College Scholarship Fraud Prevention Act of 2000
Annual Report to Congress

Submitted by:
U.S. Department of Education
U.S. Department of Justice
Federal Trade Commission

COLLEGE SCHOLARSHIP FRAUD PREVENTION ACT OF 2000
ANNUAL REPORT TO CONGRESS

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2011

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Executive Summary

Every year, millions of high school graduates and their families seek ways to finance the costs of a college education. In the process, they sometimes are either victimized by or unwittingly participate in federal student financial aid fraud. To help students and their families, Congress passed the College Scholarship Fraud Prevention Act of 2000, Pub. L. No. 106-420, 114 Stat. 1867, and it was signed into law on Nov. 1, 2000. This act established stricter sentencing guidelines for criminal financial aid fraud and charged the U.S. Department of Education, working in conjunction with the Federal Trade Commission (FTC), with implementing national awareness activities, including a financial aid fraud awareness page on the Department of Education website. The act also required that the attorney general and the secretary of education, in conjunction with the FTC, submit to Congress each year a report on the previous calendar year's incidence of fraud ("scholarship scams") by businesses or individuals marketing financial aid assistance services to consumers. This is the 2011 report, which covers developments in calendar year 2010.

The Department of Education and the FTC have continued their consumer education efforts. Using a variety of media, including websites, booklets, brochures, flyers, posters, and bookmarks, the Department of Education and the FTC are disseminating information to help consumers avoid financial aid scams. The Department of Education materials also provide information about the major federal student aid programs. They remind students that there is no fee to submit the *Free Application for Federal Student Aid* (FAFSA) and that free assistance is available from the Department of Education, high school counselors, and college financial aid administrators when applying for aid.

Financial aid-related complaints have generally diminished as a percentage of all complaints received by the FTC over the past decade. A review of these complaints indicates that the nature of financial aid fraud has changed over time, shifting from scholarship search services to financial aid consulting services. Recent complaints suggest that the pendulum may be swinging back, as many complaints again involve bogus scholarship and grant search firms.

The FTC, Department of Justice (DOJ), and the Department of Education's Office of Inspector General continue to monitor scholarship scam complaints to determine if enforcement action is necessary.

This year, DOJ brought numerous criminal actions against individuals engaged in financial aid fraud against the Department of Education's federal student aid programs, although there were none that involved scholarship scams targeting students. The FTC and DOJ will continue to coordinate parallel civil and criminal actions in appropriate cases.

I. Introduction

Every year, families lose money to fraudulent financial aid schemes. To help federal agencies combat such scams, Congress passed the College Scholarship Fraud Prevention Act of 2000, Pub. L. No. 106-420, 114 Stat. 1867 (2000), and it was signed into law on Nov. 1, 2000. The act required that the U.S. Sentencing Commission establish stronger sentencing guidelines for higher education financial assistance fraud. It also directed the secretary of education, working in conjunction with the Federal Trade Commission (FTC), to implement national awareness activities, including a financial aid fraud awareness site on the Department of Education's website. The act further required that the attorney general and the secretary of education, in conjunction with FTC, submit to Congress each year a report on fraud by businesses or individuals that market and sell advice or assistance to students and parents seeking financial aid for higher education.

The Department of Education, the Department of Justice (DOJ), and FTC prepared this report according to the act's directive. Building on previous reports,[1] this report provides an update of the activities of DOJ, the Department of Education, and FTC to combat financial aid fraud and an assessment of the nature and level of financial aid fraud during calendar year 2010.

II. Implementation of the College Scholarship Fraud Prevention Act

A. Amendments to Sentencing Guidelines

As discussed in previous reports, the U.S. Sentencing Commission amended the Sentencing Guidelines, effective Nov. 1, 2001, to include enhanced penalties for financial aid fraud. Specifically, it amended Section 2B1.1(b)(7)(D)[2] of the Sentencing Guidelines to add a provision raising the relevant "offense level" by two levels if the crime involved misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education. There were no cases reported in Fiscal Year 2010 in which the sentencing enhancement was imposed.

B. National Awareness Activities

1. The Department of Education's National Awareness Activities

The Department of Education continues to provide consumer education products and engage in outreach efforts to increase awareness of financial aid fraud. The primary education products are a brochure called "Save Your Money, Save Your Identity" and a Web page called "Looking for Student Aid" at www.studentaid.ed.gov/LSA. Both products list free resources that provide information about financial aid and warn students about financial aid scams. As discussed in more detail in prior reports, the Department of Education also publishes booklets and fact sheets that provide fraud prevention information to consumers. Distribution of print publications with scam warnings totaled approximately 4.8 million copies in 2010. Visits to the Department of Education's www.studentaid.ed.gov website, which hosts the online versions of the publications, numbered more than 19 million in 2010. The Department of Education's Office of Inspector General also hosts a fraud awareness website with scholarship scam information. The site, found at www.ed.gov/misused, registered more than 40,000 visits in 2010.

The Department of Education's outreach activities include numerous presentations to students, parents, counselors, and college financial aid administrators. Staff members make an effort to include, at a minimum, a brief warning about financial aid fraud in each workshop.

In order to stay aware of issues concerning various audiences, Department of Education staff members monitor listservs directed to professionals (such as high school or college access counselors) involved in helping students obtain financial aid. List members sometimes post messages asking or warning about companies charging fees for aid or information about aid. In response to such messages, Department of Education staff members occasionally post reminders that students can receive free advice from college financial aid administrators and from the Department of Education (as well as from high school counselors and other college access professionals). The Department of Education's reminders are sent to a total of more than 5,000 listserv members.

2. FTC's Consumer Education and Outreach Efforts

The FTC conducts an ongoing project to prosecute and prevent scholarship fraud called Project Scholarscam. Initiated in 1996, it includes both law enforcement efforts and a consumer education campaign to help students, parents, educators, and financial aid administrators identify and avoid financial aid scams. The FTC's consumer education campaign includes a package of consumer education materials, a website (www.ftc.gov/scholarshipscams), as well as a consumer alert and bookmark. The website contains comprehensive information about financial aid scams and ways consumers can avoid fraudulent marketing schemes. The consumer alert and bookmark include abbreviated information from the website and tips to help consumers avoid financial aid scams.

