

FIRST ANNUAL REPORT  
OF THE SETTLEMENT ADMINISTRATOR  
UNDER THE  
CONSENT JUDGMENTS WITH  
EDUCATION MANAGEMENT CORPORATION  
(EDMC)

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## I. INTRODUCTION

In 2015, Education Management Corporation (EDMC) entered into a settlement with 39 states and the District of Columbia to resolve consumer protection claims arising out of its recruitment and enrollment practices. In addition to requiring the forgiveness of debt owed by former students who met certain criteria, the settlement imposes restrictions and certain obligations on the strategies and processes that EDMC's four brands – the Art Institutes (Ai), Argosy University, Brown Mackie College, and South University – at their locations can use as they try to identify, recruit, and enroll prospective students in their systems. The Consent Judgments that were filed in the participating states (collectively, “the Consent Judgment”) became effective on January 1, 2016, and certain of the requirements continue to be phased into effect. A Settlement Administrator was jointly appointed to oversee EDMC's compliance with the Consent Judgment.

Paragraphs 46 and 47 of the Consent Judgment require the Administrator to provide an Annual Report that must include (a) a description of the methodology and review procedures used by the Administrator; (b) an evaluation of whether EDMC is in compliance with the provisions of this Consent Judgment, together with a description of the underlying basis for that evaluation; and (c) a description of any practice which the Administrator believes may constitute a deceptive or unfair practice (as determined in the context of consumer protection laws). The following is the Administrator's first such report, covering a review period that ended September 30, 2016.

Pursuant to the standard set forth in the Consent Judgment, isolated incidents of non-compliance are not sufficient to establish EDMC's substantial non-compliance with the Consent Judgment, and the examples included in this Report do not reflect a conclusion that EDMC is in substantial non-compliance. Throughout this Report, however, the Administrator does include examples of the types of conduct reviewed in order to better describe the bases for the Administrator's evaluation to date.

EDMC has made significant strides in complying with the Consent Judgment, though its performance can best be described as a work in progress. In some respects, it is literally too soon for any results to be reported. That is, while the Consent Judgment's Effective Date is January 1, 2016, many of the key requirements are only now coming (or will soon come) into effect. But it is also true that in a larger sense, EDMC is still making the changes that are necessary for it to have the compliance architecture and culture needed to address the issues that led to the Consent Judgment.

EDMC has taken some very important steps. At its highest levels, and within its Risk and Compliance structures, EDMC has been proactively and positively engaged in this review. It has been cooperative with all requests and has suggested ways for the Administrator to better observe the compliance-related discussions that are happening within the company. The judgments that the compliance team has made on difficult questions have been almost uniformly appropriate, and at times the company has sought the Administrator's views before issuing guidance. EDMC has treated the Administrator as a partner in strengthening the company's compliance capabilities.

That said, EDMC understandably has a ways to go, particularly given that the Consent Judgment has been in effect for less than a year. Furthermore, in a company with operations as massive and diffuse as EDMC's, the compliance team will always face a challenge in driving

change out all the way through the organization. For example, notwithstanding appropriate EDMC policies and compliant EDMC training materials, individual admissions representatives have, at times, made errors in providing information regarding financial aid, made unsupportable claims regarding school quality, or failed to disclose facts regarding a school's or program's accreditation or licensure status that the Consent Judgment requires be disclosed. Further, EDMC representatives have struggled with new requirements, including that they cease calls after students have expressed disinterest, with accurately and fairly describing the schools' or programs' accreditation status and its significance, and the nature of an online education. Representatives have also tended to downplay the financial burdens that school can impose, and in particular have repeatedly misstated the terms of the federal Pell Grants on which so many students rely. These errors do not, at this point in the implementation of the Consent Judgment, rise to the level of substantial non-compliance. EDMC has responded properly to these and similar problems that have been brought to the company's attention, both issuing corrective guidance and taking necessary personnel actions. But that problems like these recur suggests that the compliance team's effects are not yet consistently recognized in the outer reaches of the company, where representatives have those critical contacts with prospective students. The Administrator will expect fewer such issues in the coming years.

While EDMC continues its work with its own admissions personnel, perhaps no compliance challenge presents the same kind of industry-wide consequences that are presented by EDMC's use of third-party lead generators to identify prospective students. Use of these lead generators is not unique to EDMC or to for-profits, though the for-profit industry historically has tended to rely more heavily on them. These organizations and their affiliates use a variety of techniques, ranging from online advertisements and websites to email and call center calling campaigns. Typically, lead generators use a web of affiliates and sub-affiliates to operate multiple locations across the web, where they gather contact information from consumers, and then sell that information to one or more schools who will contact the prospective student. Some lead generation efforts target the unemployed and underemployed seeking employment. Some websites that purport to offer available job opportunities are actually designed to collect the contact information for consumers to be sold to a wide range of industries, including for-profit colleges, none of which will directly provide a job to anyone. It is by no means clear what role some of these websites play in actually assisting people with job opportunities, or whether an individual who provides information to these sites has ever gotten a job through them.

The Consent Judgment did not prohibit EDMC from using third-party lead generators, but rather imposed new obligations and limitations on EDMC with respect to its use and oversight of them. EDMC is responding, among other things, by reducing its reliance on these third-party lead generators. Its Art Institute Online Division has announced that it will no longer use these kinds of leads, and the Art Institute ground locations have reduced their spending considerably. The other EDMC schools continue to rely on them – and while they have insisted on better disclosures and other compliance-related practices from their vendors, EDMC has not yet ferreted out some of the lead generators' more problematic practices. EDMC also is participating with the AGs and some of the other largest for-profit education companies to develop an industry-wide code of conduct for Third-Party Lead Generators, which is intended to resolve problematic practices on an industry-wide basis rather than exclusively for EDMC. The Administrator will expect more from EDMC each year in terms of disciplining lead generators and shifting away from lead generators that are either misleading or so opaque that assessing compliance is difficult, if not impossible.

Further, the Administrator will support the Attorneys General as they attempt to develop more industry-wide best practices on the issue.

Nine months into the Consent Judgment, much work has been done. Based on the monitoring of calls recorded in the admissions process, reviews of marketing material, job data, and other materials, participation in EDMC trainings, and mystery shops conducted at programs in every state that is participating in the Consent Judgment and in which an EDMC program exists, the Administrator can report today that EDMC has taken important steps but that much work remains to be done.

In the coming years and until this period is complete, the Administrator will attempt to shine a brighter light both on issues that have to date received lesser attention, often because the relevant requirement has only recently come into effect, and on issues that this initial review has identified as warranting further focus. Moreover, the Administrator will expect, in each year, improved performance by EDMC on the core marketing provisions of the Consent Judgments, as well as the provisions governing the use, audit, and discipline of lead generators.

## **II. THE FOR-PROFIT COLLEGE INDUSTRY**

The modern for-profit education industry can be traced to a pivotal change in federal student aid regulations in the 1970s. In the early 1970s, for-profit institutions enrolled just 0.2 percent of all degree-seeking students in the United States. That landscape changed in 1972 when a series of amendments to the Higher Education Act allowed for-profit schools to receive U.S. government funds. The flow of capital to for-profit colleges increased further as a result of State budget cuts, the federal “90/10 Rule,”<sup>1</sup> federal waivers allowing schools with more than 50% enrollment in distance education to receive Title IV (federal student aid) funds, and interest from large institutional investors such as banks and hedge funds. From 1970 to 2009, enrollment at for-profit colleges surged by more than 100-fold (from 18,000 to 1.85 million), while enrollment at all degree-granting higher education organizations grew by only 2.4-fold.<sup>2</sup>

In recent years, however, this trend has begun to reverse. Several major industry players are out of the business, and many of the largest for-profit schools have seen significant decreases in enrollment. “After reaching a peak in 2010, enrollment at private for-profit institutions decreased by 26 percent (from 1.7 million to 1.3 million students) between 2010 and 2014.”<sup>3</sup>

While EDMC has its own strengths and weaknesses, it is operating in a uniquely situated industry.

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<sup>1</sup> Under the Higher Education Act, in order to remain eligible to participate in federal student aid programs, for-profit institutions may receive no more than 90% of revenues from Title IV programs. *See* 20 U.S.C. § 1094(a)(24).

<sup>2</sup> *See* Deming, Goldin, Katz, “The For-Profit Postsecondary School Sector; Nimble Critters or Agile Predators?” National Bureau of Economic Research (2011), at 1, *available at* <http://www.nber.org/papers/w17710.pdf>.

<sup>3</sup> National Center for Education Statistics, *The Condition of Education*, Undergraduate Enrollment (May 2016), *available at* [http://nces.ed.gov/programs/coe/indicator\\_cha.asp](http://nces.ed.gov/programs/coe/indicator_cha.asp).

## A. Structure of the Industry

As a general matter, for-profit schools in the current environment serve a different population than their not-for-profit counterparts. For-profit schools typically have open admissions and flexible timing – both for coursework and enrollment. For-profit schools tend to enroll more women, minorities, older students, and those with lower incomes.

For-profits also focus heavily in specific subject areas: 52% of all associates of arts degrees granted by for-profits are in business management and marketing, and in the health professions. Nearly 50% of all Bachelor of Arts degrees granted by for-profits are in business. And 78% of certificates are in health professions and personal and culinary services.<sup>4</sup>

Historically, for-profits have focused largely on certificate programs and practical skills programs relating to particular trades or jobs. But with the onset of online courses, that distinction is blurring, with some of the larger and newer for-profits offering two and four-year degrees in more general subject matters. Harvard researchers summed up a lengthy economic comparison between the two groups as follows:

We find that relative to these other institutions, for-profits educate a larger fraction of minority, disadvantaged, and older students, and they have greater success at retaining students in their first year and getting them to complete short programs at the certificate and associate degree levels. But we also find that for-profit students end up with higher unemployment and “idleness” rates and lower earnings six years after entering programs than do comparable students from other schools, and that they have far greater student debt burdens and default rates on their student loans.<sup>5</sup>

The structure of individual for-profits usually includes two primary components – an education side and the business side. As with any for-profit enterprise, the business side is responsible for developing the consumer base by recruiting students. For the larger institutions, especially, this effort involves significant expenses for marketing, advertising, and recruitment personnel. Many large for-profit schools (as well as some non-profits with large online programs) expend significant resources on large call centers, use of third-party lead generators, and online and other advertising. The business side handles finances, budgets, and regulatory requirements of being a profit-making venture. The education side is, of course, responsible for accreditation, as well as designing and providing the infrastructure and course work for the programs offered, and providing teaching, evaluation and other educational services.

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<sup>4</sup> Deming, Goldin, Katz, “The For-Profit Postsecondary School Sector; Nimble Critters or Agile Predators?” National Bureau of Economic Research (2011), at 6 (compiling information from U.S. Dep’t of Education, NCES, 2009).

<sup>5</sup> Deming, Goldin, Katz, “The For-Profit Postsecondary School Sector; Nimble Critters or Agile Predators?” National Bureau of Economic Research (2011) at 1.

## B. Funding Sources

Like most U.S. education institutions, the for-profit education sector is highly dependent on access to federal student aid funding, also known as Title IV funding, to survive. Title IV programs include the following:

- **Pell Grants**, which are need-based grants from the federal government for undergraduate students. Qualifying students can be eligible to receive up to \$5,815 per year. Pell Grants do not need to be repaid as long as the student meets the eligibility criteria for the grant. If a student withdraws from classes, however, he or she may need to repay some or all of the grant money.<sup>6</sup>
- **Direct Loans** from the Department of Education, which have to be repaid. Direct loans may be “subsidized,” in which case the Department of Education covers the interest that accrues on the loan while the student is enrolled in school. They also may be “unsubsidized” and accrue interest while the student is enrolled in school.<sup>7</sup>
- **Direct PLUS Loans** from the Department of Education, which are made to parents of dependent undergraduate students and to graduates students. Unlike with Direct Loans, which do not require a credit check, Direct PLUS Loans are only available to borrowers without an adverse credit history.<sup>8</sup>

For-profits receive a disproportionate share of federal financial aid. In the 2014-15 academic year, for-profit schools received approximately 16.7% of federal loans and grants,<sup>9</sup> despite enrolling approximately 7.5% of undergraduate students.<sup>10</sup>

For-profit schools also receive significant amounts of military funding.<sup>11</sup> As discussed above, for-profit institutions are subject to the so-called 90/10 Rule, which provides that in order to remain eligible to participate in federal student aid programs, for-profit institutions may receive no more than 90% of revenues from Title IV programs.<sup>12</sup> Notably, however, military funding and veterans’ benefits are not part of Title IV; therefore institutions can satisfy the 90/10 Rule’s 10%

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<sup>6</sup> Federal Student Aid, Federal Pell Grants, <https://studentaid.ed.gov/sa/types/grants-scholarships/pell> (last visited Sept. 11, 2016).

<sup>7</sup> Federal Student Aid, Subsidized and Unsubsidized Loans, <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized> (last visited Sept. 11, 2016).

<sup>8</sup> Federal Student Aid, PLUS Loans, <https://studentaid.ed.gov/sa/types/loans/plus> (last visited Sept. 11, 2016).

<sup>9</sup> Department of Education, Title IV Program Volume Reports, Award Year Summary by School Type, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/SummarybySchoolType.xls>

<sup>10</sup> National Center for Education Statistics, *The Condition of Education*, Undergraduate Enrollment (May 2016), available at [http://nces.ed.gov/programs/coe/indicator\\_cha.asp](http://nces.ed.gov/programs/coe/indicator_cha.asp) (listing 2014 total undergraduate enrollment as 17.3 million and for-profit undergraduate enrollment as 1.3 million).

<sup>11</sup> U.S. Senate Committee on Health, Education, Labor, and Pensions, “Is the New G.I. Bill Working?: For Profit Colleges Increasing Veteran Enrollment and Federal Funds” (July 30, 2014), available at <http://www.harkin.senate.gov/documents/pdf/53d8f7f69102e.pdf>.

<sup>12</sup> See 20 U.S.C. § 1094(a)(24).



threshold for non-Title IV funding by enrolling military students with available tuition benefits. A 2014 report from the Senate Committee on Health, Education, Labor, and Pensions found that eight of the top ten recipients of Post-9/11 GI Bill Benefits in 2012-13 were publicly-traded companies that operate for-profit education institutions.<sup>13</sup>

Where available federal funding falls short of the full cost of attendance, students may fund their education by borrowing additional loans from private lenders and/or incurring institutional debt at the school where they enroll.

Federal student loans are difficult to discharge, even through bankruptcy. With a limited ability to discharge that debt, many borrowers who are unable to pay fall into default on their loans. A far higher percentage of students from for-profit schools default on their federal loans: 47% of the student loan defaults in 2011 were from the 12% of students enrolled in for-profit schools.<sup>14</sup> A comparison of school types is instructive:

*National Three-Year Cohort Default Rates<sup>15</sup>*

<b>TYPE OF SCHOOL</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
For-Profit	21.8%	19.1%	15.8%
Non-Profit Public	13.0%	12.9%	11.7%
Non-Profit Private	8.2%	7.2%	6.8%

The Department of Education’s gainful employment rules, discussed below, represent one effort to try to require for-profit institutions to improve their cohort default rates.

### **C. Accreditation and Regulation**

In order to be eligible to receive federal student aid funds, colleges, universities, and programs must be accredited by a Department of Education-approved accreditation body. Non-profit public or private institutions offering 2- or 4-year degrees have traditionally been accredited by one of seven regional accrediting bodies. National accrediting bodies, in contrast, have traditionally focused on shorter-term vocational programs in areas such as culinary arts, medical billing, or business administration.

In addition to their accreditors, for-profit schools and non-profit schools alike are subject to regulation by the states in which they operate, and by the federal government through

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<sup>13</sup> U.S. Senate Committee on Health, Education, Labor, and Pensions, “Is the New G.I. Bill Working?: For Profit Colleges Increasing Veteran Enrollment and Federal Funds” (July 30, 2014), at 4, *available at* <http://www.harkin.senate.gov/documents/pdf/53d8f7f69102e.pdf>.

<sup>14</sup> U.S. Senate Committee on Health, Education, Labor, and Pensions, “Is the New G.I. Bill Working?: For Profit Colleges Increasing Veteran Enrollment and Federal Funds” (July 30, 2014), at 12, *available at* <http://www.harkin.senate.gov/documents/pdf/53d8f7f69102e.pdf>.

<sup>15</sup> Katrina Turner, Service Director, Operations Performance Management Services, Federal Student Aid, Department of Education, “National Default Rate Briefings for FY 2012 3-Year Official Rates” (Sept. 30, 2015), *available at* <http://www.ifap.ed.gov/eannouncements/attachments/093015AttachOfficialFY20123YRCDRBriefing.pdf>.

requirements relating to receipt of federal funds. States generally require that all educational institutions – for-profit and non-profit alike – within their borders be authorized or licensed to operate, and that process usually includes some regulatory requirements. In recent years, however, there has been increased regulation specifically aimed at for-profit institutions.

For example, gainful employment rules issued by the Department of Education that became effective in 2015 require many for-profit and career schools (as well as some non-profit certificate programs) to disclose information on program costs, whether students graduate, how much graduates earn, and how much debt those students accumulate.<sup>16</sup> The regulations also impose restrictions on the debt-to-earnings ratio of completers of the program; schools that repeatedly fail these measures can lose eligibility to participate in Title IV programs.<sup>17</sup> Likewise, congressional scrutiny of GI Bill funds spent at for-profit schools has fueled proposals to amend the 90/10 Rule, which requires that for-profit colleges may receive no more than 90% of their revenues from federal student aid, to include GI Bill funds in that calculation of the 90%, and also to change the 90% to 85%.<sup>18</sup>

The accreditors themselves are also facing additional scrutiny. In June 2016, staff at the Department of Education recommended the termination of the Accrediting Council for Independent Colleges and Schools (ACICS),<sup>19</sup> a large national accreditor that accredited Corinthian Colleges, ITT Technical Institutes, and many of EDMC’s Brown Mackie College locations, among others. The recommendation was based, among other reasons, on concerns that ACICS-accredited schools provided false or unverifiable job placement data and that ACICS failed to discover and act upon questionable and fraudulent behavior at “a significant number of larger institutions accredited by ACICS.”<sup>20</sup>

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<sup>16</sup> See Department of Education, Program Integrity: Gainful Employment, 79 Fed. Reg. 64,890, 64,891-92 (Oct. 31, 2014).

<sup>17</sup> See 79 Fed. Reg. 64,890, 64,891-92.

<sup>18</sup> See, e.g., Press Release, “Senate Dems: Time To Close For-Profit College Loophole Impacting Servicemembers, Veterans And Taxpayers” (June 22, 2016), available at <http://www.help.senate.gov/ranking/newsroom/press/senate-dems-time-to-close-for-profit-college-loophole-impacting-servicemembers-veterans-and-taxpayers->.

<sup>19</sup> See U.S. Department of Education, Staff Report to the Senior Department Official on Recognition Compliance Issues (June 2016), available at <https://opeweb.ed.gov/aslweb/finalStaffReports.cfm?aID=15&mid=68>.

<sup>20</sup> U.S. Department of Education, Staff Report to the Senior Department Official on Recognition Compliance Issues (June 2016). The Department’s recommendation was followed by a vote by the National Advisory Committee on Institutional Quality and Integrity (NACIQI), a national body charged with overseeing and providing recommendations regarding accrediting agencies to the Department of Education. It agreed with the recommendation to deny ACICS with recognition as an accrediting agency. See National Advisory Committee on Institutional Quality and Integrity (NACIQI), Report of the Meeting (June 22-24, 2015), at 9, available at <http://sites.ed.gov/naciqi/files/2016/08/NACIQI-Report-of-the-MeetingJUNE2016FINAL-508.pdf>.

