



NATIONAL STUDENT LEGAL DEFENSE NETWORK

February 2, 2018

President Barbara Gellman-Danley
Higher Learning Commission
230 South Lasalle Street, Suite 7-500
Chicago, IL 60604

Dear President Gellman-Danley:

We write on behalf of the National Student Legal Defense Network (“NSLDN”)¹ to urge the Higher Learning Commission (“HLC”) to incorporate robust student protections into its consideration of the application for accreditation arising from the proposed venture between Purdue University and Kaplan University (“Kaplan”).² We are concerned that, during the review of the proposed transaction to date, student interests have not received the attention that they deserve. In the event HLC allows the proposed transaction to move forward, we believe that, at minimum, it should build the following eight common sense student protections into the approval:

1. Require Purdue to set aside funds to protect students against fraudulent conduct, abrupt closures, or cessation of programs;
2. Require strict performance benchmarks;
3. Require enhanced disclosures to prospective students;
4. Appoint a Purdue official, to be selected by Purdue faculty representatives, to oversee all Kaplan marketing and recruiting;
5. Regulate Kaplan’s use of lead generators that collect consumer information;
6. Provide enhanced consumer-focused training for all Kaplan officials who direct or engage in the promotion or sale of any educational product or service;
7. Prohibit the use of mandatory arbitration clauses and class action bans in student enrollment agreements;
8. Require enhanced protections for student veterans.

This letter first summarizes Kaplan’s recent history with respect to student outcomes and the numerous state and federal law enforcement investigations into Kaplan’s conduct and, second, discusses each of the above student protections in detail.

¹ NSLDN is a non-profit organization that works, through litigation and advocacy, to advance students’ rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility.

² Although NSLDN has concerns with the proposed transaction, those concerns are not the subject of this letter. Instead, NSLDN writes to highlight student protections that must be included in the event HLC approves the transaction. This letter should not be construed as NSLDN’s approval of the proposed transaction.

Kaplan's Recent History of Student Outcomes

Kaplan's recent record of student outcomes makes clear that HLC must take steps to protect students if it approves the proposed transaction. According to 2015 data, Kaplan's online campuses, which are the subject of the joint venture, reported a graduation rate of only 25.8%.³ In addition, according to Department data released in January 2017, five Kaplan programs failed the Department's Gainful Employment standards and 16 programs were in the danger "zone" for being close to failing.⁴

Of the ten Kaplan campuses with student outcome measures published on the College Scorecard, only two campuses have graduation rates above 35% (Kaplan-Hagerstown at 39% and Kaplan-Cedar Falls at 36%).⁵ Notably, Kaplan-Maine has a graduation rate of only 20% and Kaplan-Davenport of only 23%.⁶ The average salary of Kaplan students across campuses (measured by the median earnings of former federal aid recipients ten years after entering the schools) is listed as \$33,500.⁷

Kaplan's cohort default rates are also alarming. An independent study by the Brookings Institution in 2015 cross-referenced federal loan data with IRS records and found that more than half of Kaplan students *graduating* in 2009 defaulted on their federal student loans by 2014.⁸ That study showed that Kaplan had the *worst default rate* of the 25 institutions with the highest student loan debt.⁹ According to the study, the only other school where borrowers were more likely to default than to stay above water on their loans was the now-defunct ITT Technical Institute. During the same period, only 4% of Purdue students defaulted on their federal loans.

The default rates cited in the Brookings study are consistent with the results of the 2012 U.S. Senate Committee on Health, Education, Labor and Pensions ("HELP Committee") Report, which found that Kaplan's default rate was "about 25 percent higher than the rate for all for-profit colleges" and "the third highest rate of loan default among the 30 schools examined by the committee."¹⁰ The HELP Committee Report also revealed that,

³ This data is taken from IPEDS GR2015 rates.

⁴ Kaplan had appealed these findings. See Gainful Employment data file, available at <https://studentaid.ed.gov/sa/sites/default/files/GE-DMYR-2015-Final-Rates.xls>.

⁵ College Scorecard, U.S. Department of Education, available at <https://collegescorecard.ed.gov/search/?name=Kaplan&sort=advantage:desc>.

