

**DEPARTMENT OF DEFENSE ACTIONS AGAINST
THE UNIVERSITY OF PHOENIX REGARDING
THE VOLUNTARY EDUCATION TUITION
ASSISTANCE PROGRAM**



**Senator John McCain
Chairman
Senate Armed Services Committee**

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I. EXECUTIVE SUMMARY

For about a year, culminating with a Senate Armed Services Committee hearing on November 29, 2016, the Chairman has been investigating the Department of Defense's (DoD) improper decision to put the University of Phoenix on probation regarding its participation in a Voluntary Education Tuition Assistance Program¹ — an important benefit that (1) helps active-duty military personnel choose postsecondary educational opportunities that best fits their needs to enhance both career and personal goals and (2) helps the DoD meet its recruitment and retention goals to support our nation's volunteer armed forces.

How and why this decision was made presents a case study of the Obama Administration's ideologically-driven effort to reshape higher-education in our country through a coordinated and, prior to this investigation, mostly unaccountable effort to eliminate for-profit educational institutions. It also raises troubling questions about the abuse of executive regulatory power, the role of an unaccountable interagency task force in carrying out that abuse, and to what extent actions such as these usurp the legitimate role of the Congress.

In support of its probation decision, the DoD cited allegations that the University improperly used military trademarks on its challenge coins² and obtained unauthorized access to military bases for commercial patriotic events.³

As a result of its investigations, however, this report finds that those reasons were specious. The University had already remedied its use of challenge coins by the time the DoD made its probation decision and obtained the approval it needed from base commanders, who have ultimate authority for what happens within their installations.^{4, 5} And *although there was* considerable confusion about base access approval requirements among the volunteer education community, including the DoD itself, the University informed the DoD before its decision how the University intended to comply with applicable rules going forward.⁶ Indeed, the probation letter itself conceded as much, acknowledging that the University had “responded to these infractions with appropriate corrective action at this time.”⁷ The probation letter also cited to outside investigations by other federal or state authorities of the University of Phoenix. But, in

¹ Hereinafter referred to as “voluntary education” or “tuition assistance or TA” as appropriate.

² A challenge coin is a small coin or medallion (usually military), bearing an organization's insignia or emblem and carried by the organization's members. Traditionally, they are given to prove membership when challenged and to enhance morale. In addition, they are also collected by service members. Typically, challenge coins such as those used by the University of Phoenix are used to honor military service and are purchased in bulk for around \$5 each.

³ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

⁴ See appendix document dated August 3, 2015, email exchange regarding trademark infringement between the Department of Defense and the University of Phoenix, containing emails dated July 22, July 31, and August 3, 2015.

⁵ See table on page 24.

⁶ See appendix document dated September 6, 2015, email exchange regarding installation access between the Department of Defense and the University of Phoenix, containing emails dated August 10, August 24, August 30, and September 6, 2015.

⁷ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

doing so, the DoD relied on allegations that it neither independently investigated nor confirmed. To this day, those outside investigations have not resulted in any findings of wrongdoing by the University.

In its hearing, the Committee showed that the DoD's decision, which was based on an ideologically motivated article published by the Center for Investigative Reporting (CIR) in *Reveal News*, furthered the anti-for-profit regulatory agenda of the Obama Administration, which was supported by a federal interagency task force on for-profit educational institutions and the aggressive advocacy of at least one prominent Member of Congress with a strategy to shut the University down.⁸ This environment resulted in a DoD bureaucrat unfairly targeting the University with this probation decision—through a process that a top DoD official conceded at the hearing was “crappy” and “lousy” and did not provide sufficient notice or opportunity for the University to respond to alleged violations of rules of the TA program.⁹

Ultimately, in January 2016, with the combined effort of several congressional committees, including the Senate Armed Services Committee, the DoD reversed its decision—but not before significant damage had been done to the University and its ability to execute its mission.¹⁰ To illustrate, in 2009, the company's stock reportedly traded at \$86.54 per share.¹¹ But just before the release of the *Reveal News* hit piece, it traded at around \$16 per share and reached a low of around \$6 a share shortly after DoD's unfair probation decision.

Moreover, had the DoD ended the University's participation in the TA program, over 9,000 service members who had chosen to attend the University of Phoenix would have been left without a school to complete their degrees.¹² Furthermore, due to the coordinated efforts of a for-profit interagency task force, the DoD's decision would also likely have resulted in decisions by the Department of Veterans Affairs (VA) to prohibit the University from participating in the Post 9/11 G.I. Bill and the Department of Education, regarding Title IV funding. That would have most certainly devastated the University, just as the Administration did with ITT Tech in forcing its closure or with DeVry, forcing it to sell-off some of its campuses.

So why was this decision really made?

This investigation shows that there was an astonishing lack of clear lines of authority, supervision, and accountability, as well as insufficient internal processes, associated with how the DoD reviews (and how participating educational institutions are provided an opportunity to remedy) allegations of wrongdoing in the TA program. The DoD was largely “making it up as it went along.” This allowed a mid-level DoD bureaucrat to abuse her discretion and for external factors, *i.e.*, at least one Member of Congress and an unaccountable interagency task force, to improperly influence a decision to take adverse action against a private educational institution that jeopardized its ability to execute its important mission and compromise its financial health.

⁸ Aaron Glantz, “University of Phoenix sidesteps Obama order on recruiting veterans,” *Reveal*, June 30, 2015, <https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/>.

⁹ Statement made by Acting Undersecretary of Defense for Personnel and Readiness Peter Levine at November 29th Senate Armed Services Committee hearing

¹⁰ Melissa Korn, “The University of Phoenix Taken Off Probation by Defense Department,” *Wall Street Journal*, January 15, 2016, <http://www.wsj.com/articles/university-of-phoenix-taken-off-probation-by-defense-department-1452890515>.

¹¹ Nasdaq, Apollo Education Group stock history, <http://www.nasdaq.com/symbol/apol>.

¹² Department of Defense, Voluntary Education Partnership Memorandum of Understanding, “Tuition Assistance DECIDE,” <https://www.dodmou.com/TADECIDE/>.

Indeed, the fact that the University of Phoenix could be singled-out in this flawed and suspect way suggests a deeper failing in how the executive branch can regulate and target entire industries and private sectors companies. This report, combined with continued congressional oversight and vigilance by an informed citizenry, will be necessary to ensuring this does not happen again. Furthermore, undoing the damage done to an entire economic sector over the past eight years through ideologically-motivated rulemakings and regulatory actions should be a priority of the next Administration and the Congress.

II. FACTUAL FINDINGS & CONCLUSIONS

Based on the investigation, this Report makes the following findings of fact.

1. **The University of Phoenix, a fully-accredited and reputable educational institution, was improperly targeted and placed on probation.** The University of Phoenix is a leader in the Arizona and national broader higher education community, which at the time of the probation decision was attended by over 9,000 service members.¹³ Since at least 2012, the University has been singled-out by opponents of for-profit institutions, including those in the Administration and certain Members of Congress, which culminated in efforts to drive the company out of business in 2015 through adverse actions taken by the DoD based on reasons that are demonstrably specious.
2. **The Administration created a hostile regulatory environment targeting for-profit educational institutions.** Through Executive Orders, targeted rulemaking, and enforcement actions that disproportionately targeted for-profit schools, this Administration has aimed to crack down on, and fatally undermine, for-profit schools. The clearest example of this is the Administration's decision to formalize an unaccountable interagency task force targeting for-profit postsecondary institutions, led by the Department of Education, with the participation by eight other agencies, including the Department of Defense.¹⁴
3. **This for-profit assault had the strong support of at least one prominent Member of Congress, who urged the action against the University in this case.** Through a combination of speeches on the floor of the U.S. Senate, congressional hearings, letters to federal agencies, *etc.* at least one Member of Congress urged the Administration to focus on for-profits in general and target the University of Phoenix in particular. On June 30, 2015, *i.e.*, the day a media article came out alleging violations by the University, the Ranking Member of the Defense Appropriations Subcommittee Richard Durbin wrote a letter urging the Department to investigate the allegations in the article, bar the company from further access to service members, and suspend it from participating in the DoD's voluntary education programs, among other things.¹⁵ Notably, participating in that article in a manner that arguably exceeded her actual authority was the same DoD mid-level bureaucrat who recommended that the University be placed on probation, drafted the probation letter, and ultimately signed it.

¹³ Department of Defense, Voluntary Education Partnership Memorandum of Understanding, "Tuition Assistance DECIDE," <https://www.dodmou.com/TADECIDE/>.

¹⁴ U.S. Department of Education, Obama Administration Announces Final Rules to Protect Students from Poor-Performing Career College Programs, October 30, 2014, <http://www.ed.gov/news/press-releases/obama-administration-announces-final-rules-protect-students-poor-performing-career-college-programs>.

¹⁵ See appendix document dated June 30, 2015, letter asking the Department of Defense to investigate the University of Phoenix from Senator Richard Durbin to Secretary of Defense Ashton Carter.

4. **The reasons that the DoD cited for putting the University of Phoenix on probation are demonstrably specious.** As bases for putting the University on probation, the DoD cited questionable and overly technical violations of the MOU; failed to acknowledge any of the corrective actions the University had already taken; and relied on, in part, allegations made by a news article and other agencies—allegations that had not been initiated or confirmed by the DoD.¹⁶ Indeed, the DoD’s letter itself definitively states, regarding the University’s use of “challenge coins” and concerns about base access, that the University had “responded to these infractions with appropriate corrective action.”¹⁷ And, whereas the probation letter referred to civil investigative demands for documents by both the Federal Trade Commission, an active member of the interagency task force on for-profits institutions, and the California State Attorney General, the DoD did not undertake its own, independent review of the FTC or California Attorney General investigations. To date, neither of these investigations has found any wrongdoing. The demonstrably specious nature of the reasons the DoD cited in its letter allows for a negative inference of an ulterior motive.
5. **After-the-fact, the DoD improperly stated additional reasons, not cited in the probation letter, as a basis for the probation decision.** After the DoD placed the University on probation, DoD officials cited “numerous other infractions” that were part of the probation decision but were not included in its probation letter.¹⁸ According to those officials, these “numerous infractions” revolved around 13 student complaints. The investigation, however, found that they had been settled prior to the probation decision.¹⁹ Furthermore, the DoD conceded that in substance those complaints were common among participating schools in the voluntary education program. The DoD also cited “push back” and non-responsiveness by the University, which turned out to be utterly false based on documents reviewed in this investigation—documents requested by the Committee that the Department failed to produce.
6. **The DoD’s decision to put the University of Phoenix on probation and possible termination was really made to further the Administration’s regulatory goal to eliminate for-profits schools from participation in federal education programs and the aim of at least one Member of Congress to shut it down.** The DoD’s own probation letter reflects that it acted “[i]n response to allegations published by the Center for Investigative Reporting” contained in an article in which the DoD mid-level

¹⁶ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

¹⁷ *Ibid.*

¹⁸ Information taken from September 28, 2015, response letter from Acting Undersecretary of Defense for Personnel and Readiness Peter Levine to Senate Armed Services Committee Chairman John McCain.

¹⁹ *Ibid.*

bureaucrat who was most responsible for the letter revealed that the DoD was “cracking down” on questionable recruiting practices among for-profits.^{20, 21} Furthermore, the outside investigations cited in the probation letter were led by active participants in the for-profit interagency task force. Moreover, a side-by-side comparison of Ranking Member Durbin’s June 30, 2015, letter to the DoD with the DoD’s October 7, 2015, probation letter to the University of Phoenix and a review of events that preceded the letter establish that it was likely issued **as responsive to** the Ranking Member Durbin’s requests, which reflected the Administration’s regulatory hostility towards for-profits.

7. **The decision to investigate and place the University on probation was improperly delegated to a DoD bureaucrat who lacked the authority to make this determination.** Dawn Bilodeau, the DoD’s Chief of Voluntary Education, a GS-15 civil service employee, recommended that the University be placed on probation, drafted the probation letter, and signed it. Bilodeau, who represents the DoD at the interagency task force and who participated in the article that both Ranking Member Durbin and the DoD cited as a basis for adverse action, lacked the proper authority to take that action, and likely knew or should have known what impact the probation letter would have on the University, as well as the second-order ways it would be utilized to penalize the University and publicly cast it in disrepute.
8. **The DoD improperly delegated oversight, administrative, and executive decision authority for voluntary education programs resulting in ambiguity in how to enforce the rules governing the conduct of participating schools under the voluntary education program; how schools allegedly violating those rules can address those allegations; creating an opportunity for a mid-level bureaucrat to abuse her discretion and allowed for external factors (in this case, at least one Member of Congress and an unaccountable interagency task force) to improperly influence a decision to take adverse action.** The DoD lacked clear lines of authority, supervision, and accountability in the administration of the voluntary education program. As evidence of this, the investigation found that there was not a single briefing memo, email, decision memorandum, or other document that reflects due diligence by the Department or that approval for the decision to put the University on probation was ever sought or granted. Also, shifting standards and guidance under the MOU created ambiguity, which was problematic given the insufficiency of the process in place at the DoD to review allegations and take adverse action against participating institutions. The process, furthermore, failed to confer on institutions alleged to have engaged in misconduct sufficient notice and an opportunity to be heard before an adverse decision that can have severe consequences on the its mission and financial viability, was made. At a Committee

²⁰ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

²¹ Aaron Glantz, “University of Phoenix sidesteps Obama order on recruiting veterans,” Reveal, June 30, 2015, <https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/>.

hearing on this investigation, a top DoD official admitted that this process was “crappy” and “lousy.”