#### **D. Relationship to Third Parties**

Marketing and recruiting have been essential to the growth in enrollment in for-profit colleges. At many, but not all, for-profit schools, much of the work of finding new consumers for the for-profit educational product has been done by third-party vendors often referred to as “lead generators.” These organizations and their affiliates use a variety of techniques, ranging from online advertisements and websites to email and call center calling campaigns. Typically, lead generators use a web of affiliates and sub-affiliates to operate multiple locations across the web, where they gather contact information for potential students, and then sell that information to one or more schools who will contact the prospective student.

Lead generation has been big business in other industries, and the same is true for education. Many lead generators use websites on which, for example, they create rankings of schools, purporting to list the “top” or “best” degree programs for a field of study or for schools for military personnel and veterans. They cast themselves as helping prospective students match their interests and needs based on location and academic preferences. But many feature or “rank” only schools that have paid to be there – largely for-profit schools. Legislators and critics fear that the prospective students who find these sites expect to be shown appropriate options out of the entire range available; instead, they are steered to the for-profit schools that pay to be promoted, and which are typically more expensive than community colleges or state universities.

Similarly, some lead generation efforts target the unemployed and underemployed seeking employment. Some websites that purport to offer available job opportunities are actually designed to collect the contact information for consumers who consent to be contacted about various job and educational opportunities. It is by no means clear what role some of these websites play in assisting people with job opportunities – or whether the individuals who provide information to these sites have ever gotten jobs through them.

Moreover, the lead generation industry has historically lacked transparency. Neither regulators nor even the for-profit colleges themselves have a good sense of who runs these operations or all of the tactics lead generators use to pursue students. Stories of employees signing up residents in homeless shelters and enticing contact information by promising jobs are just a few examples of the tactics that have been exposed. To date, the lead generation industry also has been largely unregulated. Effective regulation and policing of lead generator tactics is made more difficult by the somewhat transient quality of the industry; websites appear and disappear (or, at least, cease to be updated) frequently.

The relationship between for-profit schools and lead generators is complicated. Many for-profit schools are heavily dependent on lead generators, and lead generators earn substantial sums from their clients. But they are also, in some sense, competitors, because for-profit schools can do their own marketing, using the same kinds of tools that lead generators use (such as targeted internet advertising). This potential competition appears to be one of the reasons why for-profit schools often have limited visibility into the steps lead generators take to identify prospects. In some sense, that has worked for both industries: For-profit schools have not wanted to be responsible for lead generators, and lead generators have not wanted for-profit schools to learn the tools of the trade and then ply that trade themselves.

Finally, lead generators often work for multiple for-profit schools that are competitors with each other and even sell the exact same leads at the same time to several schools. This dynamic can create a frenzy of communication – shortly after a consumer provides information to the lead generator, the consumer is likely to be contacted by several schools within a few minutes (each school seeking to be the first to get the person on the phone), or repeatedly contacted over several days.

Recently, the tides have begun to turn against the aggressive marketing tactics used by lead generators in the education sector. Certain for-profit institutions have decided to stop using lead generators altogether.<sup>21</sup> The FTC has also begun to examine practices by lead generators. In April 2016, it brought an enforcement action against one education lead generator that allegedly “gathered online job announcements ... and summarized them on its website, which appeared to accept applications for the jobs.”<sup>22</sup> The company never sent the information consumers submitted to prospective employers, however. It instead “steered the consumers toward enrolling in education programs that had paid the defendants for consumer leads.”<sup>23</sup>

And, as discussed more below, state Attorneys General are working with the for-profit education industry to develop a code of conduct for lead generators. This effort, if successful, could help to impose discipline within an industry that can rightly be characterized as the Wild West. Without a uniform standard for tactics that are “off-limits” within the industry, vendors have resisted some institutions’ efforts to take a more conservative approach to lead generation, pointing to laxer policies at other institutions as essentially giving permission for bad behavior.

Finally, although this report will not go into depth about lead conversion rates, it is clear to the Settlement Administrator that the leads that are produced through misleading tactics are also worse leads than those produced by more appropriate marketing efforts. One need only listen to a few phone calls from frustrated consumers who believed they would be contacted about job opportunities to recognize that such leads will rarely produce actual students who go on to complete some or all of an academic program at the school. Nonetheless, education institutions continue to buy large volumes of poor-quality leads, despite all of the costs that entails. Schools pay significant sums to lead generators to purchase the leads but also incur significant expenses to employ personnel to attempt to recruit these consumers and to maintain a marketing and compliance function to monitor the activities of the lead generators.

Whether through a code of conduct, further investigations, or other actions, the Attorneys General or other regulators can continue to move the industry forward on measures of compliance and success with students if they can bring about fundamental changes in the lead generation space.

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<sup>21</sup> See, e.g., Apollo Education Group, Inc., Form 10-Q (April 7, 2016), at 36 (noting that in November 2015, the University of Phoenix eliminated the use of third-party operated websites for marketing purposes).

<sup>22</sup> Federal Trade Commission, Press Release, “FTC Charges Education Lead Generator with Tricking Job Seekers by Claiming to Represent Hiring Employers” (April 28, 2016), <https://www.ftc.gov/news-events/press-releases/2016/04/ftc-charges-education-lead-generator-tricking-job-seekers>.

<sup>23</sup> Federal Trade Commission, Press Release, “FTC Charges Education Lead Generator with Tricking Job Seekers by Claiming to Represent Hiring Employers” (April 28, 2016), <https://www.ftc.gov/news-events/press-releases/2016/04/ftc-charges-education-lead-generator-tricking-job-seekers>.

### III. EDUCATION MANAGEMENT CORPORATION

#### A. The Company and its Schools

At the time of the November 2015 Consent Judgment with the state Attorneys General, EDMC was one of the largest for-profit providers of post-secondary education in the country. Although formerly a public company, it delisted from the NASDAQ in 2014, eighteen years after its first public offering.<sup>24</sup> Although subsequent steps have resulted in a smaller footprint, at the time of the Consent Judgment it claimed to manage 109 locations in 32 U.S. states and in Canada and serve over 90,000 students. The company's locations are broken into four separate brands, or systems: the Art Institutes (Ai), Argosy University, Brown Mackie College, and South University.

The distinct brands owned by EDMC present different challenges. Each has its own culture and history; each operates with a different level of independence from EDMC's corporate headquarters. From a compliance perspective, these differences are obstacles. Even when, as the Settlement Administrator has often found, EDMC's overarching policies and compliance efforts are fully consistent with the Consent Judgment, those efforts do not easily flow through to each of the schools, especially the ground locations. In implementing the Consent Judgment, EDMC is experiencing the same types of problems that any far-flung and somewhat decentralized organization does when it tries to change its culture.

The Art Institutes system of schools is the company's largest. The company first acquired The Art Institute of Pittsburgh in 1970, and it now has over fifty locations. According to the company's most recent annual public filing, The Art Institutes accounted for more than half of EDMC's total annual revenue and enrolled student population.<sup>25</sup> Ai's programs focus on "applied arts in creative professions" and range from graphic design to culinary arts to fashion design and marketing; its schools include both ground campuses and an online option through The Art Institute of Pittsburgh, Online Division.<sup>26</sup> While EDMC has announced the closure of 19 Ai campuses by the end of 2017, Ai remains EDMC's flagship, receiving the bulk of the attention in EDMC's compliance efforts, implementing beneficial compliance practices before the other schools, and utilizing training materials prepared by EDMC's Risk and Compliance and Centralized Training teams. The Art Institute schools that will remain open are accredited by one of six accrediting bodies.<sup>27</sup>

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<sup>24</sup> See <http://www.edmc.edu/About/History.aspx>.

<sup>25</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 6, 10; see also EDMC, Schools by Revenue and SBB (Sept. 23, 2015).

<sup>26</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 3.

<sup>27</sup> The accreditors are the Accrediting Council of Independent Colleges and Schools (ACICS), the Higher Learning Commission of the North Central Association (HLC), the Middle States Commission on Higher Education (MSCHE), the Northwest Commission on Colleges and Universities (NWCCU), the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), and the Western Association of Schools and Colleges Senior College and University Commission (WASC).

Two other EDMC schools, while each continuing to enroll students and each constituting approximately 15-20% of the company's student enrollment,<sup>28</sup> are more independent and less closely incorporated into reliant on EDMC's corporate compliance efforts. The first is Argosy University, which EDMC acquired in 2001 and which offers programs in psychology and the behavioral sciences, business, legal, education, and health sciences through 28 campuses and through online programs.<sup>29</sup> Argosy is less closely managed by EDMC than the Art Institutes are, and Argosy continues to rely on advertising practices that EDMC is jettisoning for Ai, but its admissions trainings – a critical area of compliance issues under the Consent Judgment – are handled by EDMC's Centralized Training staff. Argosy schools are accredited by the Western Association of Schools and Colleges Senior College and University Commission.<sup>30</sup>

The second is South University, which became part of the EDMC family of schools in 2003.<sup>31</sup> South focuses on programs in the health professions and business disciplines at 15 campus locations and through online programs.<sup>32</sup> South schools are accredited by the Southern Association of Colleges and Schools Commission on Colleges.<sup>33</sup> South is perhaps the most decentralized of the EDMC schools. Unlike the other brands, it prepares and conducts some of its own trainings for its ground location admissions representatives,<sup>34</sup> and, like Argosy, continuing to rely on advertising practices that Ai schools, for example, are abandoning.

The final EDMC brand is the Brown Mackie College set of schools, which EDMC also acquired in 2003.<sup>35</sup> The Brown Mackie Colleges aim to prepare students for entry-level positions,<sup>36</sup> through its medical assisting, business, criminal justice, occupational therapy assistant, healthcare administration, and veterinary technology programs.<sup>37</sup> The school has less autonomy than South, but it is still relatively free of the more centralized control that the Art Institute schools experience; its admissions training materials are prepared by EDMC's Risk and Compliance and Centralized Training teams, although the trainings themselves are conducted by Brown Mackie staff. The school also faces distinct regulatory challenges. Not only are the colleges themselves

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<sup>28</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 4; EDMC, Schools by Revenue and SBB (Sept. 23, 2015).

<sup>29</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 3; <http://www.edmc.edu/About/History.aspx>; <http://www.edmc.edu/About/ArgosySchools.aspx>.

<sup>30</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 21.

<sup>31</sup> See <http://www.edmc.edu/About/History.aspx>.

<sup>32</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 4; <http://www.edmc.edu/About/SouthUniversitySchools.aspx>.

<sup>33</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 21.

<sup>34</sup> Admissions representatives at all of EDMC's brands receive compliance training developed by EDMC's Risk and Compliance team. The Art Institutes, Brown Mackie College, and Argosy University ground locations, as well as all of the brands' online divisions, use training that was either developed by EDMC's Risk and Compliance or the Centralized Training teams, with input from the Education Systems. South University ground locations develop some of their own training materials, which are then to be reviewed and approved by EDMC's Risk and Compliance department.

<sup>35</sup> See <http://www.edmc.edu/About/History.aspx>.

<sup>36</sup> See [https://content.edmc.edu/assets/pdf/BMC/Press\\_Kits/bmc-presskit.pdf](https://content.edmc.edu/assets/pdf/BMC/Press_Kits/bmc-presskit.pdf).

<sup>37</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 4.

accredited, by ACICS or by the Higher Learning Commission of the North Central Association,<sup>38</sup> but the Brown Mackie schools offer a heavy proportion of programs subject to separate accreditation or licensing standards, such as occupational therapy and surgical technician programs.

Significantly, while there are currently 26 Brown Mackie College locations, EDMC announced in June that all but four of the schools would be taught out and closed by the end of 2018.<sup>39</sup> Though the Brown Mackie locations will not receive significant investment in the coming years, the Consent Judgment's requirements continue to apply to all 26 locations. Some of the Consent Judgment's provisions will become less relevant, however. As Brown Mackie locations cease enrolling new students and focus solely on teaching out those who remain, the provisions relating to EDMC's recruitment practices will necessarily touch fewer and fewer interactions with students and prospective students. The remaining four locations – Akron, Ohio, Hopkinsville, Kentucky, North Canton, Ohio, and Quad Cities, Iowa – are in the process of being sold to The Ross Group.<sup>40</sup> The Ross Group has filed change of ownership applications with accreditors and state licensing agencies for these locations. The transaction is expected to close after those approvals, and approval from the Department of Education, are received.

The consolidation of over 100 schools into four systems, all operating under a single EDMC umbrella, serves several purposes for the company. From a cost perspective, the use of four separate systems for the many locations enables the company to promote brand identities among employers and prospective students in specific fields – providing cost-efficiencies that would not be available were the 100-plus school locations promoted independently or as part of a single brand. EDMC describes this benefit as “gain[ing] economies of scale with respect to student acquisition and retention costs.”<sup>41</sup> From a compliance perspective, all four systems can be overseen through a single, centralized compliance structure – and such an approach may have both cost and compliance benefits. To date, extending the reach of EDMC's centralized compliance efforts to each of its schools remains a task not fully complete.

## **B. The Consent Judgment**

Concurrent with the increased regulatory interest in the for-profit education industry discussed above, EDMC became the subject of several state investigations beginning in 2010. Over a two-and-a-half year period, EDMC received subpoenas from the Attorneys General of Florida, Kentucky, New York, Colorado, and Massachusetts.<sup>42</sup> The subpoenas were followed by requests for information from thirteen states in January 2014, with the Pennsylvania Attorney General's office serving as the states' principal point of contact.<sup>43</sup> Following more than a year of

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<sup>38</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 21.

<sup>39</sup> See [https://content.edmc.edu/assets/pdf/BMC/Press\\_Kits/bmc-presskit.pdf](https://content.edmc.edu/assets/pdf/BMC/Press_Kits/bmc-presskit.pdf).

<sup>40</sup> These schools will not remain subject to the Consent Judgment, because the net revenue and average starting student body of these schools do not trigger successorship provisions as set forth in Paragraph 134 of the Consent Judgment.

<sup>41</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 11.

<sup>42</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 36.

<sup>43</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 36.

subsequent discussions, EDMC entered into a settlement with 39 states and the District of Columbia to resolve consumer protection claims arising out of its recruiting and enrollment practices. The settlement was resolved through nearly identical consent judgments entered in the various states,<sup>44</sup> referred to in this Report as the Consent Judgment.

The Consent Judgment appointed an independent Settlement Administrator to monitor EDMC's compliance with the Consent Judgment's requirements and issue annual reports. This is the first report.

#### **IV. EVALUATING EDMC'S COMPLIANCE EFFORTS**

##### **A. Overall**

EDMC's compliance efforts are a work in progress. Indeed, nine months into the Consent Judgment's implementation, in many respects it is literally too soon for any results to be reported. That is, while the Consent Judgment's Effective Date is January 1, 2016, many of the key requirements are only recently coming into effect. The Consent Judgment's requirement that EDMC provide a "Single-Page Disclosure Sheet" and discuss it with prospective students, giving them a defined set of statistics relevant to their decisions, came into effect only at the end of June.<sup>45</sup> Restrictions on EDMC's ability to enroll students in programs that do not possess certain accreditations or do not qualify students to become licensed for particular fields have similarly only recently come into effect.<sup>46</sup> Obligations to refund tuition payments to students who withdraw sufficiently early in their terms are also new.<sup>47</sup> And while EDMC is working responsibly with the Consumer Financial Protection Bureau (CFPB) as the agency develops an Electronic Financial Impact Platform, intended to provide students with relevant information about the likely future economic costs of an EDMC education, the platform is still in development and EDMC's obligations with respect to it have still not come into effect.<sup>48</sup> There is thus only minimal information, or in some cases no information, available regarding EDMC's compliance with these terms at this time.

This Report on EDMC's compliance efforts is also necessarily incomplete because EDMC is still building out much of the infrastructure necessary for a complete review of its recruiting and admissions process. Under the Consent Judgment, EDMC is required to "record all telephone calls and online chats between Admissions Representatives or Student Financial Services Representatives," and to "acquire and implement an automated voice interaction analytics platform ... capable of analyzing all of the call recordings."<sup>49</sup> However, the Consent Judgment gives EDMC 18 months to phase in the call monitoring and voice analytics systems, which require

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<sup>44</sup> The various consent judgments all share identical requirements for the core provisions, although certain states also added additional provisions that apply specifically to that state. EDMC is implementing the Consent Judgment provisions in every state in which it operates, regardless of whether that state participated in the Consent Judgment.

<sup>45</sup> Consent Judgment ¶¶ 56-58, Ex. A.

<sup>46</sup> Consent Judgment ¶¶ 84-87, 89-90, Ex. A.

<sup>47</sup> Consent Judgment ¶¶ 103-05, Ex. A.

<sup>48</sup> Consent Judgment ¶¶ 71-73, Ex. A.

<sup>49</sup> Consent Judgment ¶ 95.



implementation of appropriate hardware and software on campuses.<sup>50</sup> The system is implemented and fully operational at EDMC's National Call Center (NCC),<sup>51</sup> which conducts millions of calls each year, and for the online programs of The Art Institutes, Argosy University, and South University, and for all third-party lead generator call centers, but it does not yet cover any of the schools' ground campuses. Thus while this Report reflects the results of listening to calls regarding EDMC online programs, and occasional ground campus calls that are recorded after transfers from the National Call Center,<sup>52</sup> a broader review of admissions and financial services calls from the more decentralized ground campuses will necessarily be left for a subsequent report.

In these early stages, however, it is clear that EDMC deserves credit for its cooperation with the Settlement Administrator's review. At the level of company management and within its compliance structures, EDMC has shown itself to be affirmatively open to the review. The company has agreed to the Administrator's requests for information, and has proactively offered and provided the Administrator access to internal listservs through which admissions personnel raise compliance questions, to complaint management systems, and to monthly trainings and question-and-answer sessions on admissions and recruiting subjects. EDMC has affirmatively sought the Administrator's views on certain difficult questions, seeking feedback on proposed guidance to ensure compliance. While there have been some delays in obtaining requested information, those delays have never appeared to be based on a resistance or objection to the request. EDMC appears to view the Administrator as a partner in strengthening the company's compliance capabilities.

The EDMC Risk and Compliance team is also generally making appropriate judgments on the issues that come before it. This is apparent through a number of different channels. Training materials prepared or reviewed by EDMC's compliance team provide sound, compliant guidance. Marketing materials that are submitted, as required, by outside vendors or in-house teams to EDMC's centralized Business Practices Committee contain accurate information. Responses provided through the admissions personnel listservs are consistent with the Consent Judgment's requirements.

Relatedly, when problems are identified, EDMC has responded appropriately. At times during the course of this initial period of review, the Administrator has sought to discuss with EDMC problematic communications that had been identified in the course of monitoring admissions calls. Occasionally, EDMC had also already identified the issue, and had treated the call as an infraction. When it had not previously identified that issue or call, EDMC recognized

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<sup>50</sup> Consent Judgment ¶ 95, Ex. A.

<sup>51</sup> The National Call Center is an internal call center operated by EDMC that provides the initial outreach to prospective students for Ai, Brown Mackie, and Argosy. NCC uses autodialers to quickly contact new leads that are received, verify the consumer's eligibility for school, and then connect the consumer to the appropriate school and location.

<sup>52</sup> When the NCC conducts a "warm transfer" of a call to the ground locations, the transferred call continues to record. As a result, some calls for the ground locations of the Art Institutes, Argosy, and Brown Mackie are recorded. Because South's ground locations do not use the NCC, it does not have calls that are recorded under these circumstances.

and accepted the Administrator's concerns and took appropriate follow-up personnel actions. EDMC has not rejected or downplayed concerns that have been raised.

All that said, EDMC's interest in strengthening its capacity for compliance, and the good judgments of its compliance team, are not on their own sufficient to build a compliant organization. EDMC faces a number of challenges.

