], VP Operational Excellence, DeVry Univ., *Re: More data needed* (June 27, 2013)) at 3 (“Essentially what we do is compare the standard employment statistic against the same statistic with ‘old’ employments removed.”).

<sup>104</sup> *Id.* [Email from [REDACTED]]. A reduction of approximately fifteen percentage points is consistent with DeVry having up to sixty percent of its graduates remain in their “old jobs.” *See infra* § II(B)(4). A graduating class with sixty percent of graduates in “old jobs,” thirty percent of graduates in new jobs, and ten percent of graduates unemployed would produce a rate of ninety percent  $((60 + 30) / (60 + 30 + 10))$ . When the sixty percent of graduates with “old jobs” are removed altogether from the calculation, the new rate becomes seventy-five percent  $(30 / (30 + 10))$ . DeVry estimated that, in 2013, the old jobs vs. new jobs rates would differ by ten to eleven percent. *Id.* This is consistent with DeVry having approximately fifty percent of its graduates remain in their “old jobs,” using the same math demonstrated above. *Id.*

46. DeVry performed additional internal calculations for fiscal years 2010-2013 showing how the rates for its different credential levels changed depending on whether graduates with “old jobs” were included.<sup>105</sup> According to DeVry’s calculations, when “old jobs” were excluded from its rate formula, the placement rates for its bachelor’s degree programs decreased by 9.8 to fifteen percentage points, resulting in rates from 73.8 to 82.1 percent, and the placement rates for its associate’s degree programs decreased by 10.8 to 13.1 percentage points, resulting in rates from 61.3 to 71.9 percent.<sup>106</sup>
47. The Department does not possess DeVry’s internal data for the years 2013-2015, but the recalculated rates excluding “old jobs” for those years also would result in a significantly lower rate than DeVry’s advertised 90% Representation based on the following considerations:
- Students who held “old jobs” at the time of graduation were a major and growing segment of DeVry’s graduating class each year;<sup>107</sup>
  - DeVry’s “general approach to measuring graduate employment . . . remained fundamentally the same” through at least 2015, which means that DeVry continued counting “old jobs” in its advertised rate;<sup>108</sup> and
  - A recalculation of DeVry’s rates for the 2008-2013 period consistently show lower placement rates when “old jobs” are not included.<sup>109</sup>
48. While DeVry’s advertising did not distinguish between “old jobs” and “new jobs” for in-field employment, the question of whether a graduate has obtained their in-field employment *as a result of their education* is a significant data point for agencies overseeing postsecondary educational institutions.<sup>110</sup>
49. Accordingly, DeVry’s use of the 90% Representation during the period from 2008 through 2015 significantly overstated the percentage of DeVry graduates who found new jobs within six months of graduation. DeVry inflated the placement rate by including many graduates who remained in “old jobs” that were not the result of post-graduate job searches and that were not attributable to a DeVry education.<sup>111</sup>

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<sup>105</sup> Exhibit 90 (DVG-FTC-0688173 Spreadsheet)).

<sup>106</sup> *Id.*

<sup>107</sup> Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 5 (confirming that the old jobs “segment of [its] student body has only grown over time”).

<sup>108</sup> *Id.* at 4.

<sup>109</sup> *See infra* § II(B)(4).

<sup>110</sup> Exhibit 91 (Survey of Employment Rate Methodologies/Reporting Requirements) (on file with Department)), at Row 7. BDG surveyed job placement rate methodologies required by state agencies in fourteen of the states where DeVry has operated, two of the programmatic accreditors that oversee DeVry’s programs, and six national accrediting agencies. Sixteen out of twenty-two surveyed agencies either require schools to distinguish between old and new jobs in their employment data reporting or explicitly prohibit schools from including graduates who started their jobs more than six months before graduation in their employment rates. *Id.*

<sup>111</sup> The recalculation of DeVry’s advertised placement rate that corrects for DeVry’s misleading inclusions and exclusions of graduates is set forth below. *See infra* § II(B)(4).

### 3. DeVry Inflated Its Advertised Placement Rate by Misleadingly Excluding Certain Categories of Graduates from Its Calculations

50. DeVry also inflated its ninety percent statistic by deeming certain categories of graduates to have been “inactive” in their job searches and removing them from the denominator of its Active Employment Rate % formula.<sup>112</sup> However, DeVry has admitted that many of these graduates *did* actively search for jobs.<sup>113</sup> DeVry also labeled many other graduates “inactive” based on irrelevant or speculative factors.<sup>114</sup> DeVry’s exclusion of these graduates further rendered the 90% Representation misleading because it did not actually reflect the employment outcomes of all job-seeking graduates as advertised.<sup>115</sup>
51. DeVry excluded the following five categories of supposedly “inactive” graduates from its employment calculations:
- “Inactive/Restrictive Employment Search: Unemployed” (code I2A);
  - “Refusal of Career Services Assistance” (code I2B);
  - “Delayed Employment Search: Unemployed” (code I2C);
  - “Employed Non-Education-Related and Inactive” (code E3I); and
  - “Employed Non-Education-Related and not seeking Education-Related Employment” (code E3N).<sup>116</sup>
52. Only DeVry’s exclusion of graduates who were accurately assigned employment code I2C (“Delayed Employment Search: Unemployed”) arguably was consistent with the 90% Representation. DeVry assigned code I2C if a graduate delayed their job search by sixty to ninety days out of the 180-day period during which DeVry measured employment outcomes.<sup>117</sup> Reasonable prospective students may have understood the phrase “actively seeking” in the 90% Representation to exclude graduates who did not seek employment for some or much of the six-month period after graduation.
53. For the reasons explained below, DeVry’s exclusion of graduates assigned to the other four “inactive” categories was inconsistent with its advertised claim that the 90% Representation

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<sup>112</sup> See, e.g., *infra* § II, at ¶ 51.

<sup>113</sup> See *infra* § II, at ¶¶ 56, 71. See also Exhibit 82 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 16, FTC File No. P138402 (May 13, 2014)), at 20.

<sup>114</sup> See *infra* § II, at ¶¶ 64–71.

<sup>115</sup> See *infra* § II(B)(4). Further, DeVry’s characterization of graduates as “inactive” based on the factors described *infra* was contrary to most of the methodologies established by state agencies and accreditors surveyed by BDG. Exhibit 91 (Survey of Employment Rate Methodologies/Reporting Requirements) (on file with Department), at Rows 10–13. Of the twenty-two state agency and accreditor methodologies BDG surveyed, only four state agencies and accreditors allow any similar exclusions and only do so on a very limited basis. *Id.*

<sup>116</sup> See *infra* § II, at ¶¶ 55–76.

<sup>117</sup> Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 84 (“Graduate voluntarily delays or postpones their job search for at least 90 consecutive days within the six-month post-graduation tracking period. AND Graduate must agree in writing via the status form to discontinue proactive Career Services assistance until the end of the defined delay period.”).

reflected the employment outcomes of all graduates who actively sought employment, and it rendered the 90% Representation misleading.

a) *“Employed Non-Education-Related and Not Seeking Education-Related Employment” (E3N)*

54. DeVry assigned code E3N to “graduates who [were] actively seeking an education-related position” after graduation, were unable to obtain such a position, and therefore accepted a position outside of their field of study instead of continuing to search.<sup>118</sup> DeVry assigned code E3N to between 3.1 percent and 9.4 percent of its graduates from 2008 to 2012.<sup>119</sup>
55. DeVry’s exclusion of E3N graduates from its employment calculation was directly contrary to the 90% Representation. In the 90% Representation, DeVry claimed that the ninety percent statistic reflected the employment outcomes of all graduates who had actively sought employment.<sup>120</sup> Because DeVry admitted that graduates who were assigned code E3N *did* “actively seek[] an educated-related position,” DeVry should have included their employment outcomes in its advertised job placement rate.<sup>121</sup>
56. Moreover, DeVry sometimes assigned code E3N to graduates despite knowing that the graduates had not stopped seeking in-field employment. The following examples are documented in DeVry’s Grad Observation Logs, which the school used to memorialize its interactions with graduates and to purportedly justify its employment code decisions:<sup>122</sup>
- A February 2012 graduate was categorized as E3N before he even graduated.<sup>123</sup> He indicated on his Form E job search form that he intended to conduct a job search independently of Career Services,<sup>124</sup> with an email stating that he was “looking for leads for jobs in the field that [he] graduated for . . . [and] would like to get into the technical management field since that is what [his] degree is in.”<sup>125</sup> Nonetheless, once his advisor had him confirm the start date of his out-of-field job, he was “closed” with the note that he “chose to not pursue education-related employment at this time.”<sup>126</sup>
  - A June 2012 graduate was designated as E3N with a note that he “chose to not pursue education-related employment at this time.”<sup>127</sup> However, on that same day, he had

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<sup>118</sup> *Id.* at 56.

<sup>119</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department)), at Tab 3, Row 17.

<sup>120</sup> *See supra* § II(A).

<sup>121</sup> *See infra* § II, at ¶¶ 56–77.

<sup>122</sup> The Department possesses DeVry’s Grad Observation Logs for the 2012 academic year only.

<sup>123</sup> *See* Exhibit 92 (Grad Observation Log, Student File ██████████, DeVry Univ. (Jan. 23, 2012 – May 20, 2014)), at 3.

<sup>124</sup> Exhibit 93 (Career Services – Update Form E, Student ██████████, DeVry Univ. (Jan. 24, 2012)).

<sup>125</sup> Exhibit 92 (Grad Observation Log, Student File ██████████, DeVry Univ. (Jan. 23, 2012 – May 20, 2014)), at 2.

<sup>126</sup> *Id.* at 3.

<sup>127</sup> *See* Exhibit 94 (Grad Observation Log, Student File ██████████, DeVry Univ. (May 22, 2012 – Aug. 2, 2013)), at 7.

met with the Assistant Director of Career Services and told them he “want[ed] [to] resume assistance” and “want[ed] access into the Hire DeVry system.”<sup>128</sup>

- Another graduate from Kentucky was in regular contact with his Career Services advisor starting shortly before his graduation.<sup>129</sup> He told his advisor he planned to move to Florida and search for an in-field position there.<sup>130</sup> He spoke with Career Services personnel in both Kentucky and Florida.<sup>131</sup> In June 2013, he reported that he had transferred into an Orlando job position with his current, out-of-field employer so that he would “then be able to look at job opportunities in the Orlando area” while “ensur[ing] that I still have an income in the meantime.”<sup>132</sup> He later reported to his advisor that he had “tried to use[] [the job leads] you sent to see what was available and just haven’t had any luck yet. Hopefully once the middle of June comes along, things will work out.”<sup>133</sup> Despite clearly indicating his intent to continue searching for in-field employment, DeVry closed his file two days later with the note: “Graduate completed his docusign form showing that he is not looking for work because he is continuing with his current employer. Will close E3N.”<sup>134</sup>

*b) “Refusal of Career Services Assistance” (I2B)*

57. DeVry applied code I2B to graduates who affirmatively told the school via a form, email, phone call, or other means that they did not wish to conduct a job search *with the assistance of the Career Services office*.<sup>135</sup> Approximately 0.6 percent to 0.9 percent of DeVry graduates were assigned code I2B between 2008 and 2012.<sup>136</sup>
58. However, merely because a graduate chose not to conduct their job search in tandem with Career Services staff does not mean the graduate did not search for a job at all.
59. In fact, DeVry acknowledged that graduates who chose not to work with its Career Services office commonly did so because they wished to conduct their job searches independently, instead of following the job search process required by Career Services:

Graduates waive assistance for a variety of reasons—two common examples are graduates who take time off after graduation and will not be looking for a

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<sup>128</sup> *Id.* at 6.

<sup>129</sup> See generally Exhibit 95 (Grad Observation Log, Student File ██████████, DeVry Univ. (Oct. 24, 2012 – Aug. 12, 2013)).

<sup>130</sup> *Id.* at 2.

<sup>131</sup> *Id.* at 12.

<sup>132</sup> *Id.* at 25.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 26.

<sup>135</sup> Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 83.

<sup>136</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department)), at Tab 3, Row 19.

job in the relevant 6-month period, and those . . . *who would rather conduct their own, independent job searches.*<sup>137</sup>

60. DeVry's Grad Observation Logs confirm that graduates who were assigned code I2B did communicate their intent to conduct active job searches independently of Career Services:

- One graduate who was laid off from his out-of-field job contacted Career Services in mid-July, telling them that he was "still seeking employment, but [was] not sure what he want[ed] to do."<sup>138</sup> Three days later, he emailed his advisor, "Again, thank you, and please do not call me anymore. I will find my own job!"<sup>139</sup> Later that week, DeVry coded him as an I2B "inactive" graduate.<sup>140</sup>
- Career Services noted that another graduate informed staff that, "due to his negative experience with the Career Office a few years ago . . . he wishes to not take advantage of the Career Service office at this time . . . he was now choosing to NOT . . . work with our office because he was not impressed with our services and that we were not available to assist him when he needed the assistance."<sup>141</sup> When an advisor nonetheless called a few weeks later and invited him to a job fair, "He said Thank You. He told [her] that he is always looking for employment."<sup>142</sup> Five days after that phone call, that same advisor requested he be coded as I2B, and the request was approved later that same week.<sup>143</sup>
- Another graduate kept in regular contact with her Career Services advisor, informing them of her independent job search efforts, including updates she made to her resume and to her profiles on LinkedIn, Career Builder, and Indeed.<sup>144</sup> She informed her advisor that, although she could not start a new position until August, she planned to continue looking for a job and volunteering in the meantime in order to build relevant experience.<sup>145</sup> The Campus Director ignored her statements of intent to continue job searching and assigned the graduate the I2B "inactive" code.<sup>146</sup>

61. Given DeVry's admission that it was "common" for graduates who were assigned the I2B code to conduct their own, independent job searches — and its actual knowledge of graduates' active job searches — DeVry's categorical exclusion of I2B graduates was

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<sup>137</sup> Exhibit 82 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 16, FTC File No. P138402 (May 13, 2014)), at 17 (emphasis added). Graduates who choose to conduct their job searches *with* assistance from the Career Services department are expected to meet with Career Services staff, respond to all Career Services communications, complete and maintain a profile in the HireDeVry jobs database, and adhere to a number of other requirements. *Id.* at 20.

<sup>138</sup> See Exhibit 96 (Grad Observation Log, Student File ██████████, DeVry Univ. (Sept. 15, 2009 – Mar. 25, 2014)), at 41.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 42.

<sup>141</sup> See Exhibit 97 (Grad Observation Log, Student File ██████████, DeVry Univ. (Apr. 5, 2010 – May 15, 2014)), at 137.

<sup>142</sup> *Id.* at 145.

<sup>143</sup> *Id.* at 152–53.

<sup>144</sup> See generally Exhibit 98 (Grad Observation Log, Student File ██████████, DeVry Univ. (May 11, 2011 – Aug. 2, 2013)).

