

FEDERAL TRADE COMMISSION

16 CFR Part 254

Guides for Private Vocational and Distance Education Schools

AGENCY: Federal Trade Commission.

ACTION: Revisions to Guides.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) has completed its regulatory review of the Guides for Private Vocational and Distance Education Schools (“Vocational School Guides” or “Guides”) as part of its systematic review of all current FTC rules and guides and issues its revisions.

DATES: This action is effective as of **[insert date of publication in the Federal Register]**.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The notice is also available on the Commission’s website, <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Maria Del Monaco, Attorney, East Central Region, Federal Trade Commission, (216) 263-3405, 1111 Superior Avenue, Suite 200, Cleveland, Ohio 44114.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission reviews all Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission’s rules and guides as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. These Guides, like other industry guides issued by the Commission, are “administrative interpretations of laws

administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements.” 16 CFR 1.5. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions.

II. Background

The Commission promulgated the Guides (then titled the “Guides for Private Vocational and Home Study Schools”) in May 1972, and they became effective on August 14, 1972 (37 FR 9665 (May 16, 1972)). The Commission amended the Guides effective October 9, 1998. These amendments added a provision addressing misrepresentations related to postgraduation employment. In order to streamline the Guides, certain provisions not specific to vocational schools and a section suggesting affirmative disclosures were deleted (63 FR 42570 (Aug. 10, 1998), as amended at 63 FR 72350 (Dec. 31, 1998)).¹

On July 30, 2009, the Commission published a Federal Register Notice (“FRN”) seeking comment on the Guides as part of the Commission’s ongoing periodic review of its rules and guides to determine their current effectiveness and impact (74 FR 37973).² The FRN listed eighteen questions, with additional subparts, on which comments were solicited. Generally, the FRN sought comments regarding the Guides’ benefits to consumers and burdens on businesses. In addition, the FRN’s questions addressed whether modifications are needed to increase the Guides’ benefits, reduce their costs, or address changes in relevant technology, economic conditions, or other applicable law.

¹ The deleted affirmative disclosures included the school’s make-up work policy, costs of purchasing the textbooks and equipment needed for the courses, a description of the school’s physical facilities, and a description of the school’s placement service.

² Previously, a Notice of Intent to Request Public Comments gave notice that the Commission would initiate a review of, and solicit public comments on, the Guides during 2009 (74 FR 6129 (Feb. 5, 2009)).

The Guides are intended to advise proprietary businesses that offer vocational training courses, either on the school’s premises or through distance education, how to avoid deceptive practices in connection with the advertising, promotion, marketing, or sale of their courses or programs. Specifically, the Vocational School Guides address misrepresentations in the description of a school, including misrepresentations that the school is affiliated with the government or is an employment agency. The Guides also address misleading representations related to the accreditation and approval of the school, the transferability of credit received at the school to other institutions, and the use of testimonials and endorsements. The Guides caution schools against misrepresenting the qualifications of teachers, the nature of courses, the availability of employment after graduation, the availability of financial assistance, and enrollment qualifications. They also address the use of deceptive diplomas or certificates. Finally, the Guides warn against using deceptive sales practices, such as placing classified ads that appear to be “help wanted” ads. The Guides make clear that practices inconsistent with them may violate Section 5 of the FTC Act.

III. Regulatory Review Comments and Responses

The Commission received eight comments in response to the FRN.³ They were submitted by the U.S. Department of Education (“DOE”); the National Consumer Law Center (“NCLC”); the National Association for College Admission Counseling (“NACAC”); the American Association of Collegiate Registrars and Admissions Officers (“AACRAO”); the Career College Association (now known as the Association of Private Sector Colleges and Universities, hereinafter “APSCU”); the Council of Recognized National Accrediting Agencies (“CRNAA”); Consumers Union; and Professor

³ All comments are in the public record and available for inspection at the Commission’s website, <http://www.ftc.gov/os/comments/vocationalschoolguides/>.

George Gollin of the University of Illinois, Urbana-Champaign, who is a board member of the Council for Higher Education Accreditation (“CHEA”).⁴

Seven of the eight comments stated that the Guides should be retained.⁵ Commenters described the Guides as filling a critical need, providing clear instruction regarding acceptable practices in the vocational schools sector. The comments noted the many instances of fraud in the industry and urged that the Guides be strengthened and enforced more vigorously.

