

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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Assurance No. 17-009

In the Matter of

**Investigation by Eric T. Schneiderman,  
Attorney General of the State of New York,**

of

DeVry Education Group Inc.;

DeVry University, Inc.; and

DeVry/New York, Inc.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“NYAG”) has conducted an investigation (the “Investigation”) pursuant to Executive Law § 63(12) and General Business Law Article 22-A into certain business practices of DeVry University, Inc. and DeVry/New York, Inc. (doing business as DeVry College of New York). This Assurance of Discontinuance (“Assurance”) contains the findings of NYAG’s investigation and the relief agreed to by NYAG and DeVry Education Group Inc., DeVry University, Inc., and DeVry/New York Inc. (collectively, “the Parties”).

**FINDINGS**

1. DeVry Education Group Inc. is a publicly-traded Delaware corporation with principal offices located at 3005 Highland Parkway, Downers Grove, Illinois, 60515. DeVry University, Inc., and DeVry/New York, Inc. are subsidiaries of DeVry Education Group Inc.

2. DeVry University, Inc. operates a private, for-profit postsecondary educational institution with more than 55 campuses across the country. DeVry University, Inc. also offers online degree programs.

3. For purposes of this Assurance, “DeVry” shall include DeVry Education Group Inc., DeVry University, Inc., and DeVry/New York, Inc. with respect to the activities of DeVry University, Inc. and DeVry/New York, Inc. within New York and in marketing their educational products or services to New York consumers.

4. DeVry operates three brick-and-mortar campuses in New York State. DeVry also offers online programs to New York State consumers.

5. DeVry offers a variety of associate and bachelor’s degree programs, including degree programs in Business Administration; Computer Information Systems; Network & Communications Management; and Technical Management.

6. During the period of 2008-2015, DeVry made numerous claims concerning DeVry graduates’ employment outcomes in DeVry’s advertising materials, including on DeVry’s website, in print advertisements, in television commercials, and in-person presentations to prospective students. These advertisements centered on a representation that 90% (or, in certain cases, a number close to 90%, such as 87% or 92%) of DeVry graduates who are actively seeking employment obtain employment in their field of study within six months of graduation (the “90% Claim”). For example, DeVry television, print, and online advertisements and in-person presentations represented that “In 2012, 90% of DeVry University graduates actively seeking employment had careers in their field within 6 months of graduation.” Some ads went on to urge prospective students to “Join the 90%”.

7. DeVry’s 90% Claim had the capacity to be misleading because graduates included in the 90% figure were not previously unemployed graduates that sought and successfully

obtained a job upon graduation. Rather, many graduates included in the 90% figure were graduates who were already employed prior to graduating from DeVry, including some of whom were employed before they even enrolled at DeVry.

8. Most, but not all, of DeVry's advertisements featuring the 90% Claim also included small-print disclosures stating that the employment rate was based on graduates "who were employed at graduation or actively seeking employment in their field after graduation." This disclosure was inadequate to clarify the overall impression of the advertisements, which was that 90% of DeVry graduates seeking employment obtained jobs as a result of obtaining a DeVry degree.

9. DeVry's employment outcome statistics contained certain inaccuracies with respect to whether graduates were employed in their field of study. For example, in some cases, DeVry counted graduates of DeVry's Technical Management program as "employed in field" where the graduates were employed as retail salespersons, receptionists, bank tellers, and data entry workers. In some cases, graduates were counted as employed in their field of study despite holding positions that did not require a college degree.

10. DeVry also mischaracterized certain unsuccessful job-seeking graduates as "inactive" (*i.e.*, not actively searching for a job) based on the graduate's failure to fulfill certain Career Services requirements, despite other evidence that the graduates had in fact carried out an active, though unsuccessful, job search. For example, DeVry classified certain graduates as "inactive" on the grounds that the graduates failed to log on to DeVry's job postings database, despite evidence that the graduates had applied for jobs.