<sup>145</sup> *Id.* at 15.

<sup>146</sup> *Id.* at 21.

contrary to the 90% Representation, which claimed that it included all graduates who actively sought employment.<sup>147</sup>

62. Prospective students who saw the 90% Representation stating that ninety percent of DeVry graduates who “actively seek” employment obtain career positions in their fields would have reasonably understood “actively seeking” to mean just that; they had no reason to believe or understand that DeVry was requiring graduates to work hand-in-hand with its Career Services personnel in order to be considered “actively seeking.”<sup>148</sup>

c) “Inactive/ Restrictive Employment Search” (I2A)

63. DeVry assigned code I2A to graduates who it deemed to “remain unemployed due to the graduate’s failure to work cooperatively with Career Services.”<sup>149</sup> Between 2.2 percent and 3.3 percent of DeVry graduates were assigned code I2A between 2008 and 2012.<sup>150</sup>
64. Graduates could be labeled “inactive” if they did not respond to attempts to contact them during the first thirteen weeks after graduation.<sup>151</sup>
65. Alternatively, Career Services personnel were authorized to make the subjective determination that a graduate was uncooperative. The only documentation required to make such a determination was a staff member’s observational notes and proof that a letter regarding the classification was mailed to the graduate.<sup>152</sup> Through 2012, Career Services personnel considered the following factors when deciding whether a graduate was uncooperative:
- “Graduate demonstrated continued lack of responsiveness to advisor’s contact attempts . . . .
  - Graduate did not log on or search job leads on HireDeVry [DeVry’s internal database of employer contacts and job postings].
  - Consistent failure to show for scheduled interviews.
  - Consistent failure to attend on-campus company presentations, job fairs or other events solicited by Career Services. . . .

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<sup>147</sup> See *supra* § II(B)(3), at ¶ 59.

<sup>148</sup> *Id.*

<sup>149</sup> Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 81.

<sup>150</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department)), at Tab 3, Row 18.

<sup>151</sup> See Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 81–84; see, e.g., Exhibit 81 (2011 Manual), at 56–59.

<sup>152</sup> Exhibit 78 (DeVry Educ. Grp. Inc., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 82; *id.* at 60 (noting that for the E3I graduates, the requirements for “Backup Documentation (required if all primary documentation is not available)” could be met by “Observation notes that support inactivity. This should include notes on activity in student’s activity log and referral log as well as a note tagged with the activity of “Director Approval of I Code” with “Proof of certified mailing to the graduate at their work or home location for confirmation (return receipt, return unclaimed or web confirmation).”).

- Inadequate funds for job search.
- Unrealistic career/salary expectations.
- Unable to pass drug screen.
- Failure to register with Career Services for assistance (physical file and Hire DeVry).
- Geographic Restriction . . . .”<sup>153</sup>

66. In effect, DeVry could characterize any graduate as having failed to conduct an active job search simply because they did not conduct a search in the manner that the Career Services department preferred. However, the criteria above could just as well indicate that a graduate was conducting their job search independently from Career Services. For example, a graduate conducting their own job search may have no reason to register with DeVry’s Career Services office, stay in regular contact with Career Services personnel, attend school-sponsored job fairs, or use the Hire DeVry job board. Prospective students viewing DeVry’s advertisements could not predict that borrowers falling into these categories were left out of DeVry’s calculations.

67. Similarly, DeVry’s apparent conclusions that graduates were not seeking employment based on graduates’ financial circumstances, drug history, salary goals, and geography preferences were unfounded and/or inherently contradictory.

68. Undoubtedly, there were prospective students who enrolled at DeVry precisely because they had “inadequate funds” and chose the “Career Placement University” to help them remedy their financial issues by finding employment. A graduate’s inability to pass a drug screen, which not all employers require, also is irrelevant to whether they are searching for work. Having high salary expectations has nothing to do with whether a graduate is applying for jobs. Finally, a “geographic restriction” — *where* the graduate is searching for a job — is a factor in the search itself, not a basis to conclude that there is no search.

69. Accordingly, when DeVry deemed graduates to be “inactive” based on their unresponsiveness or based on the factors listed above, the school assumed without evidence that the graduates were not searching for jobs independently. This assumption was unjustified, especially considering that DeVry’s marketing and recruiting efforts explicitly targeted students who wanted to launch new careers after graduating.<sup>154</sup>

70. Beginning in 2013, the requirements for a graduate to be considered “Actively Seeking” grew more demanding — a graduate now was required to affirmatively “demonstrate” that they were “an Actively Seeking graduate” and could be deemed “inactive” if they met any three of the following criteria:

- “Failure to sign a CS Graduate Registration form or Inactive Letters;

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<sup>153</sup> Exhibit [81](#) (2011 Manual), at 56–58. Graduates also could be assigned Inactive code I2A or E3I if they were seeking employment in a foreign country or if they were intentionally seeking parttime work. *Id.* at 56–57.

<sup>154</sup> See *infra* § II(D).

- Lack of career search activity in HireDeVry;
- Failure to upload a resume in HireDeVry or observation notes in HireDeVry showing the graduate's lack of responsiveness to update their resumé;
- Failure to utilize InterviewStream;
- Letter in ImageNow or email in HireDeVry observation note from graduate or employer stating the graduate failed drug screen;
- Letter in ImageNow or email in HireDeVry observation note from graduate or employer stating graduate failed to show for scheduled interview;
- Email in HireDeVry observation note to graduate stating the graduate failed to show for scheduled appointment with career advisor, workshops, career fairs, etc.;
- HireDeVry observation notes showing no response to Career Services after 3 or more attempts.”<sup>155</sup>

71. Again, these requirements were not accurate indicators of whether a graduate was “actively seeking” employment as a reasonable viewer of DeVry’s advertisements would understand that phrase. The criteria invited Career Services staff to assume that graduates were not seeking employment simply because they were not using DeVry’s tools and resources in the manner specified by the school, even though the graduates could have found the tools burdensome or ineffective or simply preferred to search for jobs independently.
72. DeVry itself has acknowledged that some of its so-called uncooperative graduates “choose to not partner with Career Services, but rather than formally waiving service (a process that requires completing and signing the Graduate Registration Form), some simply do not respond to communications from Career Services and do not communicate their intentions to their Advisor.”<sup>156</sup> As noted above, merely because a graduate chose not to partner with Career Services, that does not mean they failed to conduct a job search, as DeVry concluded.
73. Moreover, the Grad Observation Logs created by DeVry’s Career Services staff to document their code assignments reveal that staff sometimes assigned codes I2A or E3I<sup>157</sup> to graduates even when it was clear that the graduates were actively seeking employment by conducting independent job searches. For example:
- DeVry assigned inactive code E3I to a graduate because he only “looked at two job leads” in the HireDeVry job board and “never attended any career fairs.”<sup>158</sup> Yet, staff acknowledged that he was spending “1 to 3 hours per week” searching for new jobs

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<sup>155</sup> See Exhibit 83 (2013 Manual), at 16; Exhibit 84 (2014 Manual), at 13; Exhibit 85 (2015 Manual), at 14.

<sup>156</sup> Exhibit 82 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 16, FTC File No. P138402 (May 13, 2014)), at 20.

<sup>157</sup> Code E3I was identical to code I2A, except that it applied to supposedly uncooperative graduates who were employed outside of their fields of study rather than being unemployed. See Exhibit 78 (DeVry Educ. Grp. Inc., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 81–84; see, e.g., Exhibit 81 (2011 Manual), at 56–59.

<sup>158</sup> See Exhibit 99 (Grad Observation Log, Student File [REDACTED], DeVry Univ. (July 14, 2009 – Aug. 2, 2013)), at 69.

- on his own when not busy working at his current job.<sup>159</sup> Career Services also knew that the graduate recently had attended two job interviews and that he was “applying at places that [he] f[ound] interesting.”<sup>160</sup> After being designated “inactive,” the graduate sent a message telling DeVry that he was “still actively seeking employment[.]”<sup>161</sup> Despite knowing this, DeVry maintained his inactive code status, characterized him as not seeking employment, and excluded the graduate from its calculations.<sup>162</sup>
- Another graduate initially was given code E3S after indicating that he had actively searched for a job but failed to find in-field employment.<sup>163</sup> This designation was changed to E3I, an “inactive” code, because the graduate “only responded to his advisor 5 times;” he “couldn’t get off work to attend the FBI presentation that Career Services arranged;” and he only applied to three jobs himself in HireDeVry.<sup>164</sup> However, the graduate had updated and submitted his resume, attended a job fair, and told Career Services that he was “trying to find places[,] but most of them want experience.”<sup>165</sup> Just two weeks prior to being deemed inactive, the graduate asked for help “working on my FBI resume” so that he could “get[] noticed by them.”<sup>166</sup> DeVry characterized him as not seeking employment and excluded him from its rate calculation.<sup>167</sup>
  - One graduate, after taking time off for maternity leave, was in contact with her Career Services advisor every two to three weeks, while also working at an out-of-field job.<sup>168</sup> In November 2012, she spoke with her campus’s Career Services Director, discussing possible resume revisions and positions for which she had applied or would be applying.<sup>169</sup> Nonetheless, she was categorized as an “inactive” E3I graduate the next month with a notation stating that, “[w]hile [*she*] appears to be genuinely interested in finding employment in her field[,] she has not met the requirements of an active job search as defined by the graduate responsibility agreement.”<sup>170</sup> At the very same time that the school acknowledged that the graduate was seeking employment, DeVry characterized her as *not* seeking employment and excluded her from its rate calculation.
  - One DeVry graduate informed his Career Services advisor that he would be moving to New York to improve his chances of finding an in-field position, and, in the

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<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 57.

<sup>161</sup> *Id.* at 71.

<sup>162</sup> See generally *id.* at 68.

<sup>163</sup> See Exhibit 100 (Grad Observation Log, Student File ██████████, DeVry Univ. (Apr. 18, 2011 – Apr. 24, 2014)), at 80.

<sup>164</sup> *Id.* at 83.

<sup>165</sup> *Id.* at 35.

<sup>166</sup> *Id.* at 77.

<sup>167</sup> *Id.* at 80.

<sup>168</sup> See Exhibit 101 (Grad Observation Log, Student File ██████████, DeVry Univ. (Jan. 19, 2012 – Feb. 20, 2014)), at 22.

<sup>169</sup> *Id.* at 35.

<sup>170</sup> *Id.* at 37 (emphasis added).

meantime, he would work at a New York location of his then-current employer.<sup>171</sup> Nevertheless, Career Services coded him as E3N (employed out of field, not seeking in-field employment).<sup>172</sup> He contacted Career Services and asked them for continued assistance, for an introduction to Career Services personnel at DeVry's New York campus, and for his HireDeVry account to be reactivated.<sup>173</sup> Career Services noted that "he has been doing research . . . hoping to find some non-profits to apply with[.]"<sup>174</sup> Despite these efforts, he was coded as E3I (inactive) just one week after his most recent contact.<sup>175</sup> Unaware that he had been coded as "inactive," he continued to inform Career Services personnel of positions he had applied for and again requested that his HireDeVry account be reactivated.<sup>176</sup> Instead of recognizing these job search efforts, DeVry assigned him a different "inactive" code, I2A (unemployed, inactive job search), because he had just lost his out-of-field job.<sup>177</sup>

- Another graduate was in communication with her Career Services advisor, and she made clear that she was actively seeking a job, despite being employed in two part-time, out-of-field jobs.<sup>178</sup> She attended in-person meetings with advisors, promptly returned phone calls from advisors, uploaded and revised her resume and cover letters as requested, and attended a career fair. At the fair, the graduate spoke directly to a Career Services advisor and reiterated that she had two part-time jobs, but she was still seeking another job following graduation.<sup>179</sup> She also expressed to the advisor that she had limited time to focus on her job search but that her goal now was to commit more time and proactiveness with Career Services by attending career fairs, workshops, and using HireDeVry. The advisor reassured the graduate that "Career Services is a lifetime service and that [the advisor] would continue to work with her as the Alumni Advisor."<sup>180</sup> Two days later, the director closed the graduate's file because "she did not conduct an active job search with Career Services as defined by graduate agreement and policy manual."<sup>181</sup> The director also cited "limited activity in HireDeVry" and that, prior to the previous day, "she has not attended any career services workshops, recruiting events or career fairs."<sup>182</sup>

74. Because DeVry did not have reliable information indicating that graduates who were assigned code I2A were failing to conduct active job searches, its categorical exclusion of

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<sup>171</sup> See Exhibit 102 (Grad Observation Log, Student File ██████████, DeVry Univ. (Feb. 17, 2011 – Aug. 2, 2013)), at 7.

<sup>172</sup> *Id.* at 10.

<sup>173</sup> *Id.* at 12–13.

<sup>174</sup> *Id.* at 28.

<sup>175</sup> See Exhibit 102 (Grad Observation Log, Student File ██████████, DeVry Univ. (Feb. 17, 2011 – Aug. 2, 2013)), at 32.

<sup>176</sup> *Id.* at 33–34.

<sup>177</sup> *Id.* at 34.

<sup>178</sup> Exhibit 103 (Grad Observation Log, Student File ██████████, DeVry Univ. (Nov. 11, 2010 – Feb. 20, 2014)), at 6–38.

<sup>179</sup> *Id.* at 34.

<sup>180</sup> *Id.* at 35.

<sup>181</sup> *Id.* at 36.

<sup>182</sup> *Id.* at 36.

these graduates from its employment calculation was inconsistent with the 90% Representation and caused the representation to be misleading.

d) “Employed Non-Education-Related and Inactive” (E3I)

75. Similar to code I2A, DeVry assigned code E3I to graduates who remained employed outside of their fields of study when, in DeVry’s view, they did not cooperate with DeVry’s Career Services office.<sup>183</sup> DeVry assigned code E3I to between 0.9 percent and 2.6 percent of graduates from 2008 to 2012.<sup>184</sup>
76. Code E3I was assigned to graduates who did not respond to attempts to contact them during the first thirteen weeks after graduation.<sup>185</sup> Alternatively, Career Services personnel could make a subjective determination that a graduate was uncooperative based on the same factors described above relating to code I2A.<sup>186</sup>
77. As noted, the factors that DeVry relied upon were indicative only of a graduate’s willingness to conduct their job search through the Career Services department, and the factors were irrelevant to assessing whether the graduate was conducting an active job search on their own.<sup>187</sup>
78. Prospective students seeing the 90% Representation would not have understood it to exclude graduates based on mere assumptions or false characterizations that they were not “actively seeking” employment. Accordingly, DeVry’s exclusion of E3I graduates was inconsistent with the 90% Representation and rendered it misleading.
79. DeVry misled the public by telling them through its advertisements and enrollment materials that its ninety percent statistic reflected the employment outcomes of all graduates who conducted active job searches. In reality, DeVry excluded many graduates from its rate calculation if they actively sought in-field employment but ultimately accepted an out-of-field position; if they affirmatively waived Career Services assistance, which they commonly did in order to conduct their own independent job searches; and based on uninformed or false assertions that graduates were inactive.<sup>188</sup>

**4. DeVry Misleadingly Inflated its 90% Representation By 32.1 Percentage Points on Average**

80. Based on the graduate employment data provided by DeVry, the misleading inclusion of “old jobs” in the 90% Representation and the misleading exclusion of “inactive” graduates

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<sup>183</sup> See Exhibit 78 (DeVry Educ. Grp. Inc., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 81–84; see, e.g., Exhibit 81 (2011 Manual), at 56–59.

