

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

Thomas J. Perrelli  
Settlement Administrator  
Jenner & Block  
1099 New York Avenue, NW  
Washington, DC 20001

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## I. INTRODUCTION

### A. Overview

This is the Second Annual Report prepared by the Settlement Administrator in connection with the 2015 settlements between Education Management Corporation (“EDMC”) and 39 individual states and the District of Columbia (collectively, “the Consent Judgment”) to resolve consumer protection claims arising out of EDMC’s recruitment and enrollment practices. The Administrator’s First Report described some important steps that EDMC had undertaken in the first nine months of the Consent Judgment, from January through September 2016. The Report noted that EDMC’s Risk and Compliance team had embraced the Consent Judgment and the Administrator’s role, was working cooperatively and proactively to facilitate the Administrator’s review, and was making appropriate judgments on difficult issues. The Report also noted, though, that EDMC had a long way to go: Given the company’s de-centralized, sprawling nature across four educational systems and 109 locations, it had often proved difficult to push the Risk and Compliance team’s sound judgments out through the organization and into the front lines of its daily interactions with prospective and current students.

This report has been prepared pursuant to Paragraphs 46 and 47 of the Consent Judgment. Those paragraphs 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 that the Administrator believes may constitute a deceptive or unfair practice (as determined in the context of consumer protection laws). The report covers a review period beginning October 1, 2016 and ending September 30, 2017. As with the First Report, this Report includes as examples isolated incidents that, while perhaps not sufficient to establish substantial non-compliance with the Consent Judgment, provide useful data for evaluating EDMC’s strengths and areas of concern to date.

In the second year of the Consent Judgment, EDMC has shown the signs of an organization in the midst of a meaningful shift in culture. Incidents of admissions representatives using hard-sell, high-pressure tactics are noticeably absent from the Administrator’s random call listening. Calls in which an admissions representative seems to intentionally shade facts to lure a student into an ill-fitting program are rare. Employees interviewed during this review appear genuinely focused on doing the right thing. In terms of culture change, EDMC may be turning the battleship.

This shift is not surprising, given the approach that EDMC’s centralized Risk and Compliance function has taken to the Consent Judgment. The Consent Judgment has a number of relatively complex and situation-specific requirements regarding, for example, the nature of information that EDMC must provide about its programs, and the manner in which the company is to provide it. When explaining EDMC’s policies on those issues to the employees who are to implement them, the general practice that the Administrator observed was *not* to describe a practice as required *in order to comply with the Consent Judgment* – a description that is prone to lead to a legalistic sense of compliance for the sake of compliance. Instead, the centralized EDMC personnel overseeing the changes typically explained them as stemming from EDMC’s interest in *helping prospective students make the right choices for them*, or something similar. That approach

supports the kind of cultural change that EDMC is targeting: one in which its representatives choose compliant, truthful approaches even when they are not reading from an EDMC script or following a formal EDMC procedure.

It is important to note, though, that EDMC's successes have not been without set-backs and that the future for compliance at EDMC remains quite uncertain. At the same time that the compliance team has made important improvements and overall culture improves, EDMC has had significant difficulty correcting a number of targeted problems that should be fixable. To be sure, when small numbers of non-compliant incidents have been brought to EDMC's attention, they respond quickly with appropriate corrective actions. Too often, however, after recognizing the problem and identifying necessary corrective actions, EDMC has nonetheless been unable to stop the problematic conduct. At times, fixes dictated by headquarters have been implemented incorrectly or inadequately, job aids been overlooked, and simple misstatements have continued. None of the individual failures is as important as EDMC's overall cultural shift for the better. But they do highlight how difficult it is for a compliance organization, even when making appropriate judgments, to effect change throughout a highly decentralized structure.

The Administrator's greatest concern is for the future, and there are reasons to be concerned about EDMC's continued improvement. EDMC's Risk and Compliance team has been and is in a period of transition. During this review period, several of the team's senior leaders have departed and not been replaced, and EDMC has held off on investing in that part of the organization. While the remaining team makes sound judgments, the key challenge of implementing those judgments through a highly decentralized organization is no easier without senior leadership. The difference, from the first year, was marginal but noticeable: Issues could take longer to resolve, and resolutions were sometimes set back after EDMC veered from an initial solution that the compliance team had proposed and the Administrator had endorsed.

Indeed, EDMC as a whole is in a period of transition that will likely mean significant changes between now and the next report. The reluctance to invest in Risk and Compliance has come as EDMC sold substantially all of EDMC's assets to Dream Center Education Holdings, LLC ("DCEH"), an educational affiliate of the Dream Center Foundation ("Dream Center"),<sup>1</sup> a Los Angeles-based non-profit organization that provides a variety of social and religious services to individuals in difficult situations. And the sale itself, announced in March and closed in October, just after the close of this review period, is part of an even longer period of transition. EDMC had sold or closed several of its schools in 2016 and had been in the market for a purchaser for some period before the Dream Center announcement. DCEH is not expected to operate its EDMC acquisition in a "business as usual" fashion; it has announced that it will convert the EDMC schools into "community focused not-for-profit educational institutions" that, among other things, provide educational opportunities for Dream Center volunteers and the recipients of its services.<sup>2</sup>

What this means for EDMC's compliance future is unclear. But it does mean that a period that could have built on initial momentum has instead been a period of stasis and uncertainty. It

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<sup>1</sup> Dream Center Education Holdings, LLC, is the affiliate that acquired the schools in the transaction, which closed October 17, 2017.

<sup>2</sup> See Dream Center Foundation Press Release, "Education is the Key" (Mar. 3, 2017), *available at* <https://dreamcenter.org/about-us/foundation/>.

is the Administrator's hope that the new ownership will make the necessary investments to continue to turn the culture and, at the same time, to extend the company's central compliance infrastructure in a more robust way throughout the organization.

## **B. Summary of Findings**

Based on the monitoring of calls recorded in the admissions process, reviews of marketing material, job data, and other materials, employee interviews, reviews by third-party consultants, participation in EDMC trainings, and mystery shops conducted at programs in every state that is participating in the Consent Judgment in which an EDMC program exists, the Administrator can report today that EDMC has made implemented the significant infrastructure required by the Consent Judgment, that it has shown important progress in changing its culture, that some key issues need improvement, and that the Administrator is less confident than a year ago that EDMC is on the path towards full compliance.

*Cultural progress.* EDMC is changing its culture. Admissions representatives have shifted from previous tactics, working to overcome consumer resistance, to an approach in which they ask prospective students questions, and politely end conversations in which the prospective student says or otherwise conveys that they are not interested in pursuing an education at this time or in otherwise continuing the conversation. High-pressure and blatantly misleading tactics are all but gone from EDMC's conversations with students. Further, discussions in EDMC training focus not on compliance and legal requirements, but on providing prospective students with the information they would want in order to make good decisions.

*Major initiatives.* EDMC has also successfully implemented several of the Consent Judgment's major structural requirements. It has implemented call recording and speech analytics systems across its campuses to facilitate compliance efforts; it has created and discusses with prospective students the Single-Page Disclosure Sheets that provide information about programs, employment rates, and finances; it has worked with the Consumer Financial Protection Bureau to implement an online portal, referred to in the Consent Judgment as an Electronic Financial Information Planning tool, that provides all EDMC applicants with personalized information regarding the financial consequences of their enrollment decision; it requires enrollees to go through an orientation program that complies with Consent Judgment requirements; and it provides the required refunds to eligible new students who withdraw from EDMC during the early weeks of their terms. Apart from one relatively minor potential issue on the installation of the call recording and speech analytics systems that is still under review, these initiatives were implemented within the time period required by the Consent Judgment.

*Implementing corrective actions.* EDMC has struggled more with its attempts to implement targeted corrective actions for problems that have been identified. Notwithstanding the broader and important cultural progress, EDMC has – and will inevitably have – issues arise. Admissions representatives may misspeak, face questions they had not anticipated, or fail to memorize the details of all the programs they cover. In those cases, EDMC's Risk and Compliance team has generally made sound judgments on the nature of the problem and appropriate language to be employed in the future. But the solution has too often been implemented incorrectly or incompletely as it travels to the outer reaches of the organization, and the problems have continued. Non-compliant handling of questions regarding Pell Grants, prospective students who are under

18, and the status of programs that are not yet accredited have continued, as EDMC has at times been unable to fully implement its reasonable solutions across its programs.

*Job placement rates.* The job placement rates that EDMC publishes in its Single-Page Disclosure Sheets are critical to giving students realistic expectations regarding the likely employment prospects of their decisions. Collecting the data of how recent graduates have fared is difficult. For the majority of graduates, though, the question is relatively straight-forward: If they have a job title that a government-created database associates with the student’s educational program, the employment can count as an “in field” placement if it meets other criteria. But for about a third of graduates whose job titles do not line up with the database of traditional titles, the Consent Judgment permits them to be counted as “in field” only if, during a majority of their time at work, they use the “core skills” that their program is designed to provide. As noted in the First Report, EDMC has not historically collected the data that would be necessary to make these determinations. EDMC has recently agreed to collect different data, and is actively working with the Administrator on a better approach.

*Third-party lead generators.* The third-party vendors that scour the internet to find prospective students do not have the same restrictions that the Consent Judgment imposes on EDMC, and are the source for many of the tactics that have given the for-profit education industry a bad reputation. From a business perspective, EDMC has an additional concern that the leads those vendors produce are for consumers who are not even interested in an education – making this advertising strategy a poor investment. EDMC is significantly scaling back its reliance on these vendors, including in its spending on the “Job Sites” that consumers often read as advertising job opportunities but that lead to a bait-and-switch-like effort to sell them on for-profit schools. EDMC also has applied the Consent Judgment’s requirements for disciplining problematic vendors. It is important to note, though, that there are limits on the company’s ability to change the third-party lead generation industry through disciplinary measures taken by one of the industry’s customers. Those challenges are discussed along with other more detailed findings below.

## **II. EDUCATIONAL MANAGEMENT CORPORATION AND ITS OPERATIONS**

### **A. The Company, the Transaction, and the 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>3</sup> At the time of the Consent Judgment, EDMC claimed to manage 109 locations in 32 U.S. states and in Canada and serve over 90,000 students in its four separate brands, or systems: the Art Institutes (Ai), Argosy University, Brown Mackie College, and South University. Since then, EDMC has sold almost all of the Brown Mackie College system and is no longer accepting new students at its remaining Brown Mackie campuses, has ceased enrolling new

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<sup>3</sup> See <http://www.edmc.edu/About/History.aspx>.

students at several of its Art Institute campuses, and as of October 17, 2017 has sold substantially all of its assets to Dream Center Education Holdings, LLC (“DCEH”).<sup>4</sup>

Even with admissions at Brown Mackie no longer active, EDMC’s – and now DCEH’s – compliance team faces an extraordinary challenge in aligning the operations of three very different schools. The Art Institutes system of schools is the company’s largest: Even with 19 campuses closing this calendar year, 31 Ai schools, including its online Art Institute of Pittsburgh, Online Division, are part of the Dream Center transaction.<sup>5</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 graduates often seek positions in artistic and creative professions. The Art Institute schools that will remain open are accredited by one of six accrediting bodies.

Argosy University consists of 28 campuses, with online programs that focus on psychology and the behavioral sciences, business, legal, education, and health sciences.<sup>6</sup> Argosy schools are accredited by the Western Association of Schools and Colleges Senior College and University Commission.

South University focuses on programs in the health professions and business disciplines at 15 campus locations and through online programs.<sup>7</sup> South schools are accredited by the Southern Association of Colleges and Schools Commission on Colleges.<sup>8</sup> South is perhaps the most decentralized of the EDMC schools.

Operations at EDMC’s fourth school, Brown Mackie College, are winding down. The regulatory framework for the Brown Mackie Colleges had been somewhat different from the frameworks that governed EDMC’s other schools; not only were the Brown Mackie schools accredited by the Accrediting Council of Independent Colleges and Schools or by the Higher Learning Commission of the North Central Association,<sup>9</sup> but with their focus on a range of health care fields, the Brown Mackie schools offered a heavy proportion of programs also subject to separate accreditation or licensing standards. At this point, though, EDMC has stopped enrolling new students at the 23 Brown Mackie College locations that it owns, and DCEH did not purchase them in the transaction.<sup>10</sup>

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<sup>4</sup> Because the schools were owned and managed by EDMC throughout this review period, they are referred to as “EDMC schools” (or similar) throughout this report.

<sup>5</sup> Twenty-five Ai locations are now owned and managed by DCEH. EDMC has agreed to sell six additional Ai locations once the relevant regulatory accreditor and regulatory approvals are obtained.

<sup>6</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>7</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 4; <http://www.edmc.edu/About/SouthUniversitySchools.aspx>.

<sup>8</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 21.

<sup>9</sup> See Education Management Corporation, Form 10-K (Oct. 14, 2014) at 21.

<sup>10</sup> EDMC has slated the remaining Brown Mackie schools, which were not sold to DCEH, to close. Earlier in this review period, EDMC sold three other Brown Mackie schools – Hopkinsville, Kentucky, North Canton, Ohio, and Quad Cities, Iowa – to The Ross Group.

The various forms of autonomy granted to these schools and their campuses create compliance challenges. South prepares and conducts some of its own trainings for its ground location admissions representatives;<sup>11</sup> both Argosy and South have had flexibility to continue using certain types of advertising vendors that Ai has ceased using. The company's centralized Business Practices Committee conducts appropriate reviews, but materials that are not submitted for review or that are used beyond the period for which they are approved may have inaccurate, outdated, or non-compliant information that the corporate Business Practices Committee would not condone but of which it is unaware. The more autonomy that schools and campuses are granted, the less accustomed they become to working with Risk and Compliance, and the more difficult it becomes for Compliance to effectuate change through the organization.

This is not to say that South should be further centralized, or the other schools further decentralized. Compliant organizations can be structured in a variety of ways. But centralization, decentralization, and the various points in between pose different risks, and DCEH – and the Administrator – must be attentive to the risks that these structures create as they work to implement compliant practices throughout literally dozens of online and brick-and-mortar institutions.

## **B. 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. These institutional accreditors are in addition to the programmatic accreditors that review individual programs offered at EDMC schools. The institutional accreditors that accredit various EDMCs schools include 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 New England Association of Schools and Colleges (NEASC) through its Commission on Institutes of Higher Education (CIHE), 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).

Several EDMC schools are on probationary status with at least some of their accreditors, all as a result of questions regarding EDMC's financial status prior to the sale. ACICS, which accredits 16 Ai schools, twelve of which are in teach-out, placed the EDMC schools on a show-

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<sup>11</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. In addition to using materials developed by EDMC, South University ground locations also develop some of their own training materials, which are then to be reviewed and approved by EDMC's Risk and Compliance department.



cause directive related to EDMC's financial condition in December 2016;<sup>12</sup> it lifted those directives in August 2017 after the DCEH purchase was announced. In addition, three EDMC schools accredited by the Southern Association of Colleges and Schools were put on probation in December 2016. According to SACS's Disclosure Statements at the time, the schools had failed to demonstrate that they – or, in this case, their parent company, EDMC – had a sound financial base, resources, and financial stability.<sup>13</sup> Probation is the most serious sanction that SACS imposes, short of a loss of accreditation, and requires an automatic review of their financial condition in December 2017.