11. DeVry's 90% Claim also did not distinguish differences in the outcomes for certain programs offered by DeVry. For example, Web Graphic Design had in-field employment rates, as calculated and disclosed by DeVry, of 52%, 64%, and 71%, during the period of 2011

through 2013, and Game & Simulation Programming had employment rates of 61%, 69%, and 72% over the same period. Although DeVry disclosed program-specific employment rates to students prior to enrollment, such disclosures were not provided in the ads that included the 90% Claim.

12. DeVry also made claims concerning DeVry graduates' salaries in DeVry's advertising materials, including online and print advertisements and in-person presentations. For example, DeVry represented that DeVry bachelor's degree graduates earned 15% more one year after graduation than all graduates with bachelors' degrees from all other colleges and university (the "15% Claim"). DeVry also represented that DeVry graduates "nearly doubled their earnings" within 20 years of graduation (the "20 Year Claim") (collectively, the "Salary-Related Claims").

13. The Salary-Related Claims were based on commissioned studies carried out by a third-party entity, PayScale, Inc. ("PayScale"). PayScale analyzed proprietary data that was obtained through voluntary surveys of employees, who were asked to report their salaries to PayScale.

14. DeVry's Salary-Related Representations were not adequately substantiated. For example, the 15% Claim, which was based on PayScale's conclusions concerning DeVry graduates' earnings, was inconsistent with other data DeVry had concerning graduates' salaries, such as data derived from alumni surveys. Furthermore, the 20 Year Claim was predicated on the flawed assumption that DeVry's student-body composition remained the same over a twenty-year period, when in fact the proportion of engineering students decreased during that time, and thus may have inflated DeVry's graduates' salary outcomes.

15. New York Executive Law § 63(12) prohibits persons or business entities from engaging in repeated fraudulent or illegal acts or otherwise demonstrating persistent fraud or illegality in the carrying on, conducting or transaction of business.

16. New York General Business Law (“GBL”) Article 22-A prohibits deceptive acts or practices (GBL § 349) and false advertising (GBL § 350) in the conduct of any business, trade or commerce in the State.

17. By reasons of the foregoing, the NYAG has determined that DeVry has engaged in conduct violative of Executive Law § 63(12) and GBL Article 22-A, §§ 349 and 350.

#### **PROSPECTIVE RELIEF**

WHEREAS, the NYAG commenced this Investigation of DeVry in July 2014 pursuant to Executive Law § 63(12) and GBL Article 22-A; and

WHEREAS, without admitting or denying the above allegations, DeVry is entering this Assurance in order to settle and resolve the NYAG investigation;

WHEREAS, NYAG is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

18. DeVry is hereby permanently enjoined from any future violations of Executive Law § 63(12) and GBL Article 22-A, §§ 349 and 350.

19. DeVry shall not make any misrepresentations, expressly or by implication, concerning the success that students or graduates have realized or are likely to realize in starting or obtaining careers, jobs, or employment or concerning the compensation or compensation range that students or graduates of DeVry have received, or can be expected to receive.

20. DeVry shall not make any representation, expressly or by implication, that any employment statistic reflects the success of graduates in obtaining employment near or after graduation when the statistic includes employment that graduates obtained (a) before purchasing the product or service, or (b) at any time more than six months prior to graduating; provided, however, that nothing in this paragraph shall be construed to prohibit DeVry from making a representation to a state or federal authority or programmatic or institutional accreditor on a reporting form required by such entity, provided further that DeVry clearly and conspicuously disclose on such form, either as the primary number or in a footnote in 14-point font, the percentage of students who obtained their jobs upon or after graduating.

21. DeVry shall not make any representation, expressly or by implication, that any employment statistic reflects the employment status or employment success of graduates who were actively seeking employment if graduates were classified as not actively seeking employment based on (a) having waived career-services assistance, in whole or in part, or (b) the extent to which the graduates used career services.

22. To the extent that DeVry classifies certain graduates as failing to actively pursue employment for purposes of calculating employment rates (*i.e.*, as “inactive”); DeVry shall not classify a graduate as “inactive” based on factors such as the graduate’s failure to log in to DeVry’s job postings database where DeVry has other information that the graduate is conducting an active job search.