To reach the largest number of at-risk consumers, the FTC developed partnerships with public and private organizations, including the National Association for College Admission Counseling. From October 1996 through December 2010, the FTC and its partners distributed over 3.7 million print publications, and the FTC had more than 1.15 million visits to its financial aid consumer education website. In 2010, the FTC distributed 76,600 print publications and had nearly 61,000 visits to the website.

Continuing the partnership between the Department of Education and the FTC, the Department of Education's 2011–12 *Counselors and Mentors Handbook* includes a fact sheet based on the FTC's consumer publication, "Don't get scammed on your way to college!," as well as numerous other sources of information on avoiding financial aid scams. In addition, the Department of Education's www.studentaid.ed.gov website and the FTC's microsite, www.ftc.gov/scholarshipscams, are cross-linked.

III. Nature and Quantity of Incidents of Financial Aid Fraud

A. Overview of Financial Aid Fraud

As discussed in previous reports, operators of financial aid scams generally promise their services will ensure that students receive either a scholarship or more financial aid than students and parents could get on their own. Other typical claims include: (1) that millions (in some cases billions) of dollars of scholarships go unclaimed every year, with promises to get the student his or her fair share; (2) that the advertiser has extremely high success rates, including "testimonials" from satisfied customers; and (3) that the advertiser is endorsed or approved by a federal or state agency, a chamber of commerce, or a Better Business Bureau.[3] In fact, although they charge fees ranging from $50 to more than $1,000, these operators provide few, if any, services to help students and their families find financial aid.

The College Scholarship Fraud Prevention Act was enacted at a time when scholarship scams were prevalent; this report addresses the ongoing efforts to minimize such scams. In recent years, however, other financial aid related consumer protection issues, such as the potential impact of predatory lenders on student borrowers and the charging of fees for assistance completing the *Free Application for Federal Student Aid* (FAFSA), have increasingly become the focus of students, parents, schools, and the general public. The Department of Education, the FTC, and Congress have taken steps to attempt to combat financial aid related abuses of individual students. Similarly, the cases prosecuted by the Department of Justice reflect the prevalence of a broader universe of schemes to defraud federal student financial aid programs, including fraudulent applications solicited and submitted by corrupt student loan officers and sham applications for assistance in the name of unaware student victims.

In 2008, the Department of Education and the FTC collaborated on a publication, "Student Loans: Avoiding Deceptive Offers," to alert potential borrowers to deceptive lending practices. The publication is available through the FTC's and the Department of Education's consumer protection websites.

The Department of Education and the FTC will continue to work together to educate and protect students and their families. For instance, the Department of Education's Federal Student Aid compliance office can now access information in the FTC's Consumer Sentinel[4] database about complaints against schools and use the information to better target limited program review resources. The Department of Education is also able to enter information on complaints that it receives against particular schools. In addition, the Department of Education and the FTC have been working together to clarify their guidance to business and consumers to ensure that both agencies are sending a consistent message about what constitutes a deceptive practice or a misrepresentation so that students and parents can make informed choices based on reliable information.

The Department of Education continues to expand its efforts on behalf of consumers. In 2010, the Department's office of Federal Student Aid established the Customer Experience office, a new unit to serve as the focal point in representing the customer view across the student

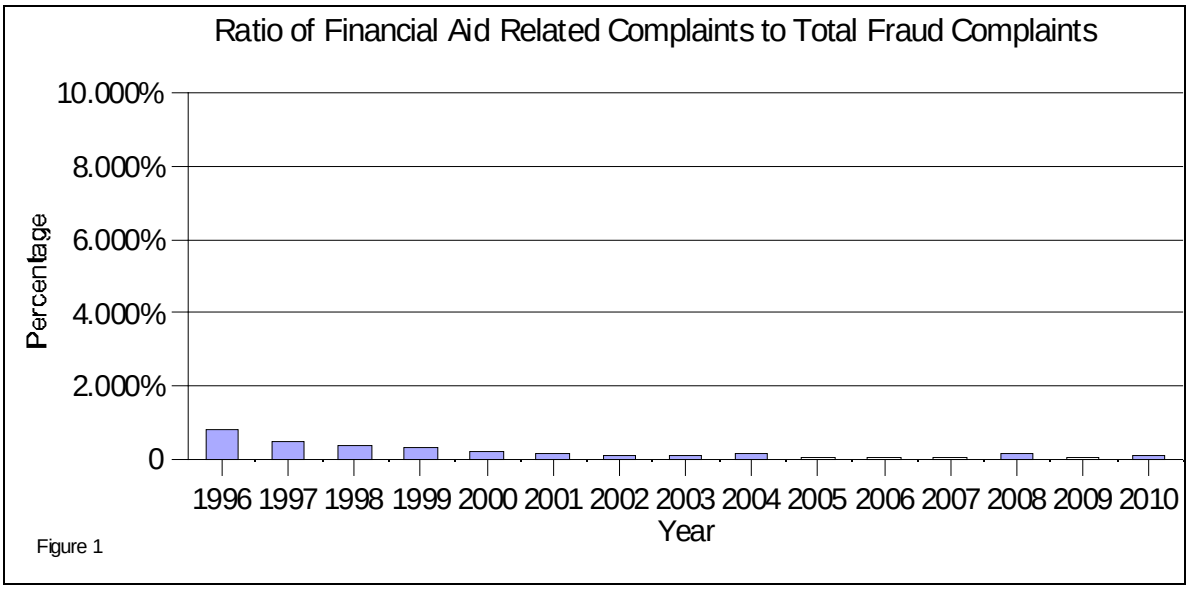
aid lifecycle. An ongoing assessment of how well needs are and can be met at all points of the federal student aid process will focus partly on financial literacy and consumer issues. The Department has also begun dialogue with the new Consumer Financial Protection Bureau about protections for student loan borrowers and overall consumer issues associated with higher education.