III. RECOMMENDATIONS

1. **Modify the Department of Defense Instruction (DoDI) 1322.25.** The DoD should modify DODI 1322.25 to delineate administrative procedures to ensure that complaints regarding educational institutions that have entered into a memorandum of understanding (MOU) with the DoD for a Voluntary Education Partnership are resolved fairly and expeditiously. It should establish guidance on the rights and responsibilities of the DoD and the subject educational institutions after such a complaint has been made. The *Fiscal Year 2017 National Defense Authorization Act* directed the DoD to modify the DODI accordingly, no later than December 30, 2016.²²
2. **Establish that adverse actions taken in administration of the TA program are non-delegable.** Given the potential significant impact that a probation decision, and other adverse actions, could have on the students attending that educational institution and the financial profile of institutions that decide to partner with the DoD in the Tuition Assistance (TA) program, such adverse decisions should not be delegated below the level of Undersecretary of Defense for Personnel & Readiness.
3. **Establish a clear process at the Department, with accompanying documentation, that provides oversight and accountability of decisions made in the administration of the TA program.** Decisions to put educational institutions participating in the TA program on probation should be made—and appropriately documented—pursuant to a process that is traceable, repeatable and defensible. Remarkably, when appearing before the Committee, relevant DoD officials conceded that no document (briefing memorandum, decision memorandum, or any other similar document) reflecting that the decision to put the University of Phoenix on probation was sought or granted, exists. To ensure sound oversight and accountability in connection with decisions to suspend or terminate an MOU relative to partner educational institutions, such decision should comport with DoD standard operating procedure regarding the documentation of approval decisions.
4. **Ensure that oversight of educational institutions is equitable and not-targeted at for-profits.** Policies and procedures governing the DoD's conduct with or relating to for-profit educational institutions should be reviewed and, wherever appropriate, revised to ensure that the DoD is not unfairly or, without rational basis, discriminating between for-profit and not for-profit educational institutions. The DoD should begin viewing all education institutions with which it has MOUs as equal. There should be no disparate treatment between public and for-profit institutions based solely on their tax status.

²² National Defense Authorization Act for Fiscal Year 2017, S.2943, <https://www.congress.gov/bill/114th-congress/senate-bill/2943?q=%7B%22search%22%3A%5B%22National+Defense+AUthorization+Act+fiscal+year+2017%22%5D%7D&r=2>.

5. **The Department of Education's unaccountable and targeted For-Profit Interagency Task Force should, for the foregoing reason, be disbanded immediately.**

IV. KEY EVENTS

1. Since 2012, through Executive Orders, targeted rulemaking, enforcement actions and the creation of an unaccountable interagency task force, this Administration has aimed to crack down on, and fatally undermine, for-profit schools.
2. During this period, Members of Congress, including Senate Defense Appropriations Subcommittee Ranking Member Richard Durbin, attacked, in some cases from the Senate Floor, for-profit educational institutions in general and the University of Phoenix in particular, for engaging in alleged misconduct.
3. In April 27, 2012, the President signed Executive Order (EO) 13607, “Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses and Other Military Family Members.”²³
4. On May 15, 2014, the DoD published Department of Defense Instruction (DoDI) 1322.25, seeking to effectuate EO 13607.²⁴ This instruction supplemented compliance requirements originally laid out in the previously established MOU.
5. On June 20, 2014, the University of Phoenix signed on to the currently operative version of the Voluntary Education Partnership MOU with the DoD.²⁵
6. On July 7, 2014, the DoD released Change 3 to the DoDI 1322.25. While Change 3 addressed base access issues, it did not specifically address commercial sponsorship.²⁶
7. On June 30, 2015, the Center of Investigative Reporting (CIR) published an article in *Reveal News* that alleged that the University of Phoenix engaged in deceptive marketing practices and infringed on military trademarks through its use of challenge coins. Participating in that article was Dawn Bilodeau, Chief of Voluntary Education for the DoD, who noted in the article that the DoD was “cracking down” on questionable recruiting practices among for-profits.²⁷
8. On the same day, Senate Defense Appropriations Subcommittee Ranking Member

²³ The White House, Executive Order 13607 – “Establishing Principles of Excellence for Education Institutions Serving Service Members, Veterans, Spouses, and Other Family Members,” April 27, 2012, <https://www.whitehouse.gov/the-press-office/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti>.

²⁴ This was approved in the Federal Register on May 15, 2014. The Federal Register, Department of Defense Final Rule on Voluntary Education Programs, <https://www.federalregister.gov/documents/2014/05/15/2014-11044/voluntary-education-programs>.

²⁵ Department of Defense, Memorandum of Understanding signed by University of Phoenix, <https://www.dodmou.com/InstitutionViewSignature/GetFile?institutionId=307>.

²⁶ Department of Defense Instruction, July 7, 2014, <http://www.dtic.mil/whs/directives/corres/pdf/132225p.pdf>.

²⁷ Aaron Glantz, “University of Phoenix sidesteps Obama order on recruiting veterans,” *Reveal*, June 30, 2015, <https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/>.

Durbin sent to Secretary of Defense Carter a letter that cited the CIR's "hit piece", which Bilodeau participated in, in support of the allegation that the University engaged in misconduct regarding unauthorized base access and trademark violations in challenge coins and asked that the DoD suspend it from participating in the TA program pending the outcome of an investigation.²⁸

9. On July 13, 2015, the DoD notified the University of its "Potential Non-Compliance" with the MOU and DoDI 1322.25 regarding the violation of trademark use.²⁹ A July 22, 2015, a letter from the DoD's Branding and Trademark Licensing Program further requested that the University cease production of coins in violation of the trademark.³⁰
10. On July 28, 2015, University President Slottow and Major General Marks also responded to the notice of potential non-compliance, writing Deputy Assistant Secretary of Defense Rosemary Freitas Williams to explain that the University had immediately ceased production and requesting a meeting to further discuss its standing with the DoD.³¹ They received a response a few days later thanking them for letter but indicating that it was "a bit premature" to meet regarding the challenge coin violation.³²
11. On July 31, 2015, the University responded to the DoD assuring them that it stopped distribution and was recalling any undistributed coins.³³
12. On August 3, 2015, a letter from the Branding and Trademark Licensing Program to the University thanked it for its corrective action.³⁴ The University's formal response to the DoD on August 4, 2015, further assured the DoD that it had ceased production of challenge coins.³⁵ On August 5, 2015, the DoD observed, "We consider your response and corrective action sufficient to resolve this report of potential non-compliance with respect to the MOU signed with the DoD."³⁶

²⁸ See appendix document dated June 30, 2015, letter asking the Department of Defense to investigate the University of Phoenix from Senator Richard Durbin to Secretary of Defense Ashton Carter.

²⁹ See appendix document dated July 13, 2015, email regarding trademark infringement from the Department of Defense to the University of Phoenix.

³⁰ See appendix document dated August 3, 2015, email exchange regarding trademark infringement between the Department of Defense and the University of Phoenix, containing emails dated July 22, July 31, and August 3, 2015.

³¹ See appendix document dated July 28, 2015, letter requesting a meeting regarding trademark infringement from University of Phoenix to Rosemary Williams, Deputy Assistant Secretary of Defense for Military Community and Family Policy.

³² See appendix document dated August 2, 2015, email turning down meeting request from Rosemary Williams, Deputy Assistant Secretary of Defense for Military Community and Family Policy to the University of Phoenix.

³³ See appendix document dated August 3, 2015, email exchange regarding trademark infringement between the Department of Defense and the University of Phoenix, containing emails dated July 22, July 31, and August 3, 2015.

³⁴ *Ibid.*

³⁵ See appendix document dated August 5, 2015, email exchange formally addressing trademark infringement of challenge coins between the Department of Defense and the University of Phoenix, containing emails dated July 28, August 4, and August 5, 2015.

³⁶ *Ibid.*

13. On August 10, 2015, the University received a notification of “Potential Non-Compliance” with the DoD MOU and DODI 1322.25” relating to base access, claiming that it may have improperly accessed five different military installations.³⁷
14. On August 24, 2015, the University responded that it had received access through its written sponsorship agreements.³⁸ Subsequent emails reflect confusion about the requirements for written permission to access installations, even when such events were provided for by other written agreements, including commercial sponsorship agreements.
15. Upon clarification, on September 6, 2015, the University assured the Department that it had “instructed its relevant personnel of the requirement to seek prior written approval for access to an installation—even when the on-installation event is contemplated by a sponsorship agreement...”³⁹
16. On October 7, 2015, Dawn Bilodeau, Chief of Voluntary Education for the DoD, notified the University of Phoenix that the DoD put it on probationary and potential termination status with respect to its participation in the TA Program for active duty military personnel.⁴⁰ This letter explained that the University could not access installations or enroll new students while on probation. The letter additionally acknowledged that the University had responded to the violations with “appropriate corrective action.”
17. On October 16, 2015, DoD issued new guidelines on the use of official DoD seals and other logos.⁴¹ On October 20, 2015, the Bilodeau issued a memo to all participating colleges and universities notifying them of the new guidelines, stating that “[t]he document is intended to serve as a guide to not only educate all non-Federal entities (NFEs) about Military Service intellectual property, but also to ensure that when use is authorized NFEs use the correct, accurate, high resolution identifiers for the Military Services. While this guide may not be all inclusive, it does address frequently asked questions regarding use of protected DoD marks.”⁴²
18. On October 22, 2015, Senate Armed Services Committee Chairman John McCain, Health, Education, Labor and Pensions Committee Chairman Alexander, and Senator Flake (R-AZ) sent a letter to Secretary Carter regarding the decision by the DoD to place

³⁷ See appendix document dated September 6, 2015, email exchange regarding installation access between the Department of Defense and the University of Phoenix, containing emails dated August 10, August 24, August 30, and September 6, 2015.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

⁴¹ Department of Defense, October 20, 2015, Memo on new trademark guidelines, <https://www.dodmou.com/Documents/LatestNews/Documents/COLLEGES%20AND%20UNIVERSITIES%20USE%20OF%20MILITARY%20SERVICE%20MARKS.pdf>.

⁴² *Ibid.*

the University on probationary and potential termination status with respect to its participation in the DoD Tuition Assistance (TA) Program. Specifically, the raised concerns that the DoD's decision was unfair, requires additional review, and may warrant reconsideration.⁴³ Chairman McCain also wrote to Secretary of Education Arne Duncan and Secretary of Veterans Affairs Robert McDonald, noting that further investigation into the DoD's decision was warranted and requesting that staff notified before any further action was taken against the University of Phoenix.

19. On November 13, 2015, Chairman McCain sent a follow-up letter to Secretary Carter regarding a response from to the October 22, 2015, letter and timing of when the DoD would make a final decision regarding the probation actions against the University of Phoenix.⁴⁴
20. On November 17, 2015, Chairman McCain, Chairman Alexander, Veterans Affairs Committee Chairman Isakson, Homeland Security and Governmental Affairs Committee Chairman Johnson and Senator Flake wrote the Secretary of Education Arne Duncan requesting information regarding the unaccountable Interagency Task Force on For-Profit Postsecondary Institutions.⁴⁵
21. On November 20, 2015, Chairman McCain and Chairman Alexander wrote to Secretary Duncan after learning that Senator Durbin had recently met with the Interagency Task-Force. The letter requested an audience with the leadership of the Task Force to discuss the "mission, goals, intentions, and expected output of this group."⁴⁶
22. On December 1, 2015, the Department of Veterans Affairs responded to Chairman McCain's inquiry, informing him that they were awaiting the results of the DoD's investigation before making any decisions regarding the University's participation in the GI Bill program.
23. Finally, on January 15, 2016, the DoD sent a letter the University informing them that they were no longer on probation.⁴⁷

⁴³ See appendix document dated October 22, 2015, letter questioning probation decision from Senators McCain, Flake, and Alexander to Secretary of Defense Ashton Carter.

⁴⁴ See appendix document dated November 13, 2015, letter following up on previous information request from Chairman John McCain to Secretary of Defense Ashton Carter.

⁴⁵ See appendix document dated November 17, 2015, letter requesting further information on the Interagency Task-Force from Senators John McCain, Johnny Isakson, Lamar Alexander, Jeff Flake, and Ron Johnson to Secretary of Education Arne Duncan.

⁴⁶ See appendix document dated November 20, 2015, letter regarding Senator Durbin's participation in the Interagency Task-Force from Senate Armed Services Committee Chairman John McCain and Committee on Health, Education, Labor and Pensions Chairman Lamar Alexander to Secretary of Education Arne Duncan.

⁴⁷ Melissa Korn, "The University of Phoenix Taken Off Probation by Defense Department," Wall Street Journal, January 15, 2016, <http://www.wsj.com/articles/university-of-phoenix-taken-off-probation-by-defense-department-1452890515>.

24. On January 28, the Department of Education responded to Chairman McCain's inquiry regarding the Interagency Task-Force.⁴⁸
25. On February 8, 2016, the Department of Defense responded to Chairman McCain's letter requesting information, almost a month after the probation status had been removed.⁴⁹
26. Due to insufficient response from the DoD, on May 23, 2016, Chairman McCain wrote to Secretary Carter requesting further information regarding the Department's decision to put the University on probation, as well as the Department's involvement with the Interagency Task-Force.⁵⁰ The Department responded on July 7, 2016 with further but inadequate information on the probation decision.
27. On August 17, 2016, Chairman McCain sent yet another letter to Secretary Carter asking for a fulsome response to the questions he had been asking since October 2015, regarding the probation decision against the University of Phoenix.⁵¹ On September 28, 2016, the Department responded to Chairman McCain's August 17th letter.

⁴⁸ See appendix document dated January 28, 2016, letter providing further information on the Interagency Task-Force, from the Department of Education to Senator John McCain.

⁴⁹ See appendix document dated February 8, 2016, letter responding to requests for information, from the Department of Defense to Chairman John McCain.

⁵⁰ See appendix document dated May 23, 2016, letter requesting further information regarding the probation decision, from Chairman John McCain to Secretary of Defense Ashton Carter.

⁵¹ See appendix document dated August 17, 2016, letter requesting further information regarding the probation decision, from Chairman John McCain to Secretary of Defense Ashton Carter.

V. REPORT OF INVESTIGATION

The purpose of this investigation is to review the Department of Defense's (DoD) October 7, 2015, decision to put the University of Phoenix on probation pending possible termination with respect to its participation in its Voluntary Education Tuition Assistance Program (or TA program), a valuable program that helps provide thousands of active-duty servicemen and –women (and other nontraditional students around the country) with access to higher education.

The DoD's decision had an immediate and detrimental impact on the ability of this reputable and fully accredited for-profit educational institution to continue providing educational programming to the military community and abruptly reduced the educational opportunities available to active-duty service members. It also financially debilitated the University.