The EDMC schools whose institutional accreditation comes from ACICS face additional uncertainty. On December 12, 2016, the Secretary of Education issued a final determination that terminated ACICS's status as a recognized accreditor, finding that ACICS was out of compliance with numerous regulatory criteria and was incapable of coming into compliance even if its recognition were extended an additional 12 months.<sup>14</sup> If that decision is not reversed on appeal or otherwise vacated, institutions accredited by ACICS have 18 months to become accredited by another federally recognized accreditor, or the schools will lose their eligibility for Title IV student aid.<sup>15</sup>

The issues that could result in EDMC or any of its schools losing accreditation status or being placed on probation are, strictly speaking, not within the scope of the Administrator's review. But because they can place strains on EDMC's compliance capacity, their existence is important context for this review.

### III. EVALUATING EDMC'S COMPLIANCE EFFORTS

#### A. Overall

In listening to recorded calls, in interviews of EDMC employees, in mystery shops of dozens of EDMC schools, and in myriad other ways, the Administrator has seen evidence of a

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<sup>12</sup> See ACICS, Campus Level – Direct or Vacate Show Cause Actions (Dec. 21, 2016), *available at* <http://acics.org/commission%20actions/content.aspx?id=6712>.

<sup>13</sup> See SACSCOC Disclosure Statement Regarding the Status of Art Institute of Atlanta (Dec. 15, 2016), *available at* <http://www.sacscoc.org/2016decActionsanddisclosurestatements/Art%20Institute%20Atlanta%20-%20NMC.pdf>; SACSCOC Disclosure Statement Regarding the Status of South University – Savannah, Georgia (Dec. 15, 2016), *available at* <http://www.sacscoc.org/2016decActionsanddisclosurestatements/South%20University%20-%20BDG.pdf>; SACSCOC Disclosure Statement Regarding the Status of Art Institute of Houston (Dec. 15, 2016), *available at* <http://www.sacscoc.org/2016decActionsanddisclosurestatements/Art%20Institute%20Houston%20-%20NMC.pdf>.

<sup>14</sup> See Decision of the Secretary, *In the matter of: Accrediting Council for Independent Colleges and Schools*, Docket No. 16-44-O (Dec. 12, 2016), *available at* <https://www2.ed.gov/documents/acics/final-acics-decision.pdf>.

<sup>15</sup> See Dear Colleague Letter (Dec. 12, 2016), *available at* <https://ifap.ed.gov/eannouncements/attachments/121316LetterToACICSIstitutionsAccredited.pdf>.

significant culture shift at EDMC over time. High-pressure sales tactics and systematic efforts to hide the facts have all but disappeared.

This does not mean that all is resolved. Most importantly, as discussed elsewhere, there are reasons to be concerned that the cultural gains are at risk. But at a more concrete level, EDMC's performance during this review period shows that despite a broader cultural shift, the persistence of certain targeted problems suggests compliance challenges yet to come. The persistence of these issues is not merely the problem of imperfect humans; mistakes will be made in any organization. Rather, the nature of the problems suggests that the work of implementing a compliance framework throughout the large organization is not complete. Some mistakes have been repeated, and some remedies have been implemented incorrectly.

Again, EDMC's success in changing the culture is more important than its targeted compliance challenges. But those targeted challenges are important, especially when considered alongside the risks that the company will be facing during this next phase.

## **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>16</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 the 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>17</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>18</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.

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

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<sup>16</sup> Consent Judgment ¶ 40.

<sup>17</sup> Consent Judgment ¶ 40.

<sup>18</sup> Consent Judgment ¶ 41.

calls involving EDMC's admissions and financial services personnel. The Administrator team uses this review to log and track issues that are identified on calls, and identify issues requiring additional attention. 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, and enables the Administrator to identify additional calls that merit review for a targeted issue.

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 the three EDMC brands that were accepting new students and included programs in all of the states that participated in the Consent Judgment 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, and has a website through which the public can submit complaints for Administrator review. 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 regular admissions training calls and monitors the correspondence through compliance listservs that allow admissions personnel to request and receive quick feedback on their compliance questions.

The Administrator team also has access to the job placement information that underlies EDMC's calculation of job placement rates for its programs. For each graduate or "completer" of a program who is 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.

Where necessary, the Administrator has also engaged third-party experts to assist with its analyses. One such firm is currently auditing EDMC data to determine whether EDMC properly identified all of the former students who were eligible for the Consent Judgment's institutional debt forgiveness.<sup>19</sup>

The team has met with and interviewed personnel at EDMC, without supervisors or other EDMC representatives present, and also talked with complainants who have brought concerns about EDMC's processes to the Administrator's attention. Through and in light of these discussions, the Administrator provides feedback on specific issues, whether identified by EDMC or the Settlement Administration team itself.

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<sup>19</sup> Consent Judgment ¶¶ 120-21.

Consistent with the Settlement Administrator’s overall approach, the goal of these efforts has been to facilitate compliance – not just in the short-term, but hopefully for years 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 has been and continues to be 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 prior to the DCEH transaction, EDMC had internalized that its culture and its approach to compliance needs to change. Success going forward will depend on creating the policies, the environment and the structures needed for the long-term. Moreover, EDMC’s new owners must commit to renewed investment in the compliance program, structure, and personnel needed to avoid the problems that EDMC has had in the past. 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 previously discussed, EDMC uses a centralized compliance organization to implement, and monitor compliance with, institutional policies relating to the recruitment and enrollment of students. The organization’s structure and tools are discussed in more detail in the Administrator’s First Report. There have been several important changes over the last year, though, and these changes are discussed here.

#### *1. Personnel*

In addition to the transaction and the uncertainty that it injected, key compliance leadership have left in recent months. The first significant change to EDMC’s Risk & Compliance team was the May departure of the company’s Chief Compliance Officer. The Chief Compliance Officer is responsible for overseeing a number of compliance-related functions within the organization, including Internal Audit, Legal & Regulatory Compliance, Call Monitoring, and Marketing Compliance.

The second major change was the departure in July of EDMC's Vice President of Internal Audit.

The company has now operated without its compliance and audit leadership for several months. Regardless of how capable the existing team may be, long-term vacancies in those positions have consequences. They leave the team less able to break through internal logjams and elevate issues for resolution, and more focused on maintaining existing initiatives than on making improvements proactively. Particularly following several months of uncertainty surrounding a potential transaction and the resulting hesitance to invest in upgrades, vacancies in these positions have stalled the company's compliance efforts. Installing strong compliance and audit leadership and investing in those aspects of the organization should be a priority of DCEH's incoming management.

## 2. *Call Recording and Monitoring.*

EDMC has historically relied on three primary tools to monitor how its admissions representatives speak with prospective students: targeted call reviews, using the speech analytics software PerformMatch; random recorded call listening; and telephonic and in-person mystery shops in which individuals pose as prospective students and test various compliance scenarios. The speech analytics and random call listening depend on a call monitoring system through which, under the Consent Judgment, EDMC is required to "record all telephone calls and online chats between Admissions Representatives or Student Financial Service Representatives, on the one hand, and Students or Prospective Students, on the other."<sup>20</sup>

The three tools each play a role, and should not be considered redundant.

*Speech analytics.* EDMC's PerformMatch software analyzes the calls that EDMC's call recording system records and, using a set of static search terms and rules, flags calls that appear to have violated EDMC's compliance standards.<sup>21</sup> By looking for certain words or phrases, PerformMatch can detect potentially problematic calls for EDMC's Call Monitoring team to review.

This speech analytics system enables EDMC to gain compliance insights on thousands of calls per month, and is particularly helpful for identifying problems that can be reduced to particular words or phrases. The Consent Judgment's requirement that EDMC advise prospective students that their discussions with admissions representatives are recorded is a good example: Because the mandatory recorded-line warning involves an established script, PerformMatch can scan tens of thousands of calls each month to determine whether the required words were present. PerformMatch is similarly useful in determining whether *prohibited* words were used, and thus is well-suited, for example, for determining whether admissions representatives used designated offensive terms in their calls. Speech analytics is not perfect for these purposes, because like any voice recognition software it can mis-hear terms that are enunciated differently. But it enables EDMC to search large volumes of calls for specified words and phrases – whether a recorded line

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<sup>20</sup> Consent Judgment ¶ 95.

<sup>21</sup> The Settlement Administrator has access to PerformMatch and can have search terms or rules added to the system.

disclosure, offensive language, or specified phrases that could signal a misleading recruiting tactic, like “you’ll definitely graduate.” The Administrator has used EDMC’s speech analytics capacity for this purpose, to identify calls in which representatives may be discussing particular issues of interest.

That said, speech analytics software is not a complete solution, as it leaves two important gaps. First, speech analytics software looks for its search terms imperfectly, missing words and phrases that are enunciated in a manner other than the manner the software expects. Second, more fundamentally, speech analytics software looks only for what it looks for: It seeks particular words and phrases from a list of terms compiled by EDMC staff. And not only is it impossible to anticipate and identify all potential variations of a non-compliant statement, but many behaviors that create the risk of a misrepresentation or an unfair practice are subtle and context-specific. Speech analytics software can apply black-and-white rules to large volumes of calls, but it will miss many instances of deceptive or misleading discussions with prospective students.

*Random call listening.* Random call monitoring is an important complement to monitoring using speech analytics. Whereas speech analytics finds only those problems that have been previously identified and that are articulated in pre-defined ways, random call listening can pick up emerging issues and issues that manifest themselves in unanticipated or subtle ways. And whereas speech analytics software enables listeners to review only that narrow slice of a call in which the software detected an issue, random call listening lends itself to reviews of entire calls – which, again, provides a more complete picture of the nature of EDMC’s interactions with prospective students.

Historically, EDMC has sought to perform random call monitoring of each admissions and financial services representative once every two weeks, or approximately 26 times per year. While this target was possible only for representatives whose calls were subject to recording – an issue discussed further below – it meant frequent reviews and opportunities to correct course.

*Mystery shops.* Finally, unlike the speech analytics and random call monitoring strategies that only work where the call recording system is installed, EDMC can use mystery shops to test admissions and financial aid discussions that focus on particular campuses, programs, and scenarios. EDMC had a set procedure for assessing representatives whose calls were not captured by EDMC’s existing call recording system at the beginning of this review period, hiring a third-party firm, RD Associates, to conduct approximately 3,000 telephonic and 80 in-person shops per year for EDMC. Representatives subject to mystery shopping would likely be reviewed multiple times per year, but rarely more than five – far fewer than the approximately 26 times that EDMC policy required for representatives whose calls were routinely recorded.

EDMC’s speech analytics, random call listening, and mystery shopping practices are described in greater detail in the First Report.<sup>22</sup> The following sections discuss a number of important changes that EDMC made to its call recording and monitoring framework over this review period.

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<sup>22</sup> See First Report at 24-29.

a) Call Recording System-Wide

The most significant change during this review period is the expansion of EDMC's call recording system. At the beginning of this review period, EDMC recorded calls made through its National Call Center (NCC), which conducted 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.<sup>23</sup> The schools' ground campuses were not covered by the call recording system, which meant that thousands of calls each month were unreviewable.

EDMC has largely, but not completely, complied with the Consent Judgment's requirement that EDMC "acquire and implement an automated voice interaction analytics platform ... capable of analyzing *all* of the call recordings" by July 1, 2017.<sup>24</sup> EDMC installed its call recording system on the vast majority of its campuses by that deadline. EDMC declined to install call recording capabilities on two locations that are part of Argosy University, Hawaii – one in Guam, and one in American Samoa – asserting that installing the system at those locations would be prohibitively expensive. The Administrator is reviewing EDMC's claim; if the monitoring contemplated by the Consent Judgment can be satisfied through other means, allowing DCEH to focus its compliance efforts more efficiently, the Administrator is open to the discussion.

The expansion in call monitoring has created a dramatic change in EDMC's ability to review its calls: In January 2016, when the Consent Judgment first came into effect, EDMC monitored a total of 1,574 admissions and financial services calls.<sup>25</sup> In August 2016, with call recording installed at the NCC but not elsewhere, EDMC monitored a total of 74,243 admissions and financial services calls, but almost exclusively calls associated with online programs;<sup>26</sup> calls with ground campuses were typically captured only incidentally, when a call through the NCC was "warm transferred" to ground locations of Ai, Argosy, and South, and the recording continued after the transfer. In July 2017, with the call monitoring system live at all online and ground campuses, EDMC recorded and was thus in a position to monitor 108,266 admissions and financial services calls – including over 40,000 calls involving ground campuses.<sup>27</sup>

EDMC must be careful in how it handles this increase in its call monitoring capacity. The question should be not just *how many* calls EDMC can review, but *how* EDMC reviews those calls. The increased number of recorded calls certainly enables EDMC to review more. With speech analytics software that can find preselected problematic phrases and pinpoint the few minutes around those phrases for focused listening, it is possible to assign compliance scores to tens of thousands more calls per month. However, assigning compliance scores is not the same thing as ensuring compliance. Speech analytics, while helpful, should supplement random call listening,

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<sup>23</sup> The National Call Center was an internal call center operated by EDMC that provided the initial outreach to prospective students for Ai, Brown Mackie, and Argosy. NCC used autodialers to quickly contact new leads that were received, verify the consumer's eligibility for school, and then connect the consumer to the appropriate school and location.

<sup>24</sup> Consent Judgment ¶ 95 (emphasis added) & Ex. A.

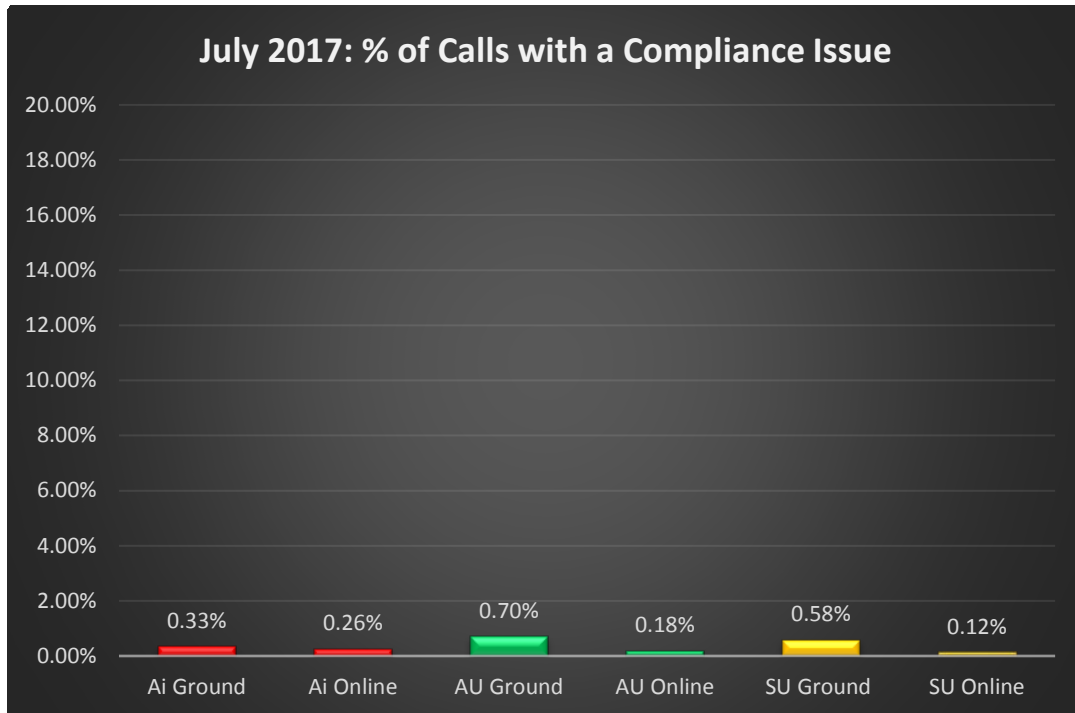
<sup>25</sup> See January 2016 Monitoring Summary.