23. When calculating employment outcome statistics, DeVry shall not classify a graduate as employed in the graduate’s field of study unless DeVry has a reasonable basis to conclude that the graduate uses the knowledge, skills, and/or abilities acquired through the degree program of study in the majority of the graduate’s regular job duties. With respect to statistics pertaining to the employment outcomes of New York graduates, or, in the event DeVry

makes any representations to New York consumers using nationwide statistics, if DeVry bases determinations of whether a graduate is employed in field on graduates' self-identification as working in their field of study, DeVry shall implement a protocol (the "In-Field Classification Protocol") to perform outreach to a statistically significant sample (using a 95% confidence level) of those within a graduating cohort who self-identified as working "in field" to confirm the appropriateness of the "in-field" classifications. Graduates who provide information during this outreach that indicates that they are not using the knowledge, skills and abilities acquired through their degree program in the majority of their regular job duties shall be re-classified as "out-of-field." If the In-Field Classification Protocol demonstrates that a significant percentage of a graduating cohort was misclassified, DeVry shall take further actions to identify and correct misclassifications within the cohort as set forth in the In-Field Classification Protocol. The methodology and procedures employed in the In-Field Classification Protocol must be presented to and approved by the NYAG prior to its implementation, no later than 90 days from the execution of this Assurance. In the event of a conflict with the reporting or disclosure requirements imposed by another state or federal authority or programmatic or institutional accreditor, nothing in this paragraph shall be construed to prohibit DeVry from complying with such requirements.

24. To the extent that DeVry includes representations about school-wide graduate employment outcomes in advertising materials used in New York, DeVry shall also prominently disclose the placement rate of any program/campus that has an employment outcome that is more than 10% lower than the school-wide rate over a period of two or more consecutive years. This requirement shall not apply to reports or disclosures of school-wide graduate employment outcomes made by DeVry pursuant to state or federal statute or regulation or at the request of a regulator or accreditor.

25. DeVry shall not make any representation, expressly or by implication, about the benefit of any educational product or service, or the success or likely success of any student or graduate, unless the representation is non-misleading, and, at the time such representation is made, DeVry possesses and relies upon Competent and Reliable Evidence that is sufficient to substantiate that the representation is true. For purposes of this Assurance, “Competent and Reliable Evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.

26. DeVry shall not make any representations concerning graduate compensation where DeVry possesses material information that (a) is inconsistent with such representations or (b) otherwise suggests that the representation may be inaccurate.

27. For a period of three years from the Effective date of this Assurance, DeVry will engage a qualified, independent third-party (“Third-Party”) that has been approved by the NYAG to verify that DeVry has implemented policies and procedures to determine graduate employment or salary outcomes in accordance with the requirements of this Assurance and that DeVry has complied in all material respects with those policies and procedures. The Third-Party shall issue a Report to the NYAG, on no less than an annual basis, that shall include a description of (a) the methodology used to conduct the review; and (b) the results of the review. In addition, DeVry shall provide to the NYAG a description of any corrective actions that have been taken to address any identified problems.

28. For a period of three years from the Effective Date of the Assurance, DeVry shall provide to the NYAG an annual affidavit of compliance with this Assurance.



## RESTITUTION

29. In consideration of the making and execution of this Assurance, and within ten (10) business days thereafter, DeVry agrees that it will pay by wire transfer payable to the State of New York \$2.25 million for consumer restitution.

30. Any payments and all correspondence related to this Assurance must reference Assurance No. 17-009.

31. Graduates eligible to participate in a claims process shall include: (a) graduates of associate and bachelor's degree programs at DeVry campuses located in New York State who began their program between July 2008 and September 2015; and (b) New York residents that graduated from DeVry online associate or bachelor's degree programs and who began their program between July 2008 and September 2015. Such graduates will be eligible to receive restitution where the graduate timely submits a claim form in accordance with the claims process that indicates that the graduate was not employed in her field of study within six months of graduation despite conducting an active job search for in-field employment.