While the Committee ultimately helped persuade the DoD to reverse its decision three months after the DoD made it, the fact remains that its decision, and the circumstances that led to it, was an egregious examples of regulatory abuse. With this in mind, the Chairman directed staff to investigate, among other things, the facts and circumstances that led to the DoD's decision to put the University of Phoenix on probation; the rules, processes, and procedures in place at the DoD that govern its administration of the TA program; and the interagency coordination on enforcement actions against for-profit educational institutions.

This investigation included 12 letter requests to the Department, other agencies, and individuals for information and documents; about 700 pages of documents produced by the Department related to the decision to place the University of Phoenix on probation; interviews of key actors at the DoD, and meetings with the members of the Department of Education's unaccountable interagency task force on for-profit education—of which DoD is a member. It culminated in a hearing before the Senate Armed Services Committee on November 29, 2016 entitled "Department of Defense Actions Concerning Voluntary Education Programs."

a) Background

For nearly 40 years, the University of Phoenix has served working adults and others for whom traditional brick-and-mortar schooling is unavailable, including 214,500 enrolled civilian and military students in 2015.⁵² According to estimates by the University of Phoenix, it has graduated more than 80,000 military and veteran students with postsecondary degrees. With more than 17,000 faculty members and 8,800 staff in every state and the territories as well as just over 1,400 faculty members and 6,300 staff in Arizona alone, the University of Phoenix is a leader in the Arizona and broader higher education community.⁵³

According to the University's 2015 Annual Report, its graduation rate is 43.9%, compared to the national average of 59%, and its default rate is 13.5%, compared to the national average of 11.8%. So, its performance aligns closely with traditional four-year colleges and universities.⁵⁴ This is notable given that the University has focused on serving non-traditional

⁵² University of Phoenix, 2015 Academic Annual Report, http://www.phoenix.edu/content/dam/altcloud/doc/about_uopx/academic-annual-report-2015.pdf.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

students, such as active-duty military and others who tend to delay enrollment after high-school, work full-time, have dependents, or are single parents.⁵⁵ In fact, the U.S. Department of Education's first college scorecard, which included data on 7,676 colleges and universities, placed the University of Phoenix in the top 25 among large institutions for salary of students after attending.⁵⁶

The University of Phoenix participates in the Department of Defense's Voluntary Education Tuition Assistance (TA) program, which provides tuition benefits for active duty military personnel to pursue a postsecondary education. Its participation in the program is governed by a Voluntary Education Partnership Memorandum of Understanding (MOU) that conveys the commitments and agreements between educational institutions participating in the TA program and the DoD, and ensures that the TA funds are spent wisely to support service-members attending quality educational programs.⁵⁷ As of November 15, 2016, 2,730 schools participated in the DoD TA Program.⁵⁸

In April 2012, Obama signed Executive Order 13607, "Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members," intended to "develop Principles of Excellence (POEs) to strengthen oversight, enforcement, and accountability" of the Post-9/11 GI Bill and DoD TA Program benefits programs.⁵⁹ The EO required DoD and VA to reflect the POEs in new agreements with institutions covering educational benefits. Further, the EO required DoD and VA, in consultation with Secretary of Education, CFPB, and Attorney General, to develop "a plan to strengthen enforcement and compliance mechanisms." On its face EO 13607 applies equally to for-profit and not for-profit educational institutions. In practice, however, the Administration, including the Department of Defense, has disproportionately pursued actions against for-profit schools.

In fact, through a series of specific policy decisions, targeted administrative rulemakings, and coordinated enforcement actions, this Administration has sought to reshape postsecondary educational options available in this country. Rather than carefully calibrate its actions to identify and hold accountable those truly bad actors in this space, the Administration has pursued overly-broad and draconian measures, which if left unchecked would have all but eliminated the for-profit educational sector.

Other key administrative actions against the for-profit industry date back to an August 2010 GAO report on for-profits that was so flawed that it required later revisions, but was

⁵⁵ For example, according to its 2015 Annual Report, its graduation rate is 43.9%, compared to the national average of 59%, and its default rate is 13.5%, compared to the national average is 11.8%. (see University of Phoenix, 2015 Academic Annual Report, http://www.phoenix.edu/content/dam/altcloud/doc/about_uopx/academic-annual-report-2015.pdf).

⁵⁶ Statement for the Record, Tim Slottow, President of the University of Phoenix, Senate Armed Services Hearing, November 29, 2016, <http://www.armed-services.senate.gov/hearings/16-11-29-department-of-defense-actions-concerning-voluntary-education-programs>.

⁵⁷ Department of Defense, Voluntary Education Partnership Memorandum of Understanding, <https://www.dodmou.com/>.

⁵⁸ Department of Defense, Voluntary Education Partnership Memorandum of Understanding, "Tuition Assistance DECIDE," <https://www.dodmou.com/TADECIDE/>.

⁵⁹ The White House, Executive Order 13607– "Establishing Principles of Excellence for Education Institutions Serving Service Members, Veterans, Spouses, and Other Family Members, April 27, 2012, <https://www.whitehouse.gov/the-press-office/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti>.

nonetheless seized by the sector's critics as evidence for the need the crack-down on these schools through government regulations.⁶⁰ The Department of Education participated with the issuance of so-called "gainful employment" regulations that tied for-profit career colleges' eligibility for federal student aid to former students' loan repayment rates and debt-to-earnings ratio; these regulations arbitrarily targeted for-profit institutions with standards that would be difficult for *any* institution of higher learning to meet.⁶¹

In October 2014, the Administration announced that it formalized a non-public interagency Task Force on for-profit post-secondary institutions led by the Department of Education, with the participation of at least 8 other federal agencies: the DoD; the Federal Trade Commission (FTC); the Consumer Financial Protection Bureau (CFPB); the Internal Revenue Service; the Securities and Exchange Commission (SEC), the Department of Justice; the Department of Veterans Affairs; and the Department of Labor.⁶² The task force would also include active engagement by states' attorneys general, which have pursued their own investigations, lawsuits and fines.

In Congress, Senate Defense Appropriations Subcommittee Richard Durbin has been perhaps the most vocal congressional opponent of the for-profit industry. Over the years, he has sent letters to the VA, DoD, Department of Education, and others with responsibility over administering programs involving for-profit institutions urging them to investigate and take adverse action against these institutions. Through a combination of speeches on the Floor of the U.S. Senate, congressional hearings, letters to federal agencies, speeches to outside organizations, and hosting forums criticizing for-profit institutions, he has pursued what amounts to a multi-pronged offensive on the industry.⁶³

While there have certainly been some bad actors in the industry, like Corinthian Colleges, Inc., which was found to have "engaged in deceptive practices", the Administration's assault on the industry has been unprecedented, and not surprisingly, without similar actions and enforcements against other, non-career colleges and universities.⁶⁴ Together, these actions appear calculated to undermine these schools' credibility and their ability to survive, and to ultimately eliminate the sector entirely. While this agenda had the vocal support and encouragement of a few members of the Senate, the regulatory assault on this sector was accomplished all without passing a single piece of legislation.

⁶⁰ Business Wire, "Coalition For Educational Success: Significantly Revised Report On For-Profit Colleges Seriously Undermines Credibility Of GAO Findings," December 8, 2010, <http://www.businesswire.com/news/home/20101207007334/en/Coalition-Educational-Success-Significantly-Revised-Report-For-Profit>.

⁶¹ Allie Grasgreen, "Obama pushes for-profit colleges to the brink," Politico, July 1, 2015, <http://www.politico.com/story/2015/07/barack-obama-pushes-for-profit-colleges-to-the-brink-119613>.

⁶² U.S. Department of Education, Obama Administration Announces Final Rules to Protect Students from Poor-Performing Career College Programs, October 30, 2014, <http://www.ed.gov/news/press-releases/obama-administration-announces-final-rules-protect-students-poor-performing-career-college-programs>.

⁶³ Senator Richard Durbin, Key Issues – Education, <http://www.durbin.senate.gov/issues/education>.

⁶⁴ Josh Mitchell, "Corinthian Colleges Ordered to Pay Damages to Students," The Wall Street Journal, October 28, 2015, <http://www.wsj.com/articles/corinthian-colleges-ordered-to-pay-damages-to-students-1446059379>.

b) DoD's Adverse Action against the University of Phoenix

Against this backdrop, on October 7, 2015, the DoD put the University of Phoenix on probation pending possible termination with respect to its participation in the TA program, citing deceptive marketing practices involving unauthorized base access and infringement on military trademarks through the use of “challenge coins.”⁶⁵

But, the relevant sequence of events appears to begin months earlier on June 30, 2015, when the Center for Investigative Reporting (CIR) published a report in *Reveal News*, entitled “[the] University of Phoenix sidesteps Obama order on recruiting veterans.”⁶⁶ Importantly, that report similarly alleged that the University engaged in deceptive marketing practices and infringed on military trademarks. Dawn Bilodeau, the DoD’s Chief of Voluntary Education, who recommended the probation decision and drafted and signed the probation letter against the University, participated in that article, acknowledging that the Department was “cracking down” on questionable recruiting practices among for-profits.⁶⁷

That same day, the top Democrat in the Defense Appropriations Subcommittee, Senator Richard Durbin, wrote Secretary of Defense Ashton Carter about what he deemed was a “deeply troubling investigation” and urged the DoD to investigate the allegations in the article and “take immediate steps to bar the company from further access to service members until these issues are resolved.”⁶⁸

Notably, that letter specifically requested that the DoD suspend the University from participating in the DoD’s voluntary education programs; investigate and prosecute the University for its use of challenge coins; and bar the company from any further access to military bases, among other things.

It appears that this letter, citing a news article that Bilodeau herself participated in, was enough to propel the DoD into action. Two weeks later, on July 14, 2015, Bilodeau reached-out to military bases regarding the alleged access violations reported in the CIR report. In her letter to those installations, Bilodeau stated, “Congress has urged DoD to investigate the allegations cited in the *Reveal* article.”⁶⁹ While Bilodeau has refused to name who she was referring to in this letter, the answer is obvious. This was in direct response to the demand by Senator Durbin.

The very next day, in a letter from then-Acting Undersecretary of Defense for Personnel and Readiness Brad Carson to Ranking Member Durbin, Carson “confirmed ... that DoD was completing a full review of University of Phoenix’s TA participation.”⁷⁰ This confirmation

⁶⁵ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

⁶⁶ Aaron Glantz, “University of Phoenix sidesteps Obama order on recruiting veterans,” *Reveal*, June 30, 2015, <https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/>.

⁶⁷ *Ibid.*

⁶⁸ See appendix document dated June 30, 2015, letter asking the Department of Defense to investigate the University of Phoenix from Senator Richard Durbin to Secretary of Defense Ashton Carter.

⁶⁹ See appendix document dated July 14, 2015, email regarding installation access violations from Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs, to Dr. Raymer.

⁷⁰ Senator Richard Durbin, Press Release on the DoD’s actions against the University of Phoenix, October 9, 2015, <http://www.durbin.senate.gov/newsroom/press-releases/durbin-calls-on-va-and-department-of-education-to-review-dods-findings-on-university-of-phoenix-and-take-action>.

would serve as the basis for increasingly hostile attacks against the University by Senator Durbin.

On July 23, 2015, in a speech about “abuses by for-profit industry” on the Senate Floor, Senator Durbin focused on the University of Phoenix.⁷¹ In that speech, he also referred to a separate CIR news article published on July 15, 2015, about GI benefits being paid to unaccredited schools, including “sex and massage schools,” and placed the University of Phoenix in that same category—educational institutions that are “fleecing the American taxpayers and members of our military.”

Ranking Member Durbin called this an “outrageous exploitation” and said that “a day of reckoning is coming for these schools, the stock market is catching-up with them.”⁷² Indeed, when President Obama was inaugurated, the company’s stock reportedly traded at \$86.54 per share. And, in part due to the Administration’s regulatory hostility and perhaps Senator Durbin’s relentless assault the previous summer, as of June 2016, it was trading at \$9 per share.⁷³



Source: Nasdaq, Apollo Education Group stock history, <http://www.nasdaq.com/symbol/apol>

Following the *Reveal News* article and a barrage of attacks against the University of Phoenix, on July 29th, the FTC, an active member of the for-profit interagency task force, issued a Civil Investigative Demand to the University.⁷⁴ When the University revealed that demand in a

⁷¹ Congressional Record, July 23, 2015, pages S5503-s5504, <https://www.congress.gov/crec/2015/07/23/CREC-2015-07-23-pt1-PgS5486-2.pdf>.

⁷² *Ibid.*

⁷³ Nasdaq, Apollo Education Group stock history, <http://www.nasdaq.com/symbol/apol>.

⁷⁴ Anne Flaherty, “FTC Investigating Online College University of Phoenix,” U.S. News, July 29, 2015, <http://www.usnews.com/news/business/articles/2015/07/29/ftc-investigating-online-college-university-of-phoenix>.

SEC filing, Ranking Member Durbin highlighted it in a press release.⁷⁵ The DoD took note of the demand, and the University would soon learn that the California Attorney General had also begun an investigation of its own.

On October 22, Chairman McCain sent a letter to Secretary Carter raising a series of concerns about the DoD's decision to impose on the University of Phoenix “probation status.”⁷⁶ On its face, the probation decision appeared to rely on questionable and overly technical violations of the MOU; failed to acknowledge any of the University’s corrective actions; and was based, in part, on allegations made by a news article and other agencies—allegations that had not been initiated or confirmed by the DoD.

After another letter from Chairman McCain to Secretary Carter about the decision and several meetings with Armed Services Committee staff, the Department removed the University from probation in January 2016.⁷⁷⁷⁸

c) Reasons Cited by DoD for Probation Decision

As a result of its investigation, this report finds that the probation decision resulted from a process that was fundamentally unfair, leading to a decision that was not supported by sufficient evidence. The investigation, in fact, finds that the reasons that the DoD cited in support of the decision—allegations about the University’s unauthorized base access for commercial patriotic events and improper use of challenge coins—are demonstrably specious.

i. Base Access

In its October 7, 2015, probation letter, the DoD cited as a basis for its decision allegations contained in the *Reveal News* article that the University failed to obtain approval from DoD “educational advisors” (EAs) to access military bases for the purpose of conducting commercial events, including those of a patriotic nature.⁷⁹

It should not have.