B. Assessment of Current Levels of Fraud

Both the FTC and the Department of Education receive financial aid related complaints from consumers. The FTC reviewed complaints in its Consumer Sentinel database to assess the current levels of financial aid fraud, while the Department of Education reviewed complaints received by the Federal Student Aid Information Center and other call centers, its Office of Inspector General, and its Federal Student Aid ombudsman.

1. FTC Complaint Database

The FTC has been monitoring consumer complaints related to financial aid fraud for over a decade. (The FTC's database does not distinguish between complaints related specifically to scholarship scams and complaints about other types of financial aid fraud or education-related complaints.) During calendar year 2010, the FTC received 718 financial aid related complaints to its Consumer Sentinel database.[5] To evaluate the extent of financial aid fraud, it is useful to place the raw numbers of complaints in the context of all fraud complaints received by the FTC on a yearly basis. During calendar year 2010, the FTC received a total of 725,087 fraud-related complaints to its Consumer Sentinel database; thus, financial aid related complaints amounted to less than 1 percent of fraud complaints received. Figure 1 shows the ratio of financial aid related complaints to total fraud complaints in the FTC's Consumer Sentinel database.



Source: FTC Consumer Sentinel, 2011.

The ratio of financial aid related complaints to all fraud complaints received by the FTC has been generally diminishing since 1996 and has remained relatively flat over the past six

years. As discussed in prior reports, however, raw complaint and inquiry numbers are an imperfect gauge of the extent of fraudulent activities. For example, certain types of fraud may be underreported, whereas in other instances the raw numbers may overstate the extent of the fraud.[6] Nevertheless, the FTC's law enforcement and consumer education campaign (which began in 1996), as well as the Department of Education's national awareness activities, may be contributing to the proportionally lower complaint figures.

The Consumer Sentinel complaint database is a useful tool, not only to estimate the extent of scholarship fraud but also to assess the nature of financial aid fraud and identify possible targets for law enforcement action. Prior reports noted that the nature of financial aid fraud has changed over time. A decade ago, the majority of complaints received by the FTC concerned telemarketing fraud by bogus scholarship search firms. In more recent years, many complaints involved financial aid consulting firms that promised customized, comprehensive financial planning to maximize the students' financial aid eligibility. A review of the complaints suggests that the pendulum may be swinging back, as many complaints again involve bogus scholarship and grant search firms. A review of the complaints also indicates an expansion of the medium through which financial aid fraud occurs. A decade ago, the majority of complaints involved telemarketing. Recent complaints indicate that fraudsters use an equal mix of telemarketing, direct mail, and the Internet (both websites and email) to solicit consumers.

The FTC also monitors complaints in Consumer Sentinel to identify possible targets for law enforcement action. The FTC typically investigates companies or individuals that generate a sufficient number of complaints to indicate a pattern or practice of deceptive or fraudulent conduct. The complaints filed in 2010 were against many different companies and do not indicate a pattern or practice of fraud by any one company. The FTC will continue to monitor these and other companies, however, for possible law enforcement actions.

2. The Department of Education's Complaint Monitoring

The Department of Education also receives written and telephone complaints about scholarship scam fraud, and financial aid fraud in general. However, the number of complaints the Department of Education receives is small in comparison to the number received by the FTC.

Scholarship fraud complaints are submitted via two primary avenues: the Federal Student Aid Information Center (FSAIC) and the Office of Inspector General (OIG). In 2010, the FSAIC and OIG received a total of seven fraud complaints (all to the OIG) relevant to this report. This number represents a negligible increase from the 2009 total of six.

Although the Federal Student Aid ombudsman's office and other call centers cannot provide statistics on numbers of complaints about financial aid scams, they can affirm that they do receive such complaints occasionally. These call centers refer callers to the FSAIC, OIG, or FTC, as appropriate, and collaborate with external groups to promote awareness around higher education financing. In 2010, a college contacted the ombudsman's office (via the OIG) about a company that had emailed a student asking for $59 so her financial aid could be processed. The ombudsman's office encouraged the college representative to file a report with the FTC and intends to discuss the complaint with the FTC as the two agencies' collaboration continues.

a. Complaints to the Department of Education's FSAIC

The FSAIC has two sections: the correspondence unit and the telephone hotline (1-800-4-FED-AID).

In 2010, the correspondence unit received no written complaints (as in 2009) regarding scholarship fraud.

The FSAIC's hotline received no calls in 2010 (as in 2009) from consumers who believed they had been targets of financial aid scammers.

The FSAIC also occasionally receives complaints about websites charging students a fee to submit the FAFSA.[7] These complaints, like the scholarship fraud complaints, have declined over the years. In 2010, the FSAIC received two complaints about such websites (and the OIG received one). The Higher Education Act of 1965, as amended (HEA), allows an applicant to use a preparer for consultative or preparation services to complete a paper or electronic FAFSA. If an applicant uses a preparer for consultative or preparation services for the completion of a FAFSA for which a fee is charged, the preparer must include, at the time the FAFSA is submitted to the Department of Education, the preparer's name, address or employer's address, Social Security number or employer identification number, and organizational affiliation on the applicant's form, and is subject to the same penalties as an applicant for purposely giving false or misleading information in the application. A preparer must clearly inform each individual upon initial contact, including contact through the Internet or by telephone, that the FAFSA is a free form that may be completed without professional assistance via paper or electronic versions provided by the Department of Education. The preparer must also include this information in any advertising. If the preparer advertises or provides any information or services through a website, the preparer must include on the website a link to the Department of Education's website that provides the electronic version of the FAFSA and must not produce, use, or disseminate any other form for the purpose of applying for federal student aid other than the FAFSA developed by the Department of Education. See III.C., below.

b. Complaints to the Department of Education's Office of Inspector General

The OIG maintains a hotline (1-800-MIS-USED) and email address (oig.hotline@ed.gov) for complaints relating to fraud, waste, and abuse involving the Department of Education's funds. Complaints also may be submitted by mail, via the www.ed.gov/misused website, or directly to OIG Headquarters or field offices across the country. Although OIG receives thousands of complaints related to financial aid fraud annually, it receives very few related to scholarship scams. OIG staff reported that there were seven complaints in 2010 that were related to scholarship fraud. Four complaints were referred to the FTC, one to the Department of Education's office of Federal Student Aid, one to the California Department of Education, and one to Florida A&M University for appropriate handling.