<sup>184</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department)), at Tab 3, Row 16

<sup>185</sup> See Exhibit 78 (DeVry Educ. Grp. Inc., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 81–84; see, e.g., Exhibit 81 (2011 Manual), at 56–59.

<sup>186</sup> See Exhibit 78 (DeVry Educ. Grp. Inc., *DeVry University’s Response to Department of Education’s August 28, 2015 Request* (Sept. 18, 2015)), at 81–84; see, e.g., Exhibit 81 (2011 Manual), at 56–59.

<sup>187</sup> See *supra* § II, at ¶¶ 71–73.

<sup>188</sup> See *supra* § II(B)(3).

artificially raised DeVry's rate calculation by an average of 32.1 percentage points during the relevant time period.<sup>189</sup>

### Correcting for the Misleading Inclusion Graduates Who Remained in "Old Jobs"

81. By DeVry's own admission, a large portion of its ninety percent job placement rate was due to the school's inclusion of graduates who remained in "old jobs" they had obtained long before graduation that were not attributable to their DeVry education.<sup>190</sup> From 2007 to 2015, between 50.8 percent and 62.5 percent<sup>191</sup> of the graduates DeVry classified as being employed in-field were employed in "old jobs."<sup>192</sup>
82. To correct for DeVry's misleading inclusion of graduates who remained in "old jobs," BDG first identified all graduates whose in-field employment began more than 120 days prior to their graduation date — the same criterion used by DeVry in its internal calculations.<sup>193</sup> BDG then removed those graduates from DeVry's tally of graduates who held in-field jobs after graduation *and* from DeVry's tally of all graduates who "actively" sought employment. This approach is equivalent to removing "old jobs" from both the numerator and denominator of DeVry's Active Employment Rate % formula.<sup>194</sup>
83. Notably, this approach is overly generous to DeVry because some of the tens of thousands of students who remained in their "old jobs" after graduation likely sought new employment but failed to find it.<sup>195</sup> All unsuccessful, job-seeking students should be included in the denominator of the Active Employment Rate % formula along with other graduates who actively sought employment. This would reduce DeVry's recalculated rate more than removing "old job" graduates from the rate calculation altogether.<sup>196</sup> However, the data

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<sup>189</sup> See Exhibit 104 (BDG Explanation of Corrections to DeVry's Job Placement Rate Calculations) (on file with Department)).

<sup>190</sup> See *supra* § II, at ¶¶ 41–42.

<sup>191</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department)), at Tab 2; see also Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015)), at 5 (confirming that the old jobs "segment of [its] student body has only grown over time").

<sup>192</sup> See Exhibit 86 (Emails between ██████████, VP Operational Excellence, DeVry Univ., and ██████████, Manager, University Career Services, DeVry Univ., *Re: More data needed* (June 12–27, 2013)), at 5; see also Exhibit 87 (*Employed in Field Analysis: (additional analysis considering grad's final term)* (June, Oct. 2006; Feb. 2007) (DVG-FTC-1592539)) (showing that only forty-four percent of graduates from DeVry's Alpharetta, Georgia campus who were classified as employed in in-field jobs received that classification based on a new job; only fifty-one percent of graduates from DeVry's Chicago campus who were recorded as employed in-field had obtained new jobs).

<sup>193</sup> See *supra* § II(B)(2). As discussed above, DeVry's inclusion of graduates with "old jobs" in the 90% Representation was misleading because the representation gave the impression that it included only graduates who obtained new jobs within six months of graduation. See *id.*

<sup>194</sup> See *supra* ¶¶ 34–36.

<sup>195</sup> DeVry has suggested that all of its mid-career students with "old jobs" wanted to keep them after graduation and that these students were not interested in seeking new employment. See, e.g., Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015)), at 8. DeVry describes its student body as comprising two distinct groups: "adult learners who enroll in [DeVry] with in-field employment they wish to keep or who obtain such employment while enrolled" and "those who actively seek new in-field employment." *Id.* DeVry has cited no evidence to support this remarkable claim. *Id.*

<sup>196</sup> See *infra* § II, at ¶ 84.

produced by DeVry does not track the number of students with “old jobs” who conducted active job searches and failed to obtain new jobs, and, therefore, BDG’s conservative recalculation assumes that graduates who remained in “old jobs” did so by choice and not because they failed to obtain new jobs.

84. As shown in the following chart, removing graduates with “old jobs” reduces DeVry’s rate calculation by 10.2 to 14.4 percentage points per year between 2008 and 2012 or by 12.0 percentage points on average:

<b>Impact of Removing “Old Jobs” Only<sup>197</sup></b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
DeVry’s tally of all graduates employed in-field, including “old jobs” (DeVry numerator) <sup>198</sup>	5,551	5,071	5,726	6,243	7,365
DeVry’s tally of “active” job-seeking graduates (DeVry denominator) <sup>199</sup>	6,115	5,745	6,532	7,279	8,146
<i>DeVry’s calculated rate (DeVry numerator / DeVry denominator)<sup>200</sup></i>	<i>90.8%</i>	<i>88.3%</i>	<i>87.7%</i>	<i>85.8%</i>	<i>90.4%</i>
Number of “old jobs” in DeVry calculation <sup>201</sup>	(3,215)	(3,166)	(3,274)	(3,434)	(4,195)
Corrected tally of graduates employed in-field, excluding “old jobs” (corrected numerator) <sup>202</sup>	2,336	1,905	2,452	2,809	3,170
Corrected tally of “active” job-seeking graduates, excluding “old jobs” (corrected denominator) <sup>203</sup>	2,900	2,579	3,258	3,845	3,951
<i>Corrected rate, excluding “old jobs” (corrected numerator / corrected denominator)<sup>204</sup></i>	<i>80.6%</i>	<i>73.9%</i>	<i>75.3%</i>	<i>73.1%</i>	<i>80.2%</i>
<b>Difference (DeVry rate – corrected rate)<sup>205</sup></b>	<b>10.2%</b>	<b>14.4%</b>	<b>12.4%</b>	<b>12.7%</b>	<b>10.2%</b>

<sup>197</sup> Exhibit 104 (BDG Explanation of Corrections to DeVry’s Job Placement Rate Calculations) (on file with Department)). The Department does not possess data for the years 2013-2015.

<sup>198</sup> Exhibit 105 (Since 1975 Worksheet (DVG-ED-0024299)), at Column G.

<sup>199</sup> *Id.* at Column E.

<sup>200</sup> *Id.* at Column H.

<sup>201</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department)), at Tab 4, Row 4

<sup>202</sup> *Id.* at Row 5.

<sup>203</sup> *Id.* at Row 12.

<sup>204</sup> *Id.* at Row 13.

<sup>205</sup> *Id.* at Row 14.

Correcting for the Misleading Exclusion of Graduates as “Inactive”

85. To correct for DeVry’s misleading exclusion of graduates who it designated “inactive,” the Department first identified all graduates who were assigned “inactive” employment codes I2B, E3N, I2A, or E3I.<sup>206</sup> These graduates were then added to DeVry’s tally of graduates who actively searched for in-field employment. This is equivalent to adding the graduates back into the denominator of DeVry’s Active Employment Rate % formula.<sup>207</sup>
86. As shown in the chart below, adding graduates with these four “inactive” codes reduces DeVry’s rate calculation by 8.4 to 17.0 percentage points per year between 2008 and 2012 or by 12.2 percentage points on average.

<b>Impact of Adding “Inactive” Graduates with Codes I2B, E3N, I2A, and E3I<sup>208</sup></b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
DeVry’s tally of all graduates employed in-field (DeVry numerator) <sup>209</sup>	5,551	5,071	5,726	6,243	7,365
DeVry’s tally of “active” job-seeking graduates (DeVry denominator) <sup>210</sup>	6,115	5,745	6,532	7,279	8,146
<i>DeVry’s calculated rate (DeVry numerator / DeVry denominator)<sup>211</sup></i>	<i>90.8%</i>	<i>88.3%</i>	<i>87.7%</i>	<i>85.8%</i>	<i>90.4%</i>
Corrected tally of “active” job-seeking graduates, including codes I2A, I2B, E3I, and E3N (corrected denominator) <sup>212</sup>	6,734	6,590	7,384	8,690	10,029

<sup>206</sup> As discussed above, DeVry’s exclusion of these graduates from the 90% Representation was misleading because the representation gave the impression that it included all graduates who actively sought employment. *See supra* § II(A)(2); *see also infra* § II(D). DeVry commonly applied code I2B to graduates who chose to search for jobs independently rather than with the assistance of DeVry’s Career Services office and DeVry assigned code E3N to graduates who actively searched for jobs in their fields of study but ultimately accepted jobs outside of their fields. *See supra* § II(B)(3).

<sup>207</sup> *See supra* ¶¶ 34–36.

<sup>208</sup> Exhibit 104 (BDG Explanation of Corrections to DeVry’s Job Placement Rate Calculations) (on file with Department)).

<sup>209</sup> Exhibit 105 (Since 1975 Worksheet (DVG-ED-0024299)), at Column G.

<sup>210</sup> *Id.* at Column E.

<sup>211</sup> *Id.* at Column H.

<sup>212</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department), at Tab 4, Row 16.

Number of graduates coded I2A	208	267	199	199	324
Percentage of all graduates coded I2A	2.6%	3.3%	2.2%	1.8%	2.6%
Number of graduates coded I2B	71	71	52	70	89
Percentage of all graduates coded I2B	0.9%	0.9%	0.6%	0.7%	0.7%
Number of graduates coded E3I	71	110	100	180	318
Percentage of all graduates coded E3I	0.9%	1.4%	1.1%	1.7%	2.6%
Number of graduates coded E3N	243	343	446	962	1152
Percentage of all graduates coded E3N	3.1%	4.3%	4.9%	8.9%	9.4%
Number of graduates coded I2A, I2B, E3I, or E3N	593	791	797	1411	1883
Percentage of all graduates coded I2A, I2B, E3I, or E3N	7.5%	9.8%	8.7%	13.1%	15.4%
<i>Corrected rate, including codes I2A, I2B, E3I, and E3N (DeVry numerator / corrected denominator)</i> <sup>213</sup>	82.4%	77.0%	77.6%	71.8%	73.4%
<b>Difference (DeVry rate – corrected rate)</b> <sup>214</sup>	<b>8.4%</b>	<b>11.3%</b>	<b>10.1%</b>	<b>14.0%</b>	<b>17.0%</b>

87. Including these graduates in DeVry's Active Employment Rate % formula is appropriate because, as explained above, they conducted active job searches that yielded out-of-field employment; they waived Career Services assistance for the "common" purpose of conducting their own independent job searches; and/or because DeVry excluded these graduates based on irrelevant factors and on mere assumptions that were inconsistent with what reasonable prospective students would have expected.<sup>215</sup>

#### Combined Impact of Corrections

88. When both of the corrections above are considered together, the impact on DeVry's advertised ninety percent statistic is striking. As shown in the chart below, between 2008 and 2012, the maximum possible placement rate that DeVry could truthfully have advertised was less than 53.4 to 66.4 percent per year, or 57.9 percent on average.<sup>216</sup> DeVry's 90%

<sup>213</sup> *Id.* at Tab 4, Row 17.

<sup>214</sup> *Id.* at Tab 4, Row 21.

<sup>215</sup> See *supra* § II(B)(3). In an internal memorandum, a DeVry employee warned that the school's use of "inactive" designations "can be misleading" and was "material and leaves us open to criticism." Exhibit 106 (DeVry Univ. Internal Memorandum Re. Career Services Outcomes Reporting) (DVG-FTC-1303546)). The memorandum is unsigned and undated. It appears to have been written in late 2009 or early 2010 because the most recent data cited in the memorandum was from October 2009.

<sup>216</sup> As noted above, the corrective calculations are overly generous to DeVry, which is why they reflect DeVry's maximum placement rates. See *supra* § II, at ¶ 81.

Representation therefore overstated the school's placement rate by at least 32.1 percentage points (90% - 57.9%) on average during this period.

<b>Combined Impact of Corrections</b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
In-Field Jobs, Attributable to a DeVry Education, excluding "old jobs" (corrected numerator) <sup>217</sup>	2,336	1,905	2,452	2,809	3,170
"Available" graduates – ("old jobs" removed completely; I2A, I2B, E3I, and E3N codes added back into denominator) (corrected denominator) <sup>218</sup>	3519	3424	4110	5256	5834
<b>Corrected Rate (corrected numerator / corrected denominator)<sup>219</sup></b>	<b>66.4%</b>	<b>55.6%</b>	<b>59.7%</b>	<b>53.4%</b>	<b>54.3%</b>

89. These calculations cannot be repeated for the years 2013-2015 because DeVry has not produced its graduate employment data for that period. The evidence supports a conclusion that DeVry's ninety percent statistic was similarly inflated through 2015 based on the following factors:

- DeVry inflated the ninety percent statistic consistently in the preceding five-year period of 2008-2012, and the amount of rate inflation was significant in each year;
- DeVry has confirmed that its "general approach to measuring graduate employment . . . remained fundamentally the same" through 2015;<sup>220</sup> and
- DeVry has provided information showing that students with "old jobs" were a growing segment of its student body through 2015.<sup>221</sup> This suggests that, to the extent the amount of DeVry's placement rate inflation changed between 2012 and 2015, the amount of rate inflation may have *increased*.

90. DeVry was only able to advertise itself as a school with a ninety percent placement rate by manipulating both the numerator and the denominator of its rate calculations. After correcting DeVry's calculations to reflect what a reasonable prospective student would have understood DeVry's 90% Representation to mean, the result is that DeVry's placement rate was drastically lower than advertised.

<sup>217</sup> Exhibit 88 (BDG Recalculations of DeVry Job Placement Statistics) (on file with Department)), at Tab 4, Row 5.

<sup>218</sup> *Id.* at Tab 4, Row 20.

<sup>219</sup> *Id.* at Tab 4, Row 21.

<sup>220</sup> Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015)), at 4.

<sup>221</sup> See *supra* § II, at ¶¶ 41–42; Exhibit 78 (DEVRY EDUC. GRP. INC., *DeVry University's Response to Department of Education's August 28, 2015 Request* (Sept. 18, 2015)), at 5.