The University of Phoenix participates in the TA program through the DoD’s Voluntary Education Partnership Memorandum of Understanding (MOU), which is governed by Department of Defense Instructions (DoDIs).⁸⁰ In 2014, the DoDI covering these MOUs was

⁷⁵ Senator Richard Durbin, October 9, 2015, Press Release on the DoD’s actions against the University of Phoenix, <http://www.durbin.senate.gov/newsroom/press-releases/durbin-calls-on-va-and-department-of-education-to-review-dods-findings-on-university-of-phoenix-and-take-action>.

⁷⁶ See appendix document dated October 22, 2015, letter questioning probation decision from Senators McCain, Flake, and Alexander to Secretary of Defense Ashton Carter.

⁷⁷ See appendix document dated November 13, 2015, letter following up on previous information request from Chairman John McCain to Secretary of Defense Ashton Carter.

⁷⁸ Melissa Korn, “The University of Phoenix Taken Off Probation by Defense Department,” Wall Street Journal, January 15, 2016, <http://www.wsj.com/articles/university-of-phoenix-taken-off-probation-by-defense-department-1452890515>.

⁷⁹ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

⁸⁰ Department of Defense, Memorandum of Understanding signed by University of Phoenix, <https://www.dodmou.com/InstitutionViewSignature/GetFile?institutionId=307>.

updated to incorporate the Principles of Excellence” (POEs) established by Executive Order 13607 on April 27, 2012.⁸¹ The DoD published Department of Defense Instruction (DoDI) 1322.25 on March 15, 2014 to incorporate the POEs.⁸² This instruction supplemented compliance requirements originally laid out in a previously established MOU with changes to base access requirements, but appeared not to specifically address commercial activities on those bases. Shortly thereafter, on June 20, 2014, the University of Phoenix signed on to an updated Voluntary Education Partnership MOU with the DoD.⁸³

Enclosure 3, Section 3 of the MOU provides the operating rules for base access agreements between participating educational institutions and DoD installations.⁸⁴ Specifically, Enclosure 3, Section 3(f) (1-5) states that the responsible education advisor, on behalf of the installation commander, shall ensure that educational institutions granted access to DoD installations to provide programs, services, or educational guidance to their students meet specific requirement, namely, that they (1) have a signed Voluntary Education Partnership MOU with DoD, (2) are in compliance with State law, (3) are State approved for use of veterans’ education benefits, (4) are certified to participate in federal student aid programs, and (5) are accredited by a national or regional accrediting body.

The University met all of these five standards as required by DoDI 1322.25 and acted in good faith when accessing DoD installations to advise and administer its programming to its military student population. Specifically, before engaging in activities within a given installation, the University obtained approval, in some instances, from the designated base education advisers or the base commanders.⁸⁵ Base commanders, of course, have the final say on everything that happens within the facilities they command. And, while the MOU delegates to EAs the responsibility to ensure that certain standards are met when an educational institution seeks to conduct a commercial activity on the base, the MOU does not in any way divest the base commander of his command authority. Therefore, the University’s reliance on base commanders’ approval for certain activities they bring within it would not have unreasonable *per se*. While the base access approval actions may have constituted an overly technical violation of the MOU at one installation, it did not warrant the adverse action that the DoD took against the University as a whole.

Indeed, in response to an August 10, 2015, notification by the DoD that the University may have violated base access approval requirements under the MOU, the University responded that it “believes that it has not violated the cited DoD MOU provisions” and noted that its involvement in each of the events the DoD identified was based on earlier written agreements,

⁸¹ The White House, Executive Order 13607– “Establishing Principles of Excellence for Education Institutions Serving Service Members, Veterans, Spouses, and Other Family Members, April 27, 2012, <https://www.whitehouse.gov/the-press-office/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti>.

⁸²This was approved in the Federal Register on May 15, 2014. The Federal Register, Department of Defense Final Rule on Voluntary Education Programs, <https://www.federalregister.gov/documents/2014/05/15/2014-11044/voluntary-education-programs>.

⁸³ Department of Defense, Memorandum of Understanding signed by University of Phoenix, <https://www.dodmou.com/InstitutionViewSignature/GetFile?institutionId=307>.

⁸⁴ *Ibid.*

⁸⁵ See table on page 24.

which each specific installation had already approved.⁸⁶ Specifically, the University observed, “In recent months, the University has received additional guidance from certain installation[s], regarding approval for access” and “[t]he University’s Military division has been informed of this guidance and instructed to obtain specific written approval from each Installation’s [education advisor] prior to attending an installation event...”⁸⁷

After the University of Phoenix provided, on August 28, 2015, the DoD a copy of a Hiring Our Heroes program agreement, on August 30, 2015, the DoD asked for additional information from the University regarding base access, arguing that the agreements that University cited “do not negate the installation access provisions of [the MOU].”⁸⁸

With the requirements for installation access approval under DoDI 1322.25, which DoD’s officials conceded were “challenging” and “inartful,” having become effective in May 2014, on September 6, 2015, the University looked to the DoD for guidance on obtaining the required approvals. But, it also noted, “the University instructed its relevant personnel of the requirement to seek prior written approval for access to an installation—even when the on-installation event is contemplated by a sponsorship agreement or when the installation has not established request for approval procedures.”⁸⁹ In this communication, the University also said that “[it] has also emphasized that personnel should comply with procedures for base access approval if a service has provided them. But even if not, University personnel have been directed that they must nevertheless obtain prior written approval before accessing an installation.”

After providing, on September 8, 2015, the DoD a copy of two commercial sponsorship agreements between it and the Fort Carson Installation Morale, Welfare and Recreation Fund (MWFR), the next communication that the University received from the DoD on the matter was notification of its probation decision.

These communications between the University and the DoD on base access reflected considerable confusion at that time among the military services and participating educational institutions about the requirements of the MOU on base access. This confusion appears to have arisen from ambiguous processes that the DoD had in place to ensure base access compliance rules by the services themselves. In fact, in each incident of a perceived base access violation, the DoD ultimately found that the base itself failed to comply with the MOU.⁹⁰ While the University acted in good faith, it was penalized based on rules so equivocal that the base commanders themselves struggled to comply with their obligations under the MOU.

To clarify this confusion and help ensure compliance with the MOU on base access, in July 2015, the Chief of Voluntary Education for the DoD Dawn Bilodeau sent a series of recommendations to the bases to address uncertainty about revised base access requirements the

⁸⁶ See appendix document dated September 6, 2015, email exchange regarding installation access between the Department of Defense and the University of Phoenix, containing emails dated August 10, August 24, August 30, and September 6, 2015.

⁸⁷ See appendix document dated September 6, 2015, email exchange regarding installation access between the Department of Defense and the University of Phoenix, containing emails dated August 10, August 24, August 30, and September 6, 2015.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ See appendix document dated August 19, 2015, email from Dawn Bilodeau to Dr. Raymer.

DoD had recently issued.⁹¹ Subsequently, the DoD posted information to the DoD MOU website “to clarify rules” for participating schools, including a list of Frequently Asked Questions and a 45-page awareness brief.⁹² Additionally, after issuing the University of Phoenix probation decision, the DoD promulgated additional guidance on the issue. While these actions may have helped other educational institutions participating in the TA program, it did nothing for the University of Phoenix, which was already paying the price for actions that preceded this additional guidance and was being held to a standard that was constantly shifting.

As the foregoing illustrates, on base access, the DoD relied on questionable and overly technical interpretations of the MOU that governed the interaction of for-profit schools with the DoD; failed to credit the University for corrective actions it had taken to comply with the MOU; and failed to consider considerable confusion within the educational community and at the DoD about base access requirements in mitigation of its decision.

The table below further illustrates the University’s good faith effort to comply with DoD policies regarding base access.

Base Access Locations	Findings: Base Access Approval
1. Navy Operations Center – Fort Worth Texas	<ul style="list-style-type: none"> • The University participated as part of the Hiring our Heroes program sponsored by the U.S. Chamber of Commerce.⁹³ • DoD found the responsible base education advisor to be in non-compliance with DoD policy regarding base access.⁹⁴
2. Fort Bragg, NC	<ul style="list-style-type: none"> • The University participated as part of the Hiring our Heroes program sponsored by the U.S. Chamber of Commerce.⁹⁵ • DoD found the responsible base education advisor to be in non-compliance with DoD policy regarding base access.⁹⁶
3. Fort Carson	<ul style="list-style-type: none"> • University signed Morale, Welfare, and Recreation (MWR) Agreements directly with Fort Carson to sponsor events. • According Fort Carson’s Garrison Commander, “no violations were observed “ and no “inappropriate recruitment activities” were conducted.⁹⁷

⁹¹ *Ibid.*

⁹² Department of Defense, “Voluntary Education Program DoD Installation Access Awareness Brief, July 2015, https://www.dodmou.com/Documents/Resources/Documents/Installation%20Access_General%20Notice%20Awareness%20Brief%20w%20FAQs_Jul2015.pdf.

⁹³ Hiring our Heroes is sponsored by the U.S. Chamber of Commerce and is “comprised of more than 30 of America’s biggest employers representing every major industry.” The HOH “is a nationwide initiative to help veterans, transitioning service members, and military spouses find meaningful employment opportunities.” <https://www.uschamberfoundation.org/hiring-our-heroes>.

⁹⁴ See appendix document dated August 19, 2015, email from Dawn Bilodeau to Mr. Drummond.

⁹⁵ Hiring our Heroes is sponsored by the U.S. Chamber of Commerce and is “comprised of more than 30 of America’s biggest employers representing every major industry.” The HOH “is a nationwide initiative to help veterans, transitioning service members, and military spouses find meaningful employment opportunities.” <https://www.uschamberfoundation.org/hiring-our-heroes>.

⁹⁶ See appendix document dated August 19, 2015, email from Dawn Bilodeau to Dr. Raymer.

⁹⁷ Document provided by DoD to Senate Armed Services Committee.

	<ul style="list-style-type: none"> • Once Fort Carson started to require base access forms for each individual event (May 2015), the University received access approval from the necessary education advisor. • DoD found the responsible base education advisor to be in non-compliance with DoD policy regarding base access.⁹⁸
4. Fort Hood, TX	<ul style="list-style-type: none"> • University signed Morale, Welfare, and Recreation (MWR) Agreements directly with Fort Hood to sponsor events. • DoD found that “the responsible education advisor confirmed awareness of the commercial sponsorship agreement”.⁹⁹ • Fort Hood’s Director of Family and Morale, Welfare and Recreation stated that the University “did not submit a written DoD Installation access request to the ESO [education service officer] because the ESO had previously approved a one year review/approval for sponsorship purposes.”¹⁰⁰ • According to Fort Hood’s Director of Family and Morale, Welfare and Recreation, they did not “witness abusive marketing tactics, handing out misleading advertising or marketing materials” and “no evidence of inappropriate recruitment activities”.¹⁰¹ • DoD found the responsible base education advisor to be in non-compliance with DoD policy regarding base access.¹⁰²
5. Fort Campbell, KY	<ul style="list-style-type: none"> • University signed Morale, Welfare, and Recreation (MWR) Agreements directly with Fort Campbell to sponsor event. • According to Fort Campbell’s Education Advisor and Garrison Commander, they have “vetted Educational Institutions (EI) participating in commercial sponsorship agreements with the Education Service Office (ESO) before and since the EO.”¹⁰³ • Furthermore, they stated that the “Education Advisor has been aware that UoP has been a sponsor...and has worked...to vet schools”¹⁰⁴ • DoD found the responsible base education advisor to be in non-compliance with DoD policy regarding base access.¹⁰⁵

⁹⁸ See appendix document dated August 19, 2015, email from Dawn Bilodeau to Dr. Raymer.

⁹⁹ See appendix document dated September 6, 2015, email exchange regarding installation access between the Department of Defense and the University of Phoenix, containing emails dated August 10, August 24, August 30, and September 6, 2015.

¹⁰⁰ Document provide by DoD to the Senate Armed Services Committee.

¹⁰¹ *Ibid.*

¹⁰² See appendix document dated August 19, 2015, email from Dawn Bilodeau to Dr. Raymer.

¹⁰³ The White House, Executive Order 13607– “Establishing Principles of Excellence for Education Institutions Serving Service Members, Veterans, Spouses, and Other Family Members, April 27, 2012, <https://www.whitehouse.gov/the-press-office/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti>.

¹⁰⁴ Document provide by DoD to the Senate Armed Services Committee.

¹⁰⁵ See appendix document dated August 19, 2015, email from Dawn Bilodeau to Dr. Raymer.

ii. Challenge Coins

The DoD's October 7, 2015, probation letter to the University of Phoenix also identified, as basis for its probation decision, "transgressions of Defense Department policies regarding the use of its official seals or other trademark insignia".¹⁰⁶ According to the DoD, military seals are protected by law and unauthorized use is prohibited.¹⁰⁷

In the probation letter and in interviews with staff, the Chief of the DoD Voluntary Education Military Community and Family Policy Dawn Bilodeau stipulated that the University had responded to these infractions with appropriate corrective action prior to the probation decision and this issue was no longer a concern of the Department.¹⁰⁸

Indeed, a few months before her probation letter, on July 22, 2015, the DoD Branding and Trademark Licensing Program within the office of Community and Public Outreach, sent an e-mail to the University about its alleged unauthorized use of challenge coins.¹⁰⁹ On July 31, 2015, the University responded and confirmed that they had "ceased distribution of the challenge coins and recalled all outstanding coins."¹¹⁰ On August 3, the DoD Trademark Office responded to the University stating "[t]hank you so much for the update on the discontinuance and recall of the challenge coins. We certainly appreciate this corrective action."¹¹¹

Moreover, according to DoD's response to Chairman McCain regarding the unauthorized use of challenge coins, 15 additional colleges and universities (9 public, 5 private, and 1 for profit) were found to have violated DoD policy by using challenge coins bearing military seals.¹¹² Moreover, DoD stated that two additional schools were found to have used the military seals on websites and marketing materials.¹¹³ The DoD notified all schools of their non-compliance surrounding the use of Military seals; however, inexplicably only the University of Phoenix was placed on probation because of the unauthorized use of challenge coins—which, by that time, had already been corrected.

15 Colleges & Universities used Challenge Coins	
Name of College or University	Type of College or University
1. California Lutheran University	Private
2. DeVry University	For-Profit
3. East Central University	Public

¹⁰⁶ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

¹⁰⁷ U.S. Department of Defense, Trademarks, <http://www.defense.gov/MEDIA/trademarks>.