C. Department of Education's Financial Aid Fraud Prevention Program

The Higher Education Opportunity Act (HEOA), P.L. 110-315, enacted on Aug. 14, 2008, emphasizes consumer awareness and education. The HEOA amended the HEA by adding strong protections for students and their families related to persons and entities providing student aid consultative or preparation services. The HEOA requires that paid preparers, in addition to disclosing their identity on the FAFSA, provide notice that the FAFSA is a free form, and that any websites used by the preparer contain a link to the Department of Education's FAFSA website. The HEOA also restricts use of an individual's Federal Student Aid PIN (a personal identification number used to sign an applicant's FAFSA), specifying that no person, commercial entity, or other entity may request, obtain, or utilize an applicant's PIN for purposes of submitting a FAFSA on behalf of the applicant.

The HEOA added a requirement to the Truth in Lending Act (TILA) (Section 128(e)(3)) that before a private education lender may consummate a private education loan for a student in attendance at an institution of higher education, the private education lender must obtain a completed and signed self-certification form from the applicant. The Federal Reserve Board's Final Regulations published on Aug. 14, 2009, incorporate this new requirement at 12 CFR § 226.48(e). The HEOA also added Section 487(a)(28) to the HEA. Under Section 487(a)(28), an institution participating in Title IV, HEA programs must provide, at the request of an applicant for a private education loan, the self-certification form required under Section 128(e)(3) of the TILA. The Department of Education's Final Regulations published on Oct. 28, 2009, incorporate this new requirement at 34 CFR §§ 601.11(d) and 668.14(b)(29).

At the request of an enrolled or admitted student applicant for a private education loan (or to a loan applicant who is a parent of an enrolled or admitted student), an institution must provide the self-certification form to the applicant with the information requested in Section 2 of the form, to the extent that the institution possesses the information. Section 2 of the self-certification form requests the following information: the student's cost of attendance (COA) for the period of enrollment covered by the loan; any estimated financial assistance (EFA) for the period of enrollment covered by the loan; and the difference between the COA and EFA.

Since Feb.14, 2010, institutions have been required to provide the self-certification form and the information needed to complete the form to an enrolled or admitted applicant (or to an applicant who is a parent of an enrolled or admitted student) upon the applicant's request for a private education loan self-certification form. An institution may post an exact copy in Portable Document Format (PDF) of the self-certification form on its website for applicants to download, or it may provide a paper copy of the self-certification form directly to an applicant through its financial aid or other designated office.

Alternatively, the applicant may obtain a copy of the self-certification form from the private education lender and submit it to the institution for completion or confirmation. An institution may also, at its option, provide the information needed to complete the form directly to a private education lender. An institution is not required to track the status of the private

education loan after providing the self-certification form to the applicant or to the private lender. In accordance with 34 CFR § 668.14(b)(29)(ii), an institution must, upon the request of the applicant, discuss the availability of federal, state, and institutional financial aid.

The HEOA also imposed new requirements on preferred lender disclosures, codified at 34 CFR § 601.10, and a code of conduct, codified at 34 CFR § 601.21. These requirements apply to both Federal Family Education Loans (FFEL) and private student loans. However, the Health Care and Education Reconciliation Act of 2010 (HCERA) eliminated the making of new loans under the FFEL program effective July 1, 2010. As a result, these requirements will only apply, as a practical matter, to private student loans. In terms of preferred lender arrangement disclosures, an institution of higher education, or an affiliated organization that participates in a preferred lender arrangement, must disclose on its website and in all informational materials that describe or discuss private education loans the information that the Board of Governors of the Federal Reserve System requires to be disclosed under Section 128 of TILA for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of students. If an institution compiles, maintains, and makes available a preferred lender list, the institution must clearly and fully disclose why the institution participates in a preferred lender arrangement with each lender on the list, particularly with respect to terms and conditions or provisions favorable to the borrower, and that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list. If the institution recommends, promotes, or endorses private education loans, there must be at least two lenders of private education loans that are not affiliates of each other included on an institution's preferred lender list. The preferred lender list must:

- indicate, for each listed lender, whether the lender is or is not an affiliate of each other lender on the list and describe the details of any such affiliation; and
- disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including:
  - payment of origination or other fees on behalf of the borrower;
  - highly competitive interest rates, or other terms and conditions or provisions of HEA Title IV program loans or private education loans;
  - high-quality servicing for such loans; or
  - additional benefits beyond the standard terms and conditions or provisions for such loans.

An institution of higher education that participates in a preferred lender arrangement must develop a code of conduct with regard to private education loans with which the institution's agents must comply. The code of conduct must:

- prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to private education loans;
- be published prominently on the institution's website; and

- be administered and enforced by the institution by, at a minimum, requiring that all of the institution's agents with responsibilities with respect to private education loans be annually informed of the provisions of the code of conduct.

An institution's code of conduct must prohibit revenue-sharing arrangements with any lender and must prohibit employees of the financial aid office from receiving gifts from a lender, a guarantor, or a loan servicer. Agents who are employed in the financial aid office of the institution, or who otherwise have responsibilities with respect to private education loans, must not solicit or accept any gift from a lender, guarantor, or servicer of private education loans. A gift includes any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a *de minimus* amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. An agent who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to private education loans must not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to private education loans.

Under the code of conduct, an institution may not direct borrowers to particular lenders or delay loan certifications. The institution must not assign, through award packaging or other methods, a first time borrower's loan to a particular lender or refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender. Finally, an institution must not request or accept from any lender any offer of funds to be used for private education loans, including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with a specified number of private education loans; a specified loan volume of such loans; or a preferred lender arrangement for such loans.