⁶ *Id.*

⁷ *Id.*

⁸ Adam Looney and Constantine Yannelis, "A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults," *Brookings Papers on Economic Activity*, Brookings Institution (Fall 2015), available at <https://www.brookings.edu/bpea-articles/a-crisis-in-student-loans-how-changes-in-the-characteristics-of-borrowers-and-in-the-institutions-they-attended-contributed-to-rising-loan-defaults/>.

⁹ *Id.* The five-year rates were based on a sample of borrowers, from the National Student Loan Data System, who entered repayment in 2009.

¹⁰ U.S. Senate Committee on Health, Education, Labor and Pensions, "For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success" 558 (July 30, 2012) ("HELP Committee Report"). For Kaplan-specific material only, see https://www.help.senate.gov/imo/media/for_profit_report/PartII/Kaplan.pdf.

of the 102,757 students who were enrolled at Kaplan in 2008-09, 55.3%, or 56,874 students, withdrew as of mid-2010.¹¹ Notably, the HELP Committee found Kaplan's withdrawal rates to be especially high for online students, who withdrew at a rate of 71.9%, or 91% higher than their brick and mortar counterparts.¹² These withdrawn students were enrolled a median of only four months.¹³

Kaplan's Recent Regulatory and Law Enforcement Matters

Since 2010, Kaplan has been the subject of numerous state and federal investigations, lawsuits, and regulatory reviews. In February 2015, the Department "began a review of Kaplan University . . . [to] assess Kaplan's administration of its Title IV, HEA programs."¹⁴ In December 2015, Kaplan received a notice from the Department that "it had been placed on provisional certification status until September 30, 2018, in connection with the open and ongoing ED program review."¹⁵ Kaplan disclosed to the SEC in November 2017 that it "cannot predict the outcome of this review, when it will be completed or any liability or other limitations that the ED may place on Kaplan University as a result of this review."¹⁶ During this period of provisional certification, Kaplan "must obtain prior ED approval to open a new location, add an educational program, acquire another school or make any other significant change."¹⁷

With respect to state law enforcement matters, Kaplan entered into an Assurance of Voluntary Compliance with Florida Attorney General Pam Bondi in 2014 following the AG's allegation that Kaplan made misleading marketing claims to Florida students.¹⁸ As set forth in the Assurance, and as part of Kaplan's remedial efforts, Kaplan ultimately waived tuition and fees for over 2,400 Florida students at a cost of more than \$6 million.¹⁹ Similarly, in 2015, Kaplan settled a case brought by Massachusetts Attorney General Maura Healy alleging that Kaplan inflated job placement rates and used "unfair" and "harassing" sales tactics between 2009-2012.²⁰ Under the MA settlement, Kaplan

¹¹ *Id.* at 560.

¹² *Id.* (explaining that "[i]n every category of degree, online Kaplan students are far more likely to withdraw from their programs than they are to complete").

¹³ *Id.*

¹⁴ Graham Holdings Company, SEC Form 10-Q at 20 (Nov. 1, 2017).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* Kaplan also disclosed to the SEC on Nov. 5, 2015 that it received an October 2015 letter from the Department citing it for failing to report data on numerous programs subject to the Gainful Employment regulations. The letter restricted Kaplan's ability to start any new programs pending resolution of the matter. See Graham Holdings Company, SEC Form 10-Q (Nov. 5, 2015).

¹⁸ State of Florida, Office of the Attorney General, *In the Investigation of Kaplan Higher Ed., LLC et al.*, Voluntary Assurance of Compliance (June 10, 2014), available at [http://myfloridalegal.com/webfiles.nsf/WF/JMEE-9L6QDA/\\$file/KaplanAVC.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JMEE-9L6QDA/$file/KaplanAVC.pdf).

¹⁹ *Id.*

²⁰ See Massachusetts AG Press Release (July 30, 2015) (alleging that "Kaplan induced enrollment of students at the school with harassing sales tactics and misleading representations in its recruitment materials concerning its educational program and employment"), available at <http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-07-30-for-profit-schools-settlements.html>.

distributed over \$1.3 million to eligible graduates.²¹ Attorneys General from Delaware,²² Illinois,²³ and North Carolina²⁴ have also investigated Kaplan for alleged consumer protection violations.