First, the company will need to move further away from vendors, or require changes by vendors, that have engaged in practices that – though common in the industry – are problematic. One such problematic practice is a simple one: Third-party vendors, hired to identify prospective leads who might be interested in education, advertise *job opportunities* online – but primarily collect and sell the leads to EDMC and others as prospective students, without necessarily delivering the expected job opportunities. The prospective students, in turn, had responded to advertisements that were facially offering employment, and then are bombarded with calls from for-profit schools. Shifting to new advertising strategies, either by breaking ties with these vendors or changing their tactics, requires more than just good judgment by the compliance staff. It requires a company willing to overhaul its marketing approach. As discussed below, there has been significant variation at the EDMC schools as to how they have approached this issue.

Second, EDMC's compliance operation will need to drive change all the way through the company. Again, while the training and materials produced or reviewed by the compliance team are sound, the goal is to cause changes at the outer reaches of the EDMC system. In the course of this initial review, compliance problems tended to arise not because the guidance was incorrect, but because front-line employees either had not received it or were not following it. To some extent, there will always be human, individual errors in an organization the size of EDMC. But where the same or similar problems are arising multiple times, in different parts of the company, EDMC will need to do a better job ensuring that compliant training and guidance actually takes hold.

Two factors complicate EDMC's ability to implement change. First, today, the EDMC compliance staff lacks basic visibility into much of its system, both because there are over 100 EDMC locations and because the company's call monitoring infrastructure has not yet reached the ground campuses. Without the ability even to *know* what its representatives are saying, EDMC is less able to *improve* what they saying. Second, except for the Art Institute system, EDMC's schools maintain a meaningful level of autonomy and independence from the centralized EDMC compliance staff. Whether an integral part of some forward-looking strategic plan or a coincidental vestige of their history, Argosy, Brown Mackie, and South – and particularly the ground programs at those schools – operate with considerably less oversight from EDMC, and there is reason to believe that the programs with less aggressive monitoring in fact have more compliance problems. Ultimately, EDMC needs to more effectively drive its compliance programs into those schools. A failure to do that will likely mean a failure to meet the obligations of the Consent Judgment. This is an issue that the Settlement Administrator team will be closely watching in the coming years.

## **B. The Settlement Administrator's Efforts**

The Consent Judgment charges the Settlement Administrator to conduct an independent review of EDMC's compliance with the Consent Judgment's terms.<sup>53</sup> This section provides a brief overview of some of the Administrator's efforts since the Consent Judgment became effective.

While the Consent Judgment does not specify the methods that Administrator must use to assess EDMC's compliance with the Consent Judgment, it does give the Administrator authority to, among other things, observe training sessions for admissions and financial services representatives, monitor telephone calls that admissions and financial services representatives conduct with current and prospective students, conduct mystery shopping of EDMC's enrollment practices, review consumer complaints, review EDMC's calculation of job placement data, and have access to books, records, and other documents sufficient to ensure compliance with the Consent Judgment.<sup>54</sup> The Consent Judgment also requires the Administrator to make a good faith effort to leverage EDMC's existing compliance mechanisms when reviewing EDMC's compliance with the Consent Judgment.<sup>55</sup>

Consistent with the Consent Judgment, the Settlement Administrator team has made use of EDMC's own compliance efforts as part of its review. For example, EDMC provides the Administrator with data from its own call monitoring and mystery shopping efforts. EDMC's ongoing call monitoring is critical and compliance reviews provide key information for the on-the-ground challenges in implementing the Consent Judgment. EDMC also provides the Administrator team with the results of compliance-related audits conducted by its Internal Audit team.

The Settlement Administrator team has gone much further, however. In addition to reviewing the EDMC compliance team's work, the Settlement Administrator team also conducts its own review. The Administrator's efforts have included the monitoring of randomly sampled calls involving EDMC's admissions and financial services personnel.<sup>56</sup> The Administrator team uses this review to log and track issues that are identified on calls. The Administrator team also has access to PerformMatch, the speech analytics system used by EDMC. The Administrator team uses PerformMatch to listen to discussions of specific topics relevant to the Consent Judgment to identify potential issues and trends. This targeted listening provides invaluable information about the cause of specific problems (lack of training, unclear direction, etc.) and the frequency with which these arise. In addition, in some instances where representatives have been observed engaging in problematic behavior, the Administrator team conducts a targeted review of other calls involving that employee, to assess whether the representative engages in a pattern of bad behavior.

The Settlement Administrator has also directed its own mystery shopping, using EDMC's mystery shopping vendor, to test the ground campuses. These mystery shops covered all four EDMC brands and included programs in all of the states that participated in the Consent Judgment

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<sup>53</sup> Consent Judgment ¶ 40.

<sup>54</sup> Consent Judgment ¶ 40.

<sup>55</sup> Consent Judgment ¶ 41.

<sup>56</sup> This review is, obviously, limited to the programs currently subject to call recording.

in which an EDMC school operates. The mystery shops were designed to focus on and enable the Administrator to assess EDMC's implementation of specific aspects of the Consent Judgment.

In addition, the Settlement Administrator has requested and reviewed documents and data that might reflect on EDMC's compliance with the Consent Judgment. The team has access to the portal used by EDMC to review and approve marketing materials, and has reviewed materials submitted through that process. The Administrator receives regular reports regarding consumer complaints received by EDMC and its resolution of those complaints. It has access to EDMC's policies and procedures repository. The Administrator team also has reviewed EDMC's training materials and attended admissions training sessions. It attends monthly admissions training calls and monitors the correspondence through compliance listservs that allow admissions personnel to request and receive quick feedback on compliance questions.

The Administrator team also has access to the job placement information that will underlie EDMC's calculation of job placement rates for its programs. For each completer deemed to be "placed" by an EDMC school, the Administrator can view the student's degree, school, job position, employer information, and other details regarding the student's employment. It can also view the information collected by CompliancePoint, a third-party vendor enlisted by EDMC to verify the job placement information.

The team has met with and interviewed personnel at EDMC and also talked with complainants who have raised specific concerns about EDMC's processes. Through and in light of these discussions, the Administrator provides feedback on specific issues, whether identified by EDMC or the Settlement Administration team itself.

Consistent with the Settlement Administrator's overall approach, the goal of these efforts has been to facilitate compliance – not just in the first year of the Consent Judgment but in future years and hopefully after the Consent Judgment has lapsed. To that end, the Administrator has sought to identify concerns as they arose so that EDMC could address them as quickly as possible and therefore to prevent patterns or practices of noncompliance. Where issues were identified, EDMC has been given the opportunity to address them, for example, through changes in its training or policies. In addition, the Administrator has sought to work with EDMC in a number of areas to improve policies and compliance efforts, especially in the area of the use and supervision of lead generators.

It is the Settlement Administrator's expectation that EDMC will improve in each year of the Consent Judgment. Moreover, the Settlement Administrator has focused on working with EDMC to implement compliance structures that will last beyond the Consent Judgment. We believe that, at the highest levels, EDMC has internalized that its culture and its approach to compliance needs to change, but success will depend on creating the policies, the environment and the structures needed for the long-term. The Settlement Administrator expects to comment on this ongoing process in future reports.

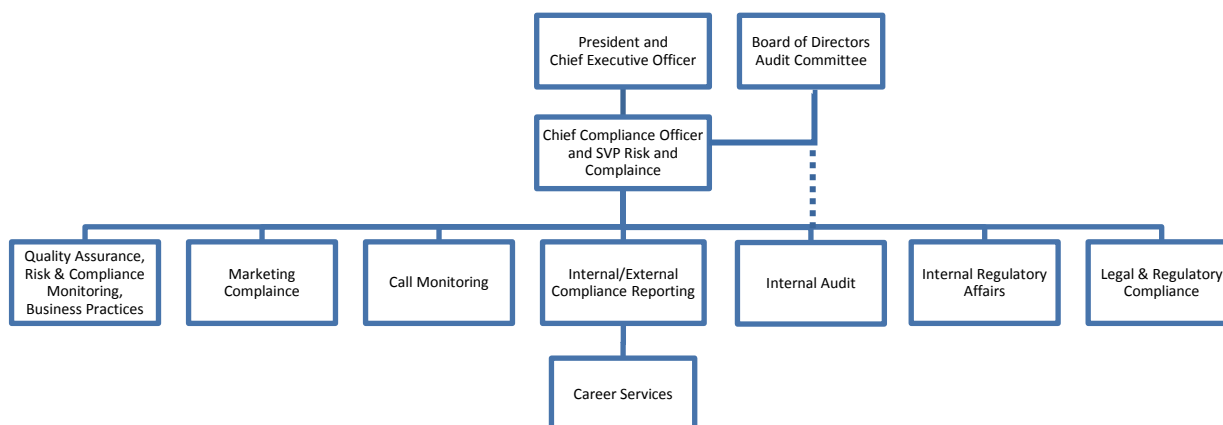
Finally, it is worth noting what the Administrator has *not* reviewed under the terms of the Consent Judgment. The Administrator has not reviewed the nature and quality of the courses offered by EDMC's educational systems, an inquiry that is the province of accreditation organizations. Nor has it reviewed EDMC's compliance with its obligations under Title IV, such

as the data used to determine its compliance with the 90/10 Rule, its student loan default rates or other effects of college debt on its students. None of these topics are covered by the Consent Judgment, so they are beyond the scope of the Administrator’s review. Of course, if EDMC or its schools were to make deceptive or false claims about these or any other issues, that conduct would fall within the terms of the Consent Judgment, and the Administrator does review such issues.

### C. EDMC Risk & Compliance Operation

As discussed above, EDMC uses a centralized compliance organization to implement, and monitor compliance with, institutional policies relating to the recruitment and enrollment of students. Beth Henke serves as the Chief Compliance Officer and Senior Vice President of Risk and Compliance. She oversees various compliance-related functions within the organization, including Internal Audit, Legal & Regulatory Compliance, Call Monitoring, and Marketing Compliance.

#### EDMC Risk and Compliance Organization



As described below, in preparation for, and in the wake of, the execution of the Consent Judgment, varying aspects of this large team have had responsibilities implementing the Consent Judgment’s requirements.

#### 1. Admissions Compliance Policies

EDMC’s Call Monitoring team creates and maintains admissions compliance policies, which are distributed through all of the school brands.

A key guidepost in this enterprise is the Admissions Compliance Guide, which offers instructions on how and *how not* to answer common questions. The Guide covers topics including accreditation, financial aid, licensure and certification, and the prohibition of the use of abusive recruitment methods.<sup>57</sup>

For example, with respect to accreditation, the Guide instructs that representatives must respond to questions about a school’s accreditation by providing the full name of the accrediting

<sup>57</sup> EDMC, Admissions Compliance Guide (Aug. 2016).

agency, not abbreviations, and can provide additional information, like the contact information for the accreditor, information about its accrediting standards or criteria, or its relationship with the Department of Education.<sup>58</sup> The Guide also directs that representatives may never “[c]ompare your school’s accreditation to that of another institution,” or imply “that because your school is accredited by the same accrediting agency as another institution, that the two have the same accreditation.”<sup>59</sup> The Guide also states that representatives may also not describe the school as “fully accredited,” because “there is no such thing as partial accreditation.”<sup>60</sup>

EDMC also maintains a Compliance Grade Level Key, which it uses to assess the severity of a compliance infraction. Infractions are scored on a scale from 1 to 4, with a level 4 infraction being most severe. The grading scale provides:

Level 1: Misstatement of factual information; not fully responding to a compliance question; asking inappropriate questions of a prospect.

Level 2: Providing an incorrect response to a compliance question.

Level 3: Providing an incorrect response to a compliance question due to being unaware or ignoring the proposed compliance response. Very close to being intentional.

Level 4: Creating an intentionally unrealistic expectation due to intentionally ignoring the proposed compliance response or demonstrating a blatant disregard for the facts.<sup>61</sup>

The Compliance Grade Level Key also includes examples of each type of infraction. For example, level 4 infractions include overstating job placement or salary statistics or indicating that transfer credits are likely to be accepted. In contrast, level 1 infractions include failing to tell a student about the technology requirements for classes or using acronyms that a student may not understand.<sup>62</sup>

The potential penalties for infractions vary, depending on the severity of the issue and the employee’s prior compliance history. Less serious, level 1 and level 2 issues are generally treated as training opportunities with additional counseling for the employee and possibly, depending on the employee’s history of infractions, verbal warning or coaching.<sup>63</sup> Level 3 and level 4 infractions have more serious repercussions. Employees who receive a level 3 or level 4 infraction are required to complete and pass the compliance test (discussed below) before they are allowed to

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<sup>58</sup> EDMC, Admissions Compliance Guide (Aug. 2016), at 5.

<sup>59</sup> EDMC, Admissions Compliance Guide (Aug. 2016), at 6.

<sup>60</sup> EDMC, Admissions Compliance Guide (Aug. 2016), at 6.

<sup>61</sup> EDMC, Compliance Grade Level Key (Nov. 2015).

<sup>62</sup> EDMC, Compliance Grade Level Key (Nov. 2015).

<sup>63</sup> EDMC, Compliance Infraction and Supervisor Guide, at 5-6.

interact with students again.<sup>64</sup> They are given at least a formal written warning and counseling to correct the issue.<sup>65</sup> In addition, if an employee has three level-3 violations or two level-4 violations within two years, he or she will be terminated “barring unforeseen mitigating circumstances.”<sup>66</sup> According to EDMC, in the 2016 fiscal year, 36 employees were terminated for level 3 and/or level 4 compliance violations,<sup>67</sup> down from 55 in the 2015 fiscal year.

Supervisors of admissions representatives are also held accountable for the compliance of those they supervise. In September, the Art Institute’s Online Division launched a new policy to hold supervisors accountable for serious compliance infractions by their team. Under the policy, if over a six-month cycle, more than 2% of a team’s monitored calls had level 3 or level 4 compliance issues, the supervisor would be given a verbal warning.<sup>68</sup> If, over the next 60 days, more than 2% of monitored calls for the team continued to have level 3 or level 4 infractions, the supervisor would be terminated.<sup>69</sup> In addition, if over three six-month cycles, a supervisor had two cycles with more than a 2% level 3 or 4 infraction rate, the manager would be terminated.<sup>70</sup> EDMC reported that this policy had had a quick and measurable impact on compliance. According to EDMC, at the time policy was rolled out, one manager was placed on a warning status and was able to improve team compliance sufficiently to avoid termination. EDMC estimated that up to 35% of managers at one point before the policy was implemented might have been eligible to be placed on a warning.

Recently, EDMC has imposed a similar, somewhat revised, version of the policy to all of its locations that are subject to call recording and voice analytics monitoring.<sup>71</sup> Like the original Ai Online policy, the new supervisor policy applies a 2% threshold for calls with level 3 or level 4 compliance infractions. Unlike the original Ai Online policy, however, the revised policy looks at error rates on a monthly basis, rather than over a six-month review period. The Risk and Compliance team will conduct a monthly analysis of supervisors to determine if any has a level 3 or 4 compliance error rate that exceeds 2.0%.<sup>72</sup> Supervisors with one month of calls that exceed the allowable error rate will be given a verbal warning. If a supervisor has a second month, within a 12-month rolling review period, with a level 3 or 4 compliance error rate above 2.0%, he or she will be issued a final warning. If the supervisor has a third month that exceeds the allowable

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<sup>64</sup> EDMC, Compliance Infraction and Supervisor Guide, at 7-8.

<sup>65</sup> EDMC, Compliance Infraction and Supervisor Guide, at 7-8.

<sup>66</sup> EDMC, Compliance Infraction and Supervisor Guide, at 8.

<sup>67</sup> Of the 36 terminated employees, 21 were admissions representatives for the online programs, who are subject to call recording and random monitoring. The remaining were disbursed roughly evenly among admissions for ground locations, NCC, and online financial services.

<sup>68</sup> EDMC, Outline for Supervisor Remediation Process (Aug. 2015), at 1.

<sup>69</sup> EDMC, Outline for Supervisor Remediation Process (Aug. 2015), at 1.

<sup>70</sup> EDMC, Outline for Supervisor Remediation Process (Aug. 2015), at 1.

<sup>71</sup> EDMC, Supervisor Remediation Process for Locations Monitored Using Voice Analytics Software (Aug. 1, 2016).

<sup>72</sup> EDMC, Supervisor Remediation Process for Locations Monitored Using Voice Analytics Software (Aug. 1, 2016), at 2.

threshold within a rolling 12-month period, he or she “will be terminated, barring significant mitigating circumstances which must be approved by the Risk and Compliance department.”<sup>73</sup>

This is a positive development. Because supervisors are the employees best positioned to know the practices by admissions representatives, they are also best positioned to correct compliance risks quickly. They also are well-positioned to create a culture of compliance in admissions, and this review system incentivizes them appropriately. In addition, by measuring compliance monthly, instead of one every six months, supervisors may be more likely to be consistent in prioritizing compliance on a daily basis. This policy is an important step toward ensuring that admissions supervisors feel accountable not only for their employees’ recruitment, but also for compliance.

The Call Monitoring team also tracks completion of mandatory admissions trainings and tests (discussed in greater detail below). Employees who miss the deadlines for completing these may be blocked from their recruiting activities until they are completed.

## 2. *Trainings*

### a) Supplemental Compliance Training Modules

To train and socialize employees on changes made in response to the Consent Judgment, EDMC launched a number of online training modules in Spring 2016. These are interactive sessions that include questions throughout the training, which reinforce the information being provided. The trainings were mandatory for admissions personnel across all of EDMC’s brands. The subjects of these training modules included:

- How to accurately and comprehensively discuss certification and licensure issues for fields of study in which students may wish to seek certification and licensure.<sup>74</sup>
- How to discuss features of a school’s programs of study, including admissions requirements, transferability of credits, accreditation, program approvals, student/faculty ratios, faculty qualifications, course requirements, and program completion rates.<sup>75</sup>
- How to accurately and completely discuss a program’s cost of attendance and financial aid issues, including a program’s cohort default rate, median debt, and military benefits.<sup>76</sup>

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<sup>73</sup> EDMC, Supervisor Remediation Process for Locations Monitored Using Voice Analytics Software (Aug. 1, 2016), at 2.

<sup>74</sup> EDMC, Training Program: Disclosures Regarding Certification and Licensure (Feb. 29, 2016).

<sup>75</sup> EDMC, Training Program: Programs of Study (Feb. 29, 2016).

<sup>76</sup> EDMC, Training Program: Financial Aid and Cost (Feb. 29, 2016).



- How to recruit students without making false, deceptive, or misleading statements, and the types of statements and behaviors that are prohibited under the Consent Judgment.<sup>77</sup>
- How to respond to prospective students who indicate that they wish to end the call or are only seeking job opportunities, not seeking to enroll in school.<sup>78</sup>
- How to accurately discuss the Single Page Disclosure sheets required by the Consent Judgment.<sup>79</sup>

Some of the material presented in these training modules represent an important pivot in EDMC’s approach to engaging students. Admissions representatives used to be trained to respond to “barriers” by a prospective student – *i.e.*, statements that reflect that the prospective student may not be interested in talking to the representative – by attempting to continue the conversation and “re-engage the Prospective Student.”<sup>80</sup> Under this approach, if a prospective student stated that she was only looking for a job or had not requested information about school, the representative was trained to attempt to “resolve their attempt to delay or end the conversation” by asking questions like, “what kinds of jobs are you looking for?” or “what information were you researching online recently?”<sup>81</sup>

EDMC’s new “Confirming Educational Interest” training gives a different approach. The module instructs that if it is unclear whether a prospective student is interested in learning about educational opportunities, the representative should not “try to divert the conversation or convince the student that s/he should be interested,” but should instead directly ask the prospective student if he or she is interested in discussing educational opportunities.<sup>82</sup> The training instructs:

[Y]ou ... should never ignore the student’s wishes or change the subject in an attempt to continue the conversation when you know the student is not interested in education. Asking a question to confirm interest is absolutely fine; asking question after question to force or prolong a conversation is not.<sup>83</sup>

And, if a student indicates that he or she is not interested in discussing educational opportunities, the representative “must respect the prospective student’s wishes and end the call in a respectful, professional manner.”<sup>84</sup>

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<sup>77</sup> EDMC, Training Program: Engaging Students the Right Way (Feb. 29, 2016).