<sup>26</sup> See August 2016 Monitoring Summary.

<sup>27</sup> See July 2017 Monitoring Summary.

not replace it. It is through random call listening that reviewers find the more subtle kinds of infractions, and identify new problems requiring attention.

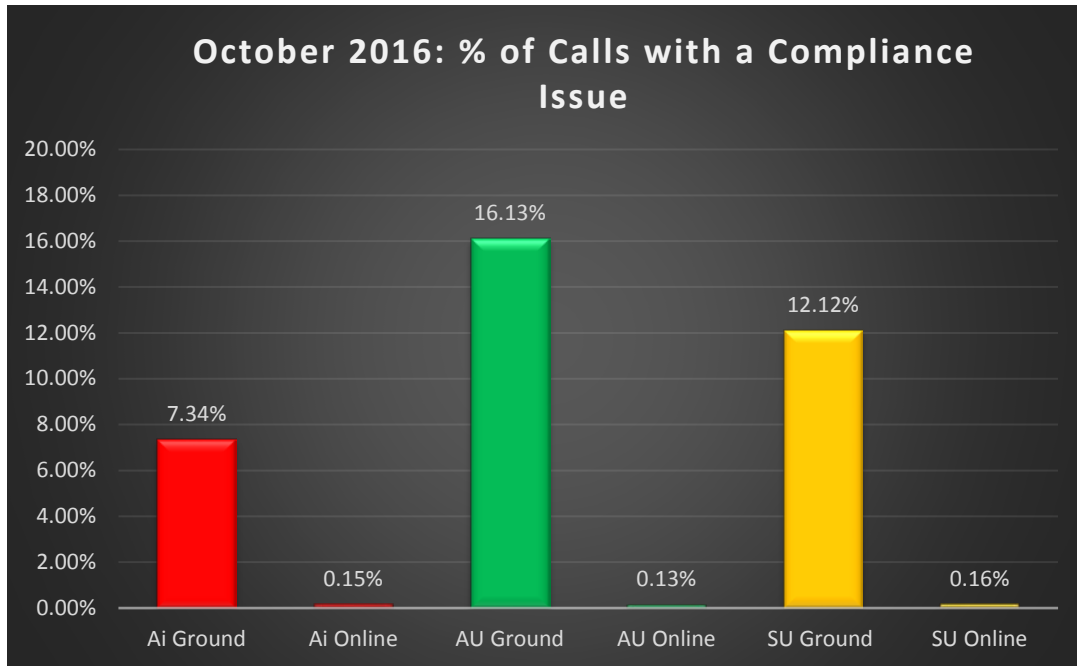
The differences between speech analytics and random call listening are visible in several snapshots of recent compliance data. EDMC’s summary of its July 2017 call monitoring is as follows:



This data, which reflects the first full month in which all calls were subjected to EDMC’s speech analytics software, shows a difference between the violation rate of EDMC’s ground campuses and the rates of those campuses’ corresponding online schools. Each of the online schools performs better on this metric than the school’s corresponding ground campus, by approximately half a percentage point in the case of Argosy and South.

More noticeable than the difference between the online and ground schools, though, is the difference between the ground schools’ performance when they were reviewed using *speech analytics* and when they were reviewed by other means. Compare the ground schools’ data above, captured using the PerformMatch speech analytics, and the same ground schools’ performance a few months earlier, before all calls were recorded. This violation rate data, from October 2016, reflects the last month of calls before EDMC began dramatically increasing its call recording – and thus its speech analytics review – capacity. The October 2016 calls were monitored via mystery shops, which were specifically designed to test compliance issues of potential concern.





While both July 2017 and October 2016 showed a difference between the violation rates at ground campuses and online schools, the more dramatic difference is between the ground schools' violation rates in October, using mystery shops,<sup>28</sup> and then using the call recording and speech analytics process in July.

School	Date	Violation Rate
Ai Ground	Oct. 2016	7.34%
Ai Ground	July 2017	0.33%
Argosy Ground	Oct. 2016	16.13%
Argosy Ground	July 2017	0.70%
South Ground	Oct. 2016	12.12%
South Ground	July 2017	0.58%

In each case, the same school scored dramatically better in July, when call monitoring was accomplished primarily through speech analytics, than it had scored in October, when calls from these schools were reviewed less often but more thoroughly.

While these improved violation rates could correspond to similarly dramatic improvements in compliance over the October to July time period, the data appears to tie more directly to the change in the primary review technique. The data used above were chosen because October was

<sup>28</sup> It is worth noting that the October 2016 violation rates may be inflated, to some extent, as they were reviewed using professional mystery shoppers who sought to create difficult scenarios on the calls. So it may not be fair to conclude that the October 2016 rates reflect some “true” violation rate; it is a rate that itself is the result of a more probing review.

the last month before the system-wide call recording expansion began, and July was the first month after the expansion was completed, and they thus provide a consistent time period for reviewing all three schools. Looking at each school on its own time period, though, it is apparent that the big drop in violation rates came precisely during the month in which its call recording volume increased.

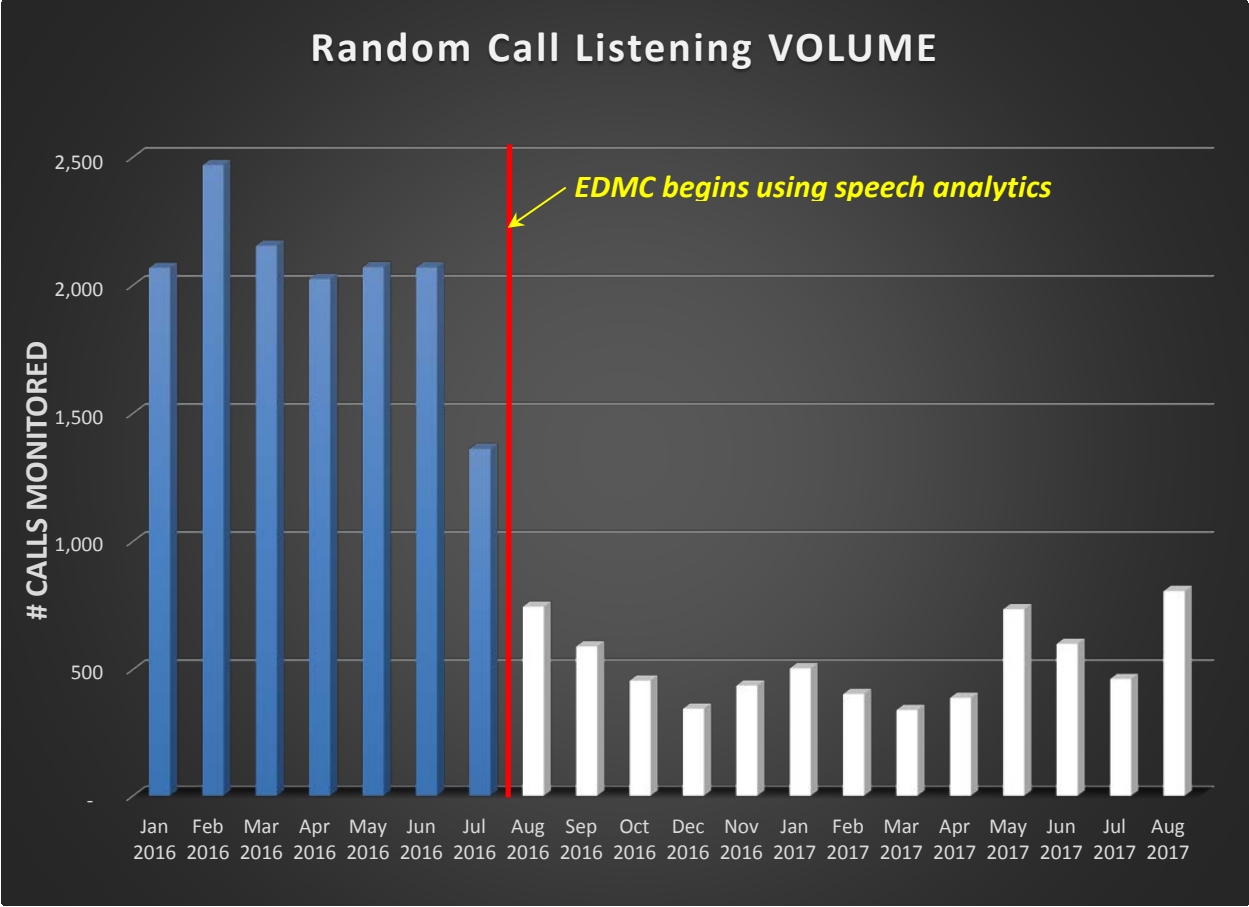
School	Date	Calls Monitored	Violation Rate
Ai Ground	Oct. 2016	109	7.34%
Ai Ground	Nov. 2017	2,320	0.33%
Ai Ground	Dec. 2017	21,233	0.29%
Argosy Ground	May 2016	38	7.89%
Argosy Ground	June 2017	5,345	0.77%
Argosy Ground	July 2017	9,384	0.70%
South Ground	March 2017	39	23.08%
South Ground	April 2017	3,332	0.93%
South Ground	May 2017	3,683	1.36%

When call monitoring volume jumps, and speech analytics dominates over other forms of monitoring, EDMC processes identify a drop in the violation rate that outstrips the improvements in actual compliance that the Administrator witnessed over those two- or three-month periods. To be sure, the Administrator has seen improvements in compliance over the course of the Consent Judgment. But the improvement has not been as dramatic as this data would suggest.

This is not to suggest that current violation rates are inaccurate, that the shift towards speech analytics was nefarious, or that random call listening is better than speech analytics. Because of its ability to facilitate high-volumes reviews, EDMC’s speech analytics software identified more compliance issues than would have been identified using random call listening alone, and is particularly valuable for catching violations that necessarily involve the presence or absence of specific key words (such as failures to disclose that a call is on a recorded line). For that reason, speech analytics is a valuable compliance tool, and an important requirement of the Consent Judgment.

That said, this data does demonstrate the importance of continuing to devote resources to random call listening. Random call listening identifies issues that speech analytics cannot. To have a complete picture of EDMC’s compliance with its Consent Judgment obligations, the company must maintain a robust random call listening program.

Unfortunately, EDMC has not been able to maintain nearly the same level of random call listening since it initiated its speech analytics system. This chart shows the level of random call listening over the life of the Consent Judgment:



Random call listening has dropped dramatically – from an average of 2,032 calls per month to an average of 525 calls per month. The Administrator has discussed these concerns with EDMC, and the importance of maintaining a robust random call listening program. But as EDMC has devoted its existing compliance resources to speech analytics, and has not invested in any new compliance resources, its random call listening monitoring has dropped off dramatically. To be sure, the Administrator’s team has continued with random call monitoring and has identified fewer issues as the Consent Judgment has gone on. But EDMC’s long-term compliance success will require increases in its random call listening.

b) National Call Center

In the Consent Judgment’s first year and for years earlier, the NCC handled literally millions of calls each year. When the company received leads for prospective students, NCC autodialers quickly attempted to contact the students. NCC personnel would verify the prospective students’ eligibility and then connect each consumer to the appropriate school and location. The NCC allowed EDMC to reach out to large volumes of prospective students quickly after receiving a lead, and then transfer calls to staff who specialize in the most relevant school for that prospective student.

The NCC was shut down late in this review period, as the remaining schools that used its services – Art Institute and Argosy<sup>29</sup> – elected to begin routing calls directly through their admissions personnel. It is unclear whether this shift will have consequences for EDMC’s compliance efforts. Because most substantive discussions with prospective students were handled by admissions and student financial services personnel, not NCC staff, compliance issues with the NCC were typically one of two kinds. The first was a relatively simple violation of the recorded-line disclosure requirement, in which a representative forgot or otherwise failed to begin the call by advising the student that the call was being recorded. EDMC has systems in place to assess how often this requirement is missed.

The other primary compliance risk at the NCC involved EDMC’s “Confirming Educational Interest” approach to discussions with prospective students. Under this approach,<sup>30</sup> prospective students who indicate that they do not want to pursue an education should not be pressured or distracted, but rather asked once to confirm whether the student is interested – and then end the call if the student is not. The issue would often arise for the NCC when EDMC received a lead from a student who, for example, had responded to an online job-related posting; if the NCC representative pressured the student to pursue her education instead, notwithstanding her lack of interest, the representative risked a compliance violation under EDMC policy.

While the NCC had its share of recorded-line disclosure and “Confirming Educational Interest” and related violations, it is unclear whether relocating these conversations from the NCC to individual schools’ admissions representatives will dramatically alter EDMC’s performance under the Consent Judgment. The relevant Consent Judgment requirements apply to those admissions representatives no less than they applied to the NCC.

### 3. *Texting*

EDMC expanded its admissions communications into a new channel during this review period, through a pilot texting project. In addition to telephonic communications, EDMC representatives will now communicate with prospective students via text, with contact initiated by an admissions representative using a pre-approved message. The text messages are to follow the same rules of conduct as telephonic communications and are preserved in the same database that EDMC uses to preserve its call recordings.

The written transcript of these texts provides a useful record for compliance purposes, and unlike on a call recording, no nuances are lost from the original communication. The most significant new compliance risk from these communications is the risk that, following a request to cease communications, EDMC continues to send texts to the prospective student.<sup>31</sup> But opt-out messages are in place, and the Administrator has not seen evidence of a problem along these lines to date.

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<sup>29</sup> Brown-Mackie is in teach-out, and South University did not use the NCC.

<sup>30</sup> See First Report at 22.

<sup>31</sup> Consent Judgment ¶ 99.

#### 4. Training

EDMC has reduced the pace of certain compliance training opportunities that it had used frequently during the first year (and more) of the Consent Judgment. Until recently, the Call Monitoring team had held monthly, mandatory compliance training webchats for all admissions supervisors. These monthly sessions typically began with a 30-minute presentation on a specific compliance issue, followed by 30 minutes of question-and-answer time that could focus on that month's subject or on any issues of recent interest. The calls were a useful opportunity for admissions supervisors to share questions from their teams and learn best practices. Topics this review period included the following:

- Confirming educational interest in communications with students.<sup>32</sup>
- Programmatic scripts for discussing EDMC's Single-Page Disclosure Sheets, called *Facts You Should Know*.<sup>33</sup>
- Answering difficult questions regarding statistics and rates, and ways to manage students' expectations around program outcomes.<sup>34</sup>

Over time, however, the topics that had been focused on the substantive areas of compliance evolved into topics that focused on compliance processes – such as the rollout of the new call monitoring system.<sup>35</sup> Calls on those kinds of topics, while relevant from a managerial perspective, do not improve EDMC's efforts in the same way as calls on a substantive compliance issue, and EDMC eventually concluded that the calls should occur less frequently. EDMC reasoned that while monthly calls were appropriate at the beginning of the Consent Judgment, when the company and its personnel needed training on a series of new requirements, there were insufficient issues now to justify monthly calls. Rather than have monthly calls with content that the required personnel would view as created for the purpose of justifying a monthly call, EDMC shifted the calls to quarterly.