**C. DeVry Knew that the 90% Representation Was Misleading but Continued Using It to “Wow” Prospective and Current Students**

91. DeVry knew since at least 2008 that the 90% Representation was being interpreted as a job placement rate reflecting the percentage of its job-seeking graduates who found new jobs.<sup>222</sup> As explained above, this interpretation was contrary to DeVry’s internal methodologies for assigning employment codes and calculating its employment rate, and a number of employees raised concerns about the accuracy and fairness of the 90% Representation.<sup>223</sup>
92. Despite knowing that the 90% Representation was misleading, DeVry continued to advertise it extensively because it knew that it could not impress prospective students using an accurate placement rate.<sup>224</sup>

**1. DeVry Knew Its 90% Representation Was Being Interpreted as a Job Placement Rate**

93. Beginning in 2008, DeVry received consistent feedback that its 90% Representation was widely being misinterpreted as a job *placement* rate reflecting *new* in-field jobs that graduates were finding using their DeVry education. This feedback came from DeVry’s senior leadership, DeVry alumni, prospective students, and many DeVry employees.<sup>225</sup>
94. When DeVry’s Vice President of Student Finance Policy and Industry Relations asked for the factual basis underlying the school’s “Graduate *placement* statistics,” he had to be told that DeVry actually tracked “Graduate EMPLOYMENT statistics” and was admonished that “We don’t use the ‘P’ word. 😊” — referring to the word “placement.”<sup>226</sup> He responded by providing a list of his “concerns” regarding how DeVry was calculating its career statistics, which he believed should be “define[d] from a prudent person perspective, rather than (strictly) from a defensible position.”<sup>227</sup>
95. Even DeVry’s former President [REDACTED], misunderstood the basis for the 90% Representation as being the “[percentage] of all DeVry graduates *seeking our assistance* [who] were employed in related fields.”<sup>228</sup> He had to be corrected by DeVry’s Director of Career Services that the ninety percent rate also included mid-career graduates whose old jobs could not be attributed to any assistance by DeVry: “As an FYI, grads that already were

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<sup>222</sup> See *infra* § II, at ¶¶ 93–99.

<sup>223</sup> *Id.*

<sup>224</sup> See *infra* § II(C)(2).

<sup>225</sup> See *infra* § II, at ¶¶ 94–99.

<sup>226</sup> Exhibit 107 (Email from [REDACTED], DeVry Univ., to [REDACTED], Vice President, Student Finance Policy and Industry Relations, DeVry Univ., *Re: FW: Graduate EMPLOYMENT statistics* (Nov. 9–13, [REDACTED])), at 2 (italics added; capitalization in original). A placement rate reflects the percentage of a school’s graduates that find employment using their education.

<sup>227</sup> *Id.* at 1.

<sup>228</sup> See Exhibit 108 (Emails between [REDACTED], DeVry Univ., and [REDACTED], DeVry Univ. Director of Career Services et. al., *Re: Single stats/salary statement for career services* (July–Aug. [REDACTED])), at 4 (emphasis added).

employed in education related positions prior to graduating are included in our employment statistics.”<sup>229</sup>

96. DeVry also knew that students enrolling at the school were doing so because they believed the 90% Representation reflected DeVry’s placement rate of successful post-graduate outcomes in new jobs. In one survey of its 2008 alumni, a number of alumni complained to DeVry that they felt misled by the 90% Representation, which they understood to mean that they had a very high likelihood of landing new jobs.<sup>230</sup> Senior DeVry employees identified and internally circulated the sample feedback below:

- “I think the >90% of students having jobs at the completion of graduation you espoused was for your benefit. It is used as a honey pot when in reality, and this is an approximation, at least that many had jobs to start. I have yet to get a job in Technical Management that I didn't have when I started school.”<sup>231</sup>
- “I thought I was going to school so I could get the good paying jobs. What happened to 90/40. 90% of our graduates will get a job paying at least \$40,000 within 6 months of graduating . . . Isn't DeVry promoting 90/40? Finally after 6 months Career Service is like, well sorry we couldn't help you find a job but 6 months is up good luck finding something. Sorry to be so harsh but it's been over a year since I graduated with no employment luck and i'm kinda wishing I would have went somewhere else or not went to school at all.”<sup>232</sup>
- “The classes and professors were great, but I can't even find a job. I am no further than I was without the extra bill . . . I am disappointed because I was told before attending that almost 90% of the students are placed in jobs. I didn't stand a chance.”<sup>233</sup>
- “I was sold on the career placement opportunity and I and others didn't get it. It has been 3 years since graduation and I am still not in my field working.”<sup>234</sup>

97. Instead of addressing the problem that the 90% Representation was misleading students, DeVry blamed its students for misinterpreting its advertisements.<sup>235</sup> DeVry’s Career Services and Marketing departments created a presentation in which they recounted the critical student feedback described above and concluded from it: “Students don’t always read the fine print,” referring to the small-font disclosures that DeVry sometimes included at the bottom of its advertisements.<sup>236</sup> A DeVry Senior Consumer Insights Specialist likewise

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<sup>229</sup> *Id.*

<sup>230</sup> See Exhibit 109 (Email from ██████████, Senior Consumer Insights Specialist, DeVry Univ., to ██████████, Director, Consumer and Market Insights, DeVry Univ. et. al., *Re: Answers to ██████████'s Questions* (Feb. 4, 2009)), at 1.

<sup>231</sup> See *id.*

<sup>232</sup> *Id.* at 1–2.

<sup>233</sup> *Id.* at 2.

<sup>234</sup> *Id.* at 2. DeVry also had direct evidence through the marketing studies it routinely carried out that prospective students viewing its advertisements had “significantly improved perceptions” that DeVry “[h]as an excellent job placement record” and “[l]eads to jobs.” See Exhibit 110 (DEVRY UNIV., *Career Positioning: Career Services and Marketing Collaborative* (Feb. 16, 2009)), at 11.

<sup>235</sup> *Id.* at 11.

<sup>236</sup> *Id.* See also *infra* § II(F) (discussing DeVry’s inconsistent and inadequate use of written statements).

concluded from the student survey that “our alumni . . . don’t pay attention to the fine print.”<sup>237</sup>

98. DeVry’s criticism of its students was unwarranted given that DeVry’s own employees also widely misinterpreted the 90% Representation. DeVry surveyed its own admissions officers and career services staff in 2008 for their reactions to the new “We Major in Careers” campaign, and it found that employees misinterpreted the advertisements as touting DeVry’s ability to enable students to get *new* jobs.<sup>238</sup> DeVry summarized their feedback by quoting its Assistant Director of Admissions, who noted, “This campaign is really about taking our students from ‘point A to point B[,]’ it is clear about taking a person from either not employed or living paycheck to paycheck and moving closer to their life goals.”<sup>239</sup>
99. A DeVry Educational/Field Advisor who was surveyed added that the 90% Representation was being interpreted by DeVry’s admissions advisors as proof that “‘employers value a DeVry education’” and that students would have the “ability to get through school quickly and get to earning potential early,” which is not what the ninety percent statistic actually measured, given the inclusion of “old jobs.”<sup>240</sup>
100. Despite knowing from so many different sources that the 90% Representation was misleading, DeVry continued using it through 2015.<sup>241</sup>

## **2. DeVry Continued Advertising the 90% Representation Because an Accurate Placement Rate Would Not “Wow” Prospective Students**

101. DeVry did reconsider several times over the years whether it should continue advertising itself using the 90% Representation, but it decided to continue using the 90% Representation, which largely reflected the “old jobs” of mid-careers students, because DeVry’s actual placement rate was too low to entice prospective students.

### Employee Concerns with Continuing to Use the 90% Representation

102. When alumni complained about the misleading nature of the 90% Representation, some DeVry employees questioned the statistic and how the school might change its messaging to “separate out fact from perception.”<sup>242</sup> They were told that, although DeVry tracked the graduates who remained in their “old jobs” and could remove them from its advertised

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<sup>237</sup> Exhibit 109 (Email from [REDACTED], Senior Consumer Insights Specialist, DeVry Univ., to [REDACTED], Director, Consumer and Market Insights, DeVry Univ. et. al., *Re: Answers to [REDACTED]’s Questions* (Feb. 4, 2009)), at 2.

<sup>238</sup> See *infra* § II, at ¶¶ 102–106.

<sup>239</sup> Exhibit 71 (DEVRY UNIV., *Brand Evolution Research What We Learned About DeVry University Advertising: Considerations for Future Creative Development* (July 28, 2008)), at 6.

<sup>240</sup> *Id.* at 18.

<sup>241</sup> See *infra* §§ II(C)(2), II(D).

<sup>242</sup> Exhibit 109 (Email from [REDACTED], Senior Consumer Insights Specialist, DeVry Univ., to [REDACTED], Director, Consumer and Market Insights, DeVry Univ. et. al., *Re: Answers to [REDACTED]’s Questions* (Feb. 4, 2009)), at 3.

placement rate, “[a] high percentage keep their old job so it takes a lot of wow out of the 90% claim.”<sup>243</sup>

103. Other DeVry employees reacted to evidence that students were being misled by “questioning [DeVry’s] emphasis on a career grad stat[istic]” in its advertising.<sup>244</sup> A Senior Consumer Insights Specialist warned that “our alumni will hold us to our promise,” referring to the promise of a high job placement rate conveyed by the 90% Representation.<sup>245</sup>

104. DeVry’s Senior Director of Brand Marketing responded with his own concern about the 90% Representation, writing to another senior employee:

I hate to say ‘you told me so’ but ‘you told me so’ . . . They may have a point (certainly don’t want to be heavily promising something we really don’t deliver)[.]<sup>246</sup>

105. DeVry’s Director of Career Services also voiced her “concern” over “the use of the words ‘seeking employment[,]’ as all of our stats include grads that held these positions prior to graduation (and our research shows that this group is actually the majority in many cases).”<sup>247</sup>

106. Another employee reported that he was “losing sleep” because DeVry’s advertisements were using phrases like “entry level, starting salary, [and] beginning salary” despite the fact that “most grads in our stats today are keeping the positions they had prior to graduation.”<sup>248</sup>

107. DeVry also appears to have been notified of ways in which its aggressive exclusions of “inactive” graduates from its rate calculations were likely to mislead prospective students. An internal memorandum presented the following bulleted points:<sup>249</sup>

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<sup>243</sup> *Id.*

<sup>244</sup> *Id.* at 1.

<sup>245</sup> *Id.* at 2. Later in the same email, the Senior Consumer Insights Specialist attributed DeVry graduates’ understanding of the 90% Representation as promising a post-graduation placement rate of ninety percent to the fact that “they don’t pay attention to the fine print,” which was included occasionally at the bottom of advertisements with the 90% Representation. *Id.* DeVry’s fine print included with the 90% Representation are addressed in Section F, *infra*.

<sup>246</sup> Exhibit 109 (Email from ██████████, Senior Consumer Insights Specialist, DeVry Univ., to ██████████, Director, Consumer and Market Insights, DeVry Univ. et. al., *Re: Answers to ██████████’s Questions* (Feb. 4, 2009)), at 1; *see also* Exhibit 74 (INFOSURV, INC., *DeVry Concept Testing Insights Report* (July 7, 2009)), at 5 (finding that alumni rated the 90% Representation more negatively than prospective students and hypothesizing that this difference was attributable to “their experience with DeVry, [which] has created a higher level of skepticism regarding the credibility of some of the claims made in the concepts”).

<sup>247</sup> Exhibit 61 (Email from ██████████, University Director of Career Services, DeVry Univ., to ██████████, ██████████, et. al., DeVry Univ., *Re: Big Bang Career Stats* (Sept. 16–23, 2008)), at 8.

<sup>248</sup> Exhibit 111 (Email from ██████████, DeVry Univ., to ██████████, Chief Marketing Officer, DeVry Univ., *Re: error on web* (Jan. 28 ██████████)), at 1 (referring to a DeVry website advertisement titled “DeVry Graduates Hear ‘You’re Hired’ More Often”; the advertisement misleadingly used the 90% Representation as a measure of how well DeVry would “prepare [students] to enter [their] chosen career field” and other similar claims).

<sup>249</sup> Exhibit 106 (DeVry Univ. Internal Memorandum Re. Career Services Outcomes Reporting) (DVG-FTC-1303546)).

- “The current methodology for reporting graduate employment statistics (undergraduate students only) is too generous than what is called for in these regulatory and employment times. In addition to the graduates we ‘net out’ or waive from our statistics, since 2001 we expanded the classification of inactive graduates, excluding them from our pool of ‘active’. This population has grown in recent years.
- The stats can be misleading. Example: The NJ campus achieved 90% this last semester by our current active definition. Yet, the ‘net’ employment rate was 69%. This difference is explained by a large 24% inactive rate of available graduates. Example: In Georgia, we had 87% active vs. 71% net with a 13% inactive unemployment rate of available graduates. On a system level, the gap will average about 10 percentage points. The most recent class was 90% vs. 77%.
- The gap between the two numbers is material and leaves us open to criticism. At a minimum, it can raise questions comparing our result to other private sector institutions.
- We waive or remove categories of students (net outs) that go beyond that which the national accrediting bodies allow. While we are not nationally accredited, their standards are understood and accepted. Being more generous than those standards puts us on a limb of risk that will make it harder to defend in these times. By comparison, Apollo and Western report less than 10% waivers while DeVry has averaged almost 16% net out rate for the last six classes; 18% for the October 2009 class.<sup>250</sup>
- All too often those citing our stats leave out the qualifying statement: ‘of those active in the job market.’ This puts the audience in a position to hear only 90%. If we are going to be wrong, it is safer to be wrong with the more conservative number; employment rates for either net grads or available grads.”<sup>251</sup>

108. A DeVry executive also recognized that Career Services personnel were incentivized to either improperly document graduates’ employment statuses or to pressure graduates to waive Career Services assistance, a practice which contributed to the inflation of the placement rate:

Our current system is such that our staffers feel pressured to document codes, and as a result will look to ‘back-door’ the documentation where they can . . . staff find themselves compelled to ‘convince’ a passive grad to complete a form (a largely ambiguous and somewhat arbitrary form in my opinion) to indicate a status that may not be entirely accurate. Simply, the code doesn’t bother me if

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<sup>250</sup> Although DeVry was not bound by the job placement rate requirements of other accreditors, DeVry’s exclusion of “inactive” graduates is unusual. BDG surveyed twenty-two state agency and accreditor methodologies, and eighteen of them do not allow such exclusions at all. *See* Exhibit 91 (Survey of Employment Rate Methodologies/Reporting Requirements) (on file with Department)), at 1–3, Rows 10–13.