APSCU, the sole dissenter, would retain the Guides only for unaccredited and unlicensed vocational schools. It believes the Guides are unnecessary and create additional burdens for institutions that are licensed by a state or accredited by a DOE-recognized accrediting agency.

The Commission disagrees with this statement for at least three reasons. First, APSCU identified no material inconsistencies between the Guides and the standards of any accrediting agencies or state licensing bodies and thus failed to identify how the Guides impose additional burdens. Second, the Guides simply identify deceptive practices that are unlawful under the FTC Act and, therefore, do not impose any burden beyond that already associated with complying with Section 5. Third, exempting accredited and licensed vocational schools from the Guides could be read as implying that circumstances have changed since the Guides were adopted, when, in fact, law enforcement actions

⁴ NCLC is a nonprofit organization specializing in issues commonly faced by low income consumers. NACAC is a nonprofit association of high school counselors and college admissions officers, and AACRAO is a nonprofit association of higher education admissions and registration professionals. APSCU is a membership organization representing for-profit higher education institutions. CRNAA is an alliance of six accrediting bodies which are recognized by the Secretary of DOE as reliable authorities on the quality of education and training offered by the institutions they accredit. Consumers Union is the nonprofit publisher of *Consumer Reports*, and CHEA is an organization of colleges and universities that advocates for self-regulation of academic quality through accreditation.

⁵ This FRN discusses the comments received by topic, not question number, because most of the comments responded by topic rather than by question number.

targeting deceptive practices of accredited and licensed vocational schools indicate that some of these entities have continued to engage in such practices.⁶

Many of the comments urging retention of the Guides also focused heavily on the recruitment practices and representations of vocational schools. In response, the Commission proposes to modify the Guides in four respects. These changes address the practices highlighted in the comments, and advise against use of particular types of misleading representations.

First, DOE, NCLC, and Consumers Union urged that the Guides address with greater specificity misrepresentations, frequently used in recruitment, on such topics as salaries, job placement, and completion rates and time frames. Accordingly, the Commission has revised the scope and application section of the Guides in section 254.0(b) to reference specifically the recruitment process. The revised Guides also address misrepresentations about completion and dropout rates and postgraduation employment prospects.

Second, DOE suggested that the Guides address misleading statements indicating that a program of instruction would render a student eligible to take a licensing exam. The Commission believes that doing so is warranted, and has modified section 254.3 of the Guides to address instances in which institutions misrepresent that completion of a program will qualify students to take a licensing exam.

⁶ *E.g., United States ex rel. Washington v. Educ. Mgmt. Corp.*, 871 F. Supp.2d 433 (W.D. Pa. 2012); Settlement in *United States ex rel. Goodstein v Kaplan, Inc., et al.*, E.D. Pa. Civ. Action No. 2:07 cv 1491 (July 15, 2011), available at http://www.justice.gov/usao/pae/News/2011/Jul/chi_settlementagreement.pdf, and News Release, *\$1.6 Million Settlement Agreement Announced with CHI Institute For Alleged Failures to Comply with Federal Student Financial Aid Requirements*, available at http://www.justice.gov/usao/pae/News/2011/Jul/chi_release.pdf (July 22, 2011); GAO, *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices*, GAO-10-948T (Aug. 4, 2010), available at <http://www.gao.gov/products/GAO-10-948T>.

Third, NCLC and Consumers Union recommended that the Guides be modified to cover representations relating to admissions testing and students' suitability for particular courses. In this regard, the Commission has amended section 254.5 of the Guides to state more explicitly that misrepresenting a student's score on an admission test is a deceptive practice. In addition, the revised Guides specify in subsections (c) and (d) of section 254.5 that it is a deceptive practice to provide inaccurate information regarding the time required to complete a course or program of instruction or a student's likelihood of success in a school or program of instruction.

Finally, DOE urged that the Guides address representations regarding transfer of course credit from another school, assistance provided to students facing language or other barriers to learning, the source of funding for student loans, and security policies and crime statistics. In response to these comments, the Commission has amended section 254.4(a) of the Guides to address specific misrepresentations relating to student financial assistance, assistance overcoming language barriers or learning disabilities, the extent to which students will receive credit for courses completed at other institutions, security policies, and crime statistics.