In addition to these state investigations, Kaplan settled a False Claims action with the United States Department of Justice (“DOJ”) in January 2015 for over \$1.3 million, around \$1 million of which was used to pay out tuition refunds to students.²⁵ The settlement resolved whistleblower allegations that Kaplan employed unqualified instructors at its campuses in Texas.²⁶

In sum, Kaplan’s record of student outcomes, misrepresentations to consumers, and “unfair” and “harassing” marketing strategies reveals a way of doing business that has harmed students and taxpayers. Because Kaplan has neither explained the reason for these outcomes nor demonstrated how it will prevent them in the future, HLC should only grant accreditation if it comes with stringent measures that will protect students.

HLC Should Not Approve the Deal Absent Robust Student Protections

In its review of the pending application, HLC accreditation criteria and policies require that it consider the history described above. Among other things, HLC must consider whether Kaplan:

- “has no record of inappropriate, unethical, and untruthful dealings with its students, with the business community, or with agencies of government” (CRRT.A.10.010-16);
- “presents itself clearly and completely to its students and staff with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships” (CRRT.B.10.010-1.D.2);

²¹ *Id.*

²² Washington Post Company, SEC Form 10-K (Feb. 29, 2012) (“On July 20, 2011, Kaplan Higher Education Corporation received a subpoena from the Office of the Attorney General of the State of Delaware. The demand primarily sought information pertaining to Kaplan University’s online and KHE Campuses’ students who are residents of Delaware.”).

²³ Washington Post Company, SEC Form 10-K (Mar. 2, 2011) (“On February 7, 2011, Kaplan Higher Education Corporation received a Civil Investigative Demand from the Office of the Attorney General of the State of Illinois. The demand primarily seeks information pertaining to Kaplan University online students who are residents of the State of Illinois.”).

²⁴ Alexander, Ames, “Kaplan College reimburses students after probe of dental program,” *Charlotte Observer* (Feb. 1, 2012) (“Kaplan College’s Charlotte campus has surrendered its license to operate a dental assistant program following allegations that its officials lied to students about the credentials they’d receive after graduating.”).

²⁵ DOJ Press Release, “For-Profit College Kaplan To Refund Federal Financial Aid Under Settlement With United States” (Jan. 5, 2015), available at <http://www.justice.gov/usao-wdtx/pr/profit-college-kaplan-refund-federal-financial-aid-under-settlement-united-states>.

²⁶ *Id.*

- “employs faculty and other academic personnel appropriately qualified and sufficient in number to support its academic programs” (CRRT.A.10.010-10);
- “remains in compliance at all times with state laws including laws related to authorization of educational activities and consumer protection wherever it does business and state law applies” (CRRT.B.10.020 - A.10); and
- “engage[s] . . . in practices or procedures that are designed or have the tendency to create a falsification or deceive students” (FDCR.A.20.010).

Given these and other HLC policies and criteria, any approval of the proposed transaction should at minimum require the following student protections.

1. *Purdue Must Set Aside Funds to Protect Students from Fraudulent Conduct and Abrupt Closures*

HLC should require Purdue to escrow, or otherwise set aside funds in an appropriate financial vehicle, in order to cover any liabilities to past, current, or future students resulting from misconduct and the potential of abrupt campus closures or other instructional or programmatic cessation. The funds should be monitored by HLC or an appropriate entity as determined by HLC.

These financial protections are justified by Kaplan’s past liabilities (discussed above) and potential future liabilities. According to Kaplan’s most recent 10-Q, filed with the SEC on November 1, 2017, “management believes it is reasonably possible that future losses from existing and threatened legal, regulatory and other proceedings in excess of the amounts recorded could reach approximately \$25 million.”²⁷

Kaplan also has a substantial potential liability for borrower defense applications currently pending with the Department. As of August 2017, at least 450 such borrower defense applications were pending.²⁸ Department official Michael Frola told the Washington Post in October 2017 that the Department would not approve the transaction unless Purdue would “assume responsibility for liabilities resulting from the operation of Kaplan University as an educational institution, whether they are known or unknown, and whether they accrue prior to, or after the closing of the transaction.”²⁹ However, Purdue has contracted away responsibility for such liability to Kaplan, leaving it unclear how such liability would be recovered in the case of a Kaplan bankruptcy.