On Sept. 9, 2009, the Department of Education published a notice in the *Federal Register* (74 Fed. Reg. 46399) announcing the intent to establish two negotiated rulemaking committees to prepare proposed regulations. One committee would develop proposed regulations governing foreign schools, including the implementation of the changes made to the HEA by the HEOA that affect foreign schools. A second committee would develop proposed regulations to maintain or improve program integrity in the Title IV HEA programs. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee, and the Program Integrity Issues Team began work in November 2009.

The Program Integrity Committee met from November 2009 to January 2010 to develop proposed regulations. The protocols under which the negotiating committee conducted its business provided that, unless agreed to otherwise, consensus on all of the amendments in the proposed regulations had to be achieved for consensus to be reached on the entire notice of proposed rulemaking (NPRM). Consensus means that there must be no dissent by any member.

During the negotiations, the Program Integrity Committee reviewed and discussed multiple drafts of proposed regulations. At the final meeting in January 2010, the committee did not reach consensus on the proposed regulations, which left the secretary of education free to regulate as he believed appropriate to protect the interests of students and taxpayers. The link to the website on negotiated rulemaking is www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html.

On June 18, 2010, the secretary issued proposed regulations on the program integrity provisions (75 Fed. Reg. 34806). After carefully reviewing the nearly 1,200 public comments, the secretary finalized the program integrity regulations on Oct. 29, 2010 (75 Fed. Reg. 66832). Of the 14 topics that were negotiated and included in the regulatory package, provisions in two areas—misrepresentation and incentive compensation—will especially serve to strengthen regulations that protect students and their families from deceptive and misleading actions.

Misrepresentation. Changes to Subpart F of Part 668 strengthen the Department's regulatory enforcement authority with respect to eligible institutions that engage in substantial misrepresentations. The Department's Federal Student Aid office often receives complaints from students who allege that they were the victims of false promises and other forms of deception when they were considering postsecondary educational opportunities. The Department believes that helping students to make sound decisions regarding their educational pursuits is essential to maintaining the integrity of the Title IV HEA programs.

Changes in several areas of the misrepresentation regulations address the problems identified through complaints. The Department believes it is critical that potential students have a clear understanding about any educational program in which they may enroll. Each institution has a responsibility to provide complete and accurate information about the programs it offers. To ensure this, the Department restructured the regulations to describe the actions the secretary may take if the secretary determines that an eligible institution has engaged in substantial misrepresentation and generally described what types of activities constitute substantial misrepresentation.

In addition, the regulations clarify that an eligible institution has engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement, makes a substantial misrepresentation regarding the institution's educational programs, financial charges, and the employability of its graduates. The Department believes it is appropriate to hold the eligible institution accountable in these instances because the integrity of the Title IV HEA programs requires that institutions are responsible for the actions of their representatives and agents.

Students who enroll in a program must have the necessary information about the cost of the program or the institution's refund policy. The Department strongly believes that students, potential students, and parents must have relevant information to make informed decisions about the type of financial aid that is available to the student. By prohibiting institutions from making substantial misrepresentations regarding the availability or nature of the financial aid offered to students, as well as a student's right to reject any particular type of financial aid, the Department

is trying to ensure that students are provided with the accurate information they need to make informed choices about the type of financial aid they use to fund their education.

Finally, the regulations highlight the types of information about employability that institutions need to monitor carefully when advertising or otherwise promoting their educational programs. Information that schools disclose to students about employability of graduates must not contain false, erroneous, or misleading statements.

Incentive Compensation. The HEA prohibits institutions of higher education that participate in the federal student aid programs from making any commission, bonus, or other incentive payments based directly or indirectly on success in securing enrollments or financial aid to any persons or entities involved in student recruiting or admissions activities, or in making decisions about the award of student financial assistance. The previous regulations specified 12 types of activities and arrangements ("safe harbors") that were not considered violations of this prohibition. The first safe harbor explained the conditions under which an institution could adjust compensation without that compensation being considered an incentive payment. The remaining 11 safe harbors described the conditions under which payments that could potentially be construed as based upon securing enrollments or financial aid were nonetheless not covered by the statutory prohibition. The existence of these safe harbors encouraged unscrupulous actors to circumvent the intent of the prohibition.

In response to student and advisor complaints about aggressive sales tactics from unscrupulous actors, the new regulations eliminate the incentive compensation safe harbors. Having looked at the actions of these actors, it became apparent that they were using these safe harbors as shelter from the basic statutory prohibition. Under the new regulations, institutions will need to focus on the two core questions that form the basis of the test the statute and the regulations impose when evaluating incentive payments. The institution can determine whether the payment or compensation is permissible by analyzing:

1. Whether it is a commission, bonus, or other incentive payment, defined as an award of a sum of money or something of value paid to or given to a person or entity for services rendered; and
2. Whether the commission, bonus, or other incentive payment is provided to any person or entity based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, which are defined as activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid.

If the answer to each question is yes, the bonus or incentive payment is prohibited. The Department believes that this simple two-part test is vastly superior to the complex scheme that gave unscrupulous actors room to circumvent the intent of the prohibition.

In addition, the Department added several definitions to the regulations to clarify who is affected, how they are affected, and what activities are relevant. Note that the incentive compensation rule applies to all types of postsecondary education institutions that participate in the federal student aid programs.

The Department believes these regulatory changes will provide greater protections for students and families through enhanced enforcement authority against eligible institutions that engage in substantial misrepresentation and will prevent institutions from circumventing the intent of the statutory prohibition concerning the payment of bonuses, commissions, or incentive payments to any person or entity engaged in any student recruitment or admission activity or the award of Title IV HEA program assistance.

