

Federal Actions Directed at DeVry Education Group Provide Compliance-Related Insight

By Don Sutherland

In his *Discourses*, Epictetus observed, “To a reasonable creature, that alone is insupportable which is unreasonable; but everything reasonable may be supported.” That insight from some 1,900 years ago has great relevance when it comes to compliance. Put simply, any claim that is made should readily be supportable. If not, such a claim is unreasonable.

On January 27, DeVry Education Group was hit by actions from the Department of Education and the Federal Trade Commission (FTC) concerning the organization’s employment claims. While it is premature to render judgment on the allegations contained in the Department of Education’s notice and FTC’s lawsuit, those developments provide insight into federal expectations related to institutional compliance.

Compliance is enormously important for purposes of accreditation. Among the Middle States Commission on Higher Education’s (MSCHE) requirements of affiliation is the provision that, “The institution complies with all applicable government (Usually Federal and state) laws and regulations.” MSCHE Standard II (Ethics and Integrity) declares, “An accredited institution possesses and demonstrates the following attributes or activities: ...compliance with all applicable federal, state, and Commission reporting policies, regulations, and requirements...” Standard II also requires “honesty and truthfulness” in an institution’s “public relations announcements, advertisements, recruiting and admissions materials and practices, as well as in internal communications.”

A combination of growing competition for enrollment, rising public and federal expectations, and an institution’s own ambitious mission and vision can create intense pressures for institution’s to differentiate themselves from their peers. Such pressure can create compliance risks, as marketing pushes the bounds of what can be supported by the evidence. At the time the Department of Education and FTC launched their actions against the DeVry Education Group, DeVry had been experiencing a decline in enrollment, revenue that had been declining an average of 3% per year during the 2011-2015 period, a vision “to become a leading global provider of career-oriented educational services” and a declaration that it would “strive to achieve superior student outcomes...” In that context, DeVry had made the claim that “90% of DeVry graduates system-wide in the active job market held positions in their fields of study within 6 months of graduation.”

The Department of Education and FTC have contested that claim. Without commenting on the merit of the allegations, a look the Department of Education’s notice and FTC’s lawsuit provides a useful framework for helping mitigate compliance risk when it comes to an institution’s reporting on student outcomes. A quick sketch of a useful framework based, in large part, on those actions follows:

- An institution is responsible for all of its own representations and those representations that are repeated or republished by third parties with whom the institution works.

- Claims need to be substantiated and such substantiation has to be readily available upon request. Substantiation requires specific underlying information e.g., student-by-student/graduate-by-graduate information. Summary information or compilations are insufficient.
- There is an emphasis on substantiating information used to recruit students given the reliance prospective students place on such claims in choosing among institutions. The Department of Education's notice explains, "Generally, prospective students will not be in a position to verify the accuracy of representations made by an institution prior to enrollment, and must therefore rely upon the truthfulness of representations made by the institution.
- Practices and policies related to reporting of data need to be written and retained.
- The methodology used to report data needs to be reasonable. There should be a rational basis for including and excluding variables e.g., graduates who should be included among those who obtained employment.
- "In field" employment should be closely-related to a student's field of study i.e., a graduate with a management degree who obtained a sales associate position should not be defined as having obtained "in field" employment and a graduate who continued with his or her current position following his or her graduation should not be defined as having "obtained" employment.
- Data need to be comparable. In other words, if a methodology has been changed, all the prior data should be restated under the new methodology to assure that the data is comparable.
- When institutions rely on multiple sources of data, conflicting conclusions among the data require institutions to examine the reliability of each of those sources. Failure to do so entails compliance risk if the institution makes representations based on incorrect data, as there was "good cause" to question the reliability of that data.