²⁷ Graham Holdings Company, SEC Form 10-Q at 19 (Nov. 1, 2017).

²⁸ The Century Foundation, “College Complaints Unmasked” (Nov. 1, 2017) (reporting borrower defense application numbers by school as of August 15, 2017, based on data received from the Department as a result of a FOIA request).

²⁹ Douglas-Gabriel, Danielle, “A hiccup in Purdue’s acquisition of for-profit Kaplan University, The Washington Post (Oct. 6, 2017), available at www.washingtonpost.com/news/grade-point/wp/2017/10/06/a-hiccup-in-purdues-acquisition-of-for-profit-kaplan-university/?utm_term=.6c0f0e462899.

Typically, such liabilities owed by a state university would be backed by the full faith and credit of the state, but Purdue has assured the public that Indiana taxpayers will not be on the hook. Describing the Indiana Commission for Higher Education’s approval of the deal, Commissioner Teresa Lubbers explained that they were “given the assurance from Purdue” that “if there was a shortfall . . . it would not come to state taxpayers, that there would be other sources if that would be the case.”³⁰ Similarly, Purdue President Mitch Daniels recently stated that the Purdue-Kaplan arrangement “poses virtually no financial risk to Purdue or the state.”³¹ President Daniels made this comment after the Indiana State Legislature passed a statute specifically enacted for the purposes of the new Purdue-Kaplan arrangement, specifying that the new entity (to be known as “Purdue University Global”³²) must have “its debts and liabilities backed by the controlling state educational institution . . . in the form of a contribution, bond, or other surety consisting solely of eligible property.”³³ However, “eligible property” is defined to exclude “public money” from the state of Indiana and “state appropriations,” calling into question whether the liabilities of the institution are truly guaranteed by the State of Indiana.

If potential liabilities arising from closed school discharges, fraud or other misconduct are not backed by the full faith and credit of the state of Indiana, HLC should carefully examine whether it can accredit Purdue Global as a public institution. If HLC does move forward with the accreditation, given the substantial doubt as to whether the State of Indiana or Kaplan would cover such liabilities, HLC should, at minimum, require prudent financial safeguards before accrediting Purdue Global as a public institution.

2. Strict Performance Benchmarks

HLC should create and enforce performance benchmarks that Purdue Global must meet over the next ten years or face the loss of accreditation. These benchmarks should include a strict debt-to-earnings ratio and a heightened campus or program level cohort default rate. To the extent that these measures are not otherwise calculated by the federal government or Purdue Global, HLC should require an earnings survey of select Kaplan programs with historically low rates.³⁴

3. Enhanced Disclosure Requirements

HLC should require increased disclosures on outcome prospects to prospective students, including that Purdue Global:

³⁰ Wright, Lindsey, “Purdue Faculty Hold Out Hope of Stopping Kaplan Acquisition,” NPR News (Nov. 17, 2017), available at <http://wboi.org/post/purdue-faculty-hold-out-hope-stopping-kaplan-acquisition>.

³¹ Fain, Paul, “Regulatory Hurdle for Purdue-Kaplan Deal,” Inside Higher Ed (Oct. 9, 2017), available at www.insidehighered.com/quicktakes/2017/10/09/regulatory-hurdle-purdue-kaplan-deal.

³² See Purdue University Press Release (Jan. 11, 2018), available at <http://www.purdue.edu/newsroom/releases/2018/Q1/purdue-announces-name-for-new-public-university-purdue-university-global-to-serve-working-adults,-online.html>.

³³ Indiana Code 21-7-13-26.5 (a)(4).

³⁴ For more information on earnings surveys, see <https://ifap.ed.gov/GainfulEmploymentInfo/attachments/standards.pdf> and <https://ifap.ed.gov/GainfulEmploymentInfo/attachments/survey.pdf>.

- Include debt-to-earnings and job placement rate calculations of program graduates in all marketing materials shared directly with students and prospective students;³⁵
- Include graduation rates in all marketing materials shared directly with students and prospective students;
- Make clear disclosures to prospective students, prior to enrollment, regarding the transferability of credits, refund and transfer policies, and the full estimated cost of attendance, including tuition, books and fees; and
- Require that all email and electronic disclosures to prospective students include a link to the U.S. Department of Education’s College Scorecard website.³⁶ The Scorecard, created with direct input from students and families, is an interactive college search tool that provides students with up-to-date and reliable information. Importantly, the Scorecard allows students to search and filter information so that they can compare costs, average loan amounts, and the average student’s ability to repay student loans across multiple institutions.