¹⁰⁸ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

¹⁰⁹ See appendix document dated August 3, 2015, email exchange regarding trademark infringement between the Department of Defense and the University of Phoenix, containing emails dated July 22, July 31, and August 3, 2015.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² Information taken from September 28, 2016, letter from Assistant Secretary of Defense, Personnel and Readiness, in response to Chairman McCain's letters of August 3 & 17.

¹¹³ According to DoD, The Chicago School of Professional Psychology (Private) & Rutgers University (Public) used Military seals on websites and marketing material.

4. Evergreen State College	Public
5. Florida State University	Public
6. Georgetown University	Public
7. Indiana Wesleyan University	Private
8. Northern Essex College	Public (2 year community college)
9. Southern Illinois University	Public
10. University of Maryland, College Park	Public
11. University of Memphis	Public
12. University of Miami	Private
13. University of North Carolina at Pembroke	Public
14. Wilmington University	Private
15. Xavier University	Private

Finally, in an August 2016 memo aimed at educating all Non-Federal Entities (NFEs) about the use of Military seals, the DoD's Community and Public Outreach office acknowledged, that "many people are unaware that these official DoD and Military marks are protected by law from unauthorized use."¹¹⁴ Similarly, after the probation decision was made, the Department, on October 20, 2015, issued additional new guidance on the use of these challenge coins clearly suggesting that the regulatory field surrounding the authorized use remained vague and not widely understood.¹¹⁵

Based on the findings of this investigation, concerns by the DoD about the University's improper use of trademarks on challenge coins could not have served as a legitimate basis for the probation decision. And, even if it did, the DoD should have considered the need for clarification among the relevant educational community as a factor in mitigation of its decision.

iii. Outside Investigations

Bilodeau's letter also cited civil investigative demands for documents by the Federal Trade Commission (FTC) and the California State Attorney General.¹¹⁶

It should not have.

An agency request for documents is not evidence of misconduct, and, without independent investigation and corroboration, should not have been used by the Department as a basis for taking adverse action. Indeed, the investigation found that the DoD did not undertake its own, independent review of the allegations raised by the FTC or California Attorney General investigations. Rather, it merely reviewed their document requests and accepted that those requests were sufficiently related to issues governed by the DoD MOU to be cited as a basis for

¹¹⁴ Department of Defense, "Important Information and Guidelines About the Use of Department of Defense Seals, Logos, Insignia, and Service Medals, August 16, 2016, <http://www.defense.gov/Portals/1/Documents/Trademarks/DOD%20Trademark%20Licensing%20Guide-16%20August%2016f.pdf>.

¹¹⁵ *Ibid.*

¹¹⁶ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

the probation decision. Moreover, the FTC’s voluminous document requests clearly amounted to a fishing expedition. Even more troubling is that both investigations may have been initiated in part by these agencies’ participation in an unaccountable interagency task force aimed at for-profits, which the DoD actively participates in.¹¹⁷ As of today, neither of these investigations have found any wrongdoing.

iv. Other Reasons, Not Cited in Letter

Due to the inadequacies and the lack of guidance by the Department surrounding the probation process, and prior remediation by the University of the reasons cited in the probation letter the purported rationale for DoD’s probation decision remained fluid and ever-evolving. Even after it issued its October 7, 2015, letter to the University of Phoenix, the DoD stated that there were “numerous other infractions” that factored into the probation decision, but were inexplicably not included in the probation letter.¹¹⁸

In statements to Committee staff during their interviews, DoD officials cited, for example, student complaints received in the Postsecondary Education Complaint System (PECS) and the Compliance Inbox. The PECS is an online reporting tool that allows service members pursuing a college degree to provide feedback regarding colleges and universities participating in the DoD Voluntary Education program. The DoD’s compliance inbox is an official means of communication between DoD officials, educational institutions, and other agencies.

According to documents provided by the DoD, from January 2014 through September 2015, it received 13 student complaints from an estimated 12,000 service members attending the University during that time period related to fees, credits, grades, etc.¹¹⁹ A less than 1 percent complaint rate is hardly compelling.

In fact, by the time the DoD issued its probation letter, it had closed-out all 13 student complaints with the University. Also, both Stephanie Barna, Principal Deputy Undersecretary of Defense for Personnel and Readiness, and Bilodeau agreed that, in terms of their substance, such complaints are not uncommon from schools participating in the TA program. So, these complaints could not have served as a basis for putting the University on probation.

DoD officials cited “push-back” and a lack of responsiveness by the University to notifications of potential non-compliance with the MOU as another reason warranting probation that was not noted in the probation letter. This explanation, however, appears **utterly false** based on documents reviewed in the course of the investigation—documents that the Department failed to provide to the Committee.

Most notably, on July 28, 2015, President Tim Slottow of the University of Phoenix sent a letter to the DoD, addressed to Rosemary Williams, then-Deputy Assistant Secretary of Defense for Military Community and Family Policy, requesting a meeting and noting that the University had “worked to respond promptly to recent questions regarding our compliance with the DOD MOU and [had] immediately ceased the distribution and production of challenge

¹¹⁷ U.S. Department of Education, Obama Administration Announces Final Rules to Protect Students from Poor-Performing Career College Programs, October 30, 2014, <http://www.ed.gov/news/press-releases/obama-administration-announces-final-rules-protect-students-poor-performing-career-college-programs>.

¹¹⁸ Information provided in staff interview.

¹¹⁹ The estimated number of students attending provided by the University of Phoenix.

coins.”¹²⁰ In her response, Williams refused such a meeting, stating it was “premature,” and cited the Department’s ongoing “methodical process to review any allegations of MOU non-compliance”—a process this review has determined to be wholly lacking methodology, as well as due process, oversight, and fairness.¹²¹

Williams closed her e-mail by stating, “I do not want to close this communication without acknowledging your collective extensive service to our country through academia, public service, and in uniform, respectively.”¹²²

Moreover, while the Department did, indeed, communicate with the University via e-mail, the final communication the DoD had with the University occurred on September 6, 2015, leaving the University without a substantive response to its request for a meeting for a full month until the October 7th probation decision was handed down.¹²³

Finally, on October 30, 2015, after the probation decision, President Slottow again sent a letter requesting an in-person meeting with DoD officials. In the letter, President Slottow wrote, “I am writing to follow-up regarding my prior request to schedule a meeting to discuss the matters in the October 7, 2015 letter to the University of Phoenix.”¹²⁴ The letter cites emails and phones calls by the University to the Department and the lack of response from the DoD.¹²⁵

Indeed, the investigation’s findings contradict Barna’s and Bilodeau’s allegations about numerous student complaints, University of Phoenix “push back”, and lack of responsiveness by the University.

Furthermore, the investigative review found there was considerable confusion at the Department and among participating institutions about the process surrounding the probation decision. This is because there was no DoD guidance regarding the probation status and how exactly an institution such as the University of Phoenix could have this status removed. As Ms. Barna pointed out in her interview, “probation status” in the voluntary education program was not provided for under any law, rule, regulation, or instruction, or even the MOU. Instead, it is some kind of *ad hoc* interim status crafted by DoD. Decisions regarding probation were apparently delegated to Ms. Bilodeau, who in this case knew or should have known that her action would have immediate and detrimental impact on the University’s reputation and abruptly disrupt its ability to continue providing educational programming to the military community.

d) Actual Reasons for the Decision

Given the insufficiency of the reasons cited by the Department in the probation decision,

¹²⁰ See appendix document dated July 28, 2015, letter requesting a meeting regarding trademark infringement from University of Phoenix to Rosemary Williams, Deputy Assistant Secretary of Defense for Military Community and Family Policy.

¹²¹ See appendix document dated August 2, 2015, email turning down meeting request from Rosemary Williams, Deputy Assistant Secretary of Defense for Military Community and Family Policy to the University of Phoenix.

¹²² See appendix document dated August 2, 2015, email turning down meeting request from Rosemary Williams, Deputy Assistant Secretary of Defense for Military Community and Family Policy to the University of Phoenix.

¹²³ See appendix document dated September 6, 2015, email exchange regarding installation access between the Department of Defense and the University of Phoenix, containing emails dated August 10, August 24, August 30, and September 6, 2015.

¹²⁴ See appendix document dated October 30, 2015, letter following up on previous meeting request from University of Phoenix President Timothy Slottow to Dawn Bilodeau.

¹²⁵ *Ibid.*

it was incumbent on this investigation to examine alternative reasons for the investigation and probation decision. Based on extensive review, the report concludes that the DoD lacked uniform guidance governing allegations of violations of the TA Program MOU; clear lines of authority and supervision; and sufficient processes to review allegations of violations of the MOU. These circumstances created an opportunity for an abuse of discretion; led to the inconsistent and unfair enforcement of the DoD's policies on institutions of higher education; and allowed for a single member of Congress to improperly influence adverse action against the University of Phoenix; a reputable member of the higher education community.

Moreover, the DoD's own probation letter reflects that it acted "[i]n response to allegations published by the Center for Investigative Reporting" contained in an article in which the DoD mid-level bureaucrat who was most responsible for the letter revealed that the DoD was "cracking down" on questionable recruiting practices among for-profits.^{126, 127} A side-by-side comparison of Ranking Member Durbin's June 30, 2015, letter to the DoD's October 7, 2015, probation letter to the University of Phoenix and the foregoing review of events that preceded the letter establish that Bilodeau likely issued the DoD letter **as directly responsive to** the Ranking Member's requests, which furthered the Administration's overall regulatory hostility towards for-profits.^{128, 129}

Given the flurry of activity around the DoD's inquiry following the June news article, which was made public by Senator Durbin after the DoD confirmed it to him, the DoD and Bilodeau—the person who recommended that the University be placed on probation, drafted the probation letter, and signed it—likely knew or should have known what impact the actual probation letter would have, as well as the second-order ways it would be utilized to publicly shame and penalize the University. In fact, just two days after Bilodeau sent the probation letter, Senator Durbin released a statement praising the DoD's decision to put the University on probation.¹³⁰ He then sent letters to the Department of Veterans Affairs (VA) and the Department of Education (ED), directing them to take action against the University due to the DoD's action and citing its "months-long investigation."¹³¹ Apparently confident about the underlying facts in the DoD's probation decision, within weeks, opponents of the University were now relying on the probation decision to threaten its access to Post 9/11 G.I. Bill funding through the VA and Title IV student aid funding through the Department of Education.

The foregoing leads to the conclusion that the intent here was to shut the University down.

¹²⁶ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

¹²⁷ Aaron Glantz, "University of Phoenix sidesteps Obama order on recruiting veterans," Reveal, June 30, 2015, <https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/>.

¹²⁸ See appendix document dated October 7, 2015, probation letter to the University of Phoenix from Ms. Dawn Bilodeau, Chief DoD Voluntary Education Military Community and Family Policy, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs.

¹²⁹ See appendix document dated June 30, 2015, letter asking the Department of Defense to investigate the University of Phoenix from Senator Richard Durbin to Secretary of Defense Ashton Carter.

¹³⁰ Senator Richard Durbin, October 9, 2015, Press Release on the DoD's actions against the University of Phoenix, <http://www.durbin.senate.gov/newsroom/press-releases/durbin-calls-on-va-and-department-of-education-to-review-dods-findings-on-university-of-phoenix-and-take-action>.

¹³¹ *Ibid.*

e) Conclusion and Recommendations

What happened in this case should never have been allowed to happen. The purpose of the investigation is to ensure that a similar abuse of authority never happens again—for there is little reason to believe that the circumstances and events that led to the mistreatment of this one university could not be present, or could not manifest themselves, elsewhere in the Department of Defense.

Indeed, in this case, the Department came perilously close to extinguishing one of its own valuable partners in voluntary education programs and the higher education option chosen by thousands of non-traditional students, especially active-duty service members. It is troubling that the lack of transparency and accountability in this instance could manifest itself in other vital DoD missions. The Chairman of the Armed Services Committee is committed to exercising its oversight prerogative to sure that those responsible are held accountable.

Against this backdrop, the report recommends that the incoming Administration take the following actions. First, given the material impact that a probation decision may have on the financial viability of educational institutions that decide to partner with the DoD in the Tuition Assistance (TA) program, DoD guidance should be updated to ensure that such decisions are not be delegated below the level of Undersecretary of Defense for Personnel & Readiness.

Second, the DoD should modify Department of Defense Instruction (DODI) 1322.25 to delineate administrative procedures that would ensure that complaints regarding educational institutions that have entered into a memorandum of understanding (MOU) with DoD for a Voluntary Education Partnership are resolved fairly and expeditiously and establish guidance on the rights and responsibilities of the DoD and the subject educational institutions after such a complaint has been made. The DODI 1322.25 does not provide adequate administrative procedures for the fair and expeditious adjudication of complaints about educational institutions that have entered into this MOU. As a result, there is no clear guidance on the rights and responsibilities of the DoD or of the educational institution prior to and following a DoD decision to suspend or terminate a MOU. Notably, the Senate version of the *Fiscal Year 2017 National Defense Authorization Act* directed the DoD to modify the DODI accordingly, no later than December 30, 2016.¹³²

Third, decisions to put educational institutions on probation that decide to partner with the DoD in the TA program should be made—and appropriately documented—pursuant to a process that is traceable, repeatable and defensible. Remarkably, when appearing before the Committee, relevant DoD officials conceded that no document (briefing memorandum, decision memorandum, or any other similar document) reflecting that the authority to put the University of Phoenix on probation was sought or granted, exists. To ensure sound oversight and accountability in connection with decisions to suspend or terminate an MOU relative to partner educational institutions, such decision should comport with DoD standard operating procedure

¹³² National Defense Authorization Act for Fiscal Year 2017, S.2943, <https://www.congress.gov/bill/114th-congress/senate-bill/2943?q=%7B%22search%22%3A%5B%22National+Defense+AUthorization+Act+fiscal+year+2017%22%5D%7D&r=2>.

regarding the documentation of approval decisions.

Fourth, policies and procedures governing the DoD's conduct with or relating to for-profit educational institutions should be reviewed and wherever appropriate revised to ensure that the DoD is not unfairly or without rational basis discriminating between for-profit and not for-profit educational institutions. The DoD should view all education institutions with which it has MOUs as equal. There should be no disparate treatment between public and for-profit instantiations based solely on their tax status.