<sup>251</sup> Exhibit 106 (DeVry Univ. Internal Memorandum Re. Career Services Outcomes Reporting) (DVG-FTC-1303546)).

the code fits the situation. What bothers me is any manipulation of a situation to fit a code.<sup>252</sup>

109. DeVry's own Director of Regulatory Compliance admitted that the 90% Representation "is misleading" unless paired with appropriate additional disclosures – disclosures that DeVry often did not make or only made in fine print.<sup>253</sup> The representation had the potential to mislead because, "[i]n reality, only about 60 percent of *all* DeVry graduates are employed within 6 months of graduation."<sup>254</sup>

#### DeVry's Decision to Continue Using the 90% Representation

110. Despite concerns that the 90% Representation was misleading, particularly because it included "old jobs" that were not attributable to DeVry, the school consistently chose to continue using it because using a more accurate job placement statistic would not impress prospective students. As DeVry's Director of Career Services explained to DeVry's President:

We've looked at this issue several times, and excluding this group [graduates already employed in in-field positions prior to graduation] would cause our stats to decline significantly. For this reason, it would [be] more beneficial to DeVry to state [the ninety percent statistic] by referring to the specific graduating class, rather than "of all DeVry graduates seeking our assistance[.]"<sup>255</sup>

111. In 2008, DeVry prepared a slideshow, in part, to answer concerned employees who were asking, "Can we substantiate our 90/40 proposition?" — referring to DeVry's advertised claims that 90% of its job-seeking graduates find new jobs at an average salary of \$40,000.<sup>256</sup> Employees also had been expressing confusion about the extent to which the 90% Representation was based on students remaining in their "old jobs;" they asked: "Can you help us understand the percentage [of graduates] that 'got' employment rather than 'held' employment within 6 months?"<sup>257</sup>

112. On a slide titled "The Truth Behind the 90/40 Proposition," DeVry reiterated that, while it did keep separate track of these two types of employment outcomes ("old jobs" vs. new jobs), it would "take[] a lot of wow out of the 90% claim" to report the outcomes for only

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<sup>252</sup> Exhibit 112 (Email from [REDACTED], Regional Associate Dean, Career Services, DeVry Univ., to [REDACTED], Vice President of Career & Student Services, DeVry Univ., *RE: Sleeping at night* (Feb. 28, [REDACTED])).

<sup>253</sup> Exhibit 60 Email from [REDACTED], Director of Regulatory Compliance at DeVry, to [REDACTED], *RE: Career Positioning Next Steps*, (Feb. 23, [REDACTED]), at 1; *see also infra* § II(F).

<sup>254</sup> Exhibit 60 Email from [REDACTED], Director of Regulatory Compliance at DeVry, to [REDACTED], *RE: Career Positioning Next Steps*, (Feb. 23, [REDACTED]), at 1 (emphasis in original).


<sup>255</sup> Exhibit 108 (Emails between [REDACTED], DeVry Univ., and [REDACTED], DeVry Univ. Director of Career Services et. al, *Re: Single stats/salary statement for career services* (July–Aug. [REDACTED])), at 4.

<sup>256</sup> Exhibit 71 (DEVRY UNIV., *Brand Evolution Research What We Learned About DeVry University Advertising: Considerations for Future Creative Development* (July 28, 2008)), at 17.

<sup>257</sup> *Id.* at 17.

those students who found new jobs.<sup>258</sup> This was due to the “high percentage [who] keep their old job.”<sup>259</sup>

## The Truth Behind the 90/40 Proposition



•Can we substantiate our 90/40 proposition?

*90% Employment statistics*

**Question:** Can you help us understand the percentage that “got” employment rather than “held” employment within 6 months?

**Answer:** [REDACTED] says we do not track career launchers vs. career advancers. We only look at the final position they claim after graduation. While they do track % that keep their job vs. those that accept new jobs. A high percentage keep their old job so it takes a lot of wow out of the 90% claim.

113. In November 2009, DeVry again questioned whether it should continue using the 90% Representation. The school decided it should “pull[] back” on its use and “not aggressively promot[e] it,” but it continued to publish the representation widely.<sup>260</sup> DeVry acknowledged that, despite the internal concern over the representation, there still were “occurrences of the stat on our website”<sup>261</sup> and that it would continue using the 90% Representation in other media if it would be “difficult or expensive to change it[.]”<sup>262</sup>
114. DeVry also flagged the 90% Representation as problematic to include in its advertising.<sup>263</sup> In October 2011, when DeVry’s National Manager of Career Services sought internal approval of proposed language for a new advertisement, she was warned that “[t]he big red flags” included “anything that . . . uses the word ‘placement’ or refers to 90/40 (90% employment at a min. salary of \$40K).”<sup>264</sup>
115. Despite its concerns and these proposed changes to its advertising approach, DeVry regularly used the 90% Representation in a wide array of media between 2008 and 2015, as

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<sup>258</sup> *Id.* at 17.

<sup>259</sup> *Id.* at 17.

<sup>260</sup> See *infra* § II(D) (showing that DeVry consistently advertised the 90% Representation for years after November 2009).

<sup>261</sup> Exhibit 113 (Email from [REDACTED], DeVry Univ., to [REDACTED] et. al., DeVry Univ., *Re: 90/40 Message Communication Change?* (Nov. 24, 2009)), at 1.

<sup>262</sup> *Id.*

<sup>263</sup> See Exhibit 114 (Email from [REDACTED], DeVry Univ., to [REDACTED], National Manager of Career Services, DeVry Univ., *RE: REACHING OUT* (Oct. 7, 2011)), at 4.

<sup>264</sup> *Id.*

shown below.<sup>265</sup> It did so while consistently reinforcing the misperception that the ninety percent statistic was a job placement rate reflecting the outcomes of all graduates seeking new employment in-field.<sup>266</sup>

**D. DeVry Advertised the 90% Representation in Magazines and Brochures, on Television and the Radio, on the Internet, and in Its Recruiting and Enrollment Materials Between 2008 and 2015**

116. Despite the concerns about its misleading nature, DeVry published the 90% Representation widely across many forms of media from at least January 2008 through December 2015.<sup>267</sup> Consistent with the marketing plans described above, DeVry paired the 90% Representation with messages that prospective students could successfully enter the careers of their choice by enrolling at DeVry.<sup>268</sup> DeVry consistently portrayed the 90% Representation in a manner that misleadingly suggested it was the school's job placement rate, not a rate of overall employment.<sup>269</sup>

117. Representative examples of the advertisements and enrollment materials containing the 90% Representation are discussed below. Numerous other examples of the 90% Representation are contained within Appendices A to D hereto.<sup>270</sup>

Advertisements in Media (Magazines, Brochures, Television, and Radio)

118. DeVry began running advertisements created for its "We Major in Careers" campaign in magazines in January 2008.<sup>271</sup> The advertisements told the stories of DeVry students who exemplified the school's ability to lead students to new careers and then stated the 90% Representation as the proof of that claim.<sup>272</sup>

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<sup>265</sup> Exhibit 25 (Notice Letter), at 4. The Department previously found that, while DeVry claimed it ceased using its 90% Representation in January 2014, the representation remained in promotional materials on DeVry's website through at least August 2015, and versions of the representation remained on websites controlled by DeVry at least through January 2016. *Id.*

<sup>266</sup> See *infra* § II(D) (describing how the 90% Representation was used with language indicating that a DeVry degree would lead to new employment).

<sup>267</sup> See *infra* § II(D). DeVry published the 90% Representation despite knowing since at least 2008 that the 90% Representation was being interpreted as a job *placement* rate that reflected the percentage of all job-seeking graduates who found new jobs within six months. See *supra* § II(C). As discussed *supra*, the 90% Representation used in these advertisements was inflated because it included jobs that students had obtained on their own without using their degrees and because it excluded the outcomes of graduates who did not conduct their job searches through the DeVry Career Services department or whose job searches resulted in them becoming employed outside their fields of study. See *supra* § II(B).

<sup>268</sup> See *infra* § II(D).

<sup>269</sup> See *id.* See also Exhibit 115 (Emails from ██████, DeVry Univ., to ██████, ██████, *Re: deep dive on 92%* (Feb. 9, 2009)), at 1 (describing the ninety percent statistic as an "important RTB" that "is going to be used as a continuing and major part of our communications").

<sup>270</sup> See Appendix A (Collection of Website Advertisements), Appendix B (Collection of Printed Advertisements), Appendix C (Collection of TV, Radio, & Other Media Advertisements), and Appendix D (Collection of Enrollment Materials).

<sup>271</sup> See Appendix B (Collection of Printed Advertisements), at 2–5.

<sup>272</sup> *Id.*

119. An advertisement in *Game Developer* magazine featured a “gamer” who believes a DeVry education will allow him to become a game designer.<sup>273</sup> A *JET Magazine* advertisement told the story of a woman who got her college degree from DeVry and used it to land a job as a Senior Systems Programmer at a prestigious employer.<sup>274</sup> As shown in the image below, a *Working Mother* advertisement was a testimonial from a mother who was “going to have a better life” because she was “going to work for a corporation as an internal auditor” “when [she] graduate[d].”<sup>275</sup>

Even with 5 kids,  
you really can afford  
to go to college.

At DeVry University, they have a very good financial aid department. They walk you through it step by step... When I graduate, I'm going to work for a corporation as an internal auditor. We're going to have a better life.

*Michelle Daniels*

Michelle Daniels '09  
Business Administration,  
Accounting Concentration

90% of DeVry grads in the active job market\* find careers in their areas of study within 6 months of graduation – in fast growing fields like Business, Information Systems and Healthcare Technology. Classes start soon, so learn about the education that's helping Michelle come through for her whole family.  
**Call 1.877.MAJOR40 or log on to DeVryStories.com/Mother**

\*System-wide for the 10-year period ending 2/07.  
Accredited by The Higher Learning Commission of the North Central Association (NCA), www.ncahlc.org.  
Programs vary by location.  
DeVry University operates as DeVry Institute of Technology in New York.  
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**DeVry University**  
We major in careers.™

Copyrighted material

Working Mother, Apr. 2008<sup>276</sup>

120. The versions of the 90% Representation in these magazine advertisements described the fields in which graduates were finding employment as “fast growing.”<sup>277</sup> This misleadingly suggested that the ninety percent statistic was based on DeVry graduates filling new positions for which there was high demand and not graduates remaining in their “old jobs.”

121. DeVry also used the 90% Representation in brochures that were provided to prospective students.<sup>278</sup> A 2009 brochure titled “*College. Your career is worth it*” invited prospective students to “join the ranks of the more than 250,000 alumni who have achieved career success” and then stated the 90% Representation.<sup>279</sup> This language misleadingly suggested that the 90% Representation was a measure of how often the school’s alumni obtained *new* careers, which was untrue.

<sup>273</sup> *Id.* at 2.

<sup>274</sup> *Id.* at 3.

<sup>275</sup> *Id.* at 4–5.

<sup>276</sup> Appendix B (Collection of Printed Advertisements), at 5.

<sup>277</sup> *Id.* at 1–6.

<sup>278</sup> Exhibit 116 (DEVRY UNIV., *College. Your Career is Worth It* (2009)), at 4; Exhibit 117 (DEVRY UNIV., *The DeVry Difference* (2013)), at 1; Exhibit 118 (DEVRY UNIV., *A Guide to Student Success for High School and Community College Educators* (2013)), at 6; Exhibit 119 (DEVRY UNIV., *Discover DeVry* (2009)), at 2.

<sup>279</sup> Appendix B (Collection of Printed Advertisements), at 6.

122. In another brochure, DeVry advised students to “[b]egin your journey with the ultimate goal in mind. Not just graduating, but landing in a successful career . . . DeVry University has been helping students do just that since 1931.”<sup>280</sup> Beneath this promise to help launch students into new careers, the “90%” statistic appeared in enormous font, followed by the full 90% Representation.<sup>281</sup>
123. DeVry also targeted high school and community college educators to encourage them to recommend DeVry to their students.<sup>282</sup> A 2013 brochure told educators that “*DeVry can help you **PREPARE YOUR STUDENTS** for what’s next,*” referring to the students’ entry into careers.<sup>283</sup> The brochure featured a DeVry alumna stating that DeVry “*prepar[ed] [her] for a career rather than just for a job*” and it included a section titled “Get Hired: Interview Prep 101” offering workshops to develop job interview skills.<sup>284</sup> The brochure included the 90% Representation misleadingly as supposed proof that students were very likely to find new careers through DeVry.<sup>285</sup>
124. DeVry also aired television commercials beginning in 2008 based on the messaging it developed as part of its “We Major in Careers” campaign.<sup>286</sup> The advertisements showed DeVry students successfully starting new jobs and careers thanks to their DeVry education and then displayed the 90% Representation.<sup>287</sup>
125. In one commercial titled “Wallpaper,” several DeVry students dressed in professional attire affix job offer letters onto a long transparent wall while a narrator states:
- If you’re going to college or back to college, that’s your bull’s eye. It is for DeVry University students. In fact, for more than 30 years, 90% of all graduates in the active job market had careers in their fields within six months. 90%.<sup>288</sup>
126. As the wall fills with hundreds of offer letters, the narrator adds, “[a]nd all those offer letters up there, that’s just from last year.”<sup>289</sup> The advertisement depicts the 90% Representation as a reflection of how often DeVry graduates were being hired into new jobs. The advertisement gives no indication that most of the jobs counted in the ninety percent statistic were “old jobs” held by mid-career graduates who did not actually find new jobs.<sup>290</sup>

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<sup>280</sup> *Id.* at 7.

<sup>281</sup> *Id.*

<sup>282</sup> Exhibit 118 (DEVRY UNIV., *A Guide to Student Success for High School and Community College Educators* (2013)).

<sup>283</sup> *Id.* at 3.

<sup>284</sup> *Id.* at 7–8.

<sup>285</sup> *Id.* at 6.

<sup>286</sup> See generally Appendix C (Collection of TV, Radio, & Other Media Advertisements). The messages and stories that DeVry intended to convey through these advertisements are explained in Section B, *infra*.

<sup>287</sup> *Id.* at 2–9.

<sup>288</sup> *Id.* at 3.

<sup>289</sup> *Id.*

<sup>290</sup> See *supra* § II(B).



Wallpaper

127. Further, the reference to students “in the active job market” used in the “Wallpaper” commercial, among other advertisements, misleadingly suggests that the 90% Representation reflected the results of all students searching for new jobs near the time they graduated.<sup>291</sup>

128. Another DeVry commercial, “Graduation Present,” depicted a student who says she is looking forward to graduating so that she can enter her new career using her DeVry business degree. A narrator then states the 90% Representation, which is also shown onscreen:

Student: And when I finished my degree in business, a new job at a great company — that’s the graduation present I want.

Narrator: In 2012, 90% of DeVry University grads actively seeking employment had careers in their field in six months. Join the 90%.<sup>292</sup>

129. By focusing on a student seeking a new job and presenting the 90% Representation in this way, DeVry created the false impression that its students had a ninety percent chance of

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<sup>291</sup> To be “in the market for” something means “[w]anting to possess, eager to have, seeking,” and the phrase “job market” means “the total number of vacant jobs open to those seeking employment” or “the aggregate of those persons seeking employment.” See Exhibit 120 (*In the market for*, DICTIONARY.COM, <https://www.dictionary.com/browse/in--the--market—for> (last accessed Sept. 21, 2021)); see Exhibit 121 (*Job market*, DICTIONARY.COM, <https://www.dictionary.com/browse/job-market> (last accessed Sept. 21, 2021)). Such language indicates the 90% Representation reflects the results of all students who searched for *new* jobs near the time they graduated. But see *supra* § II(B)(2) (noting that the 90% Representation actually contained outcomes from mid-career students).