4. *Appoint a Purdue Official, to be Selected or Confirmed by the Purdue Faculty Senate, to Oversee All of Kaplan’s Marketing and Recruiting*

As set forth above, recruitment tactics were at the heart of numerous investigations into Kaplan’s conduct. To protect against future misconduct, and as a condition of approval, HLC should empower the Purdue University Faculty Senate to appoint, hire or confirm a Purdue official to directly oversee all Kaplan marketing and recruiting efforts. The official should also be required to provide frequent reports to the Faculty Senate on all initiatives and complaints relating to Kaplan’s marketing and recruiting.

5. *Regulate Kaplan’s Use of Lead Generators to Collect Consumer Information*

Lead generation is the process of identifying and cultivating individual consumers who are potentially interested in purchasing a product or service. In the postsecondary education sector, lead generators collect consumer contact and other information and sell it to schools as “leads.” Schools then use the leads for their own purposes, including to market their products and services. As frequently reported, lead generators often engage consumers through fraudulent or misleading representations about employment opportunities or the “best affordable colleges” when, in fact, they are gathering personal

³⁵ These disclosures are currently required under the U.S. Department of Education Gainful Employment regulations for Certificate and Associate Degree Career and Technical programs and for all programs offered by for-profit institutions. See Program Integrity: Gainful Employment, 79 Fed. Reg. 64,890 (Oct. 31, 2014).

³⁶ “College Scorecard,” U.S. Department of Education, available at <https://collegescorecard.ed.gov>.

information in order to sell it to schools seeking new students at amounts ranging, in one recent case, from \$22 to \$125 for each lead.³⁷

Kaplan has a history of working with lead generators that have been accused of deceptive marketing. For example, on January 18, 2018, the Federal Trade Commission (“FTC”) announced that it issued a final order settling charges that lead generator Victory Media violated Section 5 of the FTC Act in connection with its promotion of post-secondary schools—including Kaplan—to military consumers.³⁸ According to the FTC’s complaint, some of Victory’s materials and tools deceptively promoted schools that paid the company for those promotions, including schools that the company had not deemed “military friendly.”³⁹

Given this conduct, HLC should require that Purdue Global only work with lead generators that clearly and conspicuously disclose when personal information will be sold to a third party and that receive consumers’ express, informed consent for the sale, transfer, or disclosure of such information.⁴⁰ HLC should also review the contracts of all third-party lead generators, third-party servicers, bundled servicers and other outside/online marketing vendors used by Kaplan and confirm with the FTC, Better Business Bureau, Online Lenders Alliance, and relevant state prosecutors that these entities have not received complaints or been under recent investigation. Similarly, HLC should grant the Purdue University Faculty Senate the authority to conduct due diligence on all Purdue Global lead generators, including the authority to review lead generator policies, practices, training manuals, websites, complaint handling procedures, and other consumer marketing materials and, upon completion of such review, to make recommendations to the appointed official in charge of marketing and recruiting. Finally, consistent with Online Lenders Alliance Best Practices,⁴¹ HLC should require Purdue

³⁷ See *FTC v. Expand, Inc.*, 16-cv-00714 (M.D. Fla. Apr. 28, 2016) (alleging that Expand, Inc. and its CEO misrepresented to consumers that they were applying for job openings when in fact defendants were selling consumers’ personal information – for up to \$125 per lead – to schools and career training programs), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3124/expand-inc-gigats>; see also FTC Press Release, “FTC Charges Education Lead Generator with Tricking Job Seekers by Claiming to Represent Hiring Employers” (April 28, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/04/ftc-charges-education-lead-generator-tricking-job-seekers>.