<sup>78</sup> EDMC, Training Program: Confirming Educational Interest (Mar. 16, 2016).

<sup>79</sup> EDMC, Training Program: Single-Page Disclosure Overview Training (2016).

<sup>80</sup> Argosy University, Training Program: Engagement Barriers (2014).

<sup>81</sup> Argosy University, Training Program: Engagement Barriers (2014), at 7, 12.

<sup>82</sup> EDMC, Training Program: Confirming Educational Interest (Mar. 16, 2016), at 18.

<sup>83</sup> EDMC, Training Program: Confirming Educational Interest (Mar. 16, 2016), at 21.

<sup>84</sup> EDMC, Training Program: Confirming Educational Interest (Mar. 16, 2016), at 14.

To further socialize these new compliance concepts and to give supervisors an opportunity to raise compliance questions, the Call Monitoring team hosts a monthly compliance training webchat.<sup>85</sup> All admissions supervisors are required to participate in these training sessions. The meetings typically begin with a 30-minute presentation on a specific compliance issue, followed by 30 minutes of open question-and-answer time. Recent topics have included the launch of the Single Page Disclosure sheets, how to respond to prospective students who express unrealistic expectations of their future outcomes, and the new “Confirming Educational Interest” approach to conversations with individuals who seem uninterested in attending school.

In an effort to ensure that admissions personnel can receive prompt and accurate responses to compliance-related questions, the Call Monitoring team also maintains a “compliance alias” email account for each of the school brands. The compliance alias is essentially a listserv for admissions supervisors and compliance officials. Admissions supervisors with questions can email the alias. The question is then sent to all other supervisors, as well as compliance personnel. When compliance personnel answer the question, the answer is transmitted to all individuals who are subscribed to the alias account.<sup>86</sup>

Questions to the compliance aliases vary widely, including how to accurately respond to a specific question from a prospective student, whether certain practices that were previously allowed by EDMC continue to be “compliant” under revised policies, or how a compliance infraction by a representative should be scored under the Compliance Grade Level Key. Based on the Settlement Administrator’s observations, the guidance given through the compliance alias sets appropriate expectations and guidelines for advising prospective students.

#### b) Admissions Compliance Testing

Admissions staff must also take and pass an Admissions Compliance Test as part of New Hire Training and semi-annually thereafter. Employees must earn a score of 90% or better to pass the exam.<sup>87</sup> The exam has a pool of approximately 70 potential questions, only 40 of which appear when an employee takes the exam. This practice reduces the number of repeat questions that appear if an employee must retake the exam.

If an employee fails the compliance exam, he or she is required to be immediately removed from all recruitment activities and contact with students, and the exam must be passed before the employee can return to interacting with the public.<sup>88</sup> Employees are given a maximum of three attempts in which to pass the Admissions Compliance Test. If a passing score is not achieved during the first two attempts, EDMC policy requires the employee’s manager to be notified and additional training to be given to the employee. If, after a third attempt, the employee again fails the exam, he or she is required to be terminated.<sup>89</sup>

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<sup>85</sup> The Settlement Administrator team is invited to observe these sessions.

<sup>86</sup> The Settlement Administrator team is also subscribed to the alias and is able to view all communications through that platform.

<sup>87</sup> EDMC, Admissions Compliance Testing Policy (Sept. 2015), at 1.

<sup>88</sup> EDMC, Admissions Compliance Testing Policy (Sept. 2015), at 2.

<sup>89</sup> EDMC, Admissions Compliance Testing Policy (Sept. 2015), at 2.

### 3. *Call Monitoring and Voice Analytics*

Paragraphs 95 through 99 of the Consent Judgment pertain to the recording and monitoring of interactions with students and prospective students. Among the requirements, EDMC must “record all telephone calls and online chats between Admissions Representatives or Student Financial Services Representatives, on the one hand, and Students or Prospective Students, on the other, subject to interruptions in the ordinary course of business.”<sup>90</sup> EDMC is also required to acquire and utilize “an automated voice interaction analytics platform . . . [that] shall provide conceptual and intuitive search capability and shall permit searching and remote retrieval.”<sup>91</sup> The call recording and voice analytics functions must be “fully phased in and functional” within 18 months of the effective date of the Consent Judgment – by July 1, 2017.<sup>92</sup>

At the time the Consent Judgment were executed, EDMC was already recording the telephone calls for its admissions and financial services representatives for its online programs at the Art Institute, Argosy, and South, and also all calls conducted by the National Call Center (NCC). Calls at the schools’ ground locations were not recorded.

As of the date of this report, call recordings have not yet been implemented on the ground locations, although EDMC has made progress in building the technical capacity to do so. Until the final technology roll-out envisioned under the Consent Judgment, EDMC will have great difficulty in evaluating its own performance under the Consent Judgment in these locations.

EDMC uses several approaches to monitor the representations made on calls with current and prospective students: Random call monitoring, speech analytics, and mystery shopping.<sup>93</sup> These various tools are described below.

#### a) Random Call Monitoring

EDMC’s Call Monitoring Team conducts random call monitoring of admissions and financial services personnel for the portions of EDMC’s operations that are subject to call recording: NCC, the Art Institute Online, Argosy Online, and South Online. Because ground locations do not yet have their calls recorded, representatives at these locations are not subject to random call monitoring. For the online programs, however, prior to the launch of a voice analytics system, random call monitoring served as the primary way that EDMC routinely and systematically monitored actual interactions with prospective students.

Random call monitoring is a critical compliance tool. Unlike mystery shopping, in which representatives may sense that the interaction is not organic, or observations by supervisors, in which a representative may be particularly careful to abide by compliance policies, random call monitoring assesses how representatives actually interact with prospective and current students.

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<sup>90</sup> Consent Judgment ¶ 95.

<sup>91</sup> Consent Judgment ¶ 95.

<sup>92</sup> Consent Judgment, Ex. A at 2.

<sup>93</sup> EDMC’s admissions representatives – for online and ground locations – are also required to be observed at least twice quarterly by a member of Admissions management. *See* EDMC, *New and Continuing Admissions Training and Observation Policies* (Oct. 2015), at 2-3.

And because the Call Monitoring team listens to the entire interaction, random call monitoring allows EDMC to identify new and/or subtle actions by the representative that may mislead, pressure, or confuse prospective students. The corrective action that results from any compliance issues identified on the call is governed by the Admissions Compliance Guide and Compliance Grade Level Key, discussed *supra*.

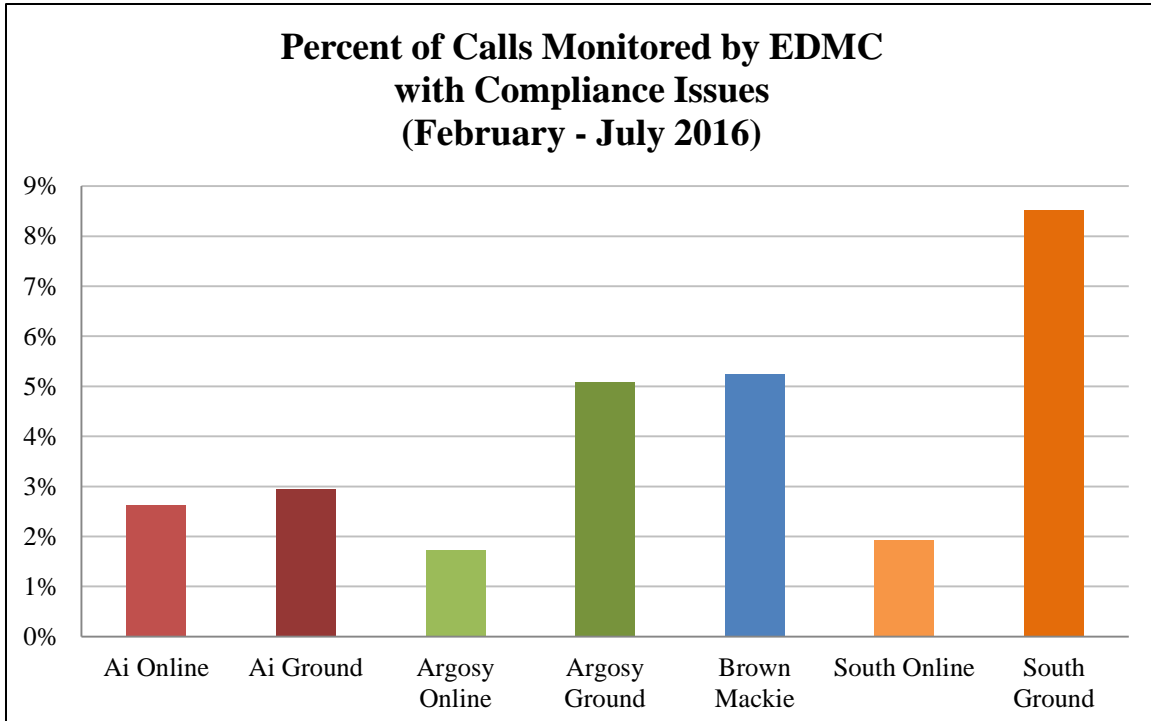
Prior to the launch of voice analytics, each admissions and financial services representative was subject to random call monitoring approximately once every two weeks. Therefore, over a twelve-month period, each representative should be observed approximately 26 times.

The frequency of call monitoring is crucial. Where calls are monitored regularly – like EDMC’s practice of monitoring at least one call every two weeks – representatives receive regular feedback and problematic issues can be corrected quickly. Moreover, frequent call monitoring may make representatives more aware of the likelihood that any call might be reviewed, which may motivate them to be more mindful of compliance policies on every call.

As a reflection of the positive impact that routine and frequent call monitoring has on compliance, EDMC’s own compliance data reflect that the programs subject to call recording and routine random call monitoring have lower rates of compliance issues than the programs that have not been subject to such oversight. As shown below, EDMC’s internal call monitoring data show that the online platforms for each school brand have fewer compliance issues detected by EDMC than the ground campuses have.<sup>94</sup> Ai’s ground locations have a higher percentage of compliance issues than Ai Online; Argosy’s ground locations have a higher percentage of compliance issues than Argosy Online, and South’s ground locations have the highest rate of compliance issues, more than four times the rate identified for South Online. Brown Mackie also has a higher rate of compliance issues than the online locations have. Given the small number of ground calls monitored, one should not draw sharp conclusions about the ground campuses from this data – other than that, where compliance efforts are most focused, compliance is likely to be better.

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<sup>94</sup> Data compiled from EDMC Risk and Compliance Group Monthly Monitoring Summaries, February 2016 through July 2016. For ground campuses, the monitored calls are mystery shopping calls, discussed in greater detail below.



It remains an open question whether the Call Monitoring team will have the capacity to maintain its previous pace of random call monitoring as the speech analytics system is fully implemented into a business-as-usual process. However, the Settlement Administrator believes that random call monitoring is crucial, and EDMC has indicated it intends to maintain a robust random call monitoring program, including hiring additional employees, as it implements recording and analytics for ground campuses. As discussed in greater detail below, its value cannot be replicated through the use of speech analytics alone.

b) Speech Analytics

Since the execution of the Consent Judgment, EDMC has acquired and begun to implement a speech analytics system. The program, known as PerformMatch, is provided by PerformLine, a marketing compliance vendor that is used across many industries. EDMC uses PerformMatch to analyze calls conducted by third-party call centers used to generate leads and calls by admissions and financial services representatives in the EDMC divisions currently subject to call recording: NCC, Art Institute Online, Argosy Online, and South Online. For these locations, the speech analytics system went live on August 1, 2016. As call recording is launched in ground locations, EDMC has stated that it plans to launch PerformMatch at the same time.

PerformMatch uses a set of static search terms and rules to flag calls that, based on the speech analytics conducted by the service, appear to have violated EDMC's compliance

standards.<sup>95</sup> PerformMatch has five categories of rules that can be used to score the compliance of a call:

- Banned Rules: Phrases that are prohibited from being said on a call.
- Required Rules: Phrases that must be said on a call.
- Conditional Banned Rules: Phrases that cannot be said in the context of other words (*e.g.*, If A is said on the call, then B cannot be said).
- Conditional Required Rules: Phrases that must be said in the context of other words (*e.g.*, If A is said, then B must also be said).
- Spotlight Rules: Phrases that do not count positively or negatively in a call's compliance score, but that can be used to identify areas for review.

When a new call recording is added to PerformMatch, the system applies the rules provided by EDMC against the words and phrases identified in the call. It then assigns a score to each call. A score of 100 indicates that PerformMatch found no rule violations on the call. For each potential infraction identified, ten points are deducted from the score.

For any call with a detected potential compliance problem, the Call Monitoring team can review the portion of the call flagged by PerformMatch and determine that whether the flagged portions of the call were compliant or non-compliant.<sup>96</sup> If Call Monitoring determines that PerformMatch triggered a false positive, it can manually rescore the call. On the other hand, if Call Monitoring finds that the call violated a compliance rule, it can take corrective action against the offending employee. Critically, the PerformMatch system does not, and cannot, replace the need for human judgment. False positives are common – and unsurprising. A member of the Call Monitoring team must listen to the relevant portion of the call, consider the words in context, and assess whether the representative said something that violated EDMC's compliance policies.

The PerformMatch system offers both advantages and disadvantages. On the positive side, PerformMatch greatly expands the volume of calls that can be subject to oversight by EDMC's Call Monitoring team. By isolating specific moments in a call that raise compliance concerns, PerformMatch allows the Call Monitoring team to detect compliance issues on many more calls than what it could through random monitoring alone. In this respect, PerformMatch serves an important triaging function. It can highlight specific calls that, based on the words and phrases used or omitted, create heightened compliance risks.

However, the system has some important limitations. First, the rules look for exact phrases that must exactly match the speech detected in the call. PerformMatch lacks the capacity to

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<sup>95</sup> Pursuant to Paragraphs 95 and 97 of the Consent Judgment, the Settlement Administrator team has access to PerformMatch and has the ability to request that additional rules be added to the system.

<sup>96</sup> PerformMatch marks the portions of the call that fall within the scope of a rule. This allows a reviewer to quickly skip between the portions that are flagged by PerformMatch without needing to listen to the conversation that happens between those portions. PerformMatch also allows the entire call to be reviewed.

conduct “fuzzy searches” for variations of words or to search for words in proximity to each other. This limited functionality effectively requires EDMC to think of as many iterations of a potential rule as possible. For example, consistent with Paragraph 98 of the Consent Judgment, EDMC requires its representatives to provide a recorded line disclosure at the beginning of the call. In PerformMatch, this is a Required Rule, which searches calls for the exact phrase “monitored and recorded.” But because human beings sometimes use different phrases to express an idea, and because the speech analytics system cannot detect the words spoken on a call with 100% accuracy, EDMC has added over 30 variations for this rule that can satisfy the requirement. Without these variations, if a representative used the phrase “monitored *or* recorded” or if PerformMatch translated a phrase as “monitored and *reported*,” the system would flag a violation on the call for failing to satisfy the Required Rule.

This verbatim approach to compliant and non-complaint language creates the risk of blind spots in the system. Most basically, it is not realistic, or even possible, for EDMC to identify all potential variations of a non-compliant statement.<sup>97</sup> Moreover, many behaviors that create the risk of a misrepresentation or an unfair practice are subtle and context-specific. If EDMC focuses too much on the black-and-white rules programmed into PerformMatch, it will miss other behaviors that can just as easily mislead a prospective student. And because PerformMatch relies solely on rules already in the system, it has limited utility in identifying *new* behaviors that should cause concern. Of course, this limitation may be inevitable for any speech analytics program. But it reaffirms that EDMC cannot rely solely on speech analytics to monitor the activities of representatives communicating with prospective students.

In addition, the PerformMatch system is, by design, a forward-looking one. When new rules are added to PerformMatch, the system does not apply that new rule against calls that have already been scored. That is, the rules apply prospectively, not retrospectively. This limited functionality hampers EDMC’s – and the Settlement Administrator’s – ability to use the speech analytics program to investigate the prevalence of a newly detected issue. If EDMC or the Settlement Administrator becomes aware of a potential new compliance concern, it cannot search the existing calls to assess whether the issue is an isolated one or quite prevalent. Instead, a new rule would need to be added and only after several days or weeks would it be possible to begin to identify the scope of the potential problem.<sup>98</sup>

These limitations all demonstrate that a speech analytics system is an important tool for monitoring the activities of admissions representatives, but it is not a panacea. PerformMatch must be used to supplement, rather than supplant, the random monitoring of full-length calls.

It is not yet clear how the Call Monitoring team will balance the time demands of reviewing and resolving all potential issues flagged by PerformMatch with the need to continue to conduct random call monitoring. It is also not yet clear how it will manage the added resource demands that will arise as ground locations become subject to call recording. EDMC initially proposed that its Call Monitoring team would spend most mornings attending to and resolving the queue of

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<sup>97</sup> For example, EDMC has a Banned Rule that prohibits the phrase “you’ll definitely graduate.” But if a representative instead said, “I’m certain you’ll graduate,” this would not be flagged by the system.

<sup>98</sup> EDMC has stated that it would be possible to have all calls in the system re-scored against a new rule, but that the process for doing so would be time consuming and possibly costly.

flagged calls in PerformMatch, with random call monitoring conducted in whatever time was left in the day. But, as the Settlement Administrator subsequently communicated to EDMC, this approach risks squeezing out all or most random call monitoring, and EDMC has committed that it will not reduce its random call monitoring. As EDMC continues to work toward full implementation of call recording and speech analytics, the Settlement Administrator will continue to watch carefully to ensure that random call monitoring continues alongside these new compliance efforts.

#### 4. *Mystery Shopping*

For the ground campuses of EDMC's school brands, which are not yet subject to call recordings, it is more difficult for EDMC to monitor and assess the activities of admissions personnel. In the absence of call recordings, EDMC relies heavily on mystery shopping.

EDMC uses a third party, RD Associates, to conduct mystery shopping at its various locations. In these interactions, the mystery shopper poses as a prospective student interested in enrolling in one of EDMC's programs. Approximately 3,000 telephone shops and 80 in-person shops are conducted each year. The telephone shops are distributed among schools based on the headcount of admissions representatives at each location. For the in-person shops, each school brand receives five shops per quarter. Although they do not know when a shop will occur or who will be the representative shopped, the school brands typically know which campuses will be shopped in the next quarter. The head of admissions for each education system and head of the training staff have input into which locations are chosen for in-person mystery shopping, but ultimate discretion for choosing the locations rests in the Risk and Compliance Department, and in particular the head of the Call Monitoring team.

The shops only go through the early stages of the application process. The mystery shopper may have an initial call and a follow-up, more substantive conversation (often referred to as an "interview"). The shopper will generally try to ask some specific questions during the conversation, on issues like job placement rates, gainful employment disclosures, or the transferability of credits. But the shopper does not typically fill out an application or go through the financial aid process. This means that financial aid representatives have not historically been shopped.

After the shop is complete, the recording is made available to EDMC, and the Call Monitoring team reviews and scores the call. Any compliance issues identified on the call are put into remediation, according to the Admissions Compliance Guide and Compliance Grade Level Key.

The mystery shopping undoubtedly serves a critical function in allowing EDMC to monitor the activities of the ground campuses. However, it clearly has important limitations. Even after roughly 3,000 mystery shops each year, the employees in ground locations receive much less frequent monitoring by EDMC's Call Monitoring team than what online admissions representatives receive. Over the course of a year, some representatives may be "shopped" multiple times, but few are shopped five times or more.<sup>99</sup> In contrast, over a 12-month period the

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<sup>99</sup> See EDMC, ADA Shopping Tracking FY16 Final (July 2016).



online admissions representatives are subject to approximately 26 instances of random call monitoring. Because the representatives at the ground locations are monitored less frequently, they receive less feedback on whether they conduct recruitment activities in a compliant manner.