With this in mind, fifth, probably the incumbent Administration's most caustic expression of its desire to unfairly target for-profit educational institutions, the For-Profit Interagency Task Force, should be disbanded immediately.

APPENDIX

RICHARD J. DURBIN

ILLINOIS

ASSISTANT DEMOCRATIC LEADER

COMMITTEE ON APPROPRIATIONS

COMMITTEE ON THE JUDICIARY

COMMITTEE ON RULES
AND ADMINISTRATION

United States Senate
Washington, DC 20510-1504

June 30, 2015

The Honorable Ashton Carter
Secretary of Defense
100 Navy Pentagon
Washington, DC 20350-1000

Dear Secretary Carter:

I am writing to bring to your attention a deeply troubling investigation by the Center for Investigative Reporting published today which documents University of Phoenix's deceptive marketing practices and its infringement on military trademarks. I am astonished at the Department's willingness to accept payment for access, in violation of the spirit of Executive Order 13607, and disappointed in the conduct of its personnel, shielding the company from public scrutiny. I urge you to investigate these allegations swiftly and take immediate steps to bar the company from further access to service members until these issues are resolved.

The University of Phoenix is a for-profit company that makes much of its money off of service members and veterans, including \$1.2 billion in GI Bill benefits alone since 2009. In return, the company offers degrees of questionable value, below-average graduation rates, and a student loan default rate almost forty percent higher than the national average. As multiple witnesses documented at a March 2013 hearing of the Defense Appropriations Subcommittee, these profit motives drive many for-profits to engage in aggressive, deceptive, or abusive marketing and recruiting practices. In response, the President issued Executive Order 13607 and the Department issued DoDi 1322.25 to protect service members from abuse.

It is clear from the article that the Department has not taken this threat or its own regulations seriously. According to the Center for Investigative Reporting (CIR), the company has evaded these regulations through paid sponsorship of briefings and events on military installations across the country. When a CIR reporter asked about these activities at an October concert featuring one of the company's recruiters on stage, a military public affairs officer removed the reporter from the base. While the article cites \$1 million of paid event sponsorships at five military bases in the last five years, it is not publicly known how pervasive this technique has become.

The company has also paid an undisclosed sum to have its staff serve as the exclusive resume advisors in Hiring Our Heroes job fairs and workshops, many on military bases. A CIR hidden camera documents that all of the resume workshop materials, presentation slides, and sample successful resumes are labeled with University of Phoenix marketing, and trainers urge attendees to go to their website for additional information. Documents obtained by CIR show these actions are part of a concerted strategy of stealth recruiting by the company to evade Department scrutiny.

Finally, the company also appears to be distributing a mock military challenge coin on bases carrying the official seals of the Department of Defense and every branch of the military alongside its company logo. A military spokesperson indicated that the Department had not given permission for the use of its trademark.

In light of this deeply troubling series of allegations, I request that you take the following steps:

- 1) Investigate whether the company's conduct violates its memorandum of understanding (MOU) with the Department.
- 2) Suspend the company from participating in Department of Defense voluntary military education programs until that investigation concludes.
- 3) Investigate and prosecute the company for its infringement of Department of Defense trademarks through its mock "challenge coins."
- 4) Halt the company's access to military personnel through the Hiring Our Heroes job fair program.
- 5) Issue corrective guidance to all base commanders to bar the company from *any* further access to military bases until these matters are resolved.

Thank you for your prompt attention to this matter.

Sincerely,



Richard J. Durbin
Vice Chairman

[REDACTED]

From: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance [REDACTED]
Sent: Monday, July 13, 2015 10:26 AM
To: Mike Bibbee
Cc: Gary Harrah; Tim Slottow; OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance
Subject: University of Phoenix: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25
Attachments: DoD Seal Infringement_Letter to DoD MOU Schools.pdf; UPhoenix_Reveal Article_30Jun15.pdf; coin_flip.mp4

SUBJECT: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25

Dear Educational Institution Representative,

This is to inform you of potential non-compliance issue(s) with your signed Department of Defense (DoD) Voluntary Education Partnership Memorandum of Understanding (MOU) regarding the Department of Defense Instruction 1322.25, "Voluntary Education Programs," and the DoD Seal Infringement letter (attached).

It has come to our attention that the University of Phoenix may have produced and issued a custom-engraved coin with the official seals of the Department and other DoD components (video clip attached). In this case, the non-compliance report was referred to our compliance inbox (osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil) with respect to a Reveal News article published June 30, 2015 (attached). Further, the aforementioned coin appears to violate the use of DoD official seals or other trademarked insignia. A DoD Seals Infringement letter was recently sent to all DoD MOU schools and is posted at www.dodmou.com on the "resources tab" (see attached).

The Voluntary Education Partnership MOU signed with the Department, reflects the commitment and agreement of the University of Phoenix to meet the requirements of DoD Instruction 1322.25. The MOU is an agreement with the DoD for education purposes only and does not extend to permissions that could imply further endorsement by DoD. Furthermore, understand that Military Department and other DoD component names, insignia, seals, symbols, phrases, and similar identifiers may be protected as trademarks or service marks and may not be used in commerce for advertising, marketing, school signage, as part of a domain name or website, or for any similar purpose. (See, e.g., The Lanham Act, 15 USC 1051, et seq.; 10 USC 2260, 10 USC 7881, and other applicable trademark licensing laws and regulations.)

DoD is committed to ensuring our military students, especially tuition assistance beneficiaries, are equipped with the details they need to make school and program choices that meet their individual education and career goals. The aforementioned places your institution in apparent violation of several provisions of your MOU with DoD, specifically, but not limited to paragraphs 3b, 3l, 4c(1) and 4 c(5). By signing the DoD Voluntary Education Partnership MOU, your educational institution agrees to comply with its terms. Please note that in accordance with the signed MOU, educational institutions failing to comply may receive a range of penalties from a written warning to revocation of the DoD Voluntary Education Partnership MOU and removal from participation in the DoD Tuition Assistance Program.

In accordance with DoD Instruction 1322.25, DoD intends to work with educational institutions to resolve reports of non-compliance. To resolve this notification of potential non-compliance, we request additional clarification reference the aforementioned. Please submit your written response to osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil within seven days from receipt of this correspondence.

SUBJECT: Reminder Notice - Trademark Infringement

July 13, 2015

Dear Participating Institution,

In our review of educational institutions for the Department of Defense Voluntary Education Partnership Memorandum of Understanding (MOU), we found that several institutions appear to be displaying the "Official Seals" of the Department of Defense (DoD), the Military Departments (i.e., Army, Navy, Air Force, and the U.S. Marine Corps), on institution websites, and in various institution publications (e.g., catalog), advertisements, brochures, and billboards. We are presuming that the use of these official seals is intended to acknowledge support for our Service members and to advertise academic curriculum tailored to meet the needs of the military community. However, the use of these official seals is expressly prohibited. Consequently, the Department is concerned that this type of inappropriate use may create an appearance of endorsement or affiliation. For example, consumers could view the advertisement and assume the Department of Defense or a particular Military Department or other DoD entity endorses or favors the policies, programs and services offered by a particular institution over those of another; or that a DoD entity may be affiliated with a particular institution. As a Participating Institution, it is imperative that all Voluntary Education Partnership MOU signatories be in compliance with DoD policy.

As explained at <http://www.defense.gov/trademarks>, the Department of Defense and Military Department seals are protected by law from unauthorized use, and these seals may NOT be used for non-official purposes. In addition, institutions are encouraged to review the Government Website Public Use Notice of Limitations at <http://www.dimoc.mil/resources/limitations.html> regarding the use of visual information containing military persons, places, and things for commercial advertisement, marketing, promotion, solicitation or fundraising purposes.

We hope this notice and the resources provided therein will inform current and future decisions concerning the use of any DoD official seals or other trademarked insignia. We request that any DoD entity official seals or other insignia that are currently being used in publications, advertisements, brochures, on billboards and websites be promptly withdrawn and that all future use cease, except in cases when permission has been granted by the appropriate DoD entity.

Your immediate assistance with this matter is greatly appreciated.

/signed/
Dawn A. Bilodeau
Chief, DoD Voluntary Education
Military Community and Family Policy

Clarke, Anthony B CIV OSD OUSD P-R (US)

From: Bilodeau, Dawn A CIV OSD OUSD P-R (US)
Sent: Tuesday, July 14, 2015 2:42 PM
To: Raymer, Pamela L CIV USARMY HRC (US)
Cc: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance
Subject: Army Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 1322.25 (Fort Bragg, NC)
Attachments: UPhoenix_Reveal Article_30Jun15 (3).pdf

Dear Dr. Raymer,

We are reaching out to you concerning potential Department of Defense (DoD) Installation access non-compliance issue(s) at a DoD installation, Fort Bragg, NC, for which you have oversight. As you are aware, Presidential Executive Order 13607, signed April 27, 2012, required the Department to create rules to strengthen existing procedures for access to DoD installations by educational institutions. In response, the Department implemented DoD Instruction 1322.25, "Voluntary Education Programs," on July 7, 2014, and has since been working with the Services and educational institutions to address reports of DoD Installation access non-compliance we have received.

In this case, the non-compliance report was referred to the DoD compliance inbox (osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil) based on the Reveal News article published June 30, 2015 (attached). Further, Congress has urged DoD to investigate the allegations cited in the Reveal News article. The article purports the University of Phoenix engaged in recruiting and marketing activities through its participation in a Hiring Our Heroes event at Fort Bragg, NC. In accordance with DoD Instruction 1322.25, the responsible education advisor must monitor educational institutions and its agents granted access to a DoD installation to ensure they do not engage in unfair, deceptive, or abusive marketing practices, such as distributing marketing materials or conducting recruitment activities on the DoD installation at unapproved locations or events.

Investigations are not within our purview; however, we will conduct a comprehensive review of the Voluntary Education Partnership Memorandum of Understanding (MOU) the University of Phoenix signed with DoD for potential non-compliance. In order to do that, we need additional information from the Service and/or responsible education advisor. We ask that you review and provide any details related to the aforementioned including, but not limited to, the below information.

DoD Installation: Fort Bragg, NC
Educational Institution: University of Phoenix
Event(s): Hiring Our Heroes
Clarification requested:

- a) When and where did the event take place (i.e., location on the installation and date including month, day, and year)?
- b) Was the responsible education advisor aware of the event? Please explain further.
 - 1) When, where and how did the event become known to the education advisor?
 - 2) What action(s), if any, were taken by the education advisor once they became aware of the event?
- c) Did the educational institution submit a written DoD Installation access request to the responsible education advisor to attend the event? If yes, provide a copy of the DoD Installation access request.
- d) What was the determination (approval/denial) of the responsible education advisor regarding any written request for DoD Installation access? Provide a copy of any DoD Installation access request approval or denial.

e) If DoD Installation access was granted by the responsible education advisor, did they monitor the educational institution at the event for compliance with DoD Instruction 1322.25? Please explain further.

1) Were any potential MOU violations observed or reported (i.e., abusive marketing tactics, handing out misleading advertising or marketing materials not in accordance with DoD Instruction 1322.25 requirements, or distributing marketing materials at unapproved events or locations)?

2) Did any representative or agent of the educational institution conduct inappropriate recruitment activities (i.e., collect individual name, phone number, email address, engagement in same-day recruitment and registration, recruitment of newly assigned military personnel, or engagement in open recruiting efforts)?

3) Did the representative or agent of the educational institution hand out promotional items (e.g., ink pens, cups, golf balls, towels, or t-shirts)? If yes, were any items having a monetary value of more than a "de minimis" amount handed out (i.e., laptops, tablets, or mobile devices)?

To fully consider this potential non-compliance, we request additional clarification reference the aforementioned. Please submit your written response to osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil within seven (7) days from receipt of this correspondence. Thank you for your prompt attention to this matter.

Compliance Team
State Liaison & Educational Opportunity
OUSD(P&R), Military Community & Family Policy (MC&FP)



University of Phoenix

July 28, 2015

Ms. Rosemary Freitas Williams
Deputy Assistant Secretary of Defense for Military Community and Family Policy
United States Department of Defense
4000 Defense Pentagon
Washington, DC 20301-1400

Dear Deputy Assistant Secretary Williams:

As the president of the University of Phoenix and the leader of our military division, we write to commend the Department of Defense (DOD) for its effective and essential work to ensure accountability for the investment U.S. Service members make to access quality postsecondary education opportunities.

As a regionally accredited institution, University of Phoenix proudly serves thousands of U.S. Service members and understands the obligations we have to provide quality degree and certificate programs that "advance their personal education and career aspirations and prepares them for future career and technical pursuits, both inside and outside of the Department of Defense."

We write to respectfully request a meeting with you and your team to share and demonstrate what we have learned and implemented as an early supporter of the DOD Voluntary Education Partnership Memorandum of Understanding (DOD MOU).


The University has worked to respond promptly to recent questions regarding our compliance with the DOD MOU and have immediately ceased the distribution and production of challenge coins.

We believe the level of support, resources, and staff we have devoted to ensuring compliance with the DOD MOU, can help inform the process used to verify compliance of all educational institutions.

Thank you for your consideration of this request. We will work diligently to accommodate your schedule for a meeting and hope to have the opportunity to discuss areas of improvement and best practices.

Respectfully,


Timothy P. Slottow
President
University of Phoenix


James "Spider" Marks
Executive Dean
College of Security & Criminal Justice
University of Phoenix
Major General (US Army, retired)

cc: Thomas L. Langdon, Ed.D., Director, State Liaison & Educational Opportunity
Dawn Bilodeau, Chief, Voluntary Education

Message (Digitally Signed)

From: Williams, Rosemary J SES WHS ESD (US) [REDACTED]
Sent: 8/2/2015 6:27:48 PM
To: Mike Bibbee [/O=APOLLO GROUP, INC./OU=EXCHANGE/cn=Recipients/cn=mobibbee]
CC: Langdon, Thomas L CIV OSD OUSD P-R (US) [REDACTED]; Bilodeau, Dawn A CIV OSD OUSD P-R (US) [REDACTED]
Subject: RE: Letter from Tim Slottow, President, University of Phoenix
Attachments: smime.p7s

Mike

Thank you for the email and attachment.