³⁸ FTC Press Release, “FTC Approves Final Consent Order in Victory Media Advertising Case” (Jan. 12, 2018), available at <https://www.ftc.gov/news-events/press-releases/2018/01/ftc-approves-final-consent-order-victory-media-advertising-case>; see also Student Veterans of America Comment to the FTC re: Docket Number FTC-2017-0085 (Nov. 20, 2017) (“Victory Media’s publications similarly promoted Kaplan College, but the materials excluded the fact that 23 percent of Kaplan’s programs fail the proposed gainful employment regulations.”), available at <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5a137fbd41920209440dcd71/1511227328342/SVA+Comment+on+Victory+Media.pdf>

³⁹ *Id.*

⁴⁰ See, e.g., *FTC v. Blue Global, LLC*, No. 17-cv-2117, Stipulated Order for Permanent Injunction and Monetary Judgment at 6 (D. Az. July 5, 2017) (requiring the defendant lead generator to clearly disclose the sale of personal information to a third party and to “have the consumer’s express, informed consent for the sale, transfer, or disclosure”), available at https://www.ftc.gov/system/files/documents/cases/ftc_v_blue_global_de04_1.pdf.

⁴¹ See Online Lenders Alliance, Best Practices (May 2017), available at <http://onlinelendersalliance.org/wp-content/uploads/2015/01/Best-Practices-2017.pdf>.

Global to obtain representations and warranties from all lead generators that they will comply with all applicable laws, regulations, and best practice guidelines for lead generators.

6. *Enhanced Consumer-Focused Training for all Kaplan Officials Who Direct or Engage in the Promotion or Sale of Any Educational Product or Service*

Similar to the training program required by the FTC in its recent settlement with DeVry, for the next ten years, HLC should require Kaplan to establish and implement enhanced consumer-focused training programs for all principals, officers, directors, managers, employees, agents, and representatives who direct or engage in the promotion or sale of any educational product or service.⁴²

7. *Prohibition Against Mandatory Arbitration Clauses and Class Action Bans in Enrollment Agreements*

Kaplan requires all of its students to sign an enrollment agreement with fine print waiving the right to sue and bring class actions.⁴³ These so-called forced arbitration clauses deprive students of their ability to bring claims to an impartial judge or jury and bar students from joining together to challenge systemic fraud. Unlike court proceedings, arbitration is often conducted behind closed doors by arbitrators picked and paid for by the school accused of fraud. While many for-profit schools include arbitrations clauses in their enrollment agreements, almost no public schools do.⁴⁴

Notably, in the spring of 2016 two of the largest for-profit colleges—DeVry University and University of Phoenix—announced that they were voluntarily eliminating the use of mandatory arbitration clauses in their enrollment agreements.⁴⁵ Explaining the rationale for the University of Phoenix decision, Greg Cappelli, chief executive of Apollo, explained that “it’s clear that eliminating mandatory arbitration is the right choice for all of our students . . . [t]his decision joins with a host of efforts already underway to

⁴² See, e.g., *FTC v. DeVry Education Group, Inc.*, No.16-cv-00579, Stipulation as to Entry of Order for Permanent Injunction and Monetary Judgment 7-8 (C.D. Cal. Dec. 15, 2016) (requiring a 20 year training program for all DeVry officials who “direct or engage in the promotion or sale of any educational product or service”).

⁴³ As found by the HELP Committee, Kaplan’s policy was to require students to waive their right to bring a lawsuit before they could even meet with financial aid counselors. See HELP Committee Report at 607 (explaining that “the undercover agent [posing as a prospective student] could not speak to someone in financial aid before signing an enrollment agreement” and that “Kaplan documents indicate that what the undercover student found was company policy”).

⁴⁴ Tariq Habash and Robert Shireman, “How Enrollment Contracts Limit Students’ Rights,” The Century Foundation (April 28, 2016) available at <https://tcf.org/content/report/how-college-enrollment-contracts-limit-students-rights/>.

⁴⁵ Douglas-Gabriel, Danielle, “Two of the biggest for-profit colleges are making it easier for students to sue,” The Washington Post (May 23, 2016), available at https://www.washingtonpost.com/news/grade-point/wp/2016/05/23/two-of-the-biggest-for-profit-colleges-are-making-it-easier-for-students-to-sue/?utm_term=.d2048388b973.

improve student outcomes.”⁴⁶ Six months later, the Department’s 2016 Borrower Defense rule barred schools participating in federal student loan programs from using forced arbitration clauses and class action bans.⁴⁷

If Purdue Global is unwilling to voluntarily commit to following DeVry and University of Phoenix’s lead, HLC should, as a condition of any approval, prohibit it from requiring students to sign agreements that waive their right to sue or bring class actions. HLC should also require Purdue Global to guarantee that any existing mandatory arbitration clauses or class action bans will not be enforced.