Mystery shopping also cannot replicate the comprehensive observation that can come only by recording and monitoring actual calls with students. Because mystery shopping only tests early interactions in the recruitment process, and until call recording is fully implemented, EDMC's Compliance Team does not yet have insight into other important steps of the admissions process, including the points in which the Single Page Disclosure Sheets are disclosed and discussed with enrolling students.

## **D. Admissions and Financial Services**

### *1. Misrepresentations, Prohibitions, Required Conduct, and Recruiting Practices*

A core element of the Consent Judgment is its provisions that bar EDMC from making deceptive statements, engaging in abusive recruitment methods, or violating state Unfair and Deceptive Acts and Practices laws. Some of the Consent Judgment's prohibitions on these issues are stated broadly: Among other things, EDMC may not omit material facts, or make false, deceptive, or misleading statements.<sup>100</sup> It also may not make representations inconsistent with facts required to be disclosed by the U.S. Department of Education in connection with its communication regarding recruitment, financial aid or financial costs, the student's ability to obtain a license or certification following graduation, the schools' academic standing, or other communications with students or prospective students.<sup>101</sup> Other provisions bar certain specific kinds of representations, prohibiting misrepresentations regarding how many of a student's credits will transfer into or out of the school,<sup>102</sup> statements implying that financial aid or military funding will cover the entire costs of the education, if not true,<sup>103</sup> and statements implying that statistics regarding EDMC generally are true of specific programs of study.<sup>104</sup> Importantly, a number of the prohibitions on these kinds of misleading statements focus on statements regarding the future success of EDMC students: their completion rates,<sup>105</sup> students' ability to sit for (or pass) licensure exams in relevant fields upon graduation,<sup>106</sup> job placement rates,<sup>107</sup> and salaries.<sup>108</sup>

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<sup>100</sup> Consent Judgment ¶¶ 74-75.

<sup>101</sup> Consent Judgment ¶¶ 74-75, 76, 80-82.

<sup>102</sup> Consent Judgment ¶ 76(c).

<sup>103</sup> Consent Judgment ¶ 77(c).

<sup>104</sup> Consent Judgment ¶ 79.

<sup>105</sup> Consent Judgment ¶ 79.

<sup>106</sup> Consent Judgment ¶ 80.

<sup>107</sup> Consent Judgment ¶ 79.

<sup>108</sup> Consent Judgment ¶ 79.

The Consent Judgment also provides that “EDMC shall not continue a telephone call after a Prospective Student has expressed a desire to conclude the call or has clearly stated that he/she does not want to apply to or enroll at an EDMC school.”<sup>109</sup>

In order to protect the youngest prospective students from these and other misrepresentations and tactics, the Consent Judgment also requires EDMC to invite prospective students who are under 18 to bring an adult with them to any interview or meeting on campus prior to enrollment.<sup>110</sup>

EDMC’s compliance with the Consent Judgment’s restrictions on misrepresentations and related conduct gives both reason for optimism and cause for concern. Within its compliance and training structures, EDMC has attempted to implement these prohibitions and requirements not only through clear instructions that admissions representatives must always give truthful responses, but also through what compliance personnel there have called “a paradigm shift” in the company’s recruiting strategies. Under the new approach, admissions representatives are to focus on enabling prospective students to make informed, considered decisions about their educational interests. Where admissions representatives previously were trained to press prospective students who attempted to cut off discussions, EDMC’s trainings now advocate an approach of “confirming educational interest.” “Confirming educational interest” requires admissions representatives to ask direct questions to explore a student’s interest in educational opportunities and to respect the decisions of those who say or otherwise convey that they are not interested in pursuing an education at this time or in otherwise continuing the conversation. EDMC trainings have also instructed admissions representatives that under the company’s new approach, “there is nothing wrong with ‘no,’” which they describe as a change from previous strategies in which representatives saw a prospective student’s negative response as a smokescreen to be overcome.

At a general level, EDMC does indeed appear to be shifting its paradigm, as high-pressure tactics are relatively rare in the admissions calls that are currently recorded. That said, there remain admissions representatives who either have not internalized the new approach or perhaps do not have an accurate understanding of the facts they are to convey.

The examples cited are not included in order to explain any conclusion of substantial non-compliance, but they do reveal areas in which there is clearly more work to be done. Indeed, as some of the Consent Judgment’s requirements have only recently come into effect, and because EDMC’s call monitoring structure thus far covers only its online programs and the National Call Center – and not any of the discussions with ground campuses at the various schools – EDMC’s efforts on this front should be considered largely a work in progress.

a) Continuing Phone Calls after Expressions of Disinterest

EDMC’s “paradigm shift,” under which admissions representatives are to respect clear indications that a student is not interested in pursuing a conversation, seems to have had some effect. Calls with prospective students generally do not contain the kinds of strong-arm, high-pressure sales tactics that have contributed to the for-profit educational industry’s negative

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<sup>109</sup> Consent Judgment ¶ 100.

<sup>110</sup> Consent Judgment ¶¶ 100-01.

reputation. EDMC is doing relatively well with respect to this core, philosophical requirement of the Consent Judgment.

That said, there are instances in which admissions representatives engage in tactics that are inconsistent both with the Consent Judgment and the standards promoted by EDMC’s compliance staff. The problems often arise in the context of students who have responded to online advertisements purporting to offer employment opportunities – an advertising practice that is common across the for-profit education industry and is addressed further below in this report<sup>111</sup> – and who advise EDMC admissions representatives that their interest was in jobs, not school. The Consent Judgment forbids admissions representatives from brushing aside clear indications of disinterest (or a lack of interest now).

The more common problems involve representatives who take a less intense approach but nonetheless press on over the prospective students’ expressed lack of interest. In one representative call, the recipient of the EDMC call was immediately candid in saying that she was looking for a job, and continued, “I don’t know how we got to this point, but I was on the phone with somebody and they were telling me about all the jobs and then they transferred me to the guy who was just on and then they transferred me to you.” The EDMC representative continued on, and the student reiterated her view that school was not a priority for her, because at that particular time she was looking for a job. Yet instead of ending the call after two clear statements of disinterest, the admissions representative pressed on, even to the point of walking the call recipient through an online tour. The call ended, however, as it began: When EDMC invited the student to complete an application, the student replied that she could not think about school right now, because she does not have a job.<sup>112</sup> There are other, similar calls: polite and perhaps not abusive, but ultimately treating the student’s clear statement of disinterest as a false obstacle rather than as a conclusion to be respected, an approach that is not consistent with Paragraph 100 of the Consent Judgment.<sup>113</sup> EDMC should continue its work to implement its “paradigm shift” to eliminate these practices.

b) Misleading or Exaggerated Claims of School Quality

In describing EDMC’s schools and programs, admissions representatives’ statements are to be factual, informative, and verifiable. Again, as a general matter, EDMC does not appear to have widespread problems on this issue. However, as there are two categories of representations that warrant further attention.

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<sup>111</sup> See Part IV.F.1.

<sup>112</sup> See Call Record 39271022.

<sup>113</sup> For example, after another call recipient told EDMC that she might be interested in further education sometime in the future, but ultimately declining an invitation to visit the campus because she wanted to discuss it with her family, EDMC pressed on, encouraging her to visit campus nonetheless. See Call Record 40494278; see also Call Record 40574936 (pressing on with student who immediately tells school that she did not request information about school, and that “[t]hey kind of forced it upon me by not giving me an option out”) (EDMC found no violation); Call Record 39996469 (pressing on with call after student informed representative, “I am getting many of these calls and I’m not replying too much” and, “I’m just not ready to decide anything”) (EDMC issued a Level 3 violation).

The first category consists of representatives' descriptions of the EDMC schools' accreditations. While the fact of accreditation is certainly relevant and not, on its own, misleading, representatives have gone further than is supportable. One representative promised a student that the school's accreditation means that "the degree you earn from us will hold value and will be recognized by employers,"<sup>114</sup> a statement that may or may not be true and suggests a value to employers that neither EDMC nor the representative can establish. Another explained accreditation status as establishing that "we are a valid school and we meet the standards and requirements, they say yes, we are valid"<sup>115</sup> – a statement that could be true if referring only to the *accreditors'* standards and requirements, but as delivered overstates any basis. Perhaps most egregiously, one student who was interested in an online, undergraduate psychology program was given a lengthy explanation of the significance of the school's accreditation for its *doctoral* psychology programs, even telling the student that the accreditor "carries a lot of clout and influence"<sup>116</sup> – a diversion that appeared less designed to inform the student regarding his actual educational interests and opportunities, and more designed to distract him from the undergraduate degree's lack of programmatic accreditation by describing to him another degree that *has* a programmatic accreditation.

The second category consists of representations regarding the relationship of the online educational experience to the experience at EDMC's ground schools. This is an area on which further training may not yet be necessary, but one that should at least continue to be watched. One representative emphasized to a student interested in an online program that "you are getting the same education as if you came here to [a ground campus] everyday," and that "in today's world sometimes it doesn't even matter what specific degree you have, it's just that you have the degree itself."<sup>117</sup> Another, in a similar vein, reasoned to one prospective student that the Art Institute Online is "100 percent online, but we are not an online school," and that "we're a college; we're not an online school"<sup>118</sup> – an approach that at least obscures the nature of the educational experience and the value of the degree. The volume of calls in this category was not alarming, and as noted above, the calls here are cited to provide context for the issues that EDMC faces and that the Administrator will be watching, not to establish a conclusion of substantial non-compliance. But the nature of the conversation makes it a category that will continue to be watched.

### c) Downplaying or Misstating Financial Aid Obligations

For any student contemplating higher education, the potential resulting financial consequences can be enormous. This has been a particular focus of regulators looking at for-profit schools. Accordingly, it is exceedingly important that the information that institutions provide to prospective students be accurate. Inaccurate statements and attempts to minimize significant financial consequences can lead to life-altering levels of debt.

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<sup>114</sup> See Call Record 39753537 (EDMC terminated the employee).

<sup>115</sup> See Call Record 40904049.

<sup>116</sup> See Call Record 39913282 (EDMC issued a Level 2 violation).

<sup>117</sup> See Call Record 39825290.

<sup>118</sup> See Call Record 39293129 (EDMC issued a Level 3 violation).

In calls listened to by the Administrator’s team, many students expressed vulnerability on this front. One prospective student, for example, in a single telephone call expressed that (a) she didn’t know if she would ever be able to repay the proposed tuition balance, (b) she was “flabbergasted” over the amount of money she would owe, (c) she is not good with money, (d) the amount of money “scared” her, (e) her parents would “shoot her” if she got a loan, and (f) a second time, that she was “scared.”<sup>119</sup> The EDMC representative – who was terminated upon review of the call – responded without any clear misrepresentations, instead describing financial aid possibilities – like the fact that certain loans need not be repaid until the student leaves school and after a six-month grace period, the fact that a lot of people take loans to pay for school, or the possibility of a \$500 scholarship – that may have sounded comforting in the moment but did little to answer the concerns. At times admissions representatives, charged with getting the prospective student into the process to meet with a financial services representatives, get close to overpromising: One representative, talking to a student who had described seeing people overburdened with loans and not wanting to get in that position, indicated that the federal government has “a lot more” options for extending payment plans, and described the possibility of income-based repayment that could result in payments of \$0.<sup>120</sup>

Against that backdrop of prospective students who are clearly concerned about the debt load that further education could impose, there should be little tolerance for plainly incorrect or misleading statements about the obligations that financial aid programs may impose. EDMC has experienced one significant issue on this front relating to federal financial aid. Federal Pell Grants, which do not need to be repaid in most circumstances, do often require repayment when students drop out in the middle of a semester or quarter. But EDMC admissions representatives repeatedly miss this nuance, and send prospective students the materially incorrect impression that a significant portion of their financial aid need not be repaid even if they withdraw. Admissions representatives have characterized Pell Grants as numerous versions of the following:

- “[F]ree money to go to school. It is an award that does not need to be repaid.”<sup>121</sup>
- Awards “you don’t have to pay back.”<sup>122</sup>
- Money “you do not have to pay back. It’s money the government basically gives you to go to school.”<sup>123</sup>
- “Money you don’t have to pay back.”<sup>124</sup>
- A “need-based grant you don’t need to pay back.”<sup>125</sup>

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<sup>119</sup> See Call Record 40030599.

<sup>120</sup> See Call Record 40696991.

<sup>121</sup> See Call Record 40858162.

<sup>122</sup> See Call Record 40786114.

<sup>123</sup> See Call Record 40725682.

<sup>124</sup> See Call Record 39407931.

<sup>125</sup> See Call Record 39196655.

These statements are plainly incorrect, but were repeated in call after call.

To be fair, EDMC is not the only entity that has explained Pell Grants imprecisely. And to its credit, EDMC agreed that the statements were incorrect and promised to take corrective action. Nonetheless, this was an instance in which EDMC's compliance operation was unsuccessful in quickly driving change through the organization. EDMC was advised of the issue with respect to Pell Grant representations on April 27, 2016, and on May 13 proposed language that EDMC representatives could use to convey correct information regarding Pell Grant repayments. Yet EDMC representatives continued to make materially incorrect misstatements on this issue, with little or no improvement. Subsequent discussions revealed that the corrected language that EDMC's compliance operation had developed had not been adequately distributed to the field. This breakdown was unusual: While EDMC has been far from perfect in implementing all of the Consent Judgment's requirements in the field, the company's compliance team has provided reasonably sound advice on even difficult questions. Here, however, the breakdown in distributing the corrected information resulted in additional students getting incorrect information regarding their possible obligations on Pell Grants.

Improvement on the Pell Grant issue will be necessary. EDMC has indicated that its compliance and admissions teams are engaged to identify appropriate cautionary language, and that EDMC will provide any proposed language to the Administrator for review.

d) Failing to Invite Parents of Students under 18

In order to ensure that prospective students who are under 18 are in an adequate position to make an informed decision about their future, the Consent Judgment imposes two very clear requirements. First, the Consent Judgment bars EDMC from "prevent[ing] a Prospective Student from consulting with or obtaining advice from a parent, adult friend, or relative with respect to any issue relevant to enrollment."<sup>126</sup> EDMC does not appear to be discouraging prospective students who express an interest in consulting with others from doing so. Second, the Consent Judgment requires EDMC to "invite Prospective Students under the age of eighteen (18) to bring an adult with them to any interview/meeting on campus prior to enrollment."<sup>127</sup> While EDMC has trained all admissions personnel on this issue, EDMC's admissions representatives have done an inadequate job identifying students who are under 18 and inviting them to bring an adult with them to campus.

The Administrator deployed mystery shoppers at campuses and programs across the country to test EDMC's implementation of the requirement that it invite students under 18 to bring an adult with them on their campus visit. In the tests, prospective students advised admissions representatives that they were still in high school, a piece of information that should have prompted the representatives either to invite the student to bring an adult or to ask additional questions to determine whether an invitation was unnecessary. Ultimately, 20% of the admissions representatives failed to invite the prospective students to bring an adult. The Administrator

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<sup>126</sup> Consent Judgment ¶ 101.

<sup>127</sup> Consent Judgment ¶ 102.

expects very significant improvement over the coming year, particularly on such a straight-forward requirement that applies to such a broad cross-section of prospective students.

EDMC is engaging in corrective action for the representatives in question and is revising its training. Improvement on this issue will be expected.

## 2. *Do Not Call Requirements*

The Consent Judgment bars EDMC from initiating unsolicited telephone calls to numbers that appear in current Do Not Call Registries or to those who have requested that they receive no further calls from EDMC, and requires it to keep accurate records of those who request to not receive further calls.<sup>128</sup> EDMC has implemented correct policies to protect against such contacts, including by “always” requiring “prior written consent from an individual prior to placing a telemarketing call.”<sup>129</sup> Call monitoring has not identified complaints from prospective students indicating that they have been contacted in violation of any such Do Not Call request.

## 3. *Licensure and Enrollment*

The Consent Judgment also imposes particular protections for students who express an interest in pursuing certain careers for which the programs in question will not qualify them. In addition to a general prohibition on advertising that a program that lacks a relevant accreditation will qualify students to pursue an occupation that requires the accreditation in question,<sup>130</sup> the Consent Judgment also imposes more specific requirements for certain occupations. For example, for prospective students interested in pursuing careers as medical assistants, but who are considering programs that lack accreditations from one of the relevant accreditors, the Consent Judgment requires EDMC to inform the students that, among other things, graduates from the program are not eligible to sit for the exam to become a Certified Medical Assistant.<sup>131</sup> Similar disclosures attach for prospective students interested in pursuing careers as psychologists, surgical technicians, surgical technologists, or surgical assistants, at programs that lack certain accreditations that are required in the field.<sup>132</sup> These requirements are most relevant to programs in the Brown Mackie system, which has more programs leading to these kinds of careers; while the sale and teach-out of Brown Mackie schools means the requirements will have limited applicability going forward, the provisions remain in effect.

The Consent Judgment also bars EDMC, absent certain exceptions, from enrolling students in programs when the program is designed to prepare students for employment in a field that requires a state license or other authorization but the program does not qualify the student to sit for the relevant exam.<sup>133</sup> This arises most commonly in circumstances in which a state’s licensing regulations require that professionals have attended schools that possess certain accreditations that

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<sup>128</sup> Consent Judgment ¶ 99.

<sup>129</sup> See Outbound Calling Do Not Call – DNC – and Telephone Consumer Protection Act – TCPA – Policy.

<sup>130</sup> Consent Judgment ¶ 85.

<sup>131</sup> Consent Judgment ¶ 84(a).

<sup>132</sup> Consent Judgment ¶ 84(b)-(d).

<sup>133</sup> Consent Judgment ¶ 86; see also Consent Judgment ¶ 89 (barring EDMC from enrolling students in programs that not possess accreditation “typically required by employers in the Student’s locality”).

a particular EDMC program may have lacked. Relatedly, the Consent Judgment imposes a specific obligation when “EDMC knows that a criminal record may disqualify a Student from employment in the field or a related field for which the Program of Study is a prerequisite.”<sup>134</sup>

These requirements, particularly to the extent they vary from program to program, are not easy to operationalize in a company as big as EDMC. Because EDMC’s admissions representatives are not, with a few exceptions, dedicated to particular programs of study, representatives may miss disclosures that are required for particular programs but not others, or that are required only for students with unique or unusual circumstances. To protect against these challenges, EDMC has sought to build the required disclosures into its online Digital Application, so that applying students cannot progress into the affected programs without seeing and accepting the necessary disclosures. That backstop is important, but it will often come too late for the student who engages in extensive discussions about a program and finds out, after the student has decided to apply, through boilerplate-appearing disclosures that the program may not or will not qualify the student to take a necessary licensing exam.

a) Failing to Inform Students of Limitations of Medical Assistant Programs

As noted above, the Consent Judgment requires that for Medical Assistant programs lacking accreditation from either the Commission on Accreditation of Allied Health Education Programs or the Accrediting Bureau of Health Education Schools, EDMC is to inform prospective students that graduates of the program will not be eligible to sit for the examination to become a Certified Medical Assistant (CMA) and that employers may prefer to hire medical assistants who have that Certified Medical Assistant (or one other) qualification. To evaluate EDMC’s compliance with this requirement, mystery shops were conducted at four Brown Mackie institutions whose Medical Assistant programs lack the relevant accreditations.

Prior to reaching the Digital Application, none of the four prospective “students” was informed that employers may prefer to hire medical assistants who have the CMA (or one other) qualification. In two of the mystery shops, representatives did not provide the information required by the Consent Judgment even when the prospective student specifically asked about employers’ preferences. EDMC also did not tell any of the prospective students that graduates would not be eligible to sit for the examination to obtain the CMA designation, even when the prospective students asked questions regarding the certifications that graduates of the program would be eligible to seek.

The sample size of this review was necessarily small, as the Consent Judgment provision in question affects a relatively small number of campuses and programs, and the mystery shoppers did not reach the point of the Digital Application where the disclosure would have occurred. Still, the failure to provide the required information when asked particular questions about certification is problematic. EDMC has prepared a job aid in response to this finding, to provide its representatives with a reminder of the required disclosure. Its implementation of this and similar requirements will continue to be reviewed.

