

MEMORANDUM OF AGREEMENT

BETWEEN

THE FEDERAL TRADE COMMISSION

AND

THE DEPARTMENT OF VETERANS AFFAIRS

This Memorandum of Agreement (MOA) is executed by the Director of Education Service, Veterans Benefits Administration, Department of Veterans Affairs (VA), and the Director, Bureau of Consumer Protection, Federal Trade Commission (FTC or Commission), to provide mutual assistance in the oversight and enforcement of laws pertaining to the advertising, sales, and enrollment practices of institutions of higher learning and other establishments that offer training for military education benefits recipients.

Purpose and Authority

Pursuant to 38 U.S.C. § 3694, the Secretary of Veterans Affairs may use the facilities and services of any other Federal department or agency when administering VA's educational benefits programs, provided that the Secretary enter into a proper agreement with that department or agency.

The Secretary, in accordance with 38 U.S.C. § 3696(c), must enter into an agreement with the FTC. Upon referral from the VA consistent with this MOA, and subject to the FTC's discretion, the FTC shall utilize, where appropriate, its services and facilities, consistent with its available resources, in carrying out investigations into deceptive or unfair advertising, sales, or enrollment practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

Responsibilities and Procedures

1. Referrals for Investigation. VA, by its Director of Education Service, may request that the FTC conduct an investigation of an institution approved for the enrollment of eligible veterans. All referrals shall be directed to the Associate Director of the Division of Financial Practices, Bureau of Consumer Protection, FTC.

The FTC also operates the Consumer Sentinel Network (CSN), a web-based complaints database that provides law enforcement members with access to millions of consumer complaints. The FTC, VA, and Departments of Defense (DoD) and Education (ED) upload the consumer complaints they receive about educational institutions into the CSN. Although VA has access to the CSN, this MOA does not address the submission of complaints to the CSN, nor does such a submission constitute a referral under the terms of this MOA.

2. Content of Referral. In the referral, the Director of Education Service shall provide a written explanation of the basis for his or her belief that the institution subject to the referral is utilizing, or has utilized, advertising, sales, or enrollment practices of any type that are deceptive. The Director of Education Service shall submit to the FTC documentary or other information in support of his or her view, which may include information on the size of the institution, the number of veterans enrolled, and any other data or information relevant to determining the impact of the school's practices on veterans and other consumers.

- a. *Confidentiality of Referral.* Both parties shall consider the content of any referral made pursuant to this MOA as nonpublic information and, except as otherwise required by applicable law, shall take all actions reasonably necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to the content of every such referral.

3. FTC Consideration of Referrals. The Director of the Bureau of Consumer Protection shall evaluate the information provided by VA and shall, in his or her discretion, determine whether acceptance of the referral is consistent with the Commission's existing investigative, enforcement, and resource priorities. In determining whether to accept a referral, the Director may consider a number of factors, including but not limited to: the type of violations alleged; whether the violations allegedly occurred on a regular and ongoing basis; the nature and amount of consumer injury at issue and the number of consumers affected; the likelihood of preventing future unlawful conduct and securing redress or other relief; and whether other state or federal law enforcement agencies have investigated the institution for similar or related violations. The Associate Director of the Division of Financial Practices, or the Associate Director's designee, shall notify VA of the Director of the Bureau of Consumer Protection's decision with regard to the referral.

4. Impact of Referral Determinations. In no event shall the acceptance or rejection of a referral be construed as a decision by the Commission about the merits of the matters referred and in no event shall the rejection of a referral be the sole basis upon which VA shall determine that an institution has not violated 38 U.S.C. § 3696(a). Nothing in this MOA precludes VA from rendering a decision under Section 3696(a).

5. FTC Staff Investigation and Preliminary Findings. Should the Director of the Bureau of Consumer Protection accept a referral, he or she will direct FTC staff to conduct such investigation as it deems necessary and to prepare preliminary findings of whether a referred institution may have utilized deceptive advertising, marketing, sales, and enrollment practices that may be prohibited by Section 5 of the FTC Act, 15 U.S.C. § 45(a). For purposes of this MOA only, "preliminary findings" shall mean either a nonpublic analysis prepared by FTC staff or an administrative or federal district court complaint approved by the Commission and which contains the FTC's allegations regarding the referred institution's violations.

6. Investigative Assistance by VA Staff. During the FTC's consideration of the referral and any subsequent investigation, VA staff in its Education Service with knowledge of the referred institution shall be available to respond to requests for information from FTC staff as needed. Upon written request from the FTC, VA shall provide FTC staff with access to advertising, sales,

and enrollment materials that VA obtained from a referred institution pursuant to 38 U.S.C. § 3696(b).

7. Requests for Preliminary Findings. Upon written request from VA, FTC staff shall provide the preliminary findings described in Paragraph 5 to VA at the conclusion of the investigation.

- a. *Requests for a Law Enforcement Purpose.* In accordance with 16 C.F.R. § 4.11(c), VA may obtain the preliminary findings by filing a request with the General Counsel of the FTC containing a certification that such information will be maintained in confidence and will be used only for official law enforcement purposes. The certificate must also describe the nature of the law enforcement activity and the anticipated relevance of the information to that activity.
- b. *Requests for Purposes other than Law Enforcement.* In accordance with 16 C.F.R. § 4.11(d), VA may request a copy of the preliminary findings from the General Counsel of the FTC for purposes other than law enforcement. However, pursuant to sections 6(f) and 21(f) of the FTC Act, the General Counsel may be required to redact certain nonpublic information from the preliminary findings.