8. *Enhanced Protections for Student Veterans*

Under federal law, for-profit colleges cannot receive more than 90% of their revenue from Department of Education Title IV federal student aid. The so-called 90/10 rule does not, however, apply to non-Department government funding—such as the GI Bill—which counts on the 10% side of the 90/10 calculation. As has been well documented, this loophole in the 90/10 rule has incentivized for-profit colleges to aggressively recruit student veterans.⁴⁸

Kaplan is no exception. Documents obtained by the HELP Committee included a 56-page strategy document produced by Kaplan for recruiting military students. Objective 1 of that document was to “[g]row our military enrollments to 9,000 per year by 2011” (which the HELP Committee found to be “a fourfold increase from their current military student enrollment”) and to “[d]rive awareness via print advertising in key military publications and targeting key military installations.”⁴⁹

Notably, in September 2016 DeVry announced that it was voluntarily limiting the amount of federal revenue that each of its six Title IV institutions derive from federal funding to

⁴⁶ Apollo Education Group News Release, “Apollo Education Group to Eliminate Mandatory Arbitration Clauses,” (May 19, 2016), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=79624&p=irol-newsArticle&ID=2169809>.

⁴⁷ See 34 CFR § 685.300. The Department has delayed implementation of the 2016 rule and commenced a new negotiated rulemaking for borrower defense.

⁴⁸ See, e.g., Wong, Alia, “‘Dollar Signs in Uniform’: Why For-Profit Colleges Target Veterans,” *The Atlantic* (June 24, 2015), available at <https://www.theatlantic.com/education/archive/2015/06/for-profit-college-veterans-loophole/396731/>. In November 2017, 32 Senators reintroduced the Military and Veterans Education Protection Act, which would “close the 90/10 loophole by counting VA and DOD funds as federal dollars.” Press Release, Senator Tom Carper (Nov. 9, 2017), available at <https://www.carper.senate.gov/public/index.cfm/2017/11/senators-reintroduce-military-and-veterans-education-protection-act-with-groundbreaking-support-from-veterans-service-organizations>.

⁴⁹ HELP Committee Press Release (May 19, 2011), available at <https://www.help.senate.gov/ranking/newsroom/press/harkin-reveals-deceptive-marketing-employed-by-for-profit-colleges-to-profit-off-veterans-and-servicemembers>. Kaplan’s admissions training manual for recruiting military students also instructed recruiters to use a “fear, uncertainty, doubt” technique to influence prospective military students’ perceptions. HELP Committee Report at 557.

85%, including Department of Veterans Affairs and military tuition assistance benefits.⁵⁰ DeVry committed to meeting this 85/15 pledge by the end of its fiscal year in 2017.

If Purdue Global is unwilling to voluntarily commit to following DeVry's lead, HLC should impose a continued requirement that it commit to abiding by an 85/15 rule wherein, like DeVry, Veterans Affairs and Department of Defense education benefits are included in the 85% limit on how much Kaplan can receive from federal student aid programs. In addition, HLC should require Kaplan to post disclosures on any military and education related websites to make clear that it is not government or military-affiliated and that, where accurate, Kaplan pays to appear in military listings. Finally, consistent with #4 above, all recruiting efforts, including any military recruiting, should be directed by the Purdue official to be selected or approved by the Purdue Faculty Senate.

* * * * *

HLC's mission to "serve the common good by assuring and advancing the quality of higher learning" would be undermined by approval of a deal that fails to protect students and taxpayers. If HLC is going to approve the proposed transaction, we strongly urge that it make its approval contingent on the student and taxpayer protections described above.

Sincerely,



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⁵⁰ Smith, Ashley, "DeVry Adopts Reform Favored by For-Profit Critics," Inside Higher Ed. (Sept. 20, 2016), available at <https://www.insidehighered.com/news/2016/09/20/devry-university-plans-adopt-financial-reform-favored-profit-critics>.