<sup>292</sup> Appendix C (Collection of TV, Radio, & Other Media Advertisements), at 6. This advertisement aired in 2013 and ran on numerous national cable and satellite television channels.

obtaining the ‘graduation present’ of a new job. The invitation for the viewer to “join the 90%” reinforced this misleading message.<sup>293</sup>

130. DeVry also marketed itself on the radio. One radio advertisement, for example, depicted a conversation between two speakers:<sup>294</sup>

[Narrator]: Earning a degree from DeVry University can help you break out of your slump and get yourself on a career track. You can study online, onsite, or a combination of both ...

[Prospective student]: Sounds like a good idea. But how do I know it really is a good idea?

[Narrator]: Well because since 1975, 90% of all DeVry graduates seeking employment had careers in their fields within six months of graduation.<sup>295</sup>

131. While the particular wording of the 90% Representation in these advertisements varied, DeVry consistently presented the representation in a misleading manner to convince viewers that they would have a very high likelihood of landing a new job if they attended DeVry. In reality, their chances of landing a new in-field position were less than sixty percent.<sup>296</sup>

#### Advertisements Online

132. As of 2008, the Internet was DeVry’s primary source of leads for prospective students.<sup>297</sup> Internet banner advertisements and visitors to DeVry’s homepage at devry.edu accounted for seventy to ninety percent of all prospective student leads per week.<sup>298</sup> DeVry also owned and/or operated dozens of other DeVry-branded webpages that it used to market its educational programs.<sup>299</sup>

133. The 90% Representation was included throughout these webpages and was displayed prominently on banners and in the body text of the webpages.<sup>300</sup> The representation typically was paired with “career-obtaining” language such as “our graduates leave school well-prepared to enter the workforce and begin contributing immediately”<sup>301</sup> or “[t]his

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<sup>293</sup> *Id.* at 6. *See also infra* § II(B)(4) (showing that DeVry’s graduates’ chances of successfully landing new jobs were far lower than ninety percent).

<sup>294</sup> Appendix C (Collection of TV, Radio, & Other Media Advertisements), at 1. DeVry aired the radio advertisements in the Bay Area, California; Kansas City, Kansas; Chicago, Illinois; as well as Raleigh and Durham, North Carolina. *Id.*

<sup>295</sup> *Id.* at 1.

<sup>296</sup> *See supra* § II(B)(4).

<sup>297</sup> Exhibit 122 (DEVRY UNIV., *Admission Advisor Interviews: DeVry University Brand Evolution Project* (May 28, 2008)), at 7, 8.

<sup>298</sup> *Id.*

<sup>299</sup> Exhibit 123 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 2, FTC File No. P138402 (June 3, 2014)), at 2–18.

<sup>300</sup> *See* Appendix A (Collection of Website Advertisements).

<sup>301</sup> *Id.* at 6.

means . . . [y]ou'll get career education that leads you straight into the professional world.”<sup>302</sup>

134. DeVry's main homepage, for example, frequently featured the 90% Representation between at least January 2008 and August 2015.<sup>303</sup> It displayed the following specific representations during the time periods noted below, often in eye-catching banners:

- January 2008: DeVry's homepage stated that, “[w]ith DeVry career stats at 93/42 [ninety-three percent employment at \$42,000 per year], the odds are in your favor” and then stated the 90% Representation.<sup>304</sup> Nearby banners invited prospective students to “Discover a career you'll love” and touted DeVry as “the nation's #1 path to accounting careers.”<sup>305</sup>
- February 2008: A student testimonial on DeVry's homepage stated, “As a senior, before I even graduated, I had a job with Tellabs as a software development engineer. They were very interested in me because of my DeVry background.”<sup>306</sup>
- June 2009: DeVry's homepage displayed the 90% Representation together with this quote from a DeVry professor: “*Our graduates find jobs faster . . . and they start with the advantage of hands-on learning that other students don't get.*”<sup>307</sup>
- January 2011: DeVry promised to help students achieve “success in your education, your career, and your life.”<sup>308</sup> Visitors who clicked a link to “See More” were shown the 90% Representation, which was characterized as a measure of the school's “career success.”<sup>309</sup>
- December 2014–January 2015: The homepage advised prospective students to “TAKE THE FIRST STEP TOWARDS CAREER SUCCESS” by enrolling at DeVry and stated that they could “COUNT ON DEVRY FOR CAREER SUCCESS.” Beneath these messages, DeVry presented the 90% Representation, with the “90%” figure in large font.<sup>310</sup>

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<sup>302</sup> *Id.* at 2.

<sup>303</sup> See generally *id.*

<sup>304</sup> *Id.* at 1 (showing a picture of dice with the words, “[t]he odds are in your favor!”). See *infra* § II(F) (for an overview of written statements included within advertisements).

<sup>305</sup> Appendix A (Collection of Website Advertisements), at 1.


<sup>306</sup> *Id.* at 4.

<sup>307</sup> *Id.* at 9 (emphasis in original).

<sup>308</sup> *Id.* at 14.

<sup>309</sup> *Id.* at 14. See also *id.* at 16 (pairing the 90% Representation with language about “career success”), 20 (same).

<sup>310</sup> *Id.* at 20.



**DeVry University**  
We major in careers:™

**Get Started Now.**

[Apply Online](#) [Get Info](#) [Chat Live](#)

**Why DeVry**

**Programs**

**Locations**


**Online Options**

**Financial Aid**

**Admissions**

**Career Services**

[Search](#)



**90.2%**  
of DeVry grads were employed in their field within 6 months of graduation.\*

**Are you ready to step it up?**

**Go!**

Tell us who you are and we'll help you get started.

[High School Students](#)

[Parents](#)

[Los Padres](#)

[Educators/Counselors](#)

[Current Students](#)

[Corporate Information](#)

[Transfer Students](#)

[Military Students](#)

[International Students](#)

[Corporate Education](#)

[Employee Training](#)

[Alumni](#)

**DeVry University** offers flexible scheduling and the convenience of studying at 80+ locations, online or both. Earn a respected associate, bachelor's or master's degree from an accredited university. A career-oriented education from DeVry University puts you in a great place to begin or advance in the workplace when you graduate. Turn your passion into purpose. At DeVry University.

[Looking for DeVry's Keller Graduate School of Management?](#)

 **DVU Tube**

 **DeVry University**

**The nation's #1 path to accounting careers.**

**New at DeVry.**

**Web Graphic Design.**

Edge out the competition with skills, experience and a degree.

**Real Alumni. Real Stories.**

As a senior, before I even graduated, I had a job with Tellabs as a software development engineer. They were very interested in me because of my DeVry background.

*John Healey*



**Degree Programs**

Bachelor's degree programs

Business Administration with emphasis in:

- Accounting
- Business Information Systems
- Finance
- Health Services Management
- Hospitality Management
- Human Resource Management
- Operations Management
- Project Management
- Sales & Marketing
- Security Management
- Small Business Management & Entrepreneurship
- Technical Communication

Biomedical Engineering Technology

Computer Engineering Technology

Computer Information Systems

Business/Management

Computer Forensics

Database Management

Information Systems Security

Systems Analysis and Integration

Web Development and Administration

Electronics Engineering Technology

Game & Simulation Programming

Network & Communications Management

Technical Management

Criminal Justice

Health Information Management

**Associate degree programs**

- Accounting
- Electronics & Computer Technology
- Health Information Technology
- Network Systems Administration
- Web Graphic Design

**Master's degree programs and certificates**

- Educational Technology (MSET)
- Educational Technology (certificate)
- Keller Graduate School of Management

www.devry.edu, Feb. 2008

135. Another webpage on DeVry's website that was typical of the school's overall advertising approach was titled "DeVry University's Career Advantage."<sup>311</sup> It told prospective students that DeVry "gives you an edge" and "is focused on your career success." It claimed that DeVry had "degrees employers value," which enabled graduates "to get started on the path to a successful career." The advertisement included the 90% Representation and misrepresented it as the rate at which graduates *entered* the professional world, even though it largely reflected mid-career students' "old jobs" that were not attributable to DeVry:

More than 90% of DeVry graduates hold positions in their chosen field within 6 months of graduation.\* This means you'll earn more than a degree at DeVry. You'll get career education that leads you straight into the professional world.<sup>312</sup>

<sup>311</sup> See, e.g., id. at 2.

<sup>312</sup> Appendix A (Collection of Website Advertisements), at 2. The asterisk led readers to a written statement which unsuccessfully attempted to clarify the terms included in the 90% Representation. These written statements are discussed in-depth *infra*, Section F.

136. DeVry also maintained a webpage directed to the parents of prospective DeVry students where it misleadingly claimed that the 90% Representation measured students' success "land[ing] jobs in their fields of study within six months of graduation".<sup>313</sup>

Do DeVry University graduates get good jobs?

Employers want DeVry University graduates. More than 90% of our new graduates quickly land jobs in their fields of study within six months of graduation. This is a true testament to the fact that DeVry teaches what companies are looking for. . . . [O]ur graduates leave school well-prepared to enter the workforce and begin contributing immediately.<sup>314</sup>

137. This webpage also claimed to reflect the outcomes of all "new graduates," concealing the fact that DeVry excluded certain types of graduates from the statistic even though they actively sought new jobs.<sup>315</sup>

138. On another webpage directed to working adults, DeVry misleadingly characterized the 90% Representation as a measure of the "thousands of students [who] begin rewarding careers" because of help they received from DeVry's Career Services department.<sup>316</sup>

In addition to a relevant education and a highly respected degree, DeVry University offers invaluable career services that have helped thousands of students begin rewarding careers in their fields. The proof is the numbers. Since 1975, 265,869 undergraduate students have graduated from DeVry and 90% of those in the active job market were employed in career-related positions within six months of graduation.<sup>317</sup>

139. DeVry's website also published press releases that promoted the school and responded to newsworthy events.<sup>318</sup> In November 2010, ABC News published an article and television segment that called DeVry's 90% Representation "[o]verblown" and "grossly misleading" because "many of the graduates [included in the figure] had jobs to begin with that DeVry was taking credit for."<sup>319</sup>

140. DeVry prepared a press release defending the 90% Representation, which the school mischaracterized as reflecting the school's "ab[ility] to connect students with employers

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<sup>313</sup> Appendix A (Collection of Website Advertisements), at 6.

<sup>314</sup> *Id.*

<sup>315</sup> *See supra* § II(B)(3).

<sup>316</sup> Appendix A (Collection of Website Advertisements), at 21.

<sup>317</sup> *Id.*

<sup>318</sup> *See, e.g., id.* at 10–11.

<sup>319</sup> Exhibit 124 (Chris Cuomo, Gerry Wagschal, Alyssa Litoff, et. al., *ABC News Investigates For-Profit Education Again: Recruiters Caught Offering Bad Advice*, ABC NEWS (Nov. 11, 2010), <https://abcnews.go.com/TheLaw/abc-news-investigates-profit-education-recruiters-caught-offering/story?id=12122004>).

[that] are looking to fill positions within high demand career fields such as accounting, technology and health services.”<sup>320</sup>

141. DeVry published at least four other press releases to its website that included the misleading 90% Representation that remained on the website through the end of 2015.<sup>321</sup>

142. DeVry also promoted itself through social media websites like Twitter. On July 29, 2013, the school’s parent company tweeted DeVry’s 90% Representation, which it incorrectly portrayed as the percentage of students finding new jobs within six months of graduating. DeVry’s own Twitter account then promoted the misleading message by retweeting it.<sup>322</sup>



#### Admissions Presentations and Enrollment Materials

143. DeVry also used the 90% Representation repeatedly throughout the enrollment process. When DeVry rolled out the “We Major In Careers” campaign in early 2008, it reworked its enrollment presentations and materials to match the messaging of the campaign, including the standard admissions interview that all prospective students sat through as well as its academic catalogs, brochures, graduate employment statistic program flyers, and career fact sheets.<sup>323</sup>

144. All admissions advisors used the 90% Representation as one of their top “tools to ‘Sell DeVry’ to prospects.”<sup>324</sup> The representation occupied the top position in what they referred

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<sup>320</sup> Exhibit 125 (DEVRY UNIV., *DeVry University Responds to Recent Media Coverage* (Nov. 9, 2010)), at 1. This mischaracterized the 90% Representation as measuring only new jobs that graduates obtained as a result of DeVry’s assistance connecting students with employers. In reality, the ninety percent statistic included graduates’ old jobs that were not attributable to DeVry. *See supra* § II(B)(2).

<sup>321</sup> *See* Exhibit 25 (Notice Letter), at 4.

<sup>322</sup> Appendix A (Collection of Website Advertisements), at 15. As of October 21, 2021, this tweet, and DeVry’s retweet, remain on the companies’ Twitter accounts. *Id.* at n. 15.

<sup>323</sup> Exhibit 67 (Jan. 2, 2008 Email to All Marketing Personnel), at 1. *See generally* Appendix D (Collection of Enrollment Materials).

<sup>324</sup> Exhibit 122 (DEVRY UNIV., *Admission Advisor Interviews: DeVry University Brand Evolution Project* (May 28, 2008)), at 15. *See also* Appendix D (Collection of Enrollment Materials). Although referred to as “admissions advisors,” they functioned as sales representatives whose job function was to convince prospective students to enroll. *See infra* ¶¶ 145–54.

to as “*The DeVry Sizzler*,” a collection of their most effective sales messages when interacting with prospective students.<sup>325</sup>

145. The enrollment process was initiated with a one-on-one interaction with a DeVry employee referred to as an “admissions advisor,” whose role included moving the prospective student from “inquiry to application and eventually to start school.”<sup>326</sup> A good admissions advisor could “build the dream and build the value.”<sup>327</sup>

146. Admissions advisors typically spent one to two hours with prospective students.<sup>328</sup> In that time, they would deliver a scripted presentation or interview, which were used to “‘successfully close’ all potential students[.]”<sup>329</sup>

147. While admissions advisors were trained to “click, click, click,” through other parts of the standard presentation,<sup>330</sup> they were required to read verbatim the job placement statistics slides, which are described below.<sup>331</sup>

148. The job placement slides explicitly portrayed the 90% Representation as a measure of the success that DeVry’s Career Services department had helping students obtain new jobs, which was misleading given the inclusion of “old jobs.”<sup>332</sup> Admissions advisors told prospective students:

Our Career Services team will work one on one with you to prepare you for career success, from helping you find a job opening to crafting your resume and fine tuning your interview skills.<sup>333</sup>

149. The admissions advisors then made the following misleading “transition statement” before showing the 90% Representation: “As a result of this career services assistance, our graduates have shown excellent employment results.”<sup>334</sup>

150. Admissions advisors would then display the 90% Representation and read it aloud “verbatim” to the prospective student. In 2013, the advisors read the following version of the 90% Representation to potential enrollees:

**Excellent Employment Results**

In 2012, 90% of DeVry University graduates from all programs who actively sought employment had careers in their field within six months of graduation.<sup>335</sup>

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<sup>325</sup> Exhibit 122 (DEVRY UNIV., *Admission Advisor Interviews: DeVry University Brand Evolution Project* (May 28, 2008)), at 15.