Best,

RFW

Mr. Slottow and General Marks -

Thank you for your thoughtful letter. My sincere apologies for not responding in a more timely fashion.

While I appreciate your desire to meet, I believe it is a bit premature at this time. As you are know, we have a methodical process to review any allegations of MOU non-compliance regarding of the institution. We arduously follow that process to be good stewards of the program as well as to maintain fair treatment of the institution. My team is working that process now and once they complete the review regarding University of Phoenix they have assured me you will be contacted as soon as possible for clarification and response.

My point of contact for this is Dr. Tom Langdon, Director, State Liaison and Educational Opportunity, as Voluntary Education is one of his responsibilities and he or his team will be in touch as soon as practical.

I do not want to close this communication without acknowledging your collective extensive service to our country through academia, public service and in uniform, respectively.

All the best

Rosemary Williams

Rosemary Freitas Williams
Deputy Assistant Secretary of Defense
Military Community & Family Policy
[REDACTED]

-----Original Message-----

From: Mike Bibbee [REDACTED]
Sent: Tuesday, July 28, 2015 10:09 PM
To: Williams, Rosemary J SES WHS ESD (US)
Cc: Langdon, Thomas L CIV OSD OUSD P-R (US); Bilodeau, Dawn A CIV OSD OUSD P-R (US)
Subject: Letter from Tim Slottow, President, University of Phoenix

Dear Deputy Assistant Secretary Williams,

I respectfully submit the attached letter from Timothy P. Slottow, President, University of Phoenix, and James "Spider" Marks, Executive Dean, who leads our military division.

V/R

Mike Bibbee, MBA, MS

From: Creecy-Starks, Adrien F CIV OSD PA (US)
Sent: Monday, August 03, 2015 6:35 AM
To: Mike Bibbee
Cc: Bolling, Ryan B CIV OSD OGC (US)
Subject: RE: Univ. Phoenix Trademark Infringement

Thank you so much for the update on the discontinuance and recall of the challenge coins. We certainly appreciate this corrective action. We also trust the notice of limitations will be helpful not only for the University of Phoenix but also for many other non-Federal entities.

Sincerely,

Fax: [REDACTED]
Visit us at www.ourmilitary.mil

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From: Mike Bibbee [mailto: [REDACTED]]
Sent: Friday, July 31, 2015 3:21 PM
To: Creecy-Starks, Adrien F CIV OSD PA (US)
Cc: Bolling, Ryan B CIV OSD OGC (US); Gary Harrah; Wilson, Caroline D CIV OSD PA (US)
Subject: RE: Univ. Phoenix Trademark Infringement

Dear Ms. Starks:

The University of Phoenix is in receipt of your letter to President Tim Slottow emailed on Wednesday July 22, 2015 (the "Letter"). The Letter references the University's production and issuance of a custom-engraved coin with official seals of the Department of Defense, other DoD components, and the U.S. Coast Guard and requests that the University promptly cease distribution of the challenge coins displaying official DoD and Military Service insignia. The University has ceased distribution of the challenge coins and recalled all outstanding coins.

The Letter also requests that the University, when updating its website and any other location where the University maintains a business presence, be cognizant of the Government Website Public Use Notice of Limitations regarding the use of visual information containing military persons, places, and things for commercial advertisement, marketing, promotion or solicitation purposes. The University appreciates the reminder and will make sure to follow the guidance.

Please do not hesitate to reach out directly should you have any questions or need additional information.

Sincerely,

Mike Bibbee, MBA, MS
Vice President – Military Operations

University of Phoenix

Operational Services | 1625 W. Fountainhead Parkway | [REDACTED] | Tempe, AZ 85282 [REDACTED]
| cell [REDACTED] | fax [REDACTED] email [REDACTED]

P Please consider the environment before printing this email.

[Click here to see Opportunities for Federal Aid Programs \(Additional Information as Required by Executive Order 13607\)](#)

-----Original Message-----

From: Creecy-Starks, Adrien F CIV OSD PA (US) [mailto:[REDACTED]]
Sent: Wednesday, July 22, 2015 11:40 AM
To: Tim Slottow
Cc: Bolling, Ryan B CIV OSD OGC (US); Creecy-Starks, Adrien F CIV OSD PA (US); Mike Bibbee; Gary Harrah; Wilson, Caroline D CIV OSD PA (US)
Subject: Univ. Phoenix Trademark Infringement

Mr. Timothy P. Slottow
University of Phoenix
President
1625 West Fountainhead Parkway
Tempe, AZ 85282-2371

Dear Mr. Slottow,

It has been brought to my office's attention that the University of Phoenix has produced and issued custom-engraved coins with the official seals of the Department of Defense (DoD), other DoD components, and the U.S. Coast Guard (see attached). You may not be aware that the DoD and the Military Service seals are protected by law from unauthorized use and may only be used for official purposes. Similarly, federal regulations prohibit the use of official military markings in ways that imply endorsement of a commercial entity or activity.

Any current or past memoranda of understanding with the DoD, a DoD Component, or the U.S. Coast Guard does not negate this insignia protection. Therefore, we respectfully request that the University of Phoenix promptly cease distribution of the co-branded challenge coins displaying official DoD and Military Service insignia.

We are concerned that such use of the official insignia creates an appearance of endorsement, when that is not the case. Challenge coins are used by the military as part of a tradition. The Military Service Trademark Licensing Program Managers and this office agree that co-branding of such coins with non-Federal entity names and logos is not necessarily in the best interest of the Department and could lead consumers and potential students to assume that DoD endorses or favors the programs and services offered by the University of Phoenix or similar infringers. Further, such use of our official insignia creates the impression that unauthorized use by third parties is appropriate, thereby weakening the strength of the seals and compromising our ability to protect them from misuse.

Veterans and active duty military students, as well as any existing student veteran organizations on the university campus, may purchase challenge coins manufactured and distributed by companies that have been licensed and authorized by Military Service Trademark Licensing Offices to produce the products. These coins may not bear both Military Services' insignia and the university's name, logo, or other marks. For more information or appeal consideration see the contacts at <http://www.defense.gov/trademarks/>.

Even with regard to licensed coins, in order to protect DoD and Military Services' insignia from misuse in college and university settings, only veterans and active duty military students are eligible recipients of authorized challenge coins. University staff (veterans and non-veterans) are prohibited from distributing the coins at college fairs, recruiting activities, and similar events, as this could imply DoD and U.S. Coast Guard endorsement.

Additionally, the University of Phoenix's Online College for Military web pages display many uniformed personnel. When updating the school's web site and any other location where the university maintains a business presence, request your staff be cognizant of the Government Website Public Use Notice of Limitations at <http://www.dimoc.mil/resources/limitations.html> regarding the use of visual information containing military persons, places, and things for commercial advertisement, marketing, promotion, or solicitation purposes.

We trust you understand our position. We appreciate your prompt attention and assistance in rectifying this matter.

Copy furnished:

Gary Harrah
Regional Director, National Defense Relations

Mike Bibbee
Vice President, Military Operations and Continuing Education

Sincerely,

Ms. Adrien F. C. Starks
Senior Assistant for Public Affairs Policy Office of the Assistant Secretary of Defense
(Public Affairs)/ Community and Public Outreach
DoD Branding and Trademark Licensing Program [REDACTED] Washington, DC 20301-1400

[REDACTED]
[REDACTED]
[REDACTED]
Fax: [REDACTED]

Visit us at www.ourmilitary.mil

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Clarke, Anthony B CIV OSD OUSD P-R (US)

From: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance
Sent: Wednesday, August 05, 2015 9:17 AM
To: Mike Bibbee
Cc: Tim Slottow; Gary Harrah; OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance
Subject: RE: University of Phoenix: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25 (Challenge Coin)

Thank you for your correspondence dated August 4, 2015. The response provided by University of Phoenix notes acknowledgement and understanding of appropriate laws and Defense Department policies regarding use of its official seals or other trademark insignia. Specifically, we note your intent "to immediately discontinued production and recalled all non-circulated coins." Additionally, we note that you believe the use of the coins do not rise to any level of violation of section 3a (2) and 3j of the DoD MOU. However, the use of these official seals is expressly prohibited and this type of inappropriate use may create an appearance of endorsement or affiliation. As a Participating Institution, it is imperative that all Voluntary Education Partnership MOU signatories be in compliance with DoD policy.

While we acknowledge your institution's corrective action to discontinue production and distribution of the aforementioned coin, such matters fall within the purview of the Department's Trademark and Licensing office and will be referred as such.

We consider your response and corrective action sufficient to resolve this report of potential non-compliance with respect to the MOU signed with the DoD. If additional action is needed reference the aforementioned coin, the DoD Trademark and Licensing office will contact you directly.

Compliance Team
State Liaison & Educational Opportunity
OUSD(P&R), Military Community & Family Policy (MC&FP)
[REDACTED]

-----Original Message-----

From: Mike Bibbee [mailto:[REDACTED]]
Sent: Tuesday, August 04, 2015 4:32 PM
To: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance
Cc: Tim Slottow; Gary Harrah
Subject: RE: University of Phoenix: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25 (Challenge Coin)

Dear Compliance Team,

Thank you for the opportunity to respond to your notice of potential non-compliance with the U.S. Department of Defense ("DoD") Voluntary Education Partnership Memorandum of Understanding ("DoD MOU") (the "Notice"). University of Phoenix (the "University") devotes significant resources to compliance with the DoD MOU. Indeed, we unconditionally and vigorously endorse the directives contained in both the DoD MOU and the President's Executive Order 13607 (the "Executive Order").

The Notice inquired about custom-engraved coins containing the DoD and the DoD Components' seals on one side and the University's insignia on the other. The Notice suggested that these "challenge coins" may place the University in violation of paragraphs 3a (2) and 3j of the DoD MOU.

The University is unaware of any instance where the coins were used to secure service members' enrollment, obtain access to TA funds, or as a deceptive marketing practice. Nor were the coins used as a commission, bonus, or other incentive based directly or indirectly on securing enrollment or federal financial aid. Nevertheless, when questions about the coins arose, the University immediately discontinued production and recalled all non-circulated coins.

Further, the University enforces rigorous policies to prevent misrepresentations to the public. For example, the General Engagement, Enrollment and Recruitment policy (Attachment 1) broadly prohibits misrepresentation by University employees. Moreover, the University trains and certifies Enrollment Representatives, Academic Counselors, and Finance Advisors that work with military students. Thus, the University does not believe that its use of the coins violated paragraphs 3a (2) and 3j of the DoD MOU.

We remain committed to serving our military and veteran students to achieve an exceptional educational experience that will facilitate career aspirations. We also remain ready and willing to demonstrate our commitment to ensure compliance with the spirit and the word of the DoD MOU and the Executive Order.

V/R

Mike Bibbee, MBA, MS
Vice President - Military Operations

University of Phoenix

Operational Services | 1625 W. Fountainhead Parkway | [REDACTED] | Tempe, [REDACTED]
| [REDACTED] | [REDACTED]

-----Original Message-----

From: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance [REDACTED]

Sent: Tuesday, July 28, 2015 9:02 AM

To: Mike Bibbee

Cc: Tim Slottow; Gary Harrah; OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance

Subject: University of Phoenix: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25 (Challenge Coin)

SUBJECT: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25

Dear Educational Institution Representative,

This is to inform you of potential non-compliance issue(s) with your signed Department of Defense (DoD) Voluntary Education Partnership Memorandum of Understanding (MOU) regarding the Department of Defense Instruction 1322.25, "Voluntary Education Programs," and the DoD Seal Infringement letter (attached).

It has come to our attention that the University of Phoenix may have produced and issued a custom-engraved coin with the official seals of the Department and other DoD components (video clip attached). In this case, the non-compliance report was referred to our compliance inbox (osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil) with respect to a Reveal News article published June 30, 2015 (attached). Further, the aforementioned coin appears to violate the use of DoD official seals or other trademarked insignia. Multiple reminder notices reference DoD Seals Infringement were sent to all DoD MOU schools, the most recent of which is attached here and posted at www.dodmou.com under resources.

The Voluntary Education Partnership MOU signed with the Department, reflects the commitment and agreement of the University of Phoenix to meet the requirements of DoD Instruction 1322.25. The MOU is an agreement with the DoD for education purposes only and does not extend to permissions that could imply further endorsement by DoD.

Furthermore, understand that Military Department and other DoD component names, insignia, seals, symbols, phrases, and similar identifiers may be protected as trademarks or service marks and may not be used in commerce for advertising, marketing, school signage, as part of a domain name or website, or for any similar purpose. (See, e.g., The Lanham Act, 15 USC 1051, et seq.; 10 USC 2260, 10 USC 7881, and other applicable trademark licensing laws and regulations.)

DoD is committed to ensuring our military students, especially tuition assistance beneficiaries, are equipped with the details they need to make school and program choices that meet their individual education and career goals. The aforementioned places your institution in apparent violation of several provisions of your MOU with DoD, specifically, but not limited to paragraphs 3a(2) and 3j. By signing the DoD Voluntary Education Partnership MOU, your educational institution agrees to comply with its terms. Please note that in accordance with the signed MOU, educational institutions failing to comply may receive a range of penalties from a written warning to revocation of the DoD Voluntary Education Partnership MOU and removal from participation in the DoD Tuition Assistance Program.

In accordance with DoD Instruction 1322.25, DoD intends to work with educational institutions to resolve reports of non-compliance. To resolve this notification of potential non-compliance, we request additional clarification reference the aforementioned. Please submit your written response to osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil within seven (7) days from receipt of this correspondence.

Compliance Team
State Liaison & Educational Opportunity
OUSD(P&R), Military Community & Family Policy (MC&FP) [REDACTED]

This message is private and confidential. If you have received it in error, please notify the sender and remove it from your system.

Clarke, Anthony B CIV OSD OUSD P-R (US)

From: Bilodeau, Dawn A CIV OSD OUSD P-R (US)
Sent: Wednesday, August 19, 2015 3:21 PM
To: Drummond, Charles FREDERICK (Fred) CIV USN DCNO N1 (US)
Cc: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance; Johnson, James P CIV USN DCNO N1 (US)
Subject: Follow Up: Navy Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 1322.25 (Navy Operational Support Center, Fort Worth, TX)
Attachments: Followup to Navy DoP Issue_18Aug2015_final.docx; RE: Navy Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 13... (10.5 KB); RE: Navy Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 13... (13.7 KB)

Fred, Sincerely appreciate all the hard work you and your team put in to gathering the information for this response.