In an organization whose goal is “to help everyone make compliance an integral part of your teams' culture and conversations,”<sup>36</sup> there is value in having regular, frequent discussions that reinforce the centrality of a compliance mindset. At the same time, calls that are perceived not as improving compliance but as merely talking about compliance, for the sake of talking about it, can be counter-productive. Ultimately, the proof will be in the pudding; an organization that is identifying issues proactively and talking about them will be more likely to solve them. Particularly as DCEH takes the reins and implements its own changes, it may find that more frequent compliance check-ins will again be helpful – both to the company's teams across the country as they implement the DCEH's compliance framework, and to the new management itself as it seeks to understand how its new initiatives are being implemented on the front lines.

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<sup>32</sup> See Monthly Admissions/NCC Management Compliance Call (Mar. 2, 2017).

<sup>33</sup> See Monthly Admissions/NCC Management Compliance Call (May 10, 2017).

<sup>34</sup> See Monthly Admissions/NCC Management Compliance Call (Nov. 3, 2017).

<sup>35</sup> See Monthly Admissions/NCC Management Compliance Call (Sept. 29, 2016).

<sup>36</sup> See Monthly Admissions/NCC Management Compliance Call (Dec. 8, 2016).

## **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>37</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>38</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>39</sup> statements implying that financial aid or military funding will cover the entire costs of the education, if not true;<sup>40</sup> and statements implying that statistics regarding EDMC generally are true of specific programs of study.<sup>41</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>42</sup> students' ability to sit for (or pass) licensure exams in relevant fields upon graduation,<sup>43</sup> job placement rates,<sup>44</sup> and salaries.<sup>45</sup>

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>46</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>47</sup>

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<sup>37</sup> Consent Judgment ¶¶ 74-75.

<sup>38</sup> Consent Judgment ¶¶ 74-75, 76, 80-82.

<sup>39</sup> Consent Judgment ¶ 76(c).

<sup>40</sup> Consent Judgment ¶ 77(c).

<sup>41</sup> Consent Judgment ¶ 79.

<sup>42</sup> Consent Judgment ¶ 79.

<sup>43</sup> Consent Judgment ¶ 80.

<sup>44</sup> Consent Judgment ¶ 79.

<sup>45</sup> Consent Judgment ¶ 79.

<sup>46</sup> Consent Judgment ¶ 100.

<sup>47</sup> Consent Judgment ¶¶ 100-01.

The sections below discuss EDMC’s ability to handle, in a compliant manner, a number of specific situations that arise in its dealings with prospective students. It has handled some of them consistently well, but others have caused it trouble – or, worse, continued to cause it trouble.

As a broad matter, however, EDMC is successfully changing its culture. 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 continuing the conversation. This approach should eliminate, or dramatically reduce, inappropriate pressuring of prospective students or systematic attempts to mislead them. And indeed, the Administrator’s call listening program during the review period – random call listening, targeted listening using speech analytics, and mystery shops – revealed that EDMC continued to reduce this category of the most offensive calls.

What remains are more targeted issues that EDMC should, with focused effort, be able to reduce significantly as well. The examples cited below 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.

## 2. *Downplaying or Misstating Financial Aid Obligations*

As noted above, the Consent Judgment bars EDMC from making deceptive statements or misrepresentations regarding financial aid or the financial costs associated with attending an EDMC program. Because the potential resulting financial consequences for a student pursuing higher education can be enormous, it is exceedingly important that institutions provide accurate information about financial aid obligations to prospective students. Inaccurate statements and attempts to minimize significant financial consequences can lead to life-altering levels of debt. Prospective students are often understandably concerned about the debt load that further education may impose, and need to fully understand and appreciate the consequences of a decision to enroll.

In its First Report, the Administrator identified a significant issue relating to EDMC representatives’ descriptions of Federal Pell Grants. The Federal Pell Grant Program provides need-based grants to low-income undergraduate and certain graduate students, as eligible, to promote access to postsecondary education. The amount granted depends on a student’s financial need, costs to attend school, status as a full-time or part-time student, and plans to attend school for a full academic year or less. Pell Grants are distinct from student loans in that they *may* not need to be paid back, but Pell Grants do often require repayment when students drop out in the middle of a semester or quarter.<sup>48</sup> Through call monitoring, the Administrator found in its First Report that EDMC admissions representatives repeatedly missed this nuance, leaving prospective students with the materially incorrect impression that a significant portion of their financial aid

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<sup>48</sup> There are other instances in which a student may need to repay part or all of a Pell Grant. For example, a student’s eligibility for the grant could change if the student’s enrollment status changes from full time to part time. A student’s eligibility may also be affected if the student receives outside scholarships or grants that reduce the student’s need for federal student aid. Other conditions may also apply.

need not be repaid even if they withdraw. To be sure, EDMC representatives are not the only ones who have missed this nuance; some of the statements made by EDMC representatives were similar or identical to those in published materials by others, including those that could reasonably have been viewed as authoritative. But the statements were inaccurate nonetheless.

The problem was initially attributed to a lack of guidance reaching admissions personnel. Accordingly, the problem persisted into the early period of this review period before EDMC was able to prepare and distribute the necessary guidance to campus admissions and financial services personnel. During that time, admissions representatives continued to mischaracterize Pell Grants as numerous versions of the following:

- A Pell Grant “does not have to be paid back.”<sup>49</sup>
- A Pell Grant is “money that you do not have to pay back to the federal government.”<sup>50</sup>
- “Grants don’t have to be repaid.”<sup>51</sup>
- A Pell Grant is “really like using free money to go to school.”<sup>52</sup>

Even a slightly more nuanced description, alluding to the possibility of exceptions but not explicitly clarifying them, is cause for concern. In several instances, admissions representatives told a prospective student that a Pell Grant (or a grant more broadly) is “generally something you do not have to pay back”<sup>53</sup> or is something “you typically do not have to pay back.”<sup>54</sup> While the “generally” and “typically” caveats make this type of description, unlike the examples above, at least technically correct, this description leaves prospective students with the strong impression that *they* would not need to pay the Pell Grant back.

Late in 2016, with the Administrator’s approval, EDMC attempted to prevent further inaccurate descriptions with a “job aid.” The job aid, which was to be distributed to EDMC admissions representatives, provided a program description of the Federal Pell Grant Program, a description of the problematic language that had been identified, and the appropriate language that should be used to describe the grant. The instructions made clear to admissions representatives that “[t]he statements that ‘the Pell Grant does not have to be repaid’ and ‘Pell Grants are free money’ are not entirely accurate, because there are limited circumstances when a Pell Grant must

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<sup>49</sup> See Call Record 41604376; *see also* Call Record 41968117 (telling student that it was “tremendous” that the student qualified for the Pell Grant because “you don’t have to pay that back.”).

<sup>50</sup> See Call Record 41657308.

<sup>51</sup> See Call Record 41817797.

<sup>52</sup> See Call Record 42021014.

<sup>53</sup> See Call Record 41537631; *see also* Call Record 41605937 (Pell grants “wouldn’t generally need to be paid back”); Call Record 41674449 (Pell grant is “generally something you don’t have to pay back”).

<sup>54</sup> See Call Record 41868740; *see also* Call Record 41672706 (“Grants are typically something you don’t have to pay back.”).



be repaid.” The aid explicitly provided language that “should be used, in its entirety, when discussing Pell Grants,” as follows:

The Pell Grant does not have to be repaid by eligible students who remain in school. You might have to pay back all or part of a Pell Grant if you withdraw from school before finishing an enrollment period (for example, a semester).

The aid also provided talking points for admissions representative and financial aid personnel to use in responding to questions, and identified the consequences of a compliance infraction – specifically, an employee who states that Pell Grants are “free money” and will not have to be repaid in any circumstance will be subject to a Level 2 compliance infraction.

Unfortunately, the problem continued into this review period. While EDMC Compliance staff understood the problematic nature of these representations, and prepared corrective language, the new guidance was not adequately distributed to the relevant personnel. The failure was noticeable, as admissions representatives continued to provide inaccurate descriptions of Pell Grants for a period after EDMC had indicated the problem should have been resolved.

While the guidance was distributed in November 2016, admissions representatives have on occasion continued to misdescribe Pell Grants as money that does not need to be repaid, without clarifying to students the conditions in which they might need to repay the grant. And though the pace has slowed in recent months, the issue has been persistent. For example, during a one-week period in February, admissions representatives described a grant as something that “typically doesn’t need to be paid back,” explaining vaguely that “it’s not necessarily free money, but it’s money that typically doesn’t need to be paid back by eligible students”;<sup>55</sup> said that a “grant” “means you do not have to pay it back”;<sup>56</sup> and explained that “a grant is money you don’t have to pay back.”<sup>57</sup> Mystery shops confirm that while EDMC has improved its handling of the Pell Grants issue, it remains a consistent source of errors.

The job aid, corrective actions, and judgments made by EDMC’s Risk and Compliance Department have been appropriate. But the persistence of the issue, particularly when the job aid was inadequately distributed, shows the difficulty of implementing targeted corrective actions. The slowed pace of inappropriate descriptions may indicate that the corrective actions are finally taking effect, but the Administrator will – and EDMC must – stay on top of this issue.

### 3. *Failing to Invite Parents of Students under 18*

The Consent Judgment 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>58</sup> It also bars

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<sup>55</sup> See Call Record 42787094.

<sup>56</sup> See Feb. 17, 2017 Mystery Shop of Argosy University, Phoenix. EDMC issued a Level 2 compliance violation for this call.

<sup>57</sup> See Feb. 23, 2017 Mystery Shop of South University, Virginia Beach. EDMC issued a Level 2 compliance violation for this call.

<sup>58</sup> Consent Judgment ¶¶ 102.

EDMC from preventing prospective students “from consulting with or obtaining advice from a parent, adult friend, or relative with respect to any issue relevant to enrollment.”<sup>59</sup> These provisions are designed to ensure that prospective students who are under 18 are able to make informed decisions about their futures. EDMC has not exhibited any problems complying with the latter prohibition on preventing prospective students from seeking and obtaining consultation or advice from others. EDMC has shown marginal improvement on the proactive requirement that prospective students who are under the age of 18 be “invite[d] . . . to bring an adult with them to any interview/meeting on campus prior to enrollment,”<sup>60</sup> but has not fixed an issue that should be fixable.

In the First Report, the Administrator found that while EDMC had trained its admissions personnel on the requirement, EDMC’s admissions representatives did an inadequate job identifying students under 18 years of age and inviting them to bring an adult with them to campus. During that review period, 20% of the admissions representatives who the Administrator tested through mystery shops failed to invite a prospective student who was under 18 to bring an adult to campus. Following this poor showing, the Administrator expected significant improvement in the second review period.

Unfortunately, no such improvement has been made. In 2017, the Administrator conducted twenty-one telephonic mystery shops to assess EDMC’s compliance with this requirement. In these calls, the prospective student disclosed that he or she was still in high school and/or under the age of 18, and was invited to visit the campus. EDMC representatives invited the parents or guardian of these prospective students in 85% of the calls.

While this is an improvement, it is an insufficient one. While the requirement may be challenging, in that it requires representatives to affirmatively identify the subset of students who are likely under 18, it is also straight-forward and covers a meaningful number of prospective students, even at a set of schools that focus on non-traditional students. The Administrator will continue to watch this issue, and expects a concerted effort from EDMC to show improvement on this issue in 2018.

#### 4. *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>61</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>62</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.

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<sup>59</sup> Consent Judgment ¶ 101.

<sup>60</sup> Consent Judgment ¶ 102.

<sup>61</sup> Consent Judgment ¶ 99.

<sup>62</sup> See Outbound Calling Do Not Call – DNC – and Telephone Consumer Protection Act – TCPA – Policy.

## 5. *Licensure and Enrollment*

The Consent Judgment also imposes particular protections for students who express an interest in pursuing certain careers for which the EDMC 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>63</sup> the Consent Judgment also imposes more specific requirements for certain circumstances.<sup>64</sup>

For example, the Consent Judgment bars EDMC, with certain exceptions, from enrolling students in programs that are 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>65</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 a particular EDMC program may have lacked. The Consent Judgment also 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>66</sup>

As noted in the First Report, program-specific requirements like these are typically handled at EDMC through a school’s online digital application. Because it is difficult for admissions representatives to track all the relevant facts about each program, the Application requires students to “accept” the necessary disclosures before progressing into the affected program. Because those boilerplate-appearing disclosures come late in the application process, it is important that admissions representatives provide as much relevant information as possible.

### a) 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>67</sup> The shop was conducted of an online program by a prospective student who resides in a state in which the program lacks the accreditation necessary for the student to qualify for licensure.

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<sup>63</sup> Consent Judgment ¶ 85.

<sup>64</sup> Some of the Consent Judgment’s requirements on these issues, particularly regarding licensure and accreditation, have become less relevant as the Brown Mackie schools are either in teach-out or have been sold. *See, e.g.*, Consent Judgment ¶ 84(a)-(d). Many of the specific requirements addressed disclosures to students interested in pursuing particular programs that led to careers more typically subject to state licensing requirements and that were more common at the Brown Mackie schools.

<sup>65</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”).

<sup>66</sup> Consent Judgment ¶ 90.

<sup>67</sup> Consent Judgment ¶ 86(c).

The representative met the Consent Judgment’s requirements, and told the prospective student that residents of that state are restricted from that program. The representative did not permit the student to continue with enrollment.

b) Disclosing the Need for Programmatic Accreditation

The Consent Judgment permits EDMC to enroll students in certain unaccredited programs only if, among other things, EDMC “Clearly and Conspicuously discloses to the Prospective Students on all promotional materials for the Program of Study . . . that such program 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>68</sup> The First Report noted that a number of EDMC hand-outs and web pages relating to South University’s Physical Therapy Assistant program and its Occupational Therapy Assistant program 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. EDMC indicated that South would remedy this deficiency and provide clear and conspicuous disclosures for the affected schools and programs.

EDMC’s implementation of this corrective action was inadequate in several respects, and raises broader concerns about the company’s controls over its various brands.

i. Websites

Following the determination last year that the websites for these South University programs did not adequately inform prospective students that the programs lacked the accreditation necessary for licensure, South added the following (or similar) language to the relevant web pages:

[This program] is in the process of pursuing programmatic accreditation from the Commission on Accreditation in Physical Therapy Education (“CAPTE”). Graduation from a CAPTE accredited program is a requirement to be eligible for licensure in the state of [State].

In the view of the Settlement Administrator, this language was inadequate to inform prospective students that accreditation would be necessary to qualify for state licensure or required examinations. While the language informed prospective students that the program was in the process of obtaining accreditation, and that graduation from an accredited program is necessary for eligibility, it does not state the critical fact that in the program’s current posture, graduates are *not* eligible. Readers who understand that the process of pursuing accreditation from CAPTE is different from being a CAPTE accredited program will know enough to infer the relevant conclusion. But that requires some understanding of how accreditation works, and falls short of the clear and conspicuous statement that the Consent Judgment requires.

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<sup>68</sup> Consent Judgment ¶ 87(a).