<sup>326</sup> *Id.* at 6.

<sup>327</sup> *Id.* at 10.

<sup>328</sup> *Id.*

<sup>329</sup> *Id.* at 2.

<sup>330</sup> Exhibit 126 (DEVRY UNIV., *Interview Training Guide* (Nov. 2013)), at 13.

<sup>331</sup> *Id.* at 17.

<sup>332</sup> *Id.* at 16–17.

<sup>333</sup> *Id.* at 16.

<sup>334</sup> *Id.*

<sup>335</sup> Exhibit 126 (DEVRY UNIV., *Interview Training Guide* (Nov. 2013)), at 7 (emphasis in original).

151. Representatives misleadingly prompted prospective students to connect the 90% Representation to the efforts of DeVry's Career Services department by asking, "How do you feel that you can benefit from our career assistance?"<sup>336</sup>
152. After reading the employment results screen verbatim, admissions advisors were required to provide a copy of a flyer reflecting certain employment statistics.<sup>337</sup> Some versions of the flyer, such as the one depicted below, featured the 90% Representation prominently in the margin as supposed "proof" of its Career Services department's ability to help students "attain positions in their career fields:"<sup>338</sup>

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<sup>336</sup> *Id.* DeVry pushed this mischaracterization despite knowing that the ninety percent statistic largely was made up of graduates who found employment without DeVry's assistance because they obtained their "old jobs" long before graduation. *See supra* § II(B)(2) (describing how DeVry internally acknowledged that jobs earned more than 120 days prior to graduation should not be attributed to DeVry's assistance).

<sup>337</sup> Exhibit 127 (DeVry Educ. Grp., Inc., Resp. to Civ. Investigative Demand Interrog. 31, FTC File No. P138402 (Sept. 3, 2014)), at 6; Exhibit 126 (DEVRY UNIV., *Interview Training Guide* (Nov. 2013)), at 17.

<sup>338</sup> *See* Appendix E (Graduate Employment Program Flyers), at 17 (yellow highlighting added). The flyers contained fine print written statements beneath the chart, which are addressed in Section E, *infra*. Other versions of the flyer did not include the 90% Representation verbatim, but they showcased the same calculation for each program of study. *Id.*

# DeVry University Graduate Employment Statistics

<b>2013 Career Services results by degree program</b> Combined statistics for students who graduated from the February 2013, April 2013, June 2013, August 2013, October 2013 and December 2013 classes. <sup>1</sup>	Graduates who were already employed, or actively sought employment, that had careers in fields related to their education within six months of graduation	Average reported annual compensation <sup>2</sup>	Graduates	Graduates who were already employed in fields related to their education or were available to actively seek employment <sup>3</sup>	Graduates who were already employed in fields related to their education or actively sought employment for up to six months after graduation <sup>4</sup>	Graduates who were already employed, or actively sought employment, that had careers in fields related to their education within six months of graduation
<b>ASSOCIATE DEGREE PROGRAMS:</b>						
Accounting	90%	\$37,458	187	99	94	85
Neurodiagnostic Technology	100%	\$47,410	8	8	8	8
Electronics & Computer Technology	90%	\$38,350	254	164	149	135
Health Information Technology	83%	\$32,375	719	416	383	320
Network Systems Administration	87%	\$37,691	681	389	359	315
Web Graphic Design	71%	\$30,375	310	101	78	56
<b>Associate Degree Total<sup>5</sup></b>	<b>85%</b>	<b>\$35,555</b>	<b>2159</b>	<b>1177</b>	<b>1071</b>	<b>919</b>
<b>BACHELOR'S DEGREE PROGRAMS:</b>						
Accounting	100%	\$29,800	11	7	5	5
Biomedical Engineering Technology	86%	\$42,238	95	79	75	65
Business Administration	92%	\$40,322	1833	1440	1373	1271
Clinical Laboratory Science	85%	\$46,905	26	21	20	17
Communications	100%	\$44,171	7	6	5	5
Computer Engineering Technology	91%	\$44,844	126	98	98	90
Computer Information Systems	86%	\$46,856	881	686	648	563
Electronics Engineering Technology	92%	\$49,551	356	300	289	267
Game & Simulation Programming	72%	\$43,337	285	190	163	118
Healthcare Administration	66%	\$50,000	4	3	3	2
Justice Administration	90%	\$30,142	54	24	21	19
Management	97%	\$40,623	106	83	79	77
Multimedia Design & Development	75%	\$30,631	305	188	174	132
Network & Communications Management	93%	\$46,733	673	558	533	498
Technical Management	94%	\$48,863	3596	2867	2788	2631
<b>Bachelor's Degree Total<sup>5</sup></b>	<b>91%</b>	<b>\$45,747</b>	<b>8358</b>	<b>6550</b>	<b>6274</b>	<b>5760</b>
<b>All Undergraduate Degree Total</b>	<b>90%</b>	<b>\$44,295</b>	<b>10517</b>	<b>7727</b>	<b>7345</b>	<b>6679</b>

## We're always here for you.

Career Services professionals across the DeVry system work diligently to partner with graduates to attain positions in their career fields. Although DeVry cannot guarantee employment, we're dedicated to helping guide and motivate our students and graduates through the career process. We work with them on career planning, job interviewing and resumé preparation. Students' career efforts are also supported by an employer database containing information on national and local companies, and virtual and onsite Career Fairs held periodically to enable our students to meet and network with recruiters of DeVry graduates. As a student at DeVry, you'll have the opportunity to partner with one of the most dedicated career services teams in education.

## The proof is in the numbers.

In 2013, 90% of DeVry University graduates actively seeking employment had careers in their field within 6 months of graduation.<sup>6</sup>

153. Admissions advisors also were trained to answer employment-related questions from prospective students by highlighting DeVry's job placement statistics and attributing them solely to the assistance provided by Career Services staff:

**Q:** What is DeVry's employment record?

**A:** [A]ll DeVry programs and locations combined, 91% [in 2010, or 88% in 2011] of graduates in the active job market were employed in their chosen field within 6 months of graduation. Active job market includes those employed prior to graduation.<sup>339</sup>

**Q:** Will DeVry find me a job when I graduate?

<sup>339</sup> Exhibit 128 (DEVRY UNIV., *Admissions Compliance Requirements Guide* (2010)), at 13; Exhibit 129 (DEVRY UNIV., *Admissions Compliance Requirements Guide* (2011)), at 13.

A: [Career] services are very successful, as evidenced by our graduate employment statistics.<sup>340</sup>

Q: What is DeVry's employment record?

A: System-wide of all 2010 [or 2011] DeVry graduates in the active job market, . . . 89% [or 88% in 2011] of those earning bachelor's degrees, were employed in their field within 6 months of graduation. Active job market includes those employed prior to graduation.<sup>341</sup>

154. These scripted statements were misleading because most of the jobs reflected in DeVry's employment statistics were obtained by mid-career students without any assistance from DeVry's Career Services department.<sup>342</sup>

155. Despite including ambiguous phrases like "employed prior to graduation" or "already employed" in some versions of the 90% Representation, DeVry never clearly disclosed that DeVry was counting its mid-career students' "old jobs" that were not attributable to a DeVry education. To the contrary, DeVry ran a number of advertisements pushing the perception that its students were landing *new* jobs shortly before graduating because employers were so eager to hire students with a DeVry education.<sup>343</sup>

156. DeVry also included the 90% Representation in its academic catalogs.<sup>344</sup> The representation typically was placed near the front of the catalogs in the form of a letter directly from the President of DeVry in the following variations:

- "[S]ince 1975, DeVry has graduated more than 230,000 students at the undergraduate level. Of graduates in the active job market, 90 percent were employed in career-related positions within six months of graduation. It's no wonder we say with conviction that at DeVry, we major in careers."<sup>345</sup>

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<sup>340</sup> Exhibit 130 (DEVRY UNIV., *Admissions Compliance Requirements Guide* (2012)), at 14; Exhibit 131 (DEVRY UNIV., *Admissions Compliance Requirements Guide* (2013)), at 14.

<sup>341</sup> Exhibit 130 (DEVRY UNIV., *Admissions Compliance Requirements Guide* (2012)), at 14; Exhibit 131 (DEVRY UNIV., *Admissions Compliance Requirements Guide* (2013)), at 14.

<sup>342</sup> See *supra* § II(B)(3).

<sup>343</sup> See, e.g., Appendix A (Collection of Website Advertisements), at 4 (showing a picture of a student stating, "As a senior, before I even graduated, I had a job with Tellabs as a software development engineer."); Appendix C (Collection of TV, Radio, & Other Media Advertisements), at 3 ("Wallpaper") (showing a student bragging that he "had multiple job offers before graduating"); and Appendix B (Collection of Print Advertisements), 4–5 ("Working Mother") (presenting a testimonial from a mother who was hired as an auditor while still a student).

<sup>344</sup> Appendix D (Collection of Enrollment Materials), at 2008–2009 Academic Catalog Letter from President and 2009–2010 Academic Catalog Letter from President. Exhibit 132 (DEVRY UNIV., *2008–2009 Academic Catalog* (July 16, 2008)), at 4; Exhibit 133 (DEVRY UNIV., *2009–2010 Academic Catalog* (Nov. 30, 2009)), at 3.

<sup>345</sup> Exhibit 132 (DEVRY UNIV., *2008–2009 Academic Catalog* (July 16, 2008)), at 4. See Appendix D (Collection of Enrollment Materials).

- “For over 30 years, of DeVry graduates in the active job market or already employed, 90 percent have enjoyed careers in their field of study within six months of graduation.”<sup>346</sup>

157. DeVry even arranged for the “hold music” on its automated phone system to recite the 90% Representation with the following message:

Since 1975, 90% of DeVry undergraduates in the active job market were employed in career-related positions [or “in their field of study”] within six months of graduation.<sup>347</sup>

158. Therefore, by the time a prospective student enrolled at DeVry, they were likely to have seen the 90% Representation in DeVry’s advertisements or on its website; they were certain to have been shown it during the enrollment process and to have had it read to them; and they were told that the ninety percent statistic reflected DeVry’s success rate when helping graduates obtain new jobs.<sup>348</sup> As explained above, all of DeVry’s uses of the 90% Representation misled prospective students to believe that they had very high chances of obtaining in-field jobs using their DeVry education, when their actual chances were little better than a coin flip.<sup>349</sup>

#### **E. The 90% Representation Was Important to Students When They Decided to Enroll at DeVry**

159. Many former DeVry students have attested that graduate job placement rates were central to their decision to attend DeVry and that DeVry’s 90% Representation had a significant impact on their decisions to enroll.

160. Sworn borrower statements like the ones below demonstrate the importance of the 90% Representation to borrowers’ decisions to attend DeVry:

- 2008, Online and Columbus, OH: “They promised that 90% of potential students they would find job placement within 6 months of graduating. This was not true and was the biggest reason I enrolled at devry. I heard so many stories during the last few months there about people struggling to find jobs with their degrees from DeVry. I have so much student loan debt and nothing to show for it. I can’t afford to go to another institution because my federal loans are almost exhausted and I cant afford to pay out of pocket.”

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<sup>346</sup> Exhibit 133 (DEVRY UNIV., 2009–2010 *Academic Catalog* (Nov. 30, 2009)), at 3. See Appendix D (Collection of Enrollment Materials). See also *infra* § II(F) (describing how using language like “already employed” within the 90% Representation was insufficient to overcome the misleading nature of the surrounding contextual language).

<sup>347</sup> Exhibit 134 (Email from ██████████, Senior Director, Communications and Investor Relations, DeVry Inc., to ██████████, Regulatory Compliance Manager, *Re: Music-On-Hold* (Apr. 17, ████████)) at 2 (discussing plan to include the 90% Representation when callers were placed on hold). There is no indication that the phone message included additional statements concerning the terms used in the 90% Representation or explaining which types of students were included or excluded from the statistic. See *id.* See also *infra* § II(F).

<sup>348</sup> See *supra* § II(A).

<sup>349</sup> See *supra* § II(B)(4).

- 2009, Tinley Park, IL: “With the advertisements they showed they had very high employment success rates of 90 percent of graduates getting employment within their field within six months of graduation. . . . The advertisements DeVry University used mentioned above and in the FTC lawsuit were one of the main reasons why I chose to go to DeVry University because they made it sound like you were guaranteed to get a good job after you had graduated from their school. I seen their advertisements on the television, which got my attention and wanted me to go to DeVry University. It has been two years since I graduated and I still don't have a good job like they said I would.”
- 2010, Downers Grove, IL: “DeVry falsey [sic] advertising since at least 2008 by claiming that 90% of DeVry graduates actively seeking employment were able to find jobs in their field of study within 6 months of graduation. I was unable to obtain or gain interest from employers for jobs relating to accounting after graduation . . . The advertising and promise that I would be able to land a job after graduation played a huge part in my decision to attend.”
- 2011, Online: “Around 2011 when I was researching schools to attend, I decided after seeing advertisements in which DeVry University claimed that 90 percent of their graduated students actively seeking employment was hired in their career field within 6 months, that this was the best school for me to obtain employment in my field of study. . . . I completed two degrees with DeVry University and as of 2017, I am still not employed in my career field.”
- 2012, Chicago, IL: “I was contradicting [sic] on going to Arizona State University when I decided to continue my education because it was really affordable and a nationally recognized college for business. I seen [sic] a DeVry University commercial and seen that they were advertising that 90% of students who graduate will be placed in their career field within 6 months after graduation and will earn 15% more than comparable colleges. I am very disappointed in DeVry because they used inaccurate information to lure students like me into applying at their school. DeVry is very expensive, but I thought it was worth it for what they were promising.”
- 2013, Chicago, IL: “On the school website prior to me enrolling, they had stated that 90% of graduates find jobs in their fields within 6 months of graduation. This was the main reason I took out student loans to attend this school and a couple years later they got sued for misrepresenting their stats.”
- 2014, Online: “I enrolled to DeVry University because I saw an advertisement on their website stating that ‘90% of its graduates actively seeking employment landed jobs in their field within six months of graduation and that graduates had 15% higher incomes one year after graduation on average than the graduates of all other colleges or universities’. These claims were also advertised on their TV commercials. I enrolled there based on the fact that I thought I would have good paying job within my degree field within a short time after I graduated.”
- 2015, Decatur, GA: “Devry said in advertising I had seen, which convinced me to apply to them, that 90% of their graduates had jobs in their fields within six months

of their graduation. That was not the case. They even admit it as such after the FTC brought up charges.”<sup>350</sup>

161. Based on statistical sampling of DeVry borrower defense applications, fifty-seven percent of borrower applicants who enrolled at DeVry between 2008 and 2015 allege they were misled by the 90% Representation.<sup>351</sup> With more than 11,000 applications currently pending, this means that almost 7,000 DeVry borrowers to date have complained about the 90% Representation.<sup>352</sup>

<b>Year of Enrollment</b>	<b>Percentage of Borrower Applications Alleging They Were Misled By the 90% Representation</b>
2008	64%
2009	59%
2010	59%
2011	57%
2012	54%
2013	49%
2014	47%
2015	48%
<b>Overall Average:</b>	<b>57%</b>

162. These consistently high numbers demonstrate that the 90% Representation was highly effective at misleading typical prospective students, who relied on the representation when enrolling at DeVry.