The Commission has decided not to adopt two other changes to the Guides which were suggested in the comments. First, NCLC, Consumers Union, and NACAC opined that the Guides should define "clearly and conspicuously." Only NACAC, however, provided a reason for doing so, which was to increase the public's awareness of the Guides. We do not believe that adding a definition to the Guides would significantly advance that goal. The Guides have included the words "clearly and conspicuously" for forty years without defining the term. Many FTC guides

and rules employ this phrase without a detailed definition.⁷ As in other contexts where we have declined to adopt a definition, the Commission believes it is unnecessary to define this phrase in the Guides because the concept is well developed in Commission case law and policy statements, and mandating rigid “clear and conspicuous” criteria would undermine the flexibility that this standard provides.⁸

Finally, DOE recommended expanding the scope of the Guides to include resident primary and secondary schools and institutions of higher education offering at least a two-year program of accredited college level studies generally acceptable for credit toward a bachelor’s degree. Presently the Guides exclude such schools and institutions.⁹ The Commission declines to expand the scope of the Guides because this proposal raises issues that are not addressed by the record before the Commission. For example, resident primary and secondary schools are unlike institutions of higher education in many respects, and those differences may result in different considerations with respect to the guidance provided by the Guides. Because the record does not address these issues, the Commission has decided not to expand the Guides. However, the scope of the Guides does not alter the scope of Section 5 of the FTC Act, and resident primary and secondary schools and institutions of higher education within the scope of the Act are covered by

⁷ See, e.g., Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR 23.7(b)(4); Telemarketing Sales Rule, 16 CFR 310.3(a)(1), 310.3(a)(3)(iii), 310.4(b)(1)(v)(A)(i), 310.4(d), 310.4(e), & 310.6(b)(6); Trade Regulation Rule on Mail or Telephone Order Merchandise, 16 CFR 435.2(a)(1)(i), 435.2(b)(1), & 435.2(b)(2); Business Opportunity Rule, 16 CFR 437.1(e), 437.3(a)(5)(ii); but see Privacy of Consumer Financial Information, 16 CFR 313.3(b) (defining clear and conspicuous); Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 CFR 308.3(d)(2) (same).

⁸ 60 FR 43842, 43843-44 (1995) (rejecting comments that “clear and conspicuous” should be defined in the Telemarketing Sales Rule); 74 FR 53124, 53130 n.55 (2009) (the Commission frequently adopts “clear and conspicuous” standard for disclosures because of its flexibility).

⁹ 16 C.F.R. 254.0(a). Independent of the Guides, true nonprofit corporations are outside the scope of the FTC Act. 15 U.S.C. 44. See *California Dental Ass’n v. FTC*, 526 U.S. 756, 766 (1999).

its proscription of deceptive and unfair conduct. Consequently, the Commission may use its enforcement authority to remedy deceptive acts and practices by such schools, including deceptive conduct described in the Guides.¹⁰

IV. Conclusion

For the reasons described above, the Commission has determined to retain the Guides, with the revisions indicated below.

List of Subjects in 16 CFR Part 254

Advertising, Trade practices.

Text of Amendments

For the reasons set forth in the preamble, the Federal Trade Commission amends 16 CFR Part 254 as follows:

Part 254 – GUIDES FOR PRIVATE VOCATIONAL AND DISTANCE EDUCATION SCHOOLS

1. The authority citation for part 254 continues to read as follows:

Authority: 38 Stat. 717, as amended; 15 U.S.C. 41-58.

2. Amend § 254.0 to read as follows:

§ 254.0 Scope and application.

* * *

¹⁰ The Commission notes that there have been reports of problematic practices by a range of for-profit colleges. *See, e.g.*, S. Comm. on Health, Education, Labor and Pensions, 112th Cong., For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success (Comm. Print 2012), *available at* <http://www.gpo.gov/fdsys/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf>. Although the Guides specifically address only for-profit institutions that provide vocational and distance education, as described in section 254.0, the Commission believes that the Guides can also provide useful guidance to any for-profit colleges that engage in similar practices. As noted above, the Commission has authority to bring law enforcement actions to curb deceptive or unfair practices in this area regardless of whether an institution that is covered by Section 5 also falls within section 254.0.

(b) These Guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These Guides specifically address the application of Section 5 of the FTC Act (15 U.S.C. 45) to the advertising, promotion, marketing, and sale of, and the recruitment of students for, courses or programs of instruction offered by private vocational or distance education schools. The Guides provide the basis for voluntary compliance with the law by members of the industry. Practices inconsistent with these Guides may result in corrective action by the Commission under Section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.