EDMC engaged in good-faith, transparent dialogues regarding those concerns, and ultimately agreed to add the following statement to its accreditation disclosures:

Until [this program] achieves accreditation, graduates will not be eligible for licensure in the state of [State].

Had that language been reasonably implemented, the issue would have been closed.

However, while EDMC added that language to the websites of the three South University programs in question, the manner in which it did so was problematic: For two of the three programs, the new disclosures appeared *in a smaller font size* than other text on the page – an approach reminiscent of common fine print, consumer deception strategies. When the South University implementation was brought to EDMC’s attention, the issue was corrected and EDMC reported that the incident was unintentional and had arisen from the use of an out-of-date style guide. EDMC agrees that the initial implementation of required disclosures in a smaller font was inappropriate.

#### ii. Hand-Outs

South’s implementation of corrective action on certain hand-outs for those programs was no better. EDMC was provided with copies of the deficient handouts that the Administrator identified in 2016, and a memorandum explaining their deficiencies. Despite this clarity, EDMC left the non-compliant and misleading information in place, and South continued to provide those materials to prospective students who visited the campuses.

The promotional materials for South University-Columbia’s Physical Therapist Assistant program *previously* indicated that the program was a candidate for accreditation, but did not clearly indicate that until the program achieves accreditation, graduates would not be eligible for licensure. A year later, the disclosures had gotten *worse*, not better: The handouts provided to prospective students stripped out even the disclosure that the program was a candidate for accreditation, and made no disclosure regarding licensure whatsoever.

The promotional materials for South University-Richmond’s and South University-Virginia Beach’s Occupational Therapy Assistant programs previously referred to the licensing exam, but contained overly optimistic statements that students “will be” eligible to sit for the licensing exam “once” accreditation has been obtained. EDMC was advised that the statements were overly optimistic. But both schools continued to use those overoptimistic statements.

The overly optimistic language in the South University-Richmond and South University-Virginia Beach is particularly troubling because the schools went out of their way to employ it. Their accreditor, the Accreditation Council for Occupational Therapy Education (ACOTE), provides sample statements for programs granted preaccreditation status to use in their catalogs and related materials,<sup>69</sup> and EDMC adopts that language almost *in toto* – and treats the accreditor guidance on these issues as very nearly mandatory. But here, EDMC in fact deviated from the accreditor’s recommended, straightforward language in favor of the misleading, overly optimistic

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<sup>69</sup> Accreditation Council for Occupational Therapy Education, Accreditation Manual at 16-17 (Dec. 2015).

alternative.<sup>70</sup> The schools use their accreditor’s recommended language on their websites, but modified it in these handouts – and then continued to use the modified version long after its deficiencies had been brought to their attention.

The issue has now been resolved. Two of the schools in question have received their accreditation, which moots this disclosure issue going forward. The fourth program, at Columbia, has stopped handing out the non-compliant materials. Columbia did not immediately transition to handing compliant materials, but the initial step of not handing out anything at least prevented the issue from recurring in the interim period.

c) 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>71</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 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, disclosing to the prospective students that the criminal record may be disqualifying. These responses were adequate, as the actual requirements for employment as a police officer vary from jurisdiction to jurisdiction. Advising prospective students to research the issue further, at this early point in the admissions process, was appropriate.

d) Accreditation and Good Standing

In addition to the specific requirement that EDMC schools accurately describe the effects of their lack of accreditation, EDMC of course also has a more general obligation to describe its schools’ and programs’ accreditation status in a manner that is accurate and not deceptive.

This requirement has become relevant in connection with a number of South University and Art Institute schools that were placed on probation by their accreditor, the Southern Association of Colleges and Schools. Probation is the most serious public sanction that the accreditor levies against a school, short of the loss of accreditation. The schools’ status on

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<sup>70</sup> Compare Accreditation Council for Occupational Therapy Education, Accreditation Manual at 16 (Dec. 2015) (recommending that programs with candidacy status state, “The program must have a preaccreditation review, complete an on-site evaluation, and be granted Accreditation Status before its graduates will be eligible to sit for the national certification examination”), with South University Virginia Beach Occupational Therapy Assistant Program Handout (“Once accreditation of the program has been obtained, its graduates will be eligible to sit for the national certification examination.”).

<sup>71</sup> Consent Judgment ¶ 90.

probation was disclosed in December 2016 as a result of financial difficulties associated with EDMC, and the lack of a “firewall” that insulated those schools from EDMC’s difficulties.

When admissions representatives were asked, directly, whether the schools were accredited and in good standing, the EDMC admissions representatives indicated that they were in good standing. One representative, asked whether the school was accredited, accurately answered that first question, saying, “We are actually regionally accredited by SACS, the Southern Association of Colleges and Schools.” Pressed further, to confirm whether the accreditation was in good standing, the response was unequivocal and, at best, confusing: “Absolutely, yes.”<sup>72</sup> Another representative, pressed on whether the accreditation was in good standing, said, “Yes, with South University it is. Our parent company, which is EDMC, they currently have a probation period that is being evaluated right now, but South University is in good standing.”<sup>73</sup>

While “good standing” may not be a term of art with a clear definition, the unqualified representation that schools on probation were in “good standing” was misleading.<sup>74</sup> Both of the schools in question were on probation by SACS. While SACS had tied the probationary status to EDMC’s own financial health, SACS was clear that the probationary status applied to the schools in question.<sup>75</sup> The EDMC admissions representatives, however, did not, and instead expressly stated that the schools were in good standing. A third admissions representative did only a little better; when asked if that school’s accreditation was in good standing, she answered, “We are accredited. I can definitely check that for you, but we are still, we are accredited.”<sup>76</sup> There was not a subsequent meeting with that student, and the representative did not get back to the prospective student with additional information.

While EDMC provided its admissions representatives with a job aid that provides guidance on questions related to institutional probationary status, EDMC pushed the job aid out to admissions representatives without waiting for the Administrator’s views. The text proposed that, if admissions representatives were asked whether the school was in “good standing” with its accreditor, they could respond, “Yes,” and then go on to explain that the school was on probation. That initial suggested response – that a school is in good standing, when it is on probation – continued to cause concern. EDMC is issuing revised guidance.

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<sup>72</sup> See 6/5/2017 Mystery Shop 344/1439.

<sup>73</sup> See 6/5/2017 Mystery Shop 345/2588.

<sup>74</sup> EDMC issued Level 2 compliance violations for these statements.

<sup>75</sup> See SACSCOC Disclosure Statement Regarding the Status of Art Institute of Atlanta (Dec. 15, 2016), available at <http://www.sacscoc.org/2016decActionsanddisclosurestatements/Art%20Institute%20Atlanta%20-%20NMC.pdf>; SACSCOC Disclosure Statement Regarding the Status of South University – Savannah, Georgia (Dec. 15, 2016), available at <http://www.sacscoc.org/2016decActionsanddisclosurestatements/South%20University%20-%20BDG.pdf>.

<sup>76</sup> See 6/5/2017 Mystery Shop 343/4011.

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

The Consent Judgment requires EDMC to clearly and conspicuously disclose to all prospective students, prior to enrollment, a Single-Page Disclosure Sheet (or “SPDS”). The Consent Judgment provides a template SPDS to which EDMC’s designed form was to conform, containing the following information:

- (a) the anticipated total direct cost of the program of study at the prospective campus;
- (b) the median debt load for students who complete the program of study, from the most recent reporting period;
- (c) the program cohort default rate from the most recent reporting period;
- (d) the program completion rate from the most recent reporting period;
- (e) the transferability of credits and degrees;
- (f) the median earnings for students who complete the program of study from the most recent reporting period, if available; and
- (g) the job placement rate disclosure for the program of study at the prospective campus for the most recent reporting period, if available.<sup>77</sup>

The Consent Judgment template split these factors out into four basic categories: Time and Cost Estimates, Transfer of Credits and Degrees, Success of Students who Enroll, and Outcomes for Students who Complete.<sup>78</sup> Combined with other Consent Judgment requirements regarding the accuracy of such information, the SPDS is intended to provide important information to students at a critical time in the admissions process.

The SPDS must be *disclosed* to a prospective student twice: once during the application process, prior to the student’s submission of a completed application, and once during the financial planning process, when an EDMC school representative reviews or discusses with the prospective student the completed FAFSA and/or financial plan.<sup>79</sup> In addition, the SPDS must be *discussed* with the student at the second point of disclosure, during this financial planning process.<sup>80</sup>

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<sup>77</sup> Consent Judgment ¶ 56(a)-(g).

<sup>78</sup> See Consent Judgment, Exhibit B.

<sup>79</sup> Consent Judgment ¶ 57.

<sup>80</sup> Consent Judgment ¶ 57.



EDMC designed an SPDS that it calls *Facts You Should Know*. At all EDMC schools, the first disclosure of the *Facts You Should Know* occurs right after the prospective student selects a program in the digital application, and is handled by an admissions representative. The second disclosure occurs right after the financial plan is reviewed, and before the enrollment agreement is signed, though the schools differ in which department handles the second disclosure. At Ai Ground campuses, the financial services advisors are responsible for the mandatory second disclosure and discussion of the *Facts You Should Know*; at Argosy, South, and Ai Online, admissions representatives provide the second disclosure and discussion after the student's financial plan is discussed but before the enrollment agreement is signed.

In the *Facts You Should Know* initial rollout, shortly before the beginning of this review period, EDMC made the document available electronically, via email, and automatically as part of its digital application. Prospective students are also emailed a copy of the document tailored to their program and school of interest during the course of the online tour and application process.

EDMC also created a "*Facts You Should Know – FAQs*" document to provide answers to commonly asked questions regarding the specific statistics and categories of information. The FAQs provide answers to questions like "Will it really take me the time disclosed to graduate?" and "What does 'job placement rate' mean for me?" In this document, EDMC indicates that the information is being provided in connection with the Consent Judgment, and that EDMC does not believe any comparable information is available from other schools or programs a student might be considering. The FAQs are also sent to prospective students via email, as an attachment to the email that contains the *Facts You Should Know*.

At the most basic level of compliance, EDMC has successfully provided the disclosure or discussion of *Facts You Should Know* as required. Because EDMC has integrated the disclosures into the online application, apart from isolated mistakes,<sup>81</sup> the failure of a school representative to disclose the SPDS data has not been a significant problem.

That said, concerns have been raised about the way in which the *Facts You Should Know* data is presented to prospective students. Ultimately, this presents the question of whether a representative is providing disclosure "clearly and conspicuously," and/or if the representative has violated the spirit, if not strictly the letter, of the Consent Judgment. For example, where an admissions representative reads the *Facts You Should Know* data to a student who does not have the document in front of him or her,<sup>82</sup> there is reason to question whether the disclosure is as "clear and conspicuous" as the Consent Judgment contemplates. Similar questions arise when a representative "speed-reads" the *Facts You Should Know*,<sup>83</sup> or merely describes what each section of the document reports but does not read or review the content of those sections.<sup>84</sup> EDMC has

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<sup>81</sup> See Record ID 43761927 (following conversation and creation of financial plan, Argosy financial aid representative did not transfer student back to the admissions representative for the second disclosure and discussion of the SPDS).

<sup>82</sup> See Record IDs 42625094, 42656269, 43183075.

<sup>83</sup> See Record ID 42808174.

<sup>84</sup> See Record ID 43200471.

issued training on this issue to all admissions and financial aid staff, and the Administrator will continue to review it.

## 7. *Job Placement Rates*

One important metric on the Single-Page Disclosure Sheets is the Job Placement Rate, showing the percentage of graduates and completers who are placed in a position in their chosen field of study. While EDMC's transition to a non-profit status will obviate certain *federal regulatory* obligations to calculate and publish this data, the Consent Judgment imposes an independent obligation to calculate the job placement rate according to an exacting formula.<sup>85</sup> Results for the first cohort of graduates and completers subject to this requirement were published in EDMC's Single-Page Disclosure Sheets during this review period.

The First Report noted that EDMC was not likely collecting the data that would be necessary to make one of the Job Placement Rate's most critical determinations. As discussed further below, to determine whether a placement is "in field" or not, EDMC is in certain circumstances required 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>86</sup> The First Report noted that EDMC's post-graduation career services contacts were not likely collecting information necessary for that determination.

Because EDMC had only the information that it had collected, its Single-Page Disclosure Sheets include Job Placement Rates that, for some graduates and placements, relied on a data collection process that the First Report described as asking the wrong question. But even assessing those determinations on their own terms, there are significant questions about the judgments that EDMC made with the data it collected.

More fundamentally, EDMC has concluded that it will *attempt* to collect data addressed at the question that the Consent Judgment requires, but that if it is unable to, it may revert to collecting the information that the Administrator has deemed inadequate. The Administrator has advised EDMC that the data at issue remains unsatisfactory, and that the Administrator is open to considering alternative, compliant proposals for satisfying the Consent Judgment's requirement. EDMC is actively working with the Administrator to address these concerns.

These issues are explained in greater detail below.

### a) EDMC's "Grid" and the Role of Core Skills Determinations

As explained in the First Report, 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 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

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<sup>85</sup> Consent Judgment ¶ 62.

<sup>86</sup> See Consent Judgment ¶ 69(a)(1)(ii).

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>87</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>88</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 difficult determination.

For placements that cannot be resolved using the bright-line, job title test, EDMC uses a system it refers to as “the Grid” for determining whether a placement is “in field.” EDMC’s Grid relies on two sets of information: the formal position description for an employee’s job, and the list of courses that the student took in his or her field. EDMC then lists all of the graduate’s job duties, drawn from the formal position description. Next to each duty, an EDMC representative determines which, if any, of the courses that the student took in school is used in fulfilling that duty. For example, an Interior Design graduate working at a high-end rug store might have, in part, the following links:

<i>Please list individual skills used on the job. Please use the actual job description when available.</i>	<i>Please list the individual core classes taken that teach the respective skill.<sup>89</sup></i>
Rug Design/Composition. Sales of modular carpet in various configurations for various applications.	Residential Design. This course is the design and presentation of a complex residential project with an emphasis on historic precedent.

<sup>87</sup> 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”); *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>88</sup> Consent Judgment ¶ 69(a)(1)(ii).

<sup>89</sup> See Grid for Graduate ID 274703 (Art Institute, Miami).

Proficient in interpreting third party architectural and design drawings with a strong sense of aesthetics.	Construction Documents. This course introduces students to the contract document process for interior spaces.
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In this example, for each of the two job duties identified, the EDMC representative identified a course that the representative believed taught the skill in question.

EDMC would then count the graduate as using the Core Skills of her program if the graduate’s full grid showed that the graduate was using, in the job, at least 51% of the student’s courses. If the student’s program involved 11 “core classes,” EDMC would count the student as placed in field if the EDMC representative concluded on her Grid that she was using 6 of those classes.

Although the Grid attempts to draw a comparison between the students’ coursework and the skills used in the workplace, it draws the wrong one. The Grid does not ask *what percentage of the student’s time is spent using Core Skills?*, but *what percentage of the student’s courses are used?*

b) Links Using the Grid

Taken on its own terms, the Grid’s utility – the reliability of the Core Skills determinations made using it – depends on the propriety of the links that are drawn between each job duty and the courses that are viewed as preparing the student for that responsibility. If a particular course provided the know-how and skills necessary to perform the required duty, the educational experience may indeed have paved the way to that job in some sense. But the less directly related that the courses are to the job duties, the more specious the methodology seems, and the less reliable the Core Skills and placement determinations.