D. FTC's Financial Aid Fraud Prevention Program

As mentioned above, the FTC's Project Scholarscam combines law enforcement[8] with consumer education to curb fraudulent scholarship or financial aid services. As a result of the FTC's lawsuits, a total of 13 companies and 34 individuals are subject to federal court orders prohibiting future misrepresentations. Most of the orders permanently ban the defendants from marketing scholarship or financial aid related services. Many of the orders also require the defendants to post performance bonds before engaging in telemarketing.[9] The FTC has refunded to consumers or disgorged to the U.S. Treasury more than $2.1 million in funds related to scholarship or financial aid related cases.[10]

E. DOJ's Financial Aid Fraud Prevention Program

Since last year's report, there have been numerous prosecutions of individuals charged with fraud in the offering or obtaining of higher education financial aid from the Department of Education's federal student aid programs. A sampling of case summaries from FY 2010 follows, representing a broad spectrum of higher education financial aid fraud cases prosecuted by DOJ, and reflecting a continuing fraud trend in which there are no cases of scholarship scams targeting students. Included in the summaries are cases of fraudulent representations made in the offering of higher education financial aid, of identities of unknowing victims or coconspirators submitted on federal financial assistance applications to fraudulently obtain federal financial aid, and of fraudulently obtained higher education financial assistance from the Department of Education. In connection with the preparation of this report, the DOJ Executive Office for U.S. Attorneys (EOUSA) surveyed the 94 U.S. Attorneys' Offices but did not identify any instances in which the two-level sentencing enhancement, Section 2B1.1(b)(8)(D) of the Sentencing Guidelines, was requested or imposed in FY 2010. Case developments within FY 2010 are included in the case summary. If there were developments in selected cases after Sept. 30, 2010, *i.e.* in FY 2011 through April 2011, they are described in endnotes.

- *United States v. Trenda Lynne Halton, et al.*, Case No. 2:09-cr-737-MHB (D. Ariz.)

On Jan. 12, 2010, lead defendant Halton pleaded guilty to one count of conspiracy, two counts of mail fraud, and seven counts of student financial assistance fraud. Defendant Halton and 64 others were indicted in June 2009 on various offenses related to a conspiracy to defraud the United States of more than $500,000 in student loan funds. Of the original defendants, 50 had pleaded guilty at the time of Halton's plea, and, of those, 23 had been sentenced to related charges and ordered to pay a total of $212,013 to the Department of Education. The indictment charged that, between July 2006 and October 2007, Halton, and four other defendants who worked with Halton, recruited individuals to act as "straw" students to apply for federal financial

aid in the form of Stafford Loans and Pell Grants in order to attend Rio Saldado Community College, even though they were neither active students nor intending to become active students. The remaining 60 defendants acted as "straw" students at the behest of Halton. This case was investigated by the U.S. Postal Inspection Service and the U.S. Department of Education Office of Inspector General, with assistance from the Surprise, Ariz., Police Department.[11]

- *United States vs. Emily Mae Crank,* Case No. 6:09-cr-00032-RAW (E.D. Okla.)

Defendant Crank was indicted in March 2009 with respect to several offenses arising from a scheme to fraudulently use identification information of Northeastern State University (NSU) students to obtain loans in the names of those students and convert the loan proceeds to her own use. After pleading guilty to financial assistance fraud in April 2009, Crank was sentenced on Nov. 18, 2009, to a term of imprisonment of 33 months, followed by three years' supervised release, a special assessment of $100, and restitution in the amount of $5,728. This case was investigated by the U.S. Department of Education Office of Inspector General, Cherokee County Sheriff's Department, NSU Campus Police, Muskogee Police Department, and the U.S. Secret Service.

- *United States v. Kevin Earl Woods, Dominic L. Campbell and Dale Odei Marbell,* Case No. 4:098-cr-00049-GAF (W.D. Mo.)

On April 23, 2010, defendant Woods, the former codirector of the Kansas City, Mo., Campus of Vatterott College, was sentenced to a term of imprisonment of one year and one day, followed by three years' supervised release, a special assessment of $100, and restitution of $361,965. Defendants Woods, Campbell, and Marbell were indicted in February 2009 on charges of conspiracy and federal student financial assistance fraud. Between 2003 and 2006, defendants directed students without high school diplomas and who did not intend on completing a General Equivalency Degree certificate, to enroll at Vatterott and fraudulently apply for federal student financial assistance to which they were not entitled because they had not graduated from high school. This case was investigated by the U.S. Department of Education Office of Inspector General.

- *United States v. James Bruce Morris and Karen Sue Morris,* Case No. 4:10-cr-00090-SWW (E.D. Ark.)

In April 2010, defendants James and Karen Morris were charged in a 60-count indictment arising out of a scheme to evade taxes during tax years 2002 through 2006, and to obtain federal student financial assistance for their children by misrepresenting the marital status of James and Karen Morris as divorced and concealing the income of the husband on applications for their children's federal student financial assistance for school years 2004–05 through 2007–08. This case was investigated by the Internal Revenue Service and by the Offices of Inspector General of the U.S. Department of Education, U.S. Social Security Administration, and U.S. Department of Veterans Affairs. [12]

- *United States v. Ernest Bernard Moore,* Case No. 1:09-cr-00250-RMU (D.-D.C.)

Defendant Moore was charged by information in October 2009 with one count of obtaining federal student financial assistance through fraud, bank fraud, and Social Security representative payee fraud. Moore, an assistant professor at Williams College, visiting researcher at Yale Law School, and senior policy fellow for a member of the U.S. House of Representatives, pleaded guilty in November 2009 to all three counts. According to Moore's factual proffer, beginning in 1985 and continuing through 2009, he commenced a course of conduct of assuming false identities in applying for federal student financial assistance from four different colleges, for over 90 credit cards, and for status as a Social Security representative payee in order to receive and cash Social Security checks. The loss from these frauds totaled at least $821,977.97. This case was investigated by the U.S. Department of Education Office of Inspector General, the U.S. Secret Service, the U.S. Capitol Police, and the Social Security Administration Office of Inspector General.[13]

- *United States v. Katrina White and Willie James Sanford,* Case No. 09-cr-00344-CMA-01 (D. Colo.)