3. Revise § 254.1 to read as follows:

§ 254.1 Definitions.

(a) Accredited. A school or program of instruction that has been evaluated and found to meet established criteria by an accrediting agency or association recognized for such purposes by the U.S. Department of Education.

(b) Approved. A school or program of instruction that has been recognized by a State or Federal agency as meeting educational standards or other related qualifications as prescribed by that agency for the school or program of instruction to which the term is applied. The term is not and should not be used interchangeably with “Accredited.” The term “Approved” is not justified by the mere grant of a corporate charter to operate or license to do business as a school and should not be used unless the represented “approval” has been affirmatively required or authorized by State or Federal law.

(c) Industry Member. Industry Members are the persons, firms, corporations, or organizations covered by these Guides, as explained in §254.0(a).

4. Delete Subsection (c) in § 254.2 and revise the remainder of the section to read as follows:

§ 254.2 Deceptive trade or business names.

(a) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, the nature of the school, its Accreditation, programs of instruction, methods of teaching, or any other material fact through the use of any trade or business name, label, insignia, or designation, or in any other manner.

(b) It is deceptive for an Industry Member to deceptively conceal in any way the fact that it is a school or to misrepresent, directly or indirectly, expressly or by implication, through the use of a trade or business name or in any other manner that:

(1) It is a part of or connected with a branch, bureau, or agency of the U.S. Government, including, but not limited to, the U.S. Department of Education, or of any State, or civil service commission; or

(2) It is an employment agency or an employment agent or authorized training facility for any industry or business.

5. Revise § 254.3 to read as follows:

§ 254.3 Misrepresentation of extent or nature of Accreditation or Approval.

(a) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, the nature, extent, or purpose of any Approval by a State or Federal agency or Accreditation by an accrediting agency or association. For example, an Industry Member should not:

(1) Represent, without qualification, that its school is Accredited unless all courses and programs of instruction have been Accredited by an accrediting agency recognized by the U.S. Department of Education. If an Accredited school offers courses or programs of instruction that

are not Accredited, all advertisements or promotional materials pertaining to those courses or programs, and making reference to the Accreditation of the school, should clearly and conspicuously disclose that those particular courses or programs are not Accredited.

(2) Represent that its school or program of instruction is Approved, unless the nature, extent, and purpose of that Approval are disclosed.

(3) Misrepresent the extent to which a student successfully completing a course or program of instruction will be able to transfer any credits the student earns to any other postsecondary institution.

(b) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that a school or program of instruction has been Approved by a particular industry, or that successful completion of a course or program of instruction qualifies the student for admission to a labor union or similar organization or for receiving a State or Federal license to perform certain functions.

(c) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that its courses or programs of instruction are recommended by vocational counselors, high schools, colleges, educational organizations, employment agencies, or members of a particular industry, or that it has been the subject of unsolicited testimonials or endorsements from former students. It is deceptive for an Industry Member to use testimonials or endorsements that do not accurately reflect current practices of the school or current conditions or employment opportunities in the industry or occupation for which students are being trained.

(d) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that its courses or programs of instruction fulfill a requirement that must be completed prior to taking a licensing examination.

Note to paragraph (c): The Commission's Guides Concerning Use of Endorsements and

Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

6. Revise Subsection 254.4 to read as follows:

§ 254.4 Misrepresentation of facilities, services, qualifications of staff, status, and employment prospects for students after training.

(a) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, in advertising, promotional materials, recruitment sessions, or in any other manner, the size, location, services, facilities, curriculum, books and materials, or equipment of its school or the number or educational qualifications of its faculty and other personnel. For example, an Industry Member should not:

* * *

(2) Misrepresent, through statements or pictures, or in any other manner, the nature or efficacy of its courses, training devices, methods, or equipment.

* * *

(4) Misrepresent the availability, amount, or nature of any financial assistance available to students, including any Federal student financial assistance. If the cost of training is financed in whole or in part by loans, students should be informed that loans must be repaid whether or not they are successful in completing the program and obtaining employment.

(5) Misrepresent that a private entity providing any financial assistance to the students is part of the Federal government or that loans from the private entity have the same interest rate or repayment terms as loans received from the U.S. Department of Education.

(6) Misrepresent the nature of any relationship between the school or its personnel and any government agency, or that students of the school will receive preferred consideration for employment with any government agency.