32. The NYAG shall determine a formula for calculating the amount of restitution eligible claimants will receive.

33. Within 60 days of the Effective Date of this Assurance, DeVry shall provide the NYAG with a database that includes the following information necessary to carry out the claims process: (a) the names, last known addresses, and last known email addresses of all DeVry graduates who are eligible to participate in the claims process pursuant to paragraph 31 of this Assurance; and (b) the amount of tuition paid by each such graduate less any DeVry-sponsored grants, scholarships or tuition refunds.

### **PENALTIES, FEES AND COSTS**

34. In consideration of the making and execution of this Assurance, and within ten (10) business days thereafter, DeVry agrees that it will pay by wire transfer payable to the State of New York \$500,000 in penalties, fees and costs.

35. Any payments and all correspondence related to this Assurance must reference Assurance No. 17-009.

### **MISCELLANEOUS**

36. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by DeVry and their counsel and NYAG's own factual investigation as set forth in Findings (1)-(17) above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in its sole discretion.

37. If the Assurance is voided or breached, DeVry agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, DeVry expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude NYAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against DeVry, or from using in any way any statements, documents or other materials produced or provided by DeVry prior to or after the date of this Assurance.

38. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by DeVry in agreeing to this Assurance.

39. DeVry represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. DeVry shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis, but shall be permitted to state that they do not admit or deny the findings set forth in this Assurance. Nothing in this paragraph affects DeVry's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which NYAG is not a party.

40. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by DeVry. The parties agree that nothing in this Assurance shall create private rights, causes of action, third party rights or remedies of any individual or entity against DeVry.

41. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

42. This Assurance resolves and releases all of NYAG's claims against DeVry relating to the subject of this Assurance, provided, however, that nothing in this Assurance shall be deemed to preclude the NYAG's review of acts, practices, or courses of conduct that occur after the Effective Date of this Assurance.

43. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

44. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole

discretion of the NYAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

45. To the extent not already provided under this Assurance, DeVry shall, upon request by NYAG, provide all documentation and information necessary for NYAG to verify compliance with this Assurance.

46. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to DeVry, to:  
General Counsel  
DeVry University, Inc.  
3005 Highland Parkway,  
Downers Grove, Illinois, 60515

If to the NYAG, to:  
Carolyn Fast  
Office of the New York State Attorney General  
120 Broadway, 3<sup>rd</sup> Floor  
New York, NY 10271

47. Acceptance of this Assurance by NYAG shall not be deemed approval by NYAG of any of the practices or procedures referenced herein, and DeVry shall make no representation to the contrary.

48. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by NYAG.

49. If a court of competent jurisdiction determines that the DeVry has breached this Assurance, DeVry shall pay to NYAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

50. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to

Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

51. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

52. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

53. The Effective Date of this Assurance shall be the date upon which it has been fully executed by all of the signatories hereto.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on January 27,

2017.

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

By: Jane M. Azia  
Jane M. Azia  
Bureau Chief  
Bureau of Consumer Frauds & Protection

By: Carolyn Fast  
Carolyn Fast  
Special Counsel

By: Melvin Goldberg  
Melvin Goldberg  
Assistant Attorney General

By: \_\_\_\_\_  
Counsel for DeVry

By: \_\_\_\_\_  
DeVry representative

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on January 27<sup>th</sup>

2017.

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

By: \_\_\_\_\_  
Jane M. Azia  
Bureau Chief  
Bureau of Consumer Frauds & Protection

By: \_\_\_\_\_  
Carolyn Fast  
Special Counsel

By: \_\_\_\_\_  
Melvin Goldberg  
Assistant Attorney General

By: *Shereen Kim Koho*  
Counsel for DeVry ) Assistant General Counsel  
DeVry Education Group Inc.

By: \_\_\_\_\_  
DeVry representative

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on January \_\_, 2017.

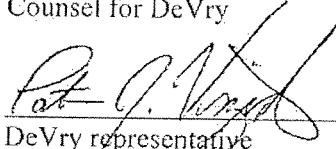
ERIC T. SCHNEIDERMAN  
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Counsel for DeVry

By:  \_\_\_\_\_  
DeVry representative