163. The efficacy of the misleading 90% Representation also is shown in DeVry’s own marketing documents.<sup>353</sup> DeVry referred to the 90% Representation internally as one of its “top tools to ‘Sell DeVry’ to prospects”<sup>354</sup> and assigned it top position in the collection of sales messages known as “*The DeVry Sizzler*” because it was so effective at convincing prospective students to enroll.<sup>355</sup>

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<sup>350</sup> Appendix F (Statements of Borrower Applicants that They Relied on DeVry’s Misrepresentations).

<sup>351</sup> To perform this analysis, BDG reviewed a random selection of 822 applications (out of over 15,000 applications) submitted by borrowers who enrolled from 2008 to 2015. *See also* Appendix F (Statements of Borrower Applicants that They Relied on DeVry’s Misrepresentations).

<sup>352</sup> As of October 22, 2021, 11,853 open cases from borrowers with enrollment start dates between January 1, 2008 and December 31, 2015 are pending with the Department.

<sup>353</sup> *See generally* Exhibit 122 (DEVRY UNIV., *Admission Advisor Interviews: DeVry University Brand Evolution Project* (May 28, 2008)), at 15.

<sup>354</sup> *Id.* [*Admission Advisor Interviews* at 15.] *See also* Appendix D (Collection of Enrollment Materials).

<sup>355</sup> Exhibit 122 (DEVRY UNIV., *Admission Advisor Interviews: DeVry University Brand Evolution Project* (May 28, 2008)), at 15.

164. The 90% Representation made the claim that a very high percentage of DeVry graduates who looked for new jobs in their fields were able to find them within six months. This claim was a significant factor for prospective students in choosing to attend DeVry.

**F. DeVry's Written Statements Did Not Overcome the Misleading Nature of the 90% Representation**

165. DeVry usually included some form of written explanatory statement in the advertisements and promotional materials that featured the 90% Representation.<sup>356</sup>

166. However, DeVry's written statements were highly inconsistent, and sometimes were omitted altogether. Moreover, all variations of the written statements were insufficient to cure the misleading nature of the 90% Representation because (1) they failed to adequately explain the terms and data used in the 90% Representation and (2) they were not prominently displayed in a manner and location where they were likely to be seen.<sup>357</sup>

167. DeVry also included broad statements in its enrollment materials and academic catalogs attempting to disclaim any guarantee of employment. These statements failed to address the misleading nature of the 90% Representation and were not prominently displayed.<sup>358</sup>

**1. Written Statements Using the 90% Representation Failed to Adequately Explain Its Terms or Underlying Data**

168. In most instances where DeVry published the 90% Representation, DeVry included a written statement purporting to explain how the 90% Representation was calculated. The wording of these statements varied considerably, but they consistently failed to cure the misleading nature of the 90% Representation.

Failure to Clarify DeVry's Calculation of the 90% Representation

169. DeVry promoted its 90% Representation in a variety of media formats, including in magazines, online, in television and radio commercials, and on social media such as YouTube and Twitter.<sup>359</sup> None of the written statements clarified that DeVry calculated the statistic by including graduates with "old jobs" that were not attributable to DeVry and by excluding graduates who had, or may have, conducted active job searches.<sup>360</sup>

170. Between 2008 and 2015, DeVry published the 90% Representation with various renditions of the following additional written statements, for example:

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<sup>356</sup> *Infra* ¶¶ 169–75 (describing each document in detail and finding that none of the statements were sufficient to overcome the misleading nature of the statements).

<sup>357</sup> *See infra* § II(F)(2).

<sup>358</sup> *See infra* § II(F)(3).

<sup>359</sup> *See supra* § II(D).

<sup>360</sup> *See* Appendix G (Collection of Written Statements).

- “\*System-wide for the 10-year period ending 2/07 of those who actively sought employment.”<sup>361</sup>
- “90.2% of those in the active job market were employed in career-related positions within six months of graduation.”<sup>362</sup>
- “Active job market includes those employed prior to graduation[:]”<sup>363</sup> and/or
- “Figure based on self-reported data from bachelor’s and associate degree graduates. Does not include graduates not actively seeking employment, as determined by DeVry University Career Services or graduates who did not report data on employment status to DeVry University Career Services.”<sup>364</sup>

171. While these statements did sometimes state that DeVry’s Career Services department excluded graduates who it deemed inactive in their job searches, the statements failed to explain that the Career Services department was excluding graduates merely because they accepted positions outside of their fields of study; chose to conduct independent job searches; or chose not to use the job search tools suggested by DeVry’s Career Services department.<sup>365</sup>

172. The statements also did not correct prospective students’ impression that the ninety percent statistic was based on *new* jobs, because it did not explain that the graduates who were “employed at graduation” actually became employed long before they graduated from or even enrolled at DeVry and simply remained in their “old jobs,” which were not attributable to DeVry.<sup>366</sup>

173. Even if the written statements above could be read to disclose the inclusion of graduates who remained in their “old jobs,” the statements still failed to disclose that those students were a significant portion of the “successful” outcomes DeVry was claiming.<sup>367</sup> DeVry’s outside marketing team pointed out this deficiency to DeVry in relation to a similarly worded statement:

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<sup>361</sup> See Appendix G (Collection of Written Statements), at 1 (PC Mag). The 90% Representation in the *Working Mother* magazine and the *JET Magazine* included an asterisk that merely included language about the time period for collected data and did not include any additional explanation concerning the representation. *Id.* at 3 (Working Mother) (utilizing the 90% Representation but failing to include any description of how the ninety percent statistic was calculated or defining any terms including in the advertisement); 4 (JET Mag) (including an asterisk that merely informed students that the 90% Representation included undergraduate students who graduated since 1975).

<sup>362</sup> Appendix G (Collection of Written Statements), at 5 (Homepage 2008); see also *id.* at 7 (Homepage 2010); 8 (Homepage 2011); 9 (Homepage 2012).

<sup>363</sup> See *id.* at 6 (Discover DeVry Brochure 2009), 7 (Homepage 2010), 9 (Homepage 2012).

<sup>364</sup> See *id.* at 11 (Homepage 2013), 12 (Homepage 2014). See also *id.* at 13 (DeVry Difference), 14 (Guide for HS), 15 (Why DeVry 2013), 22 (Graduation Present), 23 (New Office), 24 (Career Coaching) (showing a slight variation of the written statement). The messages and stories that DeVry intended to convey through these advertisements are explained in Section II(D), *supra*.

<sup>365</sup> See *supra* § II(B)(2)–(3).

<sup>366</sup> See *supra* § II(B)(2).

<sup>367</sup> See *supra* § II(B)(2); see also *id.* at ¶ 41 (graduates who wished to keep their old jobs were a majority of DeVry’s students in some cases).

I think it [the written statement] will beg the question of [how] many of the 88 percent had retained their positions versus those that found a job after graduation. Another question could be why does [DeVry] count the graduates [who] already had jobs in the graduate employment stats?<sup>368</sup>

#### Failure to Include Written Statements in All Advertisements

174. DeVry failed to include any additional explanatory language in several television, YouTube, Twitter, and radio advertisements and during its recruiting and enrollment process where DeVry promoted the 90% Representation.<sup>369</sup>
175. Because DeVry failed to include written statements with the 90% Representation every time it was published, many students seeking borrower defense relief would have seen or heard the 90% Representation without any additional explanatory statement describing the underlying data calculation conducted by DeVry.
176. In summary, when DeVry actually included a written statement in its advertising of the 90% Representation, the various forms of written statements did not actually correct the misleading aspects of the 90% Representation. In particular, the written statements did not explain that the 90% Representation included the “old jobs” of graduates obtained well before graduation or enrollment. They also did not explain that the 90% Representation excluded graduates who conducted job searches independently of the Career Services office, whose job searches resulted in out-of-field employment, or who actively searched for employment in a limited geographic area.

#### **2. Written Statements Regarding the 90% Representation Were Not Prominently Displayed**

177. Not only were DeVry’s written statements deficient substantively, they also were stated in fine print and located where prospective students were unlikely to see them.
178. The written statements included in the magazine advertisements were at the bottom of the page in small font without any specific formatting to draw the reader’s attention to the statements.<sup>370</sup>

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<sup>368</sup> Exhibit 135 (Email from ██████████, Sard Verbinen & Co., to ██████████, DeVry Univ., *Re: career stat* (Oct. 25, 2010)), at 1.

<sup>369</sup> See Appendix C (Collection of TV, Radio, & Other Media Advertisements), at 3 (“Wallpaper”); 1 (“Good Idea”). Appendix A (Collection of Website Advertisements), at 19. DeVry also promoted the 90% Representation in its call waiting “hold music” recording on its automatic phone system. There is no evidence that the phone message contained any additional statements attempting to explain the methodology behind the representation. See *supra* § II at ¶ 157.

<sup>370</sup> See Appendix B (Collection of Print Advertisements), at 1 (PC Magazine); 3 (JET Magazine).

179. When displaying the 90% Representation on its website from 2008 through 2013, DeVry typically posted written statements in small, gray text at the bottom of the webpage.<sup>371</sup>
180. In some instances, DeVry webpages on which the 90% Representation was displayed did not include any additional language attempting to define the terms. To find any additional information, the visitor would have to click on the graphic where the representation was displayed, navigate to a new webpage, and then click another link to open a PDF that included some further information about the calculation of the 90% Representation.<sup>372</sup> On the PDF document, an entire paragraph of fine print was included at the bottom of the page, and there was no accompanying asterisk that would lead the visitor to the fine print.<sup>373</sup>
181. In some of the television advertisements with the 90% Representation, DeVry briefly displayed a written statement in small font at the bottom of the screen.<sup>374</sup> The typeface of the on-screen statement was so small that a typical viewer would not be able to read it. Further, as mentioned above, DeVry did not include a statement attempting to explain the 90% Representation calculation in all television advertisements.<sup>375</sup>
182. Unsurprisingly, given the obscure placement of these written statements, DeVry's students did not see them. DeVry acknowledged in a presentation that "[s]tudents don't always read the fine print,"<sup>376</sup> and a senior DeVry Consumer Insights Specialist concluded that "our alumni . . . don't pay attention to the fine print."<sup>377</sup>

### 3. Written Statements Disclaiming Any Guarantee of Employment

183. Several of the documents that DeVry provided to students upon enrollment broadly stated that DeVry did not guarantee employment.<sup>378</sup>
184. Specifically, the DeVry enrollment agreements from at least 2008 through 2010, the academic catalogs from 2008 through 2015, and the graduate employment rates program

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<sup>371</sup> See, e.g., Appendix G (Collection of Written Statements), at 5 (Homepage 2008), 7 (Homepage 2009), 15 (Why DeVry 2013). In or around 2014, this text was moved directly next to the 90% Representation, but it appeared in fine print with no designation to draw the reader's attention. See *id.* at 12 (Homepage 2014).

<sup>372</sup> Exhibit 136 (*Why DeVry: Career Services Employment Statistics*, DEVRY UNIV. (Jan. 4, 2008), <http://www.devry.edu/whydevry/career-services/statistics.jsp> [<https://web.archive.org/web/20080104231321/http://www.devry.edu/whydevry/career-services/statistics.jsp>]). The link led readers to the graduate employment statistics chart for 2006 through 2007. See also Appendix E (Graduate Employment Program Flyers), at Oct. 2006; Feb. 2007; June 2007.

<sup>373</sup> See, e.g., Appendix E (Graduate Employment Program Flyers), at Oct. 2006; Feb. 2007; June 2007 (failing to include an accompanying asterisk).

<sup>374</sup> See Appendix C (Collection of TV, Radio, & Other Media Advertisements), at 6 ("Graduation Present" (2013) at 00:19–00:26); 8 ("New Office!" (2014) at 00:16–00:21); 4 (90% YouTube Advertisement, "Career Coaching") at 00:19–00:26).

<sup>375</sup> Appendix C (Collection of TV, Radio, & Other Media Advertisements), at 3 ("Wallpaper").

<sup>376</sup> See *supra* § II, ¶ 97. See also Exhibit 110 (Career Positioning Presentation) (Feb. 16, 2009), at 11.

<sup>377</sup> See Exhibit 109 (Email from ██████████, Senior Consumer Insights Specialist, DeVry Univ., to ██████████ ██████████, Director, Consumer and Market Insights, DeVry Univ. et. al., *Re: Answers to ██████████'s Questions* (Feb. 4 ██████████)), at 2.

<sup>378</sup> See Appendix G (Collection of Written Statements), at 25–30.

flyers from 2006 through 2013 contained language that DeVry cannot guarantee employment.<sup>379</sup>

185. These statements were irrelevant to the 90% Representation, which is not a guarantee of employment. The 90% Representation claims that a high percentage — not all — of DeVry’s job-seeking graduates find jobs within six months. That claim is not corrected by a broad statement that jobs were not guaranteed.

## **G. Conclusions**

186. The evidence relating to DeVry’s use of the 90% Representation establishes by a preponderance of the evidence that, between 2008 and 2015:

- DeVry, through its advertising and enrollment efforts, prominently featured the claim that ninety percent of DeVry graduates who actively sought employment obtained jobs in their fields of study within six months of graduation.
- DeVry significantly and misleadingly inflated the ninety percent calculation by including mid-career students who did not obtain new jobs but rather remained in their “old jobs” and by excluding graduates who actively sought employment or who DeVry considered “inactive” based on speculative criteria.
- DeVry was aware that its advertising campaign was misleading, and a number of DeVry employees raised concerns about it. Despite the concerns about its misleading nature, DeVry continued to advertise the 90% Representation extensively.

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<sup>379</sup> Appendix G (Collection of Written Statements), at 25–26 (Enrollment Agreements 2008, 2010). *See, e.g.*, Exhibit 62 (DeVry Response to BD Application, Mar. 24, 2021) at 4.