Many of the links that EDMC has made using the Grid call the system’s reliability into question. Focusing on graduates who were deemed to have been placed in-field in culinary-, fashion-, video game-, and interior design-related fields, the Administrator reviewed back-up information for a number of placements. In approximately half the files reviewed, the Core Skills determination using the Grid involved questionable links between courses and duties. Examples included the following:

- A Baking & Pastry graduate, working as a Cook at a zoo, whose “work on fryer station” duty was linked to American Regional Cuisine, Introduction to Pastry Techniques & Artistry, and Latin Cuisine – without any evidence that the fryer station work involved any of those cuisines.<sup>90</sup>
- A Line Cook whose duties were linked to courses in Leadership & Organizational Development and Quality Service Management & Training – a reasonable

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<sup>90</sup> Placement No. 747387.

application of EDMC’s Grid methodology, but one that disregarding the graduate’s statement that he did not manage employees.<sup>91</sup>

- A Pastry Cook at a casino whose job required “math skills as well as the ability to estimate” and an “[a]bility to distinguish letters, numbers, symbols,” which skills were linked to courses in Introduction to Accounting Principles and Foodservice Financial Management.<sup>92</sup>
- A Fit Specialist whose duties “work[ing] with guys that are trying on their suits for the first time and help[ing] them understand the fit,” and then suggesting alterations were linked to Early History of Fashion – a course covering fashion from the Ancient Egyptians through the French Revolution.<sup>93</sup>
- An Interior Design graduate whose work as a Design Consultant at a tile shop required her to “[t]rack store orders and provide customers with updates on product delivery status,” a responsibility that EDMC linked to coursework in Construction Documents.<sup>94</sup>

These links can be viewed through a prism of whether EDMC would have described the class, at the outset, as focused on preparing students for a particular responsibility or position. One can ask, for example, whether an instructor or course materials for Introduction to Accounting Principles would describe the class as aiming to teach students the Core Skills of “math skills,” “the ability to estimate,” and the “ability to distinguish numbers” necessary to serve as a Pastry Cook. That is not how EDMC described the course’s aims in its course catalog; the catalog says that the course “introduces the basic concepts of financial accounting, including the principles upon which the determination of a company’s net income and financial position are based.”<sup>95</sup> It is unlikely that a student who signed up for an Introduction to Accounting Principles course described in those terms would expect the course to be focused on math skills, the ability to estimate, and the ability to distinguish numbers.

In other cases, representatives using the Grid seemed to take a “throw everything at it and see what sticks” approach, listing many classes to support a job skill. In some cases, the approach might reflect that a single duty did indeed reflect the core skills of many classes. In other cases, though, it raised concerns that the additional courses were listed just to reach the 51% threshold EDMC used for counting placement as “in-field” under the Grid. In either case, the listing of many classes for single duties suggested that the Grid lacked the reliability that the Consent Judgment’s provisions required.

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<sup>91</sup> Placement No. 25892492.

<sup>92</sup> Placement No. 21647028.

<sup>93</sup> Placement No. 522292.

<sup>94</sup> Placement No. 2490173.

<sup>95</sup> Art Institute of Indianapolis, 2016-2017 Catalog at 89, available at <http://content.artinstitutes.edu/assets/documents/indianapolis/catalog.pdf>.

- A café Prep Cook’s responsibility for “production” was linked to Management by Menu, Garde Manger, Food & Beverage Operations Management, A la Carte, Art Culinaire, Hospitality Marketing, and Quality Service Management & Training.<sup>96</sup>
- An Alterations Specialist’s nine job duties – from sewing to measuring to cutting patterns – were grouped together, and tied as a group to Fashion Illustration, Trends & Forecasting, Advanced Patternmaking, and Modern History of Fashion.<sup>97</sup>
- For a Game Tester at a video game developer who had studied Media Arts & Animation – a commonly desired job outcome for that program – EDMC linked the outcomes not in a tailored manner, but by linked all 10 of the job duties, en masse, to a set of five courses.<sup>98</sup>

Grouped together in this way, with few ties between particular duties and specific courses, the Grid looks less like a systematic way for evaluating the use of particular skills, and more like an assertion, *ipso facto*, that a job is counted as a placement in field.

That these links and the others like them raise questions does not mean, per se, that a Core Skills analysis cannot involve an exercise of judgment and interpretation. But these judgments call a number of placement determinations – primarily at Art Institute schools, and primarily in culinary, fashion, interior design, and video game programs – into question. If EDMC were to continue using the Grid, it would be expected to insist on tighter links between job duties and related courses.

It would also be expected to end, outright, a particularly troubling practice at one Art Institute school that appeared sometimes to *make up* job responsibilities rather than rely on the student’s actual job description. In most cases at EDMC schools, job duties used in the Grid come either from a published job description or information submitted by the graduate or employer. But for several placements from one Art Institute campus, the school’s version of the Grid explains, “Job Description based on information provided by graduate *and general industry standards*.”<sup>99</sup> Some of the job duties analyzed in the Grid, and then successfully linked to the student’s coursework, appear not to have come from information provided from the graduate. It is unclear where that information actually came from, and the employee who included this on the job grids is no longer employed by EDMC or DCEH. Needless to say, in determining the nature of a student’s job, only one kind of information is relevant: information about that student’s job. Using general industry standards instead of what is actually known about the position in question is inappropriate.

### c) The Propriety of the Grid and Possible Alternatives

Apart from problems in how the Grid has been implemented, there remain broader concerns regarding whether the Grid is even a permissible way to make Core Skills determinations

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<sup>96</sup> Placement No. 848340.

<sup>97</sup> Placement No. 524952.

<sup>98</sup> Placement No. 33768860.

<sup>99</sup> Placement Nos. 2452231, 25673819, & 26977958 (emphasis added).

under the Consent Judgment. As noted above, where the Consent Judgment asks *what percentage of the student's time is spent using Core Skills?*, the Grid asks *what percentage of the student's courses are used?* The First Report described this concern in some detail, noting that EDMC's focus on the formal job description and coursework means that the company does not typically capture how much time graduates spend on different responsibilities associated with the position. The information that EDMC collects for the Grid may indicate the various job responsibilities, but they do not provide a breakdown of the time spent on those various components. This breakdown is important, for example, for a graduate working as a Server/Manager at a restaurant; a job that involves 95% serving is quite different from a job that involves 95% managing.

Following the First Report, EDMC agreed to replace its Grid and collect data that answers the question that the Consent Judgment poses. In EDMC's new standard Core Skills Form, graduates are presented with a summary of their program's Core Skills and asked to fill in the following statement:

After reviewing the core skills listed above, on average, what percentage of the time do you use the core skills in your current employment?

In my current employment, I spend \_\_\_\_% (0-100) of my time using the Core Skills of my program.

To be sure, asking graduates to describe how they spend their time in this way will be imprecise and subjective. But asking the relevant question, as defined by the Consent Judgment, directly is a better proxy than the Grid.

EDMC is implementing this attestation for job placement determinations that will be reviewed in the next review period. EDMC has expressed concern, though, that data collection through the attestation will miss some segment of graduates who were properly placed in field but who do not respond to and submit the attestation form. When relying on the Grid, EDMC was often able to obtain data that it would use – a published job description – even when students did not themselves respond to EDMC's outreach. With the new attestation requiring an affirmative response, EDMC is concerned that students who do not respond may go uncounted, even if placed in field.

The Administrator views EDMC's concern as legitimate, as many students fall out of contact with their alma mater following graduation. The Consent Judgment's goal is not to require a survey response requirement, but to provide accurate information regarding the employment outcomes for graduates of EDMC programs. Accordingly, the Administrator will consider additional proposals from EDMC on how to discern, for graduates who do not respond with the approved attestation, whether the graduate was placed in field. The Administrator will permit methodologies that reasonably assess whether the graduate's job requires her to use, during a majority of the time while at work, the Core Skills of her program.

d) Performance Checks

The Consent Judgment requires EDMC to institute “performance checks of those employees responsible for verifying, calculating, and/or disclosing job placement rates.”<sup>100</sup>

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>101</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.

As discussed in the First Report, EDMC has a process in place to review the accuracy of information used in its job placement statistics. Its third-party verification firm, CompliancePoint, communicates with graduates and their employers to verify initial responses. Data is routinely reviewed, and automated processes check for duplicate entries. The Risk and Compliance department evaluates students who are deemed appropriate for exclusion from the calculations.

**E. Marketing and Third-Party Vendors**

As discussed in detail in the First Report, third-party lead generators play a large role in many prospective students’ experience of the for-profit education industry. These vendors are paid by educational institutions like EDMC to provide names and contact information of consumers who might be interested in the schools’ services.

During the first year of the Consent Judgment, EDMC implemented a number of new policies and initiatives. It began to reduce its reliance on certain kinds of third-party vendors, imposed new requirements on vendors that used “job sites” in order to attract customers who might be interested in furthering their education, modified its contracts with marketing vendors to ban certain forms of advertising and to require certain consumer-friendly practices, and created a new Marketing Vendor Compliance Guide.

With those initiatives under way, this second year of the Consent Judgment has focused more on implementing and carrying through the reforms than on additional affirmative change.

*1. EDMC’s Use of Pay-Per-Lead Vendors*

EDMC’s marketing efforts have historically emphasized “Pay-Per-Lead” efforts, in which vendors sell the contact information for specific individual consumers to EDMC’s brands. EDMC pays for each individual lead that it receives from the vendors. Absent significant consequences for abusive or misleading tactics in generating leads, these vendors have an incentive to push the envelope of what is “permitted” and blatantly violate compliance guidelines. And compared to

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<sup>100</sup> Consent Judgment ¶ 70.

<sup>101</sup> Consent Judgment ¶ 70.



web advertising, television commercials, and radio commercials, PPL vendors' communications with consumers can occur relatively privately and outside the eye of even the most diligent clients, like EDMC, and regulators. Pay-per-lead is a risky business.

EDMC has been reducing its reliance on PPL marketing over the course of the Consent Judgment. Prior to the Consent Judgment's effective date, approximately 68% of EDMC's leads came from Pay-Per-Lead channels. Efforts to reduce that reliance initially varied across the EDMC schools, with Ai – which has announced an intent to eliminate PPL marketing entirely – targeting an 80% reduction in PPL spending for FY 2017,<sup>102</sup> and Argosy and South targeting 11% and 12% reductions, respectively.<sup>103</sup> For FY 2018, EDMC is targeting a further 70% reduction in PPL spending across each of the three brands – an overall drop in PPL spending from \$40 million in FY 2017 to \$12 million in FY 2018.<sup>104</sup>

DCEH has suggested that it intends to continue reducing EDMC's reliance on PPL vendors. This shift is beneficial from a compliance perspective, as it reduces a source of advertising that has proven prone to abusive tactics. Those making the shift, however, also believe that it will also pay off financially. By moving to paid search and other more traditional forms of advertising, they believe that the company will get higher-quality leads who are actually interested in the service that EDMC is selling.

## 2. *EDMC's Use of Job Sites*

EDMC has also continued to reduce its reliance on PPL leads that originate from so-called “job sites.” While the details may vary, job sites are websites that use the promise of potential job opportunities to attract consumers – and then collect the consumers' contact information and provide it to others, like EDMC, who intend to sell a different product (education) but believe the consumer's demonstrated interest in finding a job may make the consumer favorably inclined towards that other product. At their worst, these sites are predatory and deceptive.

EDMC's shift away from PPL marketing generally will mean a corresponding reduction in its purchase of leads obtained via job sites. And indeed, EDMC and its schools are continuing to reduce their Job PPL spending. While Job PPL spending remains about 1/3 of overall PPL spending,<sup>105</sup> the overall reduction in PPL spending has meant a significant drop in Job PPL dollars: Ai targeted a 71% reduction in Job PPL spending for FY 2017, and Argosy and South targeted reductions of 57% and 50%, respectively.<sup>106</sup> For FY 2018, EDMC is aiming for a further 64-69% reduction in each school's Job PPL spending.<sup>107</sup>

While EDMC continues to rely on leads generated by job sites, the content of those sites has improved since the Consent Judgment came into effect. EDMC worked, before this review

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<sup>102</sup> EDMC's fiscal year covers July 1 through June 30. So the present review period encompassed the last three quarters of FY 2017 and the first quarter of FY 2018.

<sup>103</sup> EDMC PPL Compliance (Sept. 2016), at 2.

<sup>104</sup> Vendor Job Data, Email from A. O'Donovan to B. Hauck (Oct. 4, 2017).

<sup>105</sup> Vendor Job Data, Email from A. O'Donovan to B. Hauck (Oct. 4, 2017).

<sup>106</sup> EDMC PPL Compliance (Sept. 2016), at 2.

<sup>107</sup> Vendor Job Data, Email from A. O'Donovan to B. Hauck (Oct. 4, 2017).

period, to revise the “pathing” used to generate leads for EDMC from job sites to include more conspicuous and direct questions, and to require consent to be contacted about educational opportunities. As a result, vendors are required to – among other things, and as described in more detail in the First Report – specifically ask whether a consumer is interested in furthering his or her education. EDMC also requires its vendors to include an unequivocal negative response as an option for that question: “No,” or “No, I am not interested.” While vendors may pass along leads to EDMC for consumers who give equivocal responses, like “Maybe” or “Maybe Later,” vendors may not provide EDMC with a lead for a consumer who chose the negative response.

As the First Report noted, this prohibition on vendors transferring job site leads who clearly do not want to further their education is a step in the right direction, and EDMC is receiving fewer “job only” calls than it did at the beginning of the Consent Judgment. That said, EDMC’s prohibition on vendors transferring callers who unequivocally deny interest in education is nonetheless a half measure. In EDMC’s own discussions with prospective students, its “confirm educational interest” standard means that only students who *actually say yes* are treated as being interested in pursuing discussions further. Indeed, prospective students who inform an EDMC admissions representative that they are interested in a job, not school, used to be pressured into talking about school; today, the representative routinely, and politely, ends the call. EDMC’s Marketing Vendor Compliance Guide has imposed a similar standard on the vendors who provide EDMC with leads.

### 3. *Compliance Guides*

EDMC also updated its Marketing Vendor Compliance Guide during this review period, to become effective on January 9, 2017. EDMC shared a draft of the updated guide with the Administrator team before it was finalized, and made revisions to the guide in response to feedback from the Administrator.

The Marketing Vendor Compliance Guide covers a wide range of topics relating to the Consent Judgment’s requirements. 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>108</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>109</sup>

The Guide also lays out the sanctions that must be imposed for violations of EDMC’s standards – including both Termination Violations covered by Paragraph 111(a) of the Consent Judgment, such as webpage statements that a prospective student has qualified for aid as a result of a drawing or raffle, and lesser, Non-Termination Violations. Both the Consent Judgment and the Marketing Vendor Compliance Guide impose increasingly longer “pauses” for Termination and Non-Termination Violations that do not receive proper action within five days. On the third

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<sup>108</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 2017), at 3. This definition mirrors the one provided in the Consent Judgment. Consent Judgment ¶ 4.

<sup>109</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 2017), at 4-5.