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<sup>134</sup> Consent Judgment ¶ 90.



b) Preventing Enrollment when Student Would Not Qualify for Licensure

One mystery shop was conducted to test EDMC’s compliance with the Consent Judgment’s bar on enrolling students in online programs that would not qualify the student for licensure in the state in which the student resides.<sup>135</sup> The shop was conducted of a clinical mental health counseling online program, for a prospective student who resides in Ohio – where graduates of that particular program, which lacks the accreditation necessary in Ohio, would be ineligible for licensure.

The representative met the Consent Judgment’s requirements; the representative told the prospective student that Ohio residents are restricted from that program and did not permit her to continue with enrollment. Again, given the small sample size, EDMC’s implementation of this and similar requirements will continue to be reviewed.

c) Disclosure of Need for Programmatic Accreditation

For certain programs that lack a programmatic accreditation necessary for state licensures or authorizations, or to qualify for relevant examinations, EDMC is barred from enrolling students in the relevant states unless EDMC discloses certain facts to those students. Specifically, the Consent Judgment requires that for new programs that cannot yet obtain the relevant accreditation but where the school is seeking in good faith to earn the accreditation, EDMC must disclose “on all promotional materials for the Program of Study ... that such programmatic accreditation would need to be obtained before the Student would qualify for state licensure or authorization or to take exams required for such licensure or authorization.”<sup>136</sup>

This requirement has not been implemented consistently through the EDMC system. In particular, a number of hand-outs and web pages relating to South University’s Physical Therapy Assistant and Occupational Therapy Assistant programs did not reflect that the programs lack the accreditation necessary for licensure, and that this programmatic accreditation would need to be obtained before students would be eligible to seek licensure. South University is working to remedy this and provide clear and conspicuous disclosures for the affected schools and programs.

d) Barring Students with Disqualifying Criminal History from Enrolling

Mystery shops were also conducted to test EDMC’s compliance with the provision barring it from enrolling students in programs when EDMC knows that the student’s criminal history would disqualify the student from employment in the field for which the program is a prerequisite.<sup>137</sup> The shops were tested using prospective students who expressed an interest in Criminal Justice programs, indicated that they wanted to become police officers, and disclosed that they had previously been convicted of felonies. The test was designed to determine whether the EDMC admissions representatives barred the student from enrolling, or provided disclosures

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<sup>135</sup> Consent Judgment ¶ 86(c).

<sup>136</sup> Consent Judgment ¶ 87(a).

<sup>137</sup> Consent Judgment ¶ 90.

required by the Consent Judgment to permit enrollment, in a Criminal Justice program when the student's felony conviction would likely prevent the student from obtaining employment as a police officer.

EDMC handled these mystery shops appropriately. While the prospective students in these mystery shops never reached the point of actually seeking to enroll, and thus the calls did not trigger the Consent Judgment's full requirements, the EDMC representatives handling these calls told the prospective students that they should conduct additional research regarding whether the criminal record would prevent them from being employed as police officers. These responses were adequate, as the actual requirements for employment as a police officer vary from jurisdiction to jurisdiction. To be sure, EDMC's students (and, ultimately, EDMC's retention and job placement statistics) may benefit from a stronger disclosure, advising students that a felony conviction will often prevent a person from becoming employed as a police officer. But given the jurisdictional patchwork that govern the consequences of a felony conviction, advising prospective students to research the issue further, at this early point in the admissions process, was appropriate.

#### 4. *Discussion of Single-Page Disclosure Sheets*

The Consent Judgment also requires EDMC to disclose to all prospective students a "Single-Page Disclosure Sheet" (SPDS) prior to enrollment. The SPDS must be disclosed twice during the application and financial planning process and discussed once,<sup>138</sup> and must contain a range of specified information regarding the program's anticipated total cost, median debt loads, completion and default rates, the transferability of credits, median earnings, and job placement statistics.<sup>139</sup> Combined with other Consent Judgment requirements regarding the accuracy of such information, the SPDS – or "Facts You Should Know," as EDMC calls its document – can provide important information to a student at a critical time in the admissions process.

EDMC has implemented the SPDS disclosure requirement electronically, through its Digital Application, so that students going through the admissions process will automatically see the SPDS. Students must acknowledge having received the SPDS before they can submit their application, which should ensure that the disclosures are actually made. As long as the online application process is working properly, the first required disclosure of SPDS should occur. The Digital Application also emails students a copy of the SPDS.

Discussion of the SPDS is handled differently at the different EDMC schools. At Ai, the financial services advisors are responsible for the mandatory second disclosure and discussion of the SPDS; at Argosy, Brown Mackie, and South, admissions representatives provide this disclosure and discussion after the student's financial plan is discussed but before the enrollment agreement is signed. Certain training materials for these discussions were prepared centrally, by EDMC's compliance team: Compliance has prepared a mandatory training module through its learning management system and a set of frequently asked questions for admissions representatives. However, additional training materials and talking points, though reviewed by

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<sup>138</sup> Consent Judgment ¶ 57.

<sup>139</sup> Consent Judgment ¶ 56(a)-(g).

EDMC's compliance team, were also developed by the various schools, whose admissions or financial aid personnel handle the SPDS discussions with prospective students.

Because the SPDS disclosure and discussion requirements came into effect only in late June 2016, there has been limited opportunity to observe their implementation. But particularly in light of the unfavorable information that can appear on the SPDS, the EDMC representatives' *explanations* of the SPDS and its information will be important. The guidance that EDMC Compliance has provided its representatives has been appropriate; when one representative asked how to respond to a question about a low completion rate, the guidance was matter-of-fact:

[Y]ou should simply explain how the numbers are calculated. There is no reason to try to explain away a number that someone deems to be low. We just have to be forthright and explain the calculation.

In this case, the number is calculated as follows:

# of full time students in the enrollment cohort who completed the program within 150% of the program length / # of full-time students in the enrollment cohort

...

It would also be okay to say that every student's reason for leaving a program may be different so we cannot speculate in that regard.<sup>140</sup>

This kind of guidance provides information from which the prospective student may draw his or her own conclusion, without attempting to explain away facts with misinformation.

Yet while the guidance on SPDS discussions has been appropriate, the temptation for representatives to downplay or cast doubt on the accuracy of unfavorable statistics remains. In the brief period since the SPDS requirements have been in effect, one student who asked about a 9% completion rate for her chosen program was told, in a minute-long explanation, not to worry about it and that "it's not an entirely true number."<sup>141</sup> Another was told that a 25% completion rate disclosure was describing

people that come into the program – think about when you went into college as a brand new student, right – so they are saying people who go into the program that had no experience or people that come in that don't know what they are getting into – generally they quit and they come back. So it is showing you first attempts.<sup>142</sup>

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<sup>140</sup> See Admissions Compliance Alias Email and Response re "FSYK – Program Completion Rate Question" (Aug. 3, 2016).

<sup>141</sup> See Call Record 40795773.

<sup>142</sup> See Call Record 40776926.

In fact, the SPDS completion rate does not show only first attempts, and in fact the completion rate reflects students who complete the program within 150% of the program's completion period – and thus includes those who may have quit and come back. As the SPDS discussions are implemented, EDMC should take care to ensure that those individualized discussions do not undermine the disclosures that the Consent Judgment requires.

## 5. *Mandatory Orientation*

Under Paragraph 103 of the Consent Judgment, EDMC must require most incoming students<sup>143</sup> to complete an online and/or in-person orientation program prior to the student's first class at no cost to the student. This orientation program is required to address such topics as study skills, organization, literacy, financial skills, and computer competency.<sup>144</sup>

EDMC provided the Administrator with advance access to the materials for each of the education systems' orientation program, which the Administrator reviewed and found consistent with the requirements of the Consent Judgment. EDMC has reported that the education systems began implementing the orientation course in early 2016 and it was fully implemented as of June 29, 2016. The student information systems do not allow students to be registered for classes/receive a class schedule unless they have completed orientation.

According to EDMC, the education systems are conducting a routine audit of this requirement, and EDMC's internal audit will conduct a more complete audit within the next quarter and at regular intervals thereafter. The Settlement Administrator intends to carefully review these audit results when they become available and take appropriate follow-up steps.

### **E. Calculation of Job Placement Rate**

One important component of the disclosure and discussion of the Single-Page Disclosure Sheets will be the job placement statistics, which the Consent Judgment requires be calculated in a particular manner. The determination of job placement data has been a contentious issue, as policymakers have had difficulty reaching agreement on the calculations and definitions that will prove most instructive. But for any EDMC program for which a job placement rate is required to or for which the school voluntarily calculates one, the issue is resolved; the Consent Judgment requires EDMC to calculate the rate "in accordance with this Consent Judgment."<sup>145</sup> The requirement came into full effect for EDMC graduates and completers in the year ending June 30, 2016, and thus the review of EDMC's calculations is in its early stages. These calculations and the determinations that go into them will receive ongoing attention.

#### *1. Core Skills Determinations*

The Consent Judgment's formula for determining job placement rates is complicated, but a key component of the calculation is the manner in which a former student is counted as employed

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<sup>143</sup> Graduate students and students who have already obtained twenty-four or more credits at the post-secondary education level are not required to complete the orientation course. Consent Judgment ¶ 103.

<sup>144</sup> Consent Judgment ¶ 103.

<sup>145</sup> Consent Judgment ¶ 62.

in “the field of study or a related field of study” for which the student was enrolled in the EDMC program. That is, prospective students should be able to know not only whether those who complete the program they are considering can find *a job*, but also whether the job they find is *related to that course of study*. For a student who studies psychology in order to become a psychologist, knowing whether graduates tend to get jobs in psychology or, for example, retail is relevant information.

The Consent Judgment thus lays out criteria for determining whether a particular student’s employment should qualify as being in the field of study or a related field of study. The first question involves a bright-line determination: If the recent student’s job title is one that the school publishes as associated with the particular program of study *and* is a job that the Departments of Education and Labor have recognized as associated with that course of study, then the job placement can be counted as in the field of study.<sup>146</sup> However, if that bright-line, job title determination is not satisfied, the Consent Judgment calls for a more qualitative determination. That determination looks to whether, among other things,

- (ii) the position requires the Graduate/Completer to use, during a majority of the time while at work, the Core Skills listed in the school’s published program and course descriptions expected to have been taught in the Student’s program.<sup>147</sup>

That question, regarding whether recent student “use[s], during a majority of the time while at work, the Core Skills” taught in the program of study, is a determination that may be resolved differently by different reviewers and merits close attention.

In making this determination, EDMC works with recent students, their employers, and a third-party firm called CompliancePoint, Inc. (CompliancePoint). The initial data collection is obtained by EDMC through the students or their employers. School career services advisors collect information from the students or employers, who either record information themselves on a school-provided form or provide it orally to the advisors, who then record it. The career services advisor then makes an initial determination of whether the placement qualifies as in field, relying either on the bright-line job title classifications or on the core skills evaluation.

Before that recent student is counted as placed in field, CompliancePoint conducts an independent review. To conduct the review, CompliancePoint attempts to contact the student or the student’s employer and seeks to verify the information recorded on the career services form. EDMC’s process utilizes a presumption of correctness here: If CompliancePoint is unable to contact the student, or makes contact but the student refuses to participate in the verification, the school assumes that the information initially recorded, and the school’s judgment of whether that

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<sup>146</sup> See Consent Judgment ¶ 69(a)(1)(i) (looking to whether the job title is included in the crosswalk established by the Department of Education’s National Center for Education Statistics and the Department of Labor’s Bureau of Labor Statistics for relating the Classification of Instructional Programs and the Standard Occupational Classification, or the “CIP to SOC crosswalk”); *see also id.* (allowing placement as “in field” if the job title is listed as a “lay title” on the O\*Net Code Connector for one of the related SOC titles).

<sup>147</sup> See Consent Judgment ¶ 69(a)(1)(ii).

information should qualify as an in-field placement, are correct. If, however, the employer or student provides different information, or CompliancePoint otherwise identifies a discrepancy – often missing paperwork or information, but CompliancePoint also occasionally challenges a core skills determination – then an additional process begins to reconcile the information. Unless the school accepts CompliancePoint’s new information or provides additional information to resolve the issue (such as the missing paperwork), the issue is elevated to an executive review committee within EDMC for a final determination; EDMC advises that the committee, which includes representatives of the four school systems and the company’s Risk and Compliance department, has invariably accepted CompliancePoint’s recommendations in these reviews, and that final determinations in job placement statistics have never been inconsistent with CompliancePoint’s review.

It is worth noting, however, that while CompliancePoint occasionally identifies a core skills determination meriting reconsideration, CompliancePoint’s primary focus is on verifying the more objective components of the job placement information. That is, like many third-party compliance and audit firms, the bread and butter of CompliancePoint’s work for EDMC is in the bright-line, objective determinations of whether information that was provided and recorded in one system matches information provided through CompliancePoint’s separate efforts. CompliancePoint’s efforts do not appear to be as systematically focused on the less objective, core skills determinations that can result in a job being counted as placed in field.

The Consent Judgment’s Job Placement Rate requirements have come into effect only recently, and rates are still being calculated. But the issue is important, because core skills determinations constitute about 1/3 of the total in-field placements and can involve significant exercises of discretion by front-line personnel. An initial review of preliminary determinations suggest that some of those front-line judgments will raise questions – such as whether Culinary Management graduates are using their program’s core skills when they became servers, storeroom clerks, or catering staff responsible for kitchen prep work, whether Fashion Design, Fashion & Retail Management, and Fashion Marketing graduates’ jobs are using their programs’ core skills or are predominantly altering clothes or maintaining stock on the sales floor of clothing stores, and whether Interior Design graduates are predominantly using their design skills or are predominantly mixing paint.

These exercises of discretion are not merely hypothetical, and they highlight two related questions for the review that will proceed. First, the Administrator will examine how EDMC handles the situation in which a graduate’s formal job description lists one set of duties, while the graduate’s own explanation of the program skills that he or she uses is very different. These gaps between how the employee described the position or the skills that it requires, and the terms of the formal job description, raise questions about how EDMC should determine whether a job requires the Core Skills that the program tries to teach. Given the Consent Judgment definition’s emphasis on how the student actually spends his or her time at work, favoring a formal job description over a first-person description of what the job actually will raise questions, especially when that judgment is exercised to count students as placed in field in positions that many would view as not requiring a college degree.

Second, these issues highlight the question of whether EDMC has the data that it needs to determine whether a student “use[s], during a majority of the time while at work, the Core Skills”

taught in the program of study.<sup>148</sup> Currently, EDMC attempts to make this determination by mapping the job duties that the student or employer has described to the student's coursework while in school: listing the various job duties that the student, employer, or job posting described, and then matching the duties to a course in the student's program of study that EDMC believes taught the core skill necessary for that position. But that information does not typically capture how much time the students spends on the different responsibilities associated with the position. The documents list the various responsibilities or elements of the job, but they do not provide a breakdown of the time spent on those various components. The breakdown is important; notwithstanding whatever time she spends mixing paint, the Decorative Product Specialist might indeed be using her Interior Design degree if a majority of her time is spent counseling customers. And a Culinary Management graduate who now works as a "Server / Manager on Duty" might be properly placed in field if a majority of his time is spent in managerial functions rather than serving. The challenge for EDMC is that the information it collects on many of its graduates may not provide enough information to reach a conclusion one way or another.

Going forward, EDMC's core skills determinations will receive continued attention, particularly with respect to the determinations EDMC makes for graduates of its Culinary Management, Interior Design, and fashion-related programs where placement may run from entry-level positions in which no in-field education is necessary or relevant to more advanced positions where the education is clearly relevant. When the person's job title does not match the Consent Judgment's requirements but the job duties used during a majority of time at work do, the position should be counted as placed. But particularly where the core skills determination is a secondary determination to catch the individuals who are placed in field but without traditional job titles, the burden will be on EDMC to demonstrate that the students are using, during a majority of the time while at work, the core skills taught in the program of study.

## 2. *Performance Checks*

The Consent Judgment requires EDMC to check the performance of those employees involved in the job placement rate process.

Such performance checks shall be designed to provide a reliable assessment of the accuracy of disclosed job placement rates and compliance by EDMC's employees, agents, and/or contractors with the verification, calculation, and disclosure of job placement rates.<sup>149</sup>

These checks serve to both ensure and improve the accuracy of the job placement statistics by focusing on the quality of work of the employees who perform it.

EDMC has implemented an extensive process designed to ensure the accuracy of job placement statistics. Its third-party verification firm, CompliancePoint, communicates with graduates and their employers to verify initial responses. Quarterly, the education systems will audit the resulting data, and automated processes check for duplicate entries. The Risk and

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<sup>148</sup> See Consent Judgment ¶ 69(a)(1)(ii).

<sup>149</sup> Consent Judgment ¶ 70.

Compliance department evaluates students who are deemed appropriate for exclusion from the calculations.

Those structures will be helpful in ensuring the accuracy that the Consent Judgment requires, but EDMC is still developing a system that ties the accuracy of the relevant determinations to the employees involved, as the Consent Judgment requires. That system of performance checks will be reviewed going forward.

## **F. Marketing and Third-Party Vendors**

One of the biggest compliance challenges facing the for-profit education industry – including EDMC – is the use of third-party lead generators (also referred to as “lead generators” or “third-party vendors”). As discussed in Section II.C, institutions that elect to use lead generators face considerable challenges in ensuring that those vendors recruit prospective students in an appropriate manner.

### *1. EDMC’s Use of Third-Party Vendors*

For educational institutions that elect to use third-party vendors to generate leads, significant efforts are required to monitor vendors and ensure that consumers are not misled in the recruitment process.<sup>150</sup> Lead generators’ financial models rely on the quantity of leads they can sell to institutions, and they historically have faced little or no punishments for engaging in abusive or misleading tactics to generate those leads. This creates a powerful incentive for vendors to both push the envelope of what is “permitted” and also blatantly violate EDMC’s compliance guidelines.

EDMC has historically relied heavily on lead generators to identify prospective students for its programs. The most significant channel through which EDMC identifies prospective students is through Pay-Per-Lead (PPL) efforts – essentially, traditional lead generation in which vendors sell the contact information for specific individual consumers to EDMC’s brands. As the name suggests, EDMC pays for each individual lead it receives from those vendors.

As of December 2015, approximately 68% of EDMC’s leads came from Pay-Per-Lead channels. Other lead sources include web advertising (either through advertisements like banner ads or ads that appear alongside search results), native advertising like television or radio commercials, and mailing campaigns.<sup>151</sup> Although the Marketing Compliance team is centralized at EDMC, each of EDMC’s school brands takes its own approach to marketing purchases and the mix of leads it seeks to utilize. And, as discussed further below, EDMC’s school brands have made different amounts of progress in reducing their reliance on lead generators.

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<sup>150</sup> A discussion of EDMC’s efforts to monitor and sanction its third-party vendors is provided in Section IV.F.4, *infra*.

<sup>151</sup> Leads by Channel for Every Ed System (Dec. 2015).



a) Efforts to Reduce Overall Reliance on Pay-Per-Lead Sources

Over the past year, EDMC has attempted to change its approach to advertising and lead buying to reduce its reliance on third-party vendors. Here again, of the EDMC schools, Ai has been the system that has taken the most concrete steps. In May 2016, the Art Institute Online announced that it was discontinuing the use of lead generators – *i.e.*, eliminating all Pay-Per-Lead spending. Ai’s ground locations continue to rely on lead generators to identify potential students, however Ai has reduced spending in this area. In the 2017 fiscal year, Ai as a whole has reduced its Pay-Per-Lead spending by 80% compared to the previous year.<sup>152</sup>

EDMC’s other school systems continue to use third-party vendors for lead generation and have made significantly less progress in reducing Pay-Per-Lead reliance. South reduced its total Pay-Per-Lead spending by 12%, and Argosy made reductions of 11%.