Defendants White and Sanford were indicted in August 2009 and charged with conspiring to fraudulently obtain federal student financial assistance through identity theft and with theft of student loan funds. Both defendants pleaded guilty to the conspiracy count of the indictment in January and February 2010, respectively. Sanford was sentenced in June 2010 to a term of probation of five years, a special assessment of $100, and restitution in the amount of $67,431.08. White was sentenced in July 2010 to a term of probation of five years, a special assessment of $100, and restitution in the amount of $62,551. This case was investigated by the U.S. Department of Education Office of Inspector General.

- *United States v. Talon Deante Jackson,* Case No. 1:09CR10-001 (N.D. Fla.)

Defendant Jackson pleaded guilty in August 2009 to all counts of an eight-count indictment charging multiple instances of federal financial student assistance fraud and identity theft. Jackson was sentenced in October 2009 to a term of imprisonment of 21 months, followed by supervised release of a term of five years, a special assessment of $800, and restitution in the amount of $48,415. This case was investigated by the U.S. Department of Education Office of Inspector General.

- *United States v. Cory Alan Bailey,* Case No. CR 111-27·I.LRR (D. Iowa.)

Defendant Bailey pleaded guilty in June 2010 to a single count information charging student financial assistance fraud. Bailey admitted participating in a scheme with others to fraudulently obtain federal student loan proceeds. Bailey recruited others to sign up for community college classes, created email accounts for the recruits, and used those email accounts to apply for federal financial aid for the others, enroll them in classes, and arrange for their federal loan proceeds checks to be directed to post office boxes under the control of his coschemers. This case was investigated by the U.S. Department of Education Office of Inspector General and the U.S. Postal Inspection Service.[14]

- *United States v. Chevette D. Curry,* Case No. 3:09-cr-30129-DRH (S.D. Ill.)

Defendant Curry pleaded guilty in December 2009 to a three count information charging investment fraud, tax fraud, food stamp fraud, and federal student financial assistance fraud.[15] This case was investigated by the Internal Revenue Service Criminal Investigation Division, the Office of the Inspector General for the Illinois Department of Healthcare and Family Services, the Illinois Securities Department, the U.S. Department of Education Office of Inspector General, and the U.S. Treasury Office of Inspector General for Tax Administration (TIGTA).

- *United States v. Clara Andrade-Palmer*, Case No. 10-cr-10050-RWZ (D. Mass.)

Defendant Andrade-Palmer was indicted in February 2010 on four counts of student financial assistance fraud, passport fraud, and use of a false identity. The indictment alleged that, from July 2003 through October 2005, Andrade-Palmer obtained federal student financial assistance totaling approximately $34,367.75 by fraud and false statements; made false statements in an application for U.S. passport; used a false identity to obtain student financial aid; and used a false identity to obtain a U.S. passport. This matter was investigated by the U.S. Department of Education Office of Inspector General; the U.S. Social Security Administration, Office of Inspector General; and the U.S. Department of State Diplomatic Security Service.

- *United States v. David Benton,* Case No. 1:10-mj-1030 (D.-N.J.)

A criminal complaint was lodged against defendant Benton in August 2010. The complaint alleged that Benton, an employee of Empire Beauty School in Bordentown, N.J., assisted students in fraudulently obtaining federal student financial assistance by obtaining or helping the students to obtain fake New Jersey GEDs or high school diplomas. The complaint alleges that approximately 20 students received a total of about $247,694.84 in federal financial aid funds through Benton's efforts. This case was investigated by the U.S. Department of Education Office of Inspector General.

- *United States v. Raymonda Shallowhorn,* Case No. 1:09-cr-00351-RJA (W.D.-N.Y.)

In November 2009, defendant Shallowhorn pleaded guilty to filing more than 17 federal income tax returns falsely claiming approximately $86,000 in tax refunds and admitted receiving 25 checks worth a total of about $44,000 in federal student loan proceeds. In February 2010, Shallowhorn was sentenced to three years' imprisonment, followed by 36 months of supervised release, a special assessment of $200, and restitution of $141,130 on two felony convictions for student loan fraud and making false claims for income tax refunds. This case was investigated by the U.S. Department of Education Office of Inspector General and the Internal Revenue Service, Criminal Investigation Division.

- *United States v. Nicole S. Dreher,* Case No. 7:10-cr-00034-HFF (D.-S.C.)

In March 2010, defendant Dreher pleaded guilty to one count of aggravated identity theft in connection with a fraudulent application for federal student financial assistance. Dreher was sentenced in August 2010 to a term of 22 months imprisonment, followed by supervised release for one year, a special assessment of $100, and restitution in the amount of $22,000. This case was investigated by the U.S. Department of Education Office of Inspector General and the U.S. Secret Service.

- *United States v. Penny Burns and Ruby Klyce,* Case No. 2:10-cr-20167 (W.D. Tenn.)

Defendants Burns and Klyce were indicted in April 2010 on one count of conspiracy to defraud, 10 counts of wire fraud, one count of embezzlement of Title IV educational funds, one count of theft of government funds, and one count of obstruction of justice. According to the indictment, between June 2006 and January 2009, Burns and Klyce devised a scheme to defraud the Department of Education of approximately $464,957. The indictment alleges that Burns and Klyce were the CEO and executive director, respectively, for a corporation consisting of cosmetology schools operating at nine locations between Memphis, Jackson, and Nashville, Tenn., and Charlotte, Greenville, Winston-Salem, and Durham, N.C. The case was investigated by the U.S. Department of Education Office of Inspector General, the Federal Bureau of Investigation, and the Internal Revenue Service Criminal Investigation. [16]

- *United States v. Russell Harris,* Case No. 10-097 (E.D. Wis.)

In May 2010, defendant Harris was charged in a three-count indictment with operating Wisconsin University High School ("WUHS"), which awarded diplomas to students after a short (approximately two-week long) self-study course. The indictment alleged that the personal information collected by WUHS was used to submit unauthorized applications to online college programs and for federal student financial assistance by using the identities of WUHS graduates. The scheme is alleged to have caused the Department of Education to disburse $300,000 in fraudulent financial aid and to have caused the disbursement of more than $100,000 in tuition refund payments to Harris. This case was investigated by the U.S. Department of Education, Office of Inspector General.