Termination Violation within 180 days, 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>110</sup> – unless, under the Consent Judgment, 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>111</sup> The penalties for a third Non-Termination Violation, over a 12-month rolling period, are slightly different: 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 (1) year.”<sup>112</sup>

A number of the changes in EDMC’s January 9, 2017 update to the Marketing Vendor Compliance Guide add specificity to the Guide’s existing restrictions on online vendors. New changes clarify that in advertising the availability of grants to prospective students, vendors “must clearly state that eligibility is a requirement,” and in discussing grants “must state the correct amount of aid available.”<sup>113</sup> The new guide also bars online vendors from using incentives, including gift cards, to recruit students; from sending electronic communications in violation of any laws, including the CAN-SPAM Act and the Children’s Online Privacy Protection Act (COPPA); and from using swear words when communicating with a prospective or former student or member of the public.<sup>114</sup>

The most significant change to the Marketing Vendor Compliance Guide was the incorporation and expansion of EDMC’s internal policy governing *call centers*, not just online vendors. EDMC’s new Call Center Compliance Monitoring & Enforcement Policy was created for two reasons.

First, the Consent Judgment’s provisions governing Non-Termination Violations (discussed above) encompass call centers,<sup>115</sup> but its provisions governing Termination Violations are limited to representations made on a “webpage, electronic communication, or other online advertisement” and do not expressly refer to call centers.<sup>116</sup> The new Call Center Compliance Monitoring & Enforcement Policy is designed to promote compliance by call centers through an additional level of enforcement. Whereas Paragraph 110’s treatment of Non-Termination Violations allows for a suspension of pausing based on the vendor’s remediation efforts, the new policy provides for pausing, in certain circumstances, even if the issue is remediated.

Second, the significantly higher number of calls that EDMC is now monitoring, with the speech analytics system required by the Consent Judgment, rendered EDMC’s prior thresholds for

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<sup>110</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 2017), at 17.

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

<sup>112</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 2017), at 17.

<sup>113</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 2017), at 8.

<sup>114</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 2017), at 9.

<sup>115</sup> Consent Judgment ¶ 110.

<sup>116</sup> Consent Judgment ¶ 111(a)(1), (2), & (3).

sanctioning its vendors, in EDMC's view, impracticably low. Under the policy that EDMC had implemented in November 2015, three call center violations within a rolling 10-week period would result in a thirty-day pause. If, following reinstatement, the call center received an additional three violations within a second rolling 10-week period, it would be paused again for a least thirty days. Another three violations within a rolling 10-week period would result in a one-year pause.

EDMC set those three-violation thresholds when it was conducting manual, random reviews of a select sampling of calls. EDMC's goal during that time was to monitor and review each admissions and financial services representative approximately once every two weeks. As discussed above, EDMC's speech analytics software now enables it to conduct at least some level of monitoring for a vastly increased number of calls. As EDMC may now review between 8,000 and 10,000 calls from a single vendor in a single week, it concluded that the previous numerical thresholds, which were not required by the consent judgment, were no longer properly calibrated.

Whereas the Consent Judgment's provisions for Non-Termination Violations count call center violations over a rolling 12-month period, this policy counts violations over rolling 10-week periods.<sup>117</sup> And whereas those Consent Judgment provisions do not provide for pausing if the vendor demonstrates that it is remediating the problem, this policy requires pausing if there are repeated, significant numbers of violations, regardless of whether they are being remediated.<sup>118</sup> The thresholds for pausing depend on the volume of calls that the vendor uploads into EDMC's speech analytics system for review. The basic prohibition is that once a vendor has had three weeks, within the 10-week period, in which it violates its threshold, then the vendor will be paused, regardless of remediation.<sup>119</sup> For vendors with fewer than 100 calls in a week, 3 infractions will make the week count towards a pause; the thresholds increase incrementally, until for vendors with over 1,000 calls, infractions affecting more than 0.5% of the vendor's calls will make the week count towards the pause. If there are three such weeks in a 10-week period, the vendor will be paused for 30 days. If, upon reinstatement, the vendor has another three such weeks in the next 10-week period, the vendor will be subjected to another 30-day pause. If it happens again, in the subsequent 10-week period following reinstatement, the vendor will be paused for at least one year.<sup>120</sup>

The new policy states that “[t]he consequences identified in this Policy are in addition to any processes and consequences required by the Marketing Vendor Compliance Guide.”

#### 4. *Enforcement Efforts*

Needless to say, EDMC's imposition of “consequences” for vendors that violate the terms of its Compliance Guide is a *sine qua non* of a compliant third-party vendor program. As discussed in the First Report, EDMC enlists a number of compliance-related vendors to assist it in identifying violations – and in tracking the leads that EDMC receives – back to the non-compliant material and vendor that generated them:

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<sup>117</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 9, 2017), at Appx. B, 26-27.

<sup>118</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 9, 2017), at Appx. B, 26.

<sup>119</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 9, 2017), at Appx. B, 26.

<sup>120</sup> EDMC, Marketing Vendor Compliance Guide (updated Jan. 9, 2017), at Appx. B, 26.

- One vendor, Jornaya, looks at EDMC’s vendors’ web materials (though not vendors’ affiliates’ materials) to assess whether consumers provide adequate permission to be contacted.
- A second vendor, Omniangle, “mystery shops” the internet and tracks the representations that are made to consumers on their way to becoming a lead – and can identify many of the affiliates, call centers and other companies that are involved in creating the user’s experience.
- A third vendor, PerformLine,<sup>121</sup> crawls the internet in search of uses of EDMC brands, and flags instances in which the brands are used in connection with certain keywords. EDMC then reviews those pages to assess whether its vendors are portraying the schools in a manner consistent with its policies.

Finding violations and tracking them back to the responsible source is extremely difficult in this environment. Ultimately, EDMC receives a *lead* – a name and contact information, for example – from a vendor that may have obtained the contact information directly from the consumer through one of its ads, or that may have purchased the information from a sub-vendor or affiliate that either was responsible for the original ad or purchased it from *another* party. In the ordinary course, EDMC will rarely know *who* was responsible for any given lead; it is even more difficult to know *which ad produced that lead*. EDMC’s investigative partners are thus critical – as are the consequences that EDMC imposes for any problematic leads that they identify.

EDMC identified a total of 592 violations during this review period, across all of its vendors. One vendor accounted for 184 of those violations; seven other vendors each had more than 25 violations; and the remaining 134 violations were spread across 31 vendors.

EDMC has generally imposed the consequences that the Consent Judgment dictates when its thresholds are crossed. But those 592 violations resulted in only a handful of pauses during this review period. The pauses are relatively rare because under the Consent Judgment does not require a pause merely because a vendor reaches a certain number of violations; the violations must be of a certain nature – *Termination Violations*<sup>122</sup> – to require EDMC to take action based solely on the number of violations. The pauses based on those violations are discussed in the next section. The Consent Judgment requires a pause based on Non-Termination Violations only when the violations are uncorrected within five days.<sup>123</sup>

a) Non-Termination Violations and Pauses

As discussed above, the Consent Judgment imposes a series of increasingly long “pauses” for online vendors that engage in Non-Termination Violations<sup>124</sup> and fail to correct the violation

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<sup>121</sup> PerformLine also provides the PerformMatch speech analytics system that is used to monitor EDMC’s calls with prospective students.

<sup>122</sup> Termination Violations are defined in Paragraph 111 of the Consent Judgment.

<sup>123</sup> Consent Judgment ¶ 110.

<sup>124</sup> Paragraph 107 of the Consent Judgment creates a category of “Non-Termination Violations” that consist of, for example, advertisements that promise “free” education financing, or transferring prospective

within a specified time period. For a vendor's first Non-Termination Violation within a rolling 12-month period, if the vendor does not correct the violation within five days, EDMC must pause the vendor's campaign until the violation is corrected.<sup>125</sup> For a second violation that is not corrected within five days, EDMC must pause the campaign for at least 30 days.<sup>126</sup> For a third violation within that same rolling 12-month period, the pause is to last at least a year.<sup>127</sup>

Because almost all of EDMC's vendors have a median response time of two days or fewer, pauses are rarely required under the Consent Judgment. Indeed, only one vendor received a pause during this review period for a failure to implement corrective action within five days. That vendor corrected its issue during its pause, and accordingly was removed from pause before it had expired.

#### b) Termination Violations and the 1% Exception

In addition to the pauses that the Consent Judgment requires for Non-Termination Violations that are not corrected within five days, the Consent Judgment also imposes "terminations" – really, 90-day pauses – when a vendor has three "Termination Violations," corrected or not, in a 180-day period.<sup>128</sup> Termination Violations are for the more serious offenses, like representing educational opportunities as an employment application, or stating that a student has won a scholarship as a result of a raffle.<sup>129</sup> While these terminations, like the pauses for Non-Termination Violations, counteract the incentives for vendors to send EDMC non-compliant leads, EDMC's experience shows important limits on its ability to impose "downstream" change on its vendors' practices. The requirements for terminations do not apply "if [] EDMC and/or the Third-Party Lead Vendor document to the reasonable satisfaction of the Administrator that the three Termination Violations that would otherwise have triggered the [termination obligations] 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>130</sup> This "1% Exception" provides a safe harbor for lead generators who consistently pass on problematic leads as long as their portfolio is not widely infected.

During this review period, seven vendors crossed the Termination Violation threshold and would have received terminations. Two received the 90-day pauses required by the Consent Judgment. EDMC sought permission to exempt a third one, on the grounds that its non-compliant leads constituted less than 1% of its total volume; but the Administrator identified a math error in EDMC's analysis, and the vendor has been paused.

Ultimately, the remaining four of those seven were protected by the 1% Exception. One vendor that sold EDMC 6,211 leads during an approximately 10-week period included five leads

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students to EDMC absent an express indication that the consumer is interested in educational opportunities. *E.g.*, Consent Judgment ¶¶ 107(c), (e).

<sup>125</sup> Consent Judgment ¶ 110(a).

<sup>126</sup> Consent Judgment ¶ 110(b).

<sup>127</sup> Consent Judgment ¶ 110(c).

<sup>128</sup> Consent Judgment ¶ 111(b).

<sup>129</sup> Consent Judgment ¶ 111(a).

<sup>130</sup> Consent Judgment ¶ 111(b).

from non-compliant material, or 0.08% of its portfolio. A second vendor, over six months, had between zero and 30 non-compliant leads – the precise figure is unknown, because the vendor could not trace which leads came from a set of non-compliant ads<sup>131</sup> – out of 26,927 total leads, or 0.11% of its portfolio. And a third vendor may have had up to 343 non-compliant leads over six weeks – again, the precise figure is unknown – out of 41,719 total leads sold during that period, resulting in up to 0.82% non-compliance. The fourth followed a similar pattern. Over the periods in question, the four vendors repeatedly provided EDMC with leads that stemmed from non-compliant advertising, but avoided termination because the leads constituted a relatively small percentage of the vendors’ overall portfolios.

All of the instances in which EDMC invoked the 1% Exception share a common characteristic that highlights the difficulties of enforcing compliance downstream: None of the non-compliant leads actually originated with EDMC’s vendor. In each case, it was some third-party that produced the non-compliant advertising and obtained the prospective student’s contact information. That third party – perhaps a sub-vendor of EDMC’s, or perhaps a “sub-sub-vendor” or entity even further down the chain – sold the lead to others, and it ultimately ended up in EDMC’s hands. EDMC will know from whom EDMC purchased the lead, but it will not be in a position to identify the sub-vendor, let alone a sub-sub-vendor, unless the vendor tells EDMC where *it* purchased the lead. And ultimately, the sub-vendor or sub-sub-vendor that created the original problematic content may have also sold other leads directly to EDMC, or indirectly to EDMC via other vendors. Because EDMC, for the most part, knows only who it purchased the leads from directly, it is unlikely to know the full scope of non-compliance of any of its sub-vendors.

Thus, while a vendor with three or more Termination Violations may face consequences from EDMC, a sub-vendor that is responsible for that number or more Termination Violations may go entirely unnoticed. While a vendor that sells those non-compliant leads on to EDMC could choose to “un-mask” the problematic sub-vendor during its subsequent discussions with EDMC, EDMC would not be able to know if the sub-vendor were responsible for other non-compliant leads coming in through other paths.

While EDMC may not be in contractual privity with the problematic sub-vendors, EDMC could, either working alone or, more effectively, with others in the industry, effectuate change. The problem is the inability to identify the source of the original (sub-)vendor from whom a lead is obtained, and to trace leads back to particular advertisements. Institutions that did business only with vendors who agreed to both track and provide relevant information about the source of their leads, *and* to require that their sub-vendors further downstream vendors do the same, would be better positioned to achieve compliance across their portfolios.

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<sup>131</sup> That is, the vendor knew that one or more of its sub-vendors used non-compliant advertising, and knew how many leads came from the sub-vendors in question. But because EDMC was unable to determine which leads came from the particular non-compliant advertising (as opposed to other, compliant advertising by those sub-vendors), these figures assume that *all* of that leads that came through the sub-vendors in question were non-compliant.

## F. Implementation of Electronic Financial Impact Portal (EFIP)

The Consent Judgment requires all prospective students who are eligible for financial aid and who are borrowing funds to finance their education to use an Electronic Financial Impact Platform – or “EFIP” – prior to enrolling in a program of study.<sup>132</sup> The EFIP is an interactive, internet-based program that produces a personalized disclosure of the financial impact to a particular student of pursuing a given program and incurring a specific amount of debt.<sup>133</sup>

The Consent Judgment requires that prospective students be able to obtain personalized information about the financial consequences of their education decisions based on information that they provide to the EFIP. Using information that the students provide about their sources of funding, such as scholarships, grants, student contributions, federal and private loans, as well as post-graduation expenses,<sup>134</sup> the EFIP’s customized disclosure must estimate the costs, debt, income, and expenses that each prospective student should anticipate taking on as a result of enrolling in the specific program. Specifically, the EFIP must show:

- (a) the prospective student’s anticipated total direct costs in pursuing the program of study;
- (b) the prospective student’s cost of attendance, including each component thereof;
- (c) the prospective student’s total debt at the time of repayment and the corresponding monthly loan payments over a term of years based on current interest rate information;
- (d) the prospective student’s income if he/she successfully graduates from the program of study; and
- (e) the prospective student’s post-graduation expenses, including personal financial obligations such as rent or mortgage payments, car payments, child care expenses, utilities, and the like.<sup>135</sup>

The EFIP must also provide information about the program of study, including program completion rates, the median debt burden for graduates of the program, and the default rate for graduates of that program.<sup>136</sup>

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<sup>132</sup> Consent Judgment ¶ 71.

<sup>133</sup> Consent Judgment ¶ 17. The Consent Judgment’s requirement that a prospective student generate a personalized disclosure using the EFIP applies only in the pre-enrollment period. The Consent Judgment notes that “in the event that a Student chooses to revisit the [EFIP] after enrolling in a Program of Study, EDMC shall not have any additional obligations to that student under this paragraph.” *Id.* ¶ 71.

<sup>134</sup> Consent Judgment ¶ 17.

<sup>135</sup> Consent Judgment ¶ 17.

<sup>136</sup> Consent Judgment ¶ 17.