While decreasing spending on Pay-Per-Lead sources, EDMC is attempting to improve the yield from its other marketing efforts. It is shifting resources toward more traditional online advertising, and is attempting to identify and boost the lead sources that are higher quality and identify individuals who are more likely to enroll and persist in school. Over the medium- and long-term, these efforts are likely to improve EDMC’s ability to convert contacts into successful students. In the short-term, however, EDMC remains reliant on lead generation channels for a significant portion of its marketing.

b) Efforts Regarding Job Sites

As of December 2015, more than half of EDMC’s leads from pay-per-lead sources originated from so-called “job sites,” which use the promise of potential job opportunities to attract consumers. In their worst form, job sites target individuals looking for employment with the promise of available jobs (which may not actually exist), only to do a bait-and-switch that leads the consumer unwittingly to educational institutions. As the FTC found through its enforcement action, in some cases, lead generators take consumer information under the guise of helping the consumer find employment but do not actually send this information to companies offering employment opportunities.<sup>153</sup>

EDMC has taken steps to change its approach to marketing that will reduce its reliance on lead purchasing, including from job sites.<sup>154</sup> But it also maintains that, because a majority of its PPL leads in recent years originated from job sites, and that other entities in the space will continue to use these sources, it would be at a competitive disadvantage with a sudden abandonment of leads from these sources. Instead, EDMC has chosen a two-pronged approach to these websites. First, Ai, Argosy, and South have all reduced the percentage of PPL spending on job sites. The Art Institute has been the most aggressive on this front, with a 71% reduction Job PPL spending

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<sup>152</sup> EDMC PPL Compliance (Sept. 2016), at 2.

<sup>153</sup> Federal Trade Commission, Press Release, “FTC Charges Education Lead Generator with Tricking Job Seekers by Claiming to Represent Hiring Employers” (April 28, 2016), <https://www.ftc.gov/news-events/press-releases/2016/04/ftc-charges-education-lead-generator-tricking-job-seekers>.

<sup>154</sup> EDMC’s position on whether it is seeking to reduce or eliminate its reliance on job sites has been requested, and this language may be revised prior to finalization.

for the 2017 fiscal year, compared to 2016. Argosy and South have made reductions of Job PPL spending: 57% and 50%, respectively.<sup>155</sup>

Second, EDMC has also worked with its vendors to revise the “pathing” used to generate leads for EDMC from job sites to include more conspicuous and direct questions and consents to be contacted about educational opportunities. The new, mandatory standards imposed on vendors using job sites include:

- Separate TCPA consents for job opportunities and educational opportunities;
- A clear and conspicuous “skip” mechanism to skip over the consent to be contacted about educational opportunities and get directly to the job path;
- A specific question about whether the student is interested in furthering their education;
- The consumer must be able to easily get to the job opportunities when opting out of the education opportunities or after following the education path and expressing an interest in education opportunities; and
- The job advertised must be available as an actual job.

There is much to be said about where EDMC is today – and EDMC’s position provides insight into the for-profit industry as a whole. First, it is at least somewhat positive that EDMC is working to change its reliance on lead generation.<sup>156</sup> While it still has a long way to go, EDMC – and Ai in particular – is making progress. Second, EDMC’s interim approach – forcing lead generators to put new and more specific language on website and other communications to obtain more clear consent from consumers to be contacted about educational opportunities – is better than the alternative (no language or unclear language in tiny print). Third, to the extent that regulators are focused on clear disclosure, EDMC has sought to meet that objective. Of course, this approach raises the question: if the consumer has been misled by one or more sub-vendors of a lead generator to get to a point where he or she is asked about education opportunities, does the disclosure inoculate what came before?<sup>157</sup>

But there are also negatives. First, from the Settlement Administrator’s call monitoring, it remains true that too many consumers are still being misled in some fashion; when EDMC personnel talk with them, they complain that they were only looking for a job and were passed from call center to call center until they got to EDMC. In one call, a consumer complained that he did not request information about Argosy University, but “they kinda forced it upon me by not

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<sup>155</sup> EDMC PPL Compliance (Sept. 2016), at 2.

<sup>156</sup> EDMC’s position on whether it is seeking to reduce or eliminate its reliance on job sites has been requested, and this language may be revised prior to finalization.

<sup>157</sup> The Settlement Administrator notes that, where an online school is using auto-dialers, the very specific disclosures of the TCPA are required and, to some extent, provide a guide to schools on an acceptable level of disclosure. As noted below, the TCPA disclosure requires consent not simply to being called for educational opportunities, but also consent to being called by a specific school.

giving me an option out.”<sup>158</sup> In another, a consumer told an Argosy admissions representative that he was looking for jobs and is not looking to go to college, but every time he applies for a job, “they shoot me to another school.”<sup>159</sup> Regardless of the new language required by EDMC, it either is not fully achieving its objective or lead generators are not actually complying with EDMC’s policies.

Second, even with the new language, EDMC simply does not have visibility as to whether these sites are legitimate job sites, through which a person can get a job, and not just simply portals to obtain personal information to sell to EDMC and others. No amount of auditing by EDMC can really answer that question, which highlights the larger concern with job sites.

Third, EDMC’s experience in attempting to work with job sites to implement these changes demonstrates that the for-profit industry is far from reducing its dependence on misleading tactics. When EDMC sought to implement new requirements, like the separate question regarding educational opportunities, it was clear that a) some lead generators simply would not do it (obviously feeling like their other customers were happy with the current, misleading state of affairs)<sup>160</sup> or b) lead generators were willing to implement changes for EDMC, but would continue the same practices (with less disclosure) for other clients. And indeed, some lead generators likely continue to sell leads to EDMC, asserting that they comply with EDMC’s policies, without actually complying.

There are no easy solutions to these problems until the problem of misleading lead generation is undertaken at an industry-wide level. For EDMC, they are making progress, but have a greater distance to go on this issue than any other. EDMC has clearly stated its commitment to continuing to make improvements in the coming years, even if some of its competitors continue to embrace the worst-of-the-worst in terms of leads.

It is important to note, in concluding, that perhaps the most important change insisted by EDMC is the direct question of whether the consumer is interested in furthering his or her education (or a question to similar effect). EDMC requires its vendors to include an unequivocal negative response as an option, like “No” or “No, I am not interested.” Vendors may also include up to three “equivocal” responses like “Maybe,” “Maybe Later,” or “Need More Info,” and a definitive positive response like “Yes.” EDMC allows its vendors to transfer leads to EDMC if the consumer responded with an equivocal or positive response. In other words, a consumer who responds “Maybe Later” to a question of “Are you interested in furthering your education?” can be transferred to EDMC’s call center. While the call center is to ask twice to confirm educational interest before transferring the student on to further in the EDMC process, callers still indicate later in the process (as discussed above) that they were not interested in discussing education further. An example of an approved job path is provided as Appendix A.

Under Paragraph 107(e) of the Consent Judgment, EDMC is required to have contracts with lead generators that prohibit the vendor from transferring a consumer inquiry to an EDMC

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<sup>158</sup> Call Record 40473917.

<sup>159</sup> Call Record 39243250.

<sup>160</sup> EDMC terminated its contractual relationships with vendors that would not agree to EDMC’s revised job site pathing requirements.

school unless the consumer has expressly informed the Third-Party Lead Vendor that he or she is interested in educational opportunities. As the Settlement Administrator has listened to calls and reviewed the compliance work by EDMC, it seems likely that this middle, “maybe later” category is generating some number of consumers who really do not want to talk with EDMC, but are sent there anyway. Although the Settlement Administrator has not determined the volume of calls that fall into this category (it would be difficult to do so given the opacity of the lead generators), the Settlement Administrator believes that these equivocal responses need to be eliminated or modified to ensure that the contractual provision required by the Consent Judgment is implemented properly. EDMC has implemented that right standard – only a “yes” is a “yes” – in its own admissions efforts and it should impose a similar standard on the lead generators.

## 2. *Contracts with Vendors*

Paragraph 107 of the Consent Judgment provides detailed requirements for all of EDMC’s contracts with lead generators. Under this provision, EDMC must:

- Require the vendor to comply with EDMC’s online vendor compliance guide, all applicable state and federal consumer protection laws, all provisions in the Code of Conduct (once applicable), and the Telephone Consumer Protection Act (TCPA);
- Prohibit vendors from “attracting Students or obtaining leads by misleading advertising suggesting available employment opportunities rather than educational opportunities;”
- Prohibit vendors from representing that a student “is guaranteed to receive ‘free’ financing from the federal or a state government;” although vendors are permitted “to represent that grants and scholarships may be available and would not need to be repaid;”
- Prohibit vendors from representing that “loans are grants that do not carry with them an obligation to be repaid;”
- Prohibit vendors from transferring a lead to EDMC unless the consumer has expressly indicated an interest in educational opportunities; and
- Require that when vendors make calls on behalf of EDMC, they immediately disclose, “This is [insert name] from [insert company], this call may be recorded for quality assurance purposes,” or similar words to that effect, and repeat the disclosure upon transferring a call to EDMC or when a new consumer is connected to the call.

In March 2016, EDMC prepared an addendum to its existing contracts with lead generators. EDMC shared a draft with the Settlement Administrator for review and feedback before it was finalized.<sup>161</sup>

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<sup>161</sup> Email from Allison O’Donovan to Julie Carpenter, Brian Hauck, and Elizabeth Bullock (Mar. 10, 2016).

The contract addendum implemented all of the changes required by the Consent Judgment, with the exception of the requirement that the vendor comply with the Code of Conduct that has not yet been finalized. EDMC sent the addendum to vendors in April 2016, and all of EDMC's current vendors signed the addendum without amendment.

### 3. *Online Vendor Compliance Guide*

Simultaneously with the release of the contract addendum, EDMC also released a new Marketing Vendor Compliance Guide. As with the vendor contract addendum, EDMC shared a draft of the guide with the Administrator team before it was finalized, and made revisions to the guide in response to feedback from the Administrator.<sup>162</sup>

The Marketing Vendor Compliance Guide covers a wide range of topics. Like the contract addendum, it imposes upon vendors the requirements provided in Paragraph 107. It also addresses other issues. As a few examples, the Guide expressly prohibits vendors from using abusive recruitment methods, defined as “the intentional exploitation of a prospective student’s fears, anxieties, or insecurities, or any method intentionally calculated to place unreasonable pressure on a student to enroll in our schools.”<sup>163</sup> The Guide also prohibits vendors from making misrepresentations regarding the program offerings of EDMC schools – *e.g.*, offering programs currently in teach-out or that are not offered by a specific school brand or location – or guaranteeing job placement or certification or licensure upon completion of a program.<sup>164</sup>

The Guide also lays out the sanctions that must be imposed when violations of EDMC's standards are discovered. In doing so, it distinguishes between “Termination Violations,” as defined by Paragraph 111(a) of the Consent Judgment, and “Non-Termination Violations.”

#### a) Penalties for Violations

Under the Guide, and consistent with Paragraph 111(a) of the Consent Judgment, a Termination Violation occurs where:

- (a) [The] webpage, electronic solicitation, or other online advertisement references both a post-secondary educational opportunity and an employment opportunity, and it: (i) Uses a substantially smaller font size to present the educational opportunity as compared with the employment opportunity; or (ii) Represents the educational opportunity as a “want ad” or employment application;
- (b) [The] webpage, electronic solicitation, or other online advertisement states that a prospective student: (i) Is eligible for a scholarship, grant, or financial aid as the result of a drawing or

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<sup>162</sup> Email from Allison O’Donovan to Julie Carpenter, Brian Hauck, and Elizabeth Bullock (Mar. 10, 2016).

<sup>163</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 3. This definition mirrors the one provided in the Consent Judgment. *See* Consent Judgment ¶ 4.

<sup>164</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 4-6.

raffle; (ii) Has been specially selected to receive a scholarship, grant, or financial aid; or (iii) Is entitled to receive compensation to fund his or her education in exchange for completing a form; or

- (c) [The] webpage, electronic solicitation, or other online advertisement states that a prospective student will receive compensation to fund his or her post-secondary education that will not need to be repaid, unless the statement refers to grants that are expressly stated to be subject to eligibility.<sup>165</sup>

The Guide explains that if EDMC uncovers a Termination Violation, the vendor will have five business days to correct the infraction or “document active engagement with the required changes,” or else the campaign will be paused until the violation is corrected.<sup>166</sup> If a second Termination Violation is discovered in any rolling 180-day period, the vendor will have five business days to correct the infraction or “document active engagement with the required changes,” or else the campaign will be paused for thirty days, or until the violation is corrected, whichever is longer.<sup>167</sup> If a third Termination Violation is discovered within any rolling 180 day period, then “EDMC shall, within thirty (30) days of discovering the third such Termination Violation, terminate any outstanding insertion orders to the segment of the Third-party Lead Vendor’s business in which the Termination Violations occurred and not issue any new insertion orders to that business segment for at least ninety (90) days.”<sup>168</sup>

The language defining the consequences of three Termination Violations within 180 days mirrors the Consent Judgment’s requirement, with one notable exception. The Consent Judgment allows EDMC to avoid imposing the termination penalty if either EDMC or the vendor “document to the reasonable satisfaction of the Administrator that the three Termination Violations ... represented, in the aggregate, no more than 1% of the total Prospective Student leads from the Third-Party Lead Vendor during the relevant period.”<sup>169</sup> EDMC has not extended that allowance to its vendors in the Guide.

The Guide also provides the penalties for Non-Termination Violations – *i.e.*, a violation of EDMC’s Marketing Vendor Compliance Guide that does not fall within the definition of a Termination Violation. The penalties for the first two Non-Termination Violations mirror those for the first two Termination Violations, although they are counted on a rolling 12-month period (as opposed to a rolling six-month period). Upon the first occurrence in any 12-month period, the vendor will have five business days to correct the infraction or “document active engagement with the required changes,” or else the campaign will be paused until the violation is corrected.<sup>170</sup> If a second violation is discovered in any rolling 12-month period, the vendor will have five business days to correct the infraction or “document active engagement with the required changes,” or else

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<sup>165</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 13-16.

<sup>166</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 16.

<sup>167</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 16.

<sup>168</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 17.

<sup>169</sup> Consent Judgment ¶ 111(b).

<sup>170</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 17.

the campaign will be paused for thirty days, or until the violation is corrected, whichever is longer.<sup>171</sup> If a third violation is discovered within any rolling 12-month period, then the vendor must “document active engagement with the required changes within five (5) business days,” or the vendor “will be removed from [EDMC’s] vendor list for at least one year.”<sup>172</sup> The penalties for the three violations mirror the Consent Judgment’s requirements.<sup>173</sup>

Violations identified within a given week are “counted as a single violation for that week in order to give [the vendor] an opportunity to fix the issues that resulted in violations.”<sup>174</sup> And the adverse actions against the vendor for Non-Termination Violations “only apply to the segment of [the vendor’s] business in which the violation occurs.”<sup>175</sup> For example, if a violation from an email campaign will not cause the call center operated by the vendor to be paused.<sup>176</sup> This is consistent with the Consent Judgment’s requirements.<sup>177</sup>

#### b) Additional Penalties for Call Center Violations

EDMC also developed a separate discipline policy for call centers, which is intended to apply in addition to the monitoring and penalties required by the Consent Judgment. Under that policy, as defined in the Guide, in addition to the rolling 12-month monitoring period for violations, call center violations also would be monitored over a 10-week rolling period. “[S]imilar violations identified within a given week” would be counted as a single violation for that week, while distinct types of violations within a week would be counted as separate violations.<sup>178</sup> For example, if on two separate calls in one week, the call center failed to give a recorded line disclosure, this would count as one issue, but if the same call center also had one call in which the representative failed to confirm that the student was interested in educational opportunities, this would count as a second violation within the 10-week period.

Under this policy, if a call center incurs three violations within a rolling 10-week period, it would be paused for thirty days. If, following reinstatement, it receives an additional three violations within a second rolling 10-week period, it would be paused again for a least thirty days. If, following reinstatement, the call center incurs another three violations within a rolling 10-week period, it would be paused for one year.

There is a critical difference between the call center discipline policy and the broader policies adopted to comply with Consent Judgment’s Paragraphs 110 and 111. Unlike the penalties for the first two Termination Violations, and all three Non-Termination violations, where a vendor can avoid being subject to pausing so long as it “document[s] active engagement with the required

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<sup>171</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 17.

<sup>172</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 17.

<sup>173</sup> Consent Judgment ¶ 110.

<sup>174</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 17.

<sup>175</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 17.

<sup>176</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 17.

<sup>177</sup> Consent Judgment ¶ 110.

<sup>178</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 18.

changes within five (5) business days,”<sup>179</sup> the call center policy requires *automatic* pausing. Call center vendors are to be paused automatically for 30 days after three violations in a 10-week period and would be subject to a one-year pause after three 10-week windows in a 12-month period with three violations.

The call center pausing policy was rolled out in September 2015. EDMC began pausing vendors in November 2015, and has paused both call centers and digital property vendors. In June 2016, however, as EDMC was beginning to implement speech analytics monitoring of all of its call center calls (discussed in more detail below), EDMC reported to the Administrator that it had decided to limit the application of the policy to issues identified through EDMC’s manual, random review of call center calls. Violations identified through the speech analytics system would not be counted toward this policy. Violations identified through manual call monitoring would continue to be counted. (EDMC also reported that it was maintaining the 12-month monitoring imposed by the Consent Judgment.)

EDMC justified the change by explaining that as it began reviewing a higher volume of call center calls through the launch of the speech analytics system, the rate of detected violations similarly increased. In one week alone, EDMC reported, a vendor had 15 violations but also had conducted between 8,000 and 10,000 calls. EDMC’s marketing team worried that the tolerance for a straight numerical number of errors needed to be adjusted in light of the significantly increased number of calls being reviewed. EDMC stated that it would have to reassess the policy as PerformMatch monitoring was implemented.

In September 2016, EDMC shared with the Administrator team a draft of a potential revised policy that would tie violation thresholds to the volume of calls received. It remains to be seen how it will ultimately resolve this issue. EDMC must ensure, however, that its vendors face tangible consequences for activities that violate EDMC policies. Unless vendors face the risk of penalties that will impact their business operations, vendors are unlikely to be adequately motivated to ensure compliance. These activities will continue to be reviewed.

#### 4. *Monitoring and Compliance*

The Consent Judgment also imposes certain requirements on EDMC to monitor its vendors’ compliance. EDMC must work with the Administrator, in consultation with the Attorneys General, to “devise a plan” for EDMC to monitor its vendors and verify their compliance with the contractual terms required by Paragraph 107 of the Consent Judgment.<sup>180</sup> EDMC is also required to “maintain policies and procedures and take appropriate action ... to require Third-Party Lead Vendors to comply with the Consent Judgment.”<sup>181</sup>

EDMC uses a number of tools to monitor the activities of its vendors, a number of which are highlighted below.

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<sup>179</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 16, 17.

<sup>180</sup> See Consent Judgment ¶ 109; Section IV.F.2, *supra*.

<sup>181</sup> Consent Judgment ¶ 113.



a) The Business Practices Committee

EDMC policies require all marketing and communications materials – including marketing efforts by third-party vendors – to be submitted in advance to EDMC’s Business Practices Committee (BPC).<sup>182</sup> Materials that have been previously approved, or language that has been previously approved, does not maintain that “approved” status in perpetuity. Instead, EDMC requires that material be re-submitted if language is used in a new context or if more than six months have passed since the approval was given.

The BPC maintains an online portal, through which materials can be submitted and are subsequently reviewed.<sup>183</sup> The BPC portal is designed to facilitate review by compliance and by the relevant subject matter experts on a topic, where appropriate. Reviewers include those with expertise in legal, financial aid, state licensure, military, accreditation, and other relevant subject matters. For example, when academic catalogues go through the portal for review, reviewers will include those familiar with requirements by state regulators and accreditors.

Through this review, marketing and other materials can be approved without edits, approved with edits made by the reviewers, or not approved – sometimes with the opportunity for the submitter to revise and resubmit the content.