(7) Misrepresent that certain individuals or classes of individuals are members of its faculty or advisory board, have prepared instructional materials, or are otherwise affiliated with the school.

(8) Misrepresent the nature and extent of any personal instruction, guidance, assistance, or other service, including placement assistance and assistance overcoming language barriers or learning disabilities, it will provide students either during or after completion of a course.

(9) Misrepresent the extent to which a prospective student will receive credit for courses or a program of instruction already completed at other postsecondary institutions.

(10) Misrepresent the percentage of students who withdraw from a course or program of instruction, or the percentage of students who complete or graduate from a course or program of instruction.

(11) Misrepresent security policies or crime statistics that the school must maintain.

(b) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that it is a nonprofit organization or that it is affiliated or otherwise connected with any public institution or private religious or charitable organization.

(c) It is deceptive for an Industry Member that conducts its instruction by correspondence, or other form of distance education, to fail to clearly and conspicuously disclose that fact in all promotional materials.

(d) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that a course or program of instruction has been recently revised or instructional equipment is up-to-date, or misrepresent its ability to keep a course or program of instruction current and up-to-date.

(e) It is deceptive for an Industry Member, in promoting any course or program of instruction in its advertising, promotional materials, or in any other manner, to misrepresent, directly or indirectly, expressly or by implication, whether through the use of text, images, endorsements, or by other means, the availability of employment after graduation from a school or program of

instruction, the specific type of employment available to a student after graduation from a school or program of instruction, the success that the Industry Member's graduates have realized in obtaining such employment, including the percentage of graduates who have received employment, or the salary or salary range that the Industry Member's graduates have received, or can be expected to receive, in such employment.

Note to paragraph (e): The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

7. Revise § 254.5 to read as follows:

§ 254.5 Misrepresentations of enrollment qualifications or limitations.

(a) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, the nature or extent of any prerequisites or qualifications for enrollment in a school or program of instruction.

(b) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that the lack of a high school education or prior training or experience is not an impediment to successful completion of a course or program of instruction or obtaining employment in the field for which the course or program of instruction provides training.

(c) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, the time required to complete a course or program of instruction.

(d) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, a student's likelihood of success in a school or program of instruction, including, but not limited to, misrepresenting the student's score on any admissions test.

8. Revise § 254.6 to read as follows:

§ 254.6 Deceptive use of diplomas, degrees, or certificates.

(a) It is deceptive for an Industry Member to issue a degree, diploma, certificate of completion, or any similar document, that misrepresents, directly or indirectly, expressly or by implication, the subject matter, substance, or content of the course or program of instruction or any other material fact concerning the course or program of instruction for which it was awarded or the accomplishments of the student to whom it was awarded.

(b) It is deceptive for an Industry Member to offer or confer an academic, professional, or occupational degree, if the award of such degree has not been Approved by the appropriate State educational agency or Accredited by a nationally recognized accrediting agency, unless it clearly and conspicuously discloses, in all advertising and promotional materials that contain a reference to such degree, that its award has not been Approved or Accredited by such an agency.

(c) It is deceptive for an Industry Member to offer or confer a high school diploma unless the program of instruction to which it pertains is substantially equivalent to that offered by a resident secondary school, and unless the student is informed, by a clear and conspicuous disclosure in writing prior to enrollment, that the Industry Member cannot guarantee or otherwise control the recognition that will be accorded the diploma by institutions of higher education, other schools, or prospective employers, and that such recognition is a matter solely within the discretion of those entities.

9. Revise § 254.7 to read as follows:

§ 254.7 Deceptive sales practices.

(a) It is deceptive for an Industry Member to use advertisements or promotional materials that misrepresent, directly or indirectly, expressly or by implication, that employment is being offered or that a talent hunt or contest is being conducted. For example, captions such as, “Men/women wanted to train for * * *,” “Help Wanted,” “Employment,” “Business Opportunities,” and words or terms of similar import, may falsely convey that employment is being offered and therefore should be avoided.

(b) It is deceptive for an Industry Member to fail to disclose to a prospective student, prior to enrollment, the total cost of the program of instruction and the school's refund policy if the student does not complete the program of instruction.

(c) It is deceptive for an Industry Member to fail to disclose to a prospective student, prior to enrollment, all requirements for successfully completing the course or program of instruction and the circumstances that would constitute grounds for terminating the student's enrollment prior to completion of the program of instruction.

By direction of the Commission.

Donald S. Clark,
Secretary.