IV. Conclusion

As described above, the FTC, the Department of Education, and DOJ have implemented the directives of the College Scholarship Fraud Prevention Act of 2000.

Since the act was passed, both the FTC and Department of Education have added content to websites and increased efforts in fraud awareness campaigns. DOJ continues to prosecute individuals charged with fraud in the offering or obtaining of federal student aid but did not prosecute anyone for scholarship scams in 2010.

Although complaints about scholarship scams have decreased greatly, the agencies are continuing to work cooperatively to prosecute and prevent financial aid fraud.

Appendix: Fraud Awareness Websites

Site	URL	Description
Department of Education Sites		
Misused	**www.ed.gov/misused**	Scam awareness information and link to OIG Hotline for complaints
Looking for Student Aid	**www.studentaid.ed.gov/LSA**	List of free resources that provide information about financial aid and warnings about financial aid scams
Federal Trade Commission Site		
Scholarship Scams	**www.ftc.gov/scholarshipscams**	Fraud warning signs and links to more resources

Endnotes

[1] Previous reports can be accessed via www.studentaid.ed.gov/LSA.

[2] On Nov. 1, 2004, this provision was redesignated as U.S.S.G. § 2B1.1(b)(8)(D).

[3] *Solving the Problem of Scholarship Scams: Hearings on S. 1455, The College Scholarship Fraud Prevention Act of 1999 Before the S. Comm. on the Judiciary*, 106th Cong. (1999) (statement of Mark Kantrowitz, publisher of the www.finaid.org website).

[4] Consumer Sentinel is a secure, password-protected complaint database designed to allow law enforcers to share data about fraud. Consumer Sentinel now contains over 7.2 million fraud and identity theft complaints and is accessible to more than 1,700 law enforcement agencies—including every state attorney general in the U.S. and consumer protection agencies in 23 nations. In addition to consumer complaints, Consumer Sentinel offers its law enforcement members a variety of tools to facilitate investigations and prosecutions, including: law enforcement alerts about companies currently under investigation; information to help agencies coordinate effective joint action; an index of telemarketing sales pitches; and data analysis to determine trends in fraud. Consumer Sentinel collects complaints from the FTC and over 125 other organizations. More information on Consumer Sentinel can be found in *Consumer Sentinel Network Data Book for January–December 2010*, issued by the FTC in March 2011 and available online at www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf.

[5] The number of financial aid related complaints and total fraud complaints per year are set forth in the table on page 24.

FTC's Consumer Sentinel Complaints

Year	Financial Aid-Related Complaints	Total Fraud Complaints	Percentage of Financial Aid Complaints to Total Fraud Complaints
1996	133	16,588	0.802%
1997	146	29,069	0.502%
1998	246	62,840	0.391%
1999	290	85,248	0.340%
2000	228	111,255	0.205%
2001	184	137,306	0.134%
2002	259	242,783	0.107%
2003	328	331,366	0.099%
2004	757	410,298	0.185%
2005	256	437,585	0.059%
2006	201	423,672	0.047%
2007	198	503,797	0.039%
2008	852	609,595	0.140%
2009	315	680,704	0.046%
2010	718	725,087	0.099%

[6] As discussed in previous years' reports, the number of complaints contained in the Consumer Sentinel database does not provide a complete picture of the extent of consumer injury from any particular type of fraud: (1) some consumers may complain directly to the company or to law enforcement authorities that do not forward complaints to the Consumer Sentinel database; (2) some financial aid scams on the Internet are relatively inexpensive and consumers often do not complain when the financial injury is low; (3) increases in the number of complaints may reflect an increase in the number of law enforcement and consumer protection agencies forwarding complaints to the Consumer Sentinel database; and (4) increases in the number of complaints may reflect greater consumer awareness of the fraud and how to report it.

[7] To apply for federal student financial aid and many state student aid programs, students must first complete the FAFSA. The Department of Education uses information provided on a student's FAFSA to determine the student's eligibility for aid from the federal student aid

programs. Many states and schools also use the FAFSA to award aid from their programs. Some states and schools may require the student to fill out additional forms for state and school awards.

[8] Among other things, the FTC enforces Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair or deceptive acts or practices in or affecting commerce. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), allows the FTC to bring, by its own attorneys, actions in federal district court to halt violations of Section 5. Remedies available to the FTC include permanent injunctions and equitable monetary relief such as restitution to consumers or disgorgement of unjust enrichment. Section 13(b) also allows the FTC to seek preliminary relief, including temporary restraining orders and preliminary injunctions. In appropriate cases, the FTC may seek preliminary relief on an *ex parte* basis.

[9] Performance bonds are designed to deter defendants from engaging in misrepresentations and provide a fund to redress consumer injury should defendants violate the order.

[10] Although the FTC obtained approximately $22.8 million in judgments, the full amount of these judgments was not collected. In the case of judgments obtained through settlement, the FTC suspended some or all of the judgment amount based upon the defendants' demonstrated inability to pay the full amount. In other cases, the FTC referred unsatisfied judgment balances to the U.S. Treasury for further collection efforts.

[11] By February 2011, 64 of 65 defendants had been convicted and had been ordered to pay collective restitution in the amount of $581,060. The case regarding the remaining defendant was dismissed.

[12] In April 2011, the defendants were found guilty on all counts of a superseding indictment which had been filed in February 2011.

[13] In October 2010, defendant Moore was sentenced to concurrent terms of incarceration of 50 months on each of the counts, followed by supervised release of concurrent periods of 36 and 60 months, a $300 assessment, and restitution in the amount of $759,593.86.

[14] In January 2011, defendant Bailey was sentenced to a term of imprisonment of 36 months, followed by supervised release of 36 months, a $100 special assessment, and restitution in the amount of $138,920.

[15] Defendant Curry was sentenced in November 2010 to serve 12 months on each of the three counts concurrently, followed by supervised release of three months, a $300 special assessment, and restitution in the total amount of $227,226.

[16] In April 2011, the indictment against defendant Klyce was dismissed because of her death.