As a general matter, the BPC does well in directing marketing materials to the appropriate subject matter experts and revising the materials that come to it. The bulk of marketing materials reviewed and approved by the BPC are unobjectionable. However, the Settlement Administrator has identified some evidence that some of the mandates of the Consent Judgment have not yet become engrained in that review process.

For example, the Consent Judgment prohibits lead generators from transferring leads to EDMC unless that consumer has expressed that he or she is interested in educational opportunities.<sup>184</sup> It also specifies how vendors should respond to consumer statements that indicate various levels of interest in educational opportunities. Specifically, the Consent Judgment requires third-party vendors “to ask the consumer if they are interested in educational opportunities.”<sup>185</sup> If the consumer replies no, or with another “clear negative response,” the vendor is prohibited from sending the lead to an EDMC school. If the consumer replies with “an equivocal response,” like “I’m not sure,” then the third-party vendor is permitted to describe the advantages an education may provide in creating additional job opportunities.<sup>186</sup> But the vendor must “again ask the consumer if they are interested in educational opportunities,” and must receive “a clear and affirmative” answer of yes before the lead can be directed to an EDMC school.<sup>187</sup>

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<sup>182</sup> See EDMC, Marketing Compliance Handbook (updated Jan. 12, 2015), at 5; EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 1.

<sup>183</sup> The Settlement Administrator team has access to the portal and review how materials progress through the review process.

<sup>184</sup> Consent Judgment ¶ 107(e).

<sup>185</sup> Consent Judgment ¶ 107(e).

<sup>186</sup> Consent Judgment ¶ 107(e).

<sup>187</sup> Consent Judgment ¶ 107(e).

The Settlement Administrator has identified multiple scripts for third-party call centers that were submitted to the BPC for review and ultimately approved for use with revisions made by the BPC reviewers.<sup>188</sup> One of the approved the call center scripts purported to involve representatives who intend to help a consumer find available job opportunities. In the script, the representatives would introduce themselves to consumers as “agent[s] with Career Connect Live,” and who are working “[t]o match you with appropriate [job] openings.”<sup>189</sup>

The scripts reflect that through the BPC review process, EDMC ensured that the vendors included a question to ask the consumer whether he/she has an interest in employment opportunities, and the script revisions indicate that the call should end if the consumer says “no.”<sup>190</sup> However, even after BPC review, the scripts do not indicate what the vendor should do if a student answers with an equivocal answer like “I don’t know” or “I’m not sure.” And, if such a response is given, the scripts do not require the vendors to “again ask . . . if they are interested in educational opportunities,”<sup>191</sup> or reflect that the consumer must indicate a clear interest in educational opportunities before the lead may be directed to EDMC.

While the Administrator understands that certain equivocal answers may trigger reasonable questions or discussions from a call center, there is a real risk that consumers are transferred to EDMC schools without ever expressing such an interest, despite the obligations under the Consent Judgment. EDMC is reviewing its call center scripts to ensure that they adequately address this issue, and the Administrator will review those revisions; such changes may also reduce the number of calls transformed to EDMC of consumers who have no interest in educational opportunities.

In addition, as discussed above in Section IV.D.3, the Administrator identified problems ensuring consistency and clarity surrounding how programs lacking certain programmatic accreditations are described in marketing and academic materials. Marketing and other public-facing materials used by EDMC schools, including the information on EDMC’s websites and information in its academic catalogues, are all intended to be reviewed by the BPC. However, the mystery shopping conducted in connection with the Consent Judgment found inconsistencies in the disclosures used to notify prospective students that certain programs lacked a programmatic accreditation required for certification. EDMC has not yet determined how this breakdown had occurred, but believes that the issues likely arose either because the schools were using legacy materials that should have been discontinued, or because the schools developed and launched new materials without submitting them for BPC review. But, regardless of the explanation of the failure, the BPC cannot be successful in its role unless it is able to ensure that these disclosures are accurate, consistent, and satisfy the requirements of the Consent Judgment.

This also illustrates another critical challenge for the BPC. The BPC’s review is necessarily limited to the materials that are submitted to it. And, despite policies requiring

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<sup>188</sup> See BPC Job 20415; BPC Job 22427; BPC Job 24028. Others were not approved for use, but reflected changes recommended by the BPC. See BPC Job 20376; BPC Job 20777.

<sup>189</sup> BPC Job 20415. In another script not ultimately approved, the representative would claim to be a “Career Matching Specialist,” whose “job is to find candidates that match specific jobs.” BPC Job 20376.

<sup>190</sup> BPC Job 20415; BPC Job 22427; BPC Job 24028.

<sup>191</sup> See Consent Judgment ¶ 107(e).

EDMC's schools and third-party vendors to submit all marketing materials in advance, EDMC has acknowledged that vendors do not reliably submit materials for review before they are used.<sup>192</sup>

The gap between what should be submitted and what is actually submitted leaves EDMC reliant on other tools to monitor the tactics used by its lead generators. These are described below.

b) Jornaya (formerly LeadID)

EDMC utilizes Jornaya (formerly known as LeadID) to assist in ensuring its vendors comply with the Telephone Consumer Protection Act of 1991 (TCPA), which, among other things, restricts the use of auto-dialers to contact consumers without their prior express written consent.<sup>193</sup>

EDMC requires its vendors to have users acknowledge that they consent to being contacted by an EDMC school system before a lead can be sold to EDMC.<sup>194</sup> Its preferred language for such consent varies slightly depending on the medium in which it is presented (*e.g.*, call center or website), but essentially follows this script:

By clicking the button below as my official signature, I consent to representatives of <<Ed System>> contacting me about **EDUCATIONAL OPPORTUNITIES** via email, text or phone, including my mobile phone if provided above, using an automatic dialer. I understand that my consent is not a requirement for any purchase. Message and data rates may apply. I understand that I may withdraw my consent at any time.<sup>195</sup>

To verify that consumers provide consent to be contacted, EDMC requires all of its vendors to use Jornaya. EDMC policy requires that vendors that use "any landing page, microsite, or other digital property that includes a Request for Information Form (RIF)" to include specific code that allows Jornaya to operate on the page.<sup>196</sup> Vendors' affiliates are not required to do so. When the Jornaya-specific coding is present on a website, Jornaya captures the user experience and the specific disclosures provided to each individual consumer regarding the consent to be contacted. Jornaya can also assess whether, or to what extent, those disclosures deviate from the specific language that has been approved by EDMC. This ensures that leads have given adequate consent to be contacted about educational opportunities and/or EDMC's schools in particular. And, if a consumer were to complain that EDMC or one of its schools contacted her without her consent, Jornaya could provide evidence that adequate consent was given.

EDMC receives weekly reports from Jornaya that report, by vendor, the number of web-generated leads for which the disclosure was audited, the percent of webpages with TCPA

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<sup>192</sup> The failure to submit materials for BPC review does not fall within the categories of Termination Violations or Non-Termination violations, and therefore will not lead to pausing or termination of the vendors. *See* EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 12-13.

<sup>193</sup> 47 U.S.C. § 227.

<sup>194</sup> EDMC, Marketing Compliance Handbook (updated Jan. 12, 2015), at 11.

<sup>195</sup> EDMC, Marketing Compliance Handbook (updated Jan. 12, 2015), at 11 (emphasis in original).

<sup>196</sup> EDMC, Marketing Vendor Compliance Guide (updated July 19, 2016), at 12.

disclosures, the extent to which those disclosures match EDMC’s requirements, and whether the disclosures were adequately visible to the user. But Jornaya has certain important limitations. Although leads are tagged with a source code that can be used by Jornaya to identify which vendor supplied the lead, Jornaya will not reveal the identity of the source of a lead without a legal claim – like an alleged TCPA violation. As a result, EDMC cannot use the information it obtains from Jornaya to identify what chain of vendors and affiliates may have been used to generate a lead. Jornaya also does not indicate how many, if any, layers a lead passed through before reaching EDMC. For example, a lead from a sub-vendor may go to a call center, which handles the TCPA consent, before reaching EDMC. Jornaya’s reports would not reveal this path.

c) Omniangle

EDMC also contracts with Omniangle, a third-party service, to help it monitor the tactics used by third-party vendors and their affiliates to generate leads that are sold to EDMC. Omniangle is an intelligence firm that essentially “mystery shops” the internet and tracks the representations that are made to consumers on their way to becoming a lead. Omniangle identifies not only what the user experience was, but also identifies what companies were involved in putting that user experience together (*e.g.*, affiliate networks, affiliates, call center record generator sites, third-party call centers, etc.).

Omniangle serves a critical function for EDMC by creating transparency in an industry that is often far from transparent. Lead generators use a variety of tools to attempt to recruit consumers, and consumers are often passed through a maze of vendors, affiliates, and sub-affiliates before the lead is sold to an EDMC school. For example, a consumer might receive an email, which links to a webpage with a submission form for contact information, and then be called by a call center (and sometimes transferred through multiple call centers) before that consumer is finally directed or transferred to an EDMC school. Omniangle can trace the entire path used by these various affiliates and sub-affiliates, detect which companies are involved in each step of the process, and can notify EDMC where its vendors (or their affiliates) use tactics that are inconsistent with EDMC policy. Omniangle sends reports to EDMC that show the tactics that its vendors and/or their partners are using to generate leads.

Members of EDMC’s Marketing Compliance and Risk and Compliance teams review on a weekly basis the potential violations that have been identified by Omniangle. Where policy violations are identified, the Marketing Compliance team works with the vendors to remediate the issues.

d) PerformLine

EDMC also uses PerformLine to facilitate its monitoring of lead generators. PerformLine serves two critical functions: First, PerformLine uses a webcrawler to detect how EDMC’s brands are used online. Second, PerformLine offers the PerformMatch speech analytics system, which is used to detect compliance infractions by third-party call centers and by EDMC’s own employees. Each of these functions is described in more detail below.

PerformLine uses a web crawler called Kraken<sup>197</sup> to scan the internet for the use of EDMC trade names. Kraken scans URL pages for uses of EDMC brands and other keywords to identify potential advertising infractions. PerformLine then provides reports for each scanned webpage where such keywords are proximate to EDMC brand. That report notes the webpage's URL and the relevant keyword(s) that appear on that webpage. It also contains a screenshot of the webpage, with the relevant keyword(s) highlighted. EDMC's Marketing Compliance team can then review the reports and determine if a vendor is portraying EDMC schools in a manner that is inconsistent with its policies.

In addition, as already discussed in greater detail in Section IV.C.2.b), EDMC uses PerformLine's speech analytics system, PerformMatch, to monitor recorded calls and identify potential rule violations. EDMC uses dozens of third-party call centers to generate leads for its school brands.<sup>198</sup> These call centers are required to record their conversations with leads sold to EDMC and provide those recordings to EDMC. With the launch of PerformMatch, EDMC is now able to screen all calls submitted for potential compliance infractions.

##### 5. *Challenges and Future Steps*

Consistent with Paragraph 108 of the Consent Judgment, EDMC has participated in industry conversations with state Attorneys General to develop a Code of Conduct for the recruitment of consumers through third-party vendors. These discussions remain ongoing. Regardless of the outcome of the Code of Conduct discussions, or the speed with which those reach a conclusion, EDMC should continue to focus on taking steps to ensure that recruiting and lead generation efforts for its schools are consistent with the letter and the spirit of the Consent Judgment. EDMC should be considering a number of steps.

First, EDMC will need to decide whether the compliance risks created by relying on third-party vendors, and the costs that are associated with trying to monitor those vendors, are worth incurring. As illustrated above, it is difficult and resource intensive to adequately monitor vendors' activities and ensure that policy violations are remediated in a timely manner. If all of EDMC's schools were to follow the lead of Ai Online and stop utilizing PPL lead sources, EDMC's compliance efforts would be easier to achieve.

To the extent that EDMC's schools continue to rely on lead generators, EDMC will also have to grapple with whether to continue to allow vendors to use job sites and the promise of available employment opportunities to lure consumers.

Greater attention also will need to be given to the marketing decisions at South and Argosy in particular. South and Argosy lag behind Ai in the progress that has been made to reduce reliance on lead generators in general, and job sites in particular.

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<sup>197</sup> See <https://www.performline.com/technology/discovery/>.

<sup>198</sup> As of December 2015, EDMC reported it was using 38 call centers.

## V. FUTURE WORK

The upcoming year will be a pivotal one for EDMC. In addition to continuing to work on the issues discussed above, some of the key provisions of the Consent Judgment have yet to take effect or are just taking hold at EDMC's institutions. In this Section, we provide a preview of upcoming Consent Judgment provisions that will become effective and discuss other aspects of the Consent Judgment that will be a focus of the Administrator team over the next year.

### A. Upcoming Implementation of Consent Judgment Requirements

#### 1. *The Electronic Financial Impact Portal (EFIP)*

Paragraph 72 of the Consent Judgment requires EDMC to provide feedback to the Consumer Financial Protection Bureau regarding its development of an Electronic Financial Impact Platform (EFIP). The EFIP is intended to “generate a personalized disclosure” to newly enrolling students using federal student aid that will help the student understand the financial consequences of enrolling.<sup>199</sup>

Once the CFPB has provided a ready-to-implement version of its Electronic Financial Impact Platform to EDMC, EDMC will have sixty days to determine whether it will use the CFPB's Electronic Financial Impact Platform.<sup>200</sup> If EDMC elects not to use the CFPB's EFIP tool, it must work with the Administrator, in consultation with the Attorneys General, to develop an alternative EFIP tool.

EDMC has reported that it has been meeting weekly with the CFPB and representatives of the AG Executive Committee to discuss the tool. EDMC has shared templates of the tool and has stated that it expects to make a decision whether to adopt the CFPB's tool by the end of October.

#### 2. *Call Monitoring for Ground Locations*

The Consent Judgment allows EDMC to phase in call recording and voice analytics over an 18-month period, with full functionality by the end of June 2017.<sup>201</sup> As detailed in Section IV.C.3, EDMC has already launched voice recording and speech analytics for its admissions and financial services personnel that serve its online programs – *i.e.*, Ai Online, Argosy Online, and South Online – as well as the for the National Call Center. EDMC has reported that for the ground locations, it is continuing preparations to launch call recordings at other locations.

According to EDMC, call recording for the Art Institutes' ground locations will be launched first, with the roll-out scheduled to take place from October 2016 through December 2016. Call recordings will be implemented subsequently at Argosy University and South University campuses. There are no plans to launch a call recording system at Brown Mackie,

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<sup>199</sup> Consent Judgment ¶ 71.

<sup>200</sup> Consent Judgment ¶ 72.

<sup>201</sup> Consent Judgment ¶¶ 95-98, Ex. A, at 2.

where all but a handful of schools are in teach-out and the remaining four locations are being prepared for sale.

## **B. Assessments of Other Consent Judgment Requirements**

### *1. Withdrawal and Refund Policies*

Paragraphs 104 through 106 of the Consent Judgment provide refund provisions for students who withdraw shortly after enrolling at EDMC’s schools. For online programs, new students may withdraw within 21 days without becoming liable for any tuition or fees associated with attending class.<sup>202</sup> For ground programs, new students may withdraw within 7 days without becoming liable for any tuition and fees.<sup>203</sup> For other students who withdraw, EDMC may be entitled to the percentage of tuition, fees, and other costs earned based on the percentage of the enrollment period attended by the student.<sup>204</sup>

These refund provisions became effective at the end of June 2016.<sup>205</sup> EDMC’s Internal Audit team centrally audited its institutions’ first start dates for which this refund policy applies, and no issues were noted. The Internal Audit team will conduct a more fulsome audit within the next quarter and at regular intervals thereafter. The Administrator will review EDMC’s implementation of these provisions in the next report.

### *2. Other Issues*

For some remaining portions of the Consent Judgment, the Administrator’s review remains ongoing. For example, the Consent Judgment requires EDMC to “make reasonable efforts to assess local employer requirements” in the localities where it enrolls students, and EDMC is prohibited from enrolling students in a program of study that “does not possess the accreditation typically required by employers in the Student’s locality.”<sup>206</sup> EDMC’s efforts to assess local employers’ requirements remain a work in progress, and the Administrator will continue to work with it regarding this provision.

The Administrator team also continues to review EDMC’s implementation of the institutional debt forgiveness provisions of the Consent Judgment. The Consent Judgment requires EDMC to forgo collection on institutional debt owed by certain qualifying students.<sup>207</sup> EDMC has provided some materials reflecting its efforts to comply with this provision, but the Administrator’s review of EDMC’s compliance with this provision remains ongoing. Over the coming year, this will remain a key area of focus.

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<sup>202</sup> Consent Judgment ¶ 104.

<sup>203</sup> Consent Judgment ¶ 104.

<sup>204</sup> Consent Judgment ¶ 105.




<sup>205</sup> Consent Judgment Ex. A at 2.

<sup>206</sup> Consent Judgment ¶ 89.

<sup>207</sup> Consent Judgment ¶¶ 120-21.

## APPENDIX A – SAMPLE APPROVED JOB SITE


### Step 1: Landing Page to Search for Jobs

- Locate nearest Randalls jobs
- Map of Randalls's locations that are hiring
- Find and apply for Randalls Jobs Online

Job	Location	
<input type="text" value="Randalls"/>	<input type="text" value="78759"/>	<a href="#">View Randalls jobs</a>
<small>Job title, Keywords, or Company name</small>	<small>City, State or Zip</small>	


**Your business deserves a better network.**  
Save up to \$400 when you switch.

[Let's talk >](#)

**About Randalls**

Founded in 1966 in Houston, TX, Randall's has expanded to over 100 locations throughout Texas with over 18,000 employees. In 1999, Randall's was acquired by Safeway, and currently operates as their official Texas branch, based out of Houston. Randall's locations offer freshly caught seafood, on-premise bakeries, florists, pharmacies, and banks. Recently, Randall's has introduced premium locations that offer expanded takeout options including fresh BBQ, pizza, and pasta dishes. Some locations even include gas stations, or full-service counters that allow you to renew your driver's license or purchase movie tickets.

**Randalls in Your Area**



**Types of jobs you could find at Randalls**

**Night Stocker**

The main duty of a Night Stocker is to make sure that Randall's Grocery is fully stocked at all times. Night Stockers are required to unload delivery trucks and place the groceries onto the proper shelves. They will need to work efficiently and quickly learn the departments and products. As they will interact with customers, Night Stockers must be friendly and helpful.



Step 2: Claim that Jobs Have Been Located, First TCPA Consent



**We have located Randalls Jobs in Austin.  
Let's get started by creating your account**

First Name	Last Name
<input type="text"/>	<input type="text"/>
Email	Phone
<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/>
Street Address	Date of Birth
<input type="text"/>	Month - / Day - / YYYY-
Austin, TX 78759 ( <a href="#">change</a> )	
<b>I AGREE</b> <input type="checkbox"/> I acknowledge that by submitting this form, I may be contacted by phone, at the number provided above, including my wireless number if provided, by a representative of Online-Edu-Help.com, College Matching Service, LocalJobster, Career Advisor, and/or Career School Advisors for educational offers. I understand these calls may be generated using an automated technology.	
I understand that consent to be contacted is not a condition of registration.	
<input type="button" value="Get Started &gt;"/>	

Step 3: Educational Opportunities Questions



We've started looking for Randalls jobs for you. Please complete the fields below to determine if we can match you with additional partner opportunities.

Which position would you like to apply for?

Current Employment Status

Do You Have Any Of The Following Certifications?

- Commercial Driver's License (CDL)
- Nurse Assistant (CNA)
- Pharmacy Technician (CPhT)
- HVAC Technician (NATE)
- First Aid, CPR or AED

Education

Highest Level of Education

Are You Interested in Furthering Your Education?

Continue

## Step 4: Connection To Call Center

### Call now to talk with an Employment Specialist

We have found several open positions for Randalls in your area. Please call us now to receive additional applications. An employment specialist is currently available to receive your call now.

**CALL NOW**

 **1-512-643-6362**

[Click here to schedule another time for your call](#)

[No Thanks](#)