8. Impact of Preliminary Findings. The FTC preliminary findings described under Paragraph 5 are intended for the use of VA in rendering its judgment under 38 U.S.C. §3696(a). The preliminary findings are not a determination by the Commission as to whether the institution has been or is violating Section 5 of the FTC Act, an order finalized thereunder, or any other laws enforced by the FTC.

9. VA Response to Preliminary Findings. Within 90 days of VA's receipt of the FTC preliminary findings, VA shall take appropriate action with respect to the subject matter of the preliminary findings. When practicable and appropriate, before VA issues press releases, announcements, guidance, or other public documents pertaining to educational institutions investigated by the FTC pursuant to this MOA, VA will notify the FTC in advance of the planned release or as soon as practicable thereafter. VA shall notify the FTC of the final action taken with regard to the alleged violation(s) of section 3696(a) by an institution.

10. FTC Actions. Upon issuing press releases, announcements (including the issuance or filing of a law enforcement complaint under laws the FTC enforces), guidance, or other public documents pertaining to educational institutions investigated by the FTC pursuant to this MOA, the FTC will notify VA. The FTC shall provide VA with all final orders entered by the Commission or federal courts against institutions investigated by the FTC pursuant to this MOA.

11. Third-Party Information Requests. In the event a third party makes a request (including, but not limited to, any demand, subpoena, court order, or request made pursuant to the Freedom of Information Act or the Privacy Act) for access to or copies of nonpublic information received by one party to this MOA from the other party to this MOA, the party receiving the request shall:

- a. As soon as practicable, notify the providing party in writing of the request and include a copy of the request;

- b. If the request is made pursuant to the Freedom of Information Act or the Privacy Act, refer, if practicable, such request for material to the providing party for a direct response to the requestor. If making such a referral is not practicable, the receiving party shall consult with the providing party in connection with its response to the requestor and prior to disclosing the information to the requestor.
- c. If the request is not made pursuant to the Freedom of Information Act or the Privacy Act, before complying with the third party request, consult with the providing party and, to the extent practicable, give the providing party a reasonable opportunity to respond to the demand or request and to assert all reasonable and appropriate legal exemptions or privileges on its own behalf; and
- d. Consent to an application by the providing party to intervene in any action to preserve, protect, and maintain the confidentiality of such information or any related privilege.

General Provisions

This MOA does not modify in any way the ability and responsibility of the parties to enforce their respective statutes and regulations. Specifically, nothing in this MOA shall require the FTC, or limit the FTC's authority, to investigate whether educational institutions or others have violated the Federal Trade Commission Act, 15 U.S.C. § 45, by committing unfair or deceptive sales, advertising, or enrollment practices, or any other laws enforced by the FTC. The FTC may use materials obtained pursuant to this MOA when carrying out investigations under the FTC Act and other laws.

Except as otherwise required by applicable law, the parties shall take all actions reasonably necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to all nonpublic information provided pursuant to this MOA. Nothing in this MOA waives or alters any privilege, claim of confidentiality, or other protection applicable to information provided pursuant to this MOA.

Nothing in this MOA shall be deemed to waive or alter any existing statutory or regulatory requirements governing the disclosure of nonpublic information. Each party will maintain nonpublic information in a manner that conforms to the standards that apply to federal agencies for the protection of the confidentiality of nonpublic information and personally identifiable information and for data security and integrity, including the Privacy Act, 5 U.S.C. § 552a; the Freedom of Information Act, 5 U.S.C. § 552; Sections 6(f) and 21(f) of the FTC Act, 15 U.S.C. §§ 46(f), 57b-2(f); Commission Rules 4.9-4.11, 16 C.F.R. §§ 4.9-4.11; and 38 C.F.R. §§ 1.460-1.603.

Liaison

For purposes of this agreement, the Associate Director of the Division of Financial Practices, Bureau of Consumer Protection, shall be the FTC's liaison, and the Assistant Director, Oversight and Accountability, Veterans Benefits Administration, shall be VA's liaison.

Where this MOA requires VA to provide notice to the FTC, such notice shall be provided to the Associate Director of the Division of Financial Practices, Bureau of Consumer Protection. Where this MOA requires that the FTC provide notice to VA, such notice shall be provided to the Assistant Director, Oversight and Accountability, Veterans Benefits Administration.

Notwithstanding the above liaison provisions, all referrals for investigation must be made by the Director of Education Service, and all decisions to accept referrals must be made by the Director of the Bureau of Consumer Protection.

Revisions, Additions, and Modifications

The parties intend to periodically review the functioning and effectiveness of this MOA with a view to altering the scope or operation of this MOA as they deem necessary. Such review shall take place at least once every three years. Revisions, alterations, or modifications to this MOA must be agreed to in writing by both parties and will be pursued expeditiously.

Duration of Agreement

This MOA shall be effective as of the last date of the signatures below and will terminate when agreed upon by both parties.

By: Federal Trade Commission

/signed/

Date: 11/29/2018

Andrew Smith
Director
Bureau of Consumer Protection
Federal Trade Commission

By: Department of Veterans Affairs

/signed/

Date: 11/26/2018

Robert M. Worley II
Director
Education Service
Veterans Benefits Administration