Under the Consent Judgment, EDMC could choose whether to implement an EFIP that was developed by the Consumer Financial Protection Bureau (“CFPB”) or develop its own product, in-house. The Consent Judgment required that EDMC “undertake reasonable efforts” to provide feedback to the CFPB with regard to any preliminary versions of the EFIP platform that CFPB presented to EDMC.<sup>137</sup> Once CFPB’s final version of the EFIP was ready to implement, EDMC had sixty days from receipt of the EFIP to determine whether it would use the CFPB’s tool.<sup>138</sup> EDMC chose to use the EFIP developed by the CFPB.<sup>139</sup>

EDMC’s use of the CFPB’s EFIP went into effect on April 9, 2017. As of that date, all prospective students looking to enroll in a program of study at an EDMC school have to complete a section of the application called *Understanding Your Financial Aid*, which is the interactive EFIP that EDMC adopted. This portion of the application must be completed before the prospective student can sign an enrollment agreement, and it follows completion of the student’s financial aid plan. Data from the financial aid plan is transferred into the EFIP, and the resulting *Understanding Your Financial Aid* product is made available to the prospective student via a link sent to the student by email. *Understanding Your Financial Aid* is broken out into three steps that allow the student to (1) review the student’s first-year financial aid offer, (2) evaluate the financial impact of accepting that financial aid offer, and (3) learn about options for reducing the anticipated student debt load.<sup>140</sup>

In Step 1, the EFIP pulls data in from the financial aid award letter, and then allows the student to adjust the amounts of resources and expenses, including funding sources and any personal or other contributions, and automatically recalculates the estimates whenever a value is changed. While prospective students can adjust the cost input, such as tuition and housing costs, the EFIP reminds students that those changes will not alter the financial aid offer or the student’s eligibility for grants or loans.<sup>141</sup> After the student adjusts the costs, contributions, or loans, the student is provided a Debt Summary that shows the amount of money the student would need to borrow for the first year and for the total program, as well as a total repayment amount. The total repayment amount assumes a standard 10-year repayment plan and no change in interest rates or fees for the duration of the program.

Step 2 provides the prospective student with information on the role that factors like graduation rates and expected salary can play with respect to the student’s ability to repay student debt. The EFIP analyzes the student’s data in light of relevant information about the school’s or

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<sup>137</sup> Consent Judgment ¶ 72.

<sup>138</sup> Consent Judgment ¶ 72.

<sup>139</sup> Had EDMC determined not to use the EFIP developed by the CFPB, the Consent Judgment established a process through which EDMC would have worked, with the Administrator and in consultation with the Attorneys General, to develop its own EFIP. Consent Judgment ¶ 73.

<sup>140</sup> Before delving into the EFIP process, a prospective student selects the estimated years it will take to complete the program, which may be shorter or longer than the program’s designed completion time. The student’s anticipated completion timeframe impacts later calculations, including the student’s total anticipated debt after graduation.

<sup>141</sup> Any changes the student makes at this stage will not be visible to the school and will not be reflected or updated in the student’s financial plan.

program's graduation rate, median earnings of prior graduates,<sup>142</sup> estimated monthly payments and debt, repayment options,<sup>143</sup> and other relevant information. Based on that analysis and the student's anticipated living expenses, the EFIP calculates the student's total estimated debt burden and projected loan payments. It also provides loan default rates for the selected program of study, as well as a link to default rates for the entire school, and provides a brief explanation of what can happen to students who default on their student loans. The tool also embeds some advice about a student's anticipated debt burden, offering a "general rule of thumb" that students should avoid borrowing more for school than they will earn during their first year out of school.

Step 2 also requires students to acknowledge their review of the *Understanding Your Financial Aid* tool before completing the enrollment process. After being shown the final estimate of their anticipated debt burden, students must indicate whether they understand how that debt may impact their future finances. Students must select either "Yes" or "Not sure" to the following (customized) sentence:

"It's estimated you'll owe \$[**amount of debt**] to earn a degree in [**program**] at [**school**]. Do you better understand how this may impact your future finances?"

A student's response to this question is not shared with the school, and does not affect the student's ability to accept or reject the school's financial aid offer. Regardless of the student's answer, the EFIP then allows the student to continue the enrollment process or revisit the financial aid plan with a financial aid representative.

Once a student selects a response to the concluding prompt, nothing more is required with respect to the EFIP. Step 3 appears after the prompt is answered, however, to provide ideas and identify other resources for the student to explore that might improve the affordability of attending school, including decreasing the amount borrowed or increasing post-graduation earnings. The student can print a copy of this information for future use.

EDMC's implementation of its *Understanding Your Financial Aid* EFIP tool was executed without major issue. The Administrator's monitoring has not identified any problems, and EDMC reports that since the tool went live, no problems have been reported. The Administrator will continue to keep monitoring the execution of this requirement.

## **G. Orientation and Withdrawal Policies**

### *1. Orientation Requirement*

Under Paragraph 103 of the Consent Judgment, EDMC must require most incoming students to complete an online and/or in-person orientation program prior to the student's first

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<sup>142</sup> This is the same median earnings that can be found in the Single-Page Disclosure Sheet, *Facts You Should Know*, that prospective students review during the application process. If median earnings are not available for the program, the EFIP will display "Typical salary for this school," which is the earnings of students who started attending the school ten years ago.

<sup>143</sup> The option to break out repayment over a ten- or twenty-five-year period is given only to prospective students with a certain threshold amount of anticipated debt.

class, at no cost to the student.<sup>144</sup> The orientation program must address topics such as study skills, organization, literacy, financial skills, and computer competency.<sup>145</sup> During the course of the orientation period, a student must be able to withdraw from enrollment without any cost, and any grants or financial aid received on behalf of the student must be returned to the grantor or lender.

The orientation program was required to be approved by the Administrator in consultation with the Attorneys General. As reported in the First Report, EDMC provided the Administrator with advance access to the materials for each education systems' orientation program, which the Administrator reviewed and found consistent with the requirements of the Consent Judgment. EDMC's orientation course was fully implemented as of June 29, 2016.

EDMC's education systems vary in how they track the orientation requirement. Ai and Argosy have largely centralized their compliance. Students cannot begin classes until they have completed orientation, and this requirement is tracked and monitored at the campus or school level. Through some combination of regular tracking reports at each campus, Orientation Facilitators, and final reconciliations before the start of each term, students who fail to complete the orientation program by the start of their terms must be processed as a cancelled student or must change his or her start date. Schools are advised that a student listed as incomplete may not be allowed to attend class, unless that student has received an approved extension.

Unlike Ai and Argosy, South University does not have any centralized oversight of its compliance with the orientation requirement. Responsibility for ensuring compliance with this provision is instead delegated to campus-level staff. EDMC has identified potential issues with South Ground campuses that merit further investigation. The Administrator will be reviewing the follow-through on this issue closely.

## 2. *Withdrawal Requirement*

The Consent Judgment also requires EDMC to comply with certain refund practices for newly enrolled students who withdraw shortly after they enroll EDMC. The refund policy covers students who are newly enrolled in an EDMC undergraduate program and who have fewer than 24 credits of post-secondary education – essentially non-transfer, first-term enrollees.<sup>146</sup> Students at EDMC ground schools who meet those criteria and withdraw within seven days of the start of their first term – or 21 days for students in online programs – are entitled to a full refund of their tuition and fees.<sup>147</sup> Further, while EDMC may retain the full amount of tuition and fees for students who attend 60% or more of an academic term, students are entitled to a proportionate refund for students who withdraw at an earlier point in a term.<sup>148</sup> EDMC must publish its refund policies in

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

<sup>145</sup> Consent Judgment ¶ 103.

<sup>146</sup> Consent Judgment ¶ 104.

<sup>147</sup> Consent Judgment ¶ 104.

<sup>148</sup> Consent Judgment ¶ 105.

its schools' enrollment agreements,<sup>149</sup> and may not change those policies to the students' detriment without Administrator approval.<sup>150</sup>

EDMC has complied with these withdrawal requirements.

a) Refunds

The Administrator used two primary tools to assess EDMC's compliance with the Consent Judgment's refund provisions: reviews of individual student accounts to ensure that withdrawing students received the refunds owed them based on the date they were recorded as having withdrawn, and a review of EDMC practices and overarching data to assess whether EDMC students were properly withdrawn on the "correct" date of their withdrawal or whether EDMC in any way slow-walked withdrawals in order to maximize the amounts that EDMC could retain.

To review individual student withdrawals, the Administrator obtained enrollment data for all newly enrolled students who withdrew from non-graduate programs at Ai, Argosy, and South, including both ground campuses and online programs, after July 1, 2016. The data included students who withdrew before class started, having never attended class, and students who withdrew after classes began.

From this data, the Administrator's team reviewed samples of individual student ledgers to confirm that students who withdrew before classes began or within seven days of the start of ground schools or 21 days of the start of online schools received full refunds. The Administrator's review did not identify any students who were entitled to full refunds who did not receive them. However, in one instance, a student enrolled in an Ai ground school did not receive a refund of a \$50 application fee. The Administrator has accepted EDMC's explanation that the application fee was paid on December 3, 2015, prior to the signing of the Consent Judgment. EDMC also noted that Ai schools no longer have an application fee.

EDMC also properly provided partial refunds to students who withdrew after the seven- or 21-day periods but before the 60% cut-off for EDMC to retain all funds. Again, student ledgers were pulled from different EDMC schools and campuses. The amount of the partial refund owed varied depending on the school's published policies, many of which were tailored to comply with individual state law requirements. The Administrator's review did not identify any students who were entitled to partial refunds who did not receive them.

Because the amount of the refund owed is tied directly to the date on which the student is recorded as withdrawing, it was also important to assess whether EDMC properly withdrew students on the date required, and did not let withdrawals linger in order to claim more of the students' tuition and fees. If a student attempted to withdraw on Day 6 of a ground campus program, for example, but was not recorded as withdrawing until Day 8, the student would not receive the full refund to which she was entitled.

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<sup>149</sup> Consent Judgment ¶ 104.

<sup>150</sup> Consent Judgment ¶ 105.

To look for the kinds of delays that would harm students' refund claims, EDMC registrars from a number of EDMC ground campuses – who would have been in a position to witness those delays, but not themselves have caused it –were interviewed about the withdrawal process and their experience of it. The interviews did not indicate any pattern or frequency of problematic withdrawals. Indeed, the official withdrawal date is determined not based on when the student's withdrawal is processed, but is dated back to the student's last day of attending class, which means that EDMC would have little incentive to delay processing withdrawals. Those last dates of attendance are recorded as part of EDMC's ordinary business processes, either in class by course instructors or through student postings in online course forums. None of the registrars interviewed indicated having witnessed or suspected attempts to manipulate those dates.<sup>151</sup>

This conclusion is consistent with data regarding the dates on which EDMC students tend to withdraw. If EDMC systematically delayed withdrawals in order to maximize its revenue, there would likely be a spike in withdrawals immediately following the seven- and 21-day cut-offs for full refunds. In fact, there is not an unusually high distribution of withdrawals following those cut-offs. To the contrary, the days immediately following the cut-offs are relatively modest periods of withdrawal.<sup>152</sup>

b) Enrollment Agreements

EDMC adequately advises students that refunds are available if they withdraw within seven days at a ground campus or 21 days at an online school. The Consent Judgment requires that the availability of these refunds in each school's enrollment agreement.<sup>153</sup> Ai, Argosy, and South ground program enrollment agreements all contain the following language:

The Initial Period of Enrollment allows first-time undergraduate students the ability to begin classes as a non-regular student, without any financial penalty, to determine if our school and educational program are right for the student. Students who enroll may cancel their enrollment prior to the start of the term or within seven (7) calendar days following the first day of the student's first scheduled class, whichever is later (referred to as the "Initial Period").

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<sup>151</sup> The Administrator also interviewed personnel from EDMC's Centralized Finance Team, which is responsible for calculating refunds for both individual student accounts and federal financial aid purposes. EDMC's Centralized Finance Team reviews attendance and withdrawal information in real time as the information is reported from the various campuses. While data entry of withdrawal dates is susceptible to human error, the subsequent calculations regarding students' refund eligibility are automated, and internal controls and an additional quality assurance process are used to ensure that students' statuses are correctly determined.

<sup>152</sup> The Administrator also reviewed student complaints relating to the withdrawal process. While a very small handful claimed that they had withdrawn earlier than they were given credit for, EDMC's documentation suggested otherwise. At most, the incidents appear to have been one-off customer service issues rather than any intention effort to delay withdrawals to maximize revenue.

<sup>153</sup> Consent Judgment ¶ 104.

Ai, Argosy, and South online programs have equivalent language, modified to reflect the longer 21-day period for withdrawal that the Consent Judgment provides for online schools.<sup>154</sup> The disclosures in these enrollment agreements are adequate.

c) Administrator Approval of Policy Changes

The Consent Judgment also requires EDMC to obtain Administrator approval of any changes to its internal policies regarding “calculating the percentage of tuition and fees and other educational costs that a Student remains obligated to pay upon withdrawal in a manner that results in the policy becoming less favorable to Students.”<sup>155</sup> This requirement pertains primarily to the Consent Judgment’s and Department of Education regulations’ provisions that permit schools to retain a portion of tuition, fees, and costs for portions of an enrollment period that a student attends, but bars schools from retaining, when a student has attended less than 60% of the academic term, tuition, fees, or costs associated with the portion of the term after the student withdrew.<sup>156</sup>

EDMC’s refund policies have stayed largely the same since the Consent Judgment came into effect, varying slightly from school to school in accordance with state law requirements and based on the schools’ academic calendars.<sup>157</sup> There was one primary change during this review period: a shortening of the time in which Ai students can return their “starting kits” in resalable condition for a full refund.<sup>158</sup> Because that modification did not involve a change to the manner in which the schools “calculate[e] the percentage” of tuition, fees, and costs owed, it did not require Administrator approval.

#### IV. FUTURE WORK

At this point, all of the Consent Judgment’s provisions have come into effect. The Administrator has engaged in both ongoing review of EDMC operations and targeted inquiries into its compliance with particular Consent Judgment provisions. Over the upcoming year, the Administrator expects to devote extensive attention to any backsliding that may occur following the DCEH transaction. DCEH has indicated a commitment to a strong compliance culture, but maintaining forward progress on these issues requires strong investment of resources, talent, and leadership attention.

There are also a number of areas, noted in this report, on which the Administrator expects to see additional progress over the coming year. EDMC will be revising its process for collecting job placement data, and will be providing further information on South University’s implementation of the Consent Judgment’s orientation requirement. And the Administrator will continue to review how EDMC explains its *Facts You Should Know* document, and ensure that EDMC implements effective corrective actions where problems arise. The Administrator will also

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<sup>154</sup> Consent Judgment ¶ 104.

<sup>155</sup> Consent Judgment ¶ 105.

<sup>156</sup> Consent Judgment ¶ 105; 34 C.F.R. § 668.22(e) & (f).

<sup>157</sup> Whereas Ai typically operates in 11-week terms, Argosy and South typically offer three five-week “sessions” within a 15-week term, thus requiring slightly different methods for calculating how much of the term is completed and the periods for which refunds are owed.

<sup>158</sup> See EDMC Refund Policy at 3 (change effective April 1, 2017).

finalize its review of compliance with Consent Judgment ¶¶ 120-21, which require EDMC to forgo collection on institutional debt owed by certain qualifying students. Finally, The Administrator will also devote significant attention this year to the Consent Judgment’s provisions regarding third-party vendors, who can play a critical – and, too often, negative role in prospective students’ introduction to EDMC. As noted above, EDMC has taken important steps to address these issues, but much work remains to be done.

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