In reference to the complaints received against University of Phoenix and the response you submitted to our inquiry (attached), we wanted to share with you some additional areas of concern. As the Service Chief, we believe you have the authority to resolve these concerns. We have included areas for reference to assist you in establishing additional DoD installation access guidelines for education advisors. Further, the below recommendations regarding the identified potential non-compliance issue(s) are provided for implementation at the Navy Operational Support Center (NOSC) Fort Worth, Navy College Office in Corpus Christi, and all other Navy locations with similar arrangements. We request you provide this office with actions taken to address each recommendation presented in this response. Sincerely, Dawn

Dawn Bilodeau
Chief, DOD Voluntary Education
Military Community & Family Policy

[REDACTED]

"If it is to be, it is up to me."

Mr. Drummond,

Sincerely appreciate all the hard work you and your team put in to gathering the information for this response.

In reference to the complaints received against University of Phoenix and the response you submitted to our inquiry, we wanted to share with you some additional areas of concern. As the Service Chief, we believe you have the authority to resolve these concerns. We have included areas for reference to assist you in establishing additional DoD installation access guidelines for education advisors. Further, the below recommendations regarding the identified potential non-compliance issue(s) are provided for implementation at the Navy Operational Support Center (NOSC) Fort Worth, Navy College Office in Corpus Christi, and all other Navy locations with similar arrangements. We request you provide this office with actions taken to address each recommendation presented in this response.

NAVY OPERATIONAL SUPPORT CENTER FORT WORTH

1. The Navy Operational Support Center (NOSC) response indicates a gap in the Navy installation access approval process for vetting educational institutions by NOSC staff and by the responsible education advisor located at the Navy College Office in Corpus Christi. These gaps in vetting educational institutions are inconsistent with the requirement of DoD Instruction (DoDI) 1322.25, Change 3, Voluntary Education Programs.

Although the NOSC staff is not part of a voluntary education vetting process for authorizing attendees at job fairs or events, it is very important that they understand the requirements of DoDI 1322.25, Change 3. In particular, any installation staff member who invites an educational institution onto a military installation should be familiar with the requirement that all educational institutions requesting permission to participate in events on a DoD installation require vetting through the responsible education advisor regardless of purpose for coming on the DoD installation.

It is important that the responsible education advisor is familiar with and makes known the process/procedures to all agencies involved in the support of DoD installation job fairs and all other events in which educational institutions may request DoD installation access for which the responsible education advisor has oversight. This should be done to prevent a recurrence of a potential non-compliance issue. Transparency is key to ensuring that when DoD installation access is granted, everyone involved is in compliance with DoDI 1322.25 requirements.

RECOMMENDATION: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2. The job fair at NOSC Fort Worth was not conducted IAW DoDI 1322.25, Change 3, requirements to monitor educational institutions and its agents who are granted access on a DoD installation. The NOSC staff was not aware of their obligation to inform the Director of the Navy College Office that the University of Phoenix, an educational institution was participating at the event. Corpus Christi is

responsible for the NOSC at Fort Worth. We are aware that geographically this creates a challenge to meet this requirement.

When an educational institution is granted DoD installation access by the responsible education advisor to participate in installation event, it is the responsibility of the education advisor to monitor the educational institution for compliance with DoD Voluntary Education Partnership Memorandum of Understanding, DoDI 1322.25, Change 3, and compliance with policies in DoDI 1344.07, Personal Commercial Solicitation. Monitoring access and reporting non-compliance is critical to the success of the DoD installation access program. Further, the aforementioned is consistent with DoDI 1322.25 requirements of the Military Service to provide adequate funds for program implementation and administration as well as providing adequately trained staff.

RECOMMENDATION:

[REDACTED]

SUMMARY OF RECOMMENDATIONS

[REDACTED]

[REDACTED]

Clarke, Anthony B CIV OSD OUSD P-R (US)

From: Bilodeau, Dawn A CIV OSD OUSD P-R (US)
Sent: Wednesday, August 19, 2015 3:21 PM
To: Raymer, Pamela L CIV USARMY HRC (US)
Cc: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance; Talbort, Patricia A CIV USARMY HRC (US)
Subject: Follow Up: Army Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 1322.25 (Forts Brag, Campbell, Carson, and Hood)
Attachments: Followup to Army_UoP_Issue_18Aug2015_final.docx; RE: Army Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 13... (34.5 KB); RE: Army Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 13... (43.7 KB); RE: Army Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 13... (41.1 KB); RE: Army Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 13... (27.2 KB); RE: Army Inquiry Reference Potential Non-Compliance with DoD MOU/DoDI 13... (1.36 MB)

Pam, Sincerely appreciate all the hard work you and your team put in to gathering the information for this response.

In reference to the complaints received against University of Phoenix and the response you submitted to our inquiry (attached), we wanted to share with you some additional areas of concern. As the Service Chief, we believe you have the authority to resolve these concerns. We have included areas for reference to assist you in establishing additional DoD installation access guidelines for education advisors. Further, the attached recommendations regarding the identified potential non-compliance issue(s) are provided for Forts Brag, Campbell, Carson, and Hood and implementation at all other Army locations for which you have policy oversight. We request you provide this office with actions taken to address each installation specific recommendation presented in this response. Sincerely, Dawn

Dawn Bilodeau
Chief, DOD Voluntary Education
Military Community & Family Policy

"If it is to be, it is up to me."

Dr. Raymer,

Sincerely appreciate all the hard work you and your team put in to gathering the information for this response.

In reference to the complaints received against University of Phoenix and the response you submitted to our inquiry, we wanted to share with you some additional areas of concern. As the Service Chief, we believe you have the authority to resolve these concerns. We have included areas for reference to assist you in establishing additional DoD installation access guidelines for education advisors. Further, the below recommendations regarding the identified potential non-compliance issue(s) are provided for Forts Campbell, Carson, Hood, and Bragg and implementation at all other Army locations for which you have policy oversight. We request you provide this office with actions taken to address each installation specific recommendation presented in this response.

FORT CAMPBELL

a. The response received from Fort Campbell indicates potential non-compliance by the responsible education advisor to monitor an educational institution granted DoD installation access, which is inconsistent with the requirement of DoD Instruction 1322.25, Voluntary Education Programs. Although it was stated the responsible education advisor was not aware of the presence of University of Phoenix at the "Big Smo" concert and did not monitor the event, the DoD instruction places the responsibility on the education advisor to collaborate with MWR ensuring all concerned parties are compliant with DoDI 1322.25. This includes verifying that commercial sponsorship does not involve inappropriate recruitment actions as evidenced by the setting up of booths or tables and the distribution of promotional literature.

As a reminder, when an educational institution is granted DoD installation access by the responsible education advisor to participate in an installation event, it is the responsibility of the education advisor to monitor the educational institution for compliance with the DoD Voluntary Education Partnership Memorandum of Understanding, DoDI 1322.25, Voluntary Education Programs, Change 3, and compliance with policies in DoDI 1344.07, Personal Commercial Solicitation. Further, the aforementioned is consistent with DoDI 1322.25 requirements of the Military Service to provide adequate funds for program implementation and administration as well as providing adequately trained staff.

RECOMMENDATION:

[REDACTED]

[REDACTED]

b. In October 2014, as part of the DoD Installation Access Information Briefing webinars, responsible education advisors were asked by DoD VolEd to take immediate steps to review local MOUs, contracts, solicitation, policies and procedures (military service, DoD installation, etc.) for compliance with DoDI

1322.25, Change 3, taking action (as needed) to cancel and/or amend agreements not in compliance. In addition, the responsible education advisors were asked to develop/implement standard processes and procedures for requesting and monitoring DoD installation access, taking action to halt current processes and procedures not in compliance.

According to the provided response "Fort Campbell has vetted educational institutions (EI) participating in commercial sponsorship agreements with the Education Services Officer (ESO) before and since the Executive Order 13607 was issued." However the report offers no explanation for how such vetting could have left the responsible education advisor unaware of the Big Smo concert. This presents a potential non-compliance issue.

RECOMMENDATION:

c. The following events were of minor concern since University of Phoenix did not participate directly in the event by accessing the installation: All Things Chocolate, Brunch with Santa and Fashion Show. Although the University of Phoenix did not physically attend the event, the responsible education advisor should have been aware of a potential non-compliance issue with DoD installation access.

RECOMMENDATION:

d. We applaud Army's efforts in developing additional guidance and clarification on installation access at Fort Campbell and request a copy of the new procedures for our records on DoD installation access compliance. Further, we request additional information on the extent to which Army IMCOM guidance is being/has been integrated across the domain.

FORT CARSON

a. The response received from Fort Carson indicates a potential non-compliance by the responsible education advisor to monitor educational institution granted DoD installation access, which is inconsistent with the requirement of DoDI 1322.25, Change 3. We understand the situation with staffing issues across DoD installations; however, staffing shortfalls does not relieve the responsible education advisor of the DoDI 1322.25 requirement, to monitor educational institutions participating in events on the DoD installation.

As a reminder, when an educational institution is granted DoD installation access by the responsible education advisor to participate in an installation event, it is the responsibility of the education advisor to monitor the educational institution for compliance with DoD MOU, DoDI 1322.25, Change 3, and compliance with personal commercial solicitation policies in DoDI 1344.07. Further, the aforementioned is consistent with DoDI 1322.25 requirements of the Military Service to provide adequate funds for program implementation and administration as well as providing adequately trained staff.

RECOMMENDATION:

b. As a requirement of DoDI 1322.25, it is the responsibility of the education advisor to inform educational institutions and its agents of the requirement not to recruit newly assigned military personnel until after receiving information about voluntary education programs and educational services available from an education services staff member.

From March 2015 to May 2015, a potential non-compliance issue occurred when the educational institution had access to newly assigned Service members via the sponsored Newcomers Luncheon. It appears that this event was a regularly recurring event, without the benefit of a review for each occurrence of DoD installation access by an educational institution. Moreover, allowing a single institution to have access for recruiting purposes, even after newly assigned Service members have been briefed by an education services staffer is not compliant with DoDI 1322.25 requirements.

RECOMMENDATION:

[REDACTED]

[REDACTED]

FORT HOOD

a. The response received from Fort Hood indicates a potential non-compliance by the responsible education advisor to monitor educational institution granted DoD installation access, which is inconsistent with the requirement of DoD Instruction 1322.25. We understand the education advisor was unaware of the events and the efforts put in place to establish new procedures (i.e., 15 Jul 15 meeting with MWR).

As a reminder, when an educational institution is granted DoD installation access by the responsible education advisor to participate in an installation event, it is the responsibility of the education advisor to monitor the educational institution for compliance with DoD MOU, DoDI 1322.25, Change 3, and compliance with personal commercial solicitation policies in DoDI 1344.07. Further, the aforementioned is consistent with DoDI 1322.25 requirements of the Military Service to support adequate funds for program implementation and administration as well as providing adequately trained staff.

We commend Army's efforts in reforming the vetting process and informing MWR of the requirements in DoDI 1322.25 and the education advisor's willingness to develop new procedures to ensure full compliance in the future.

RECOMMENDATION:

[REDACTED]

FORT BRAGG

SUMMARY OF RECOMMENDATIONS

-

Mike Bibbee

From: Mike Bibbee
Sent: Sunday, September 06, 2015 12:01 PM
To: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance
Cc: Tim Slottow; Gary Harrah
Subject: RE: University of Phoenix: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25_Improper Access

CONFIDENTIAL TREATMENT REQUESTED

Dear Compliance Team:

Thank you for the opportunity to respond to your follow-up request of August 30, 2015 (the "follow-up request"), regarding the August 10, 2015 notice of potential non-compliance with the U.S. Department of Defense ("DoD") Voluntary Education Partnership Memorandum of Understanding ("DoD MOU") (the "Notice"). In the follow-up request, you suggested that the University of Phoenix (the "University") has not provided "sufficient evidence recognizing the requirement to go through the responsible education advisor for each business related activity requiring access to a DoD installation." The University respectfully submits that it, as well as all Military Division personnel, appreciate and are committed to complying with DoD Instruction 1322.25 (DoDI 1322.25).

Since DoDI 1322.25's requirement for installation-access approval became effective in May 2014, the University has looked to the emerging guidance from DoD and the various installations in order to obtain appropriate approvals. For example, the University used Fort Carson's established procedures for obtaining approval to the Newcomer's Socials hosted this past May by completing the requisite forms. By adhering to installations' established procedures such as those—as well as operating under Hiring Our Heroes and Morale, Welfare and Recreation ("MWR") agreements—the University believes that it has acted in good faith in endeavoring to comply with DoDI 1322.25's spirit.

In connection with your inquiry, the University has instructed its relevant personnel of the requirement to seek prior written approval for access to an installation—even when the on-installation event is contemplated by a sponsorship agreement or when the installation has not established request-for-approval procedures.. The University has also emphasized that personnel should comply with procedures for access approval if a service has provided them. But even if not, NDLs have been directed that they must nevertheless obtain prior written approval before accessing an installation.

In addition, the University is currently developing a new National Defense Liaison ("NDL") Standard Operating Procedure ("SOP") which will fully embody DoDI 1322.25's requirements and the DoD's and installations' attendant guidance.

The University is committed to compliance with DoDI 1322.25, including its requirement to gain prior written approval for installation access. We will continue to require all University personnel to obtain prior written approval before accessing installations. We appreciate your attention to this matter, and we repeat our support of the DoD MOU.

* * *

We request that this message and the accompanying materials be treated as confidential and non public, and maintained in a nonpublic file, in accordance with the Freedom of Information Act, 5 U.S.C. § 552, and all applicable regulations adopted by the DoD, including 32 C.F.R. § 286. We also request that any memoranda, notes or other writings of any sort whatsoever which are made by any employee of the DoD (or any other government agency) which incorporate, include or relate to any of the information (1) contained in these materials or (2) referred to in any conference, meeting, telephone conversation or interview between (a) employees, representatives, agents and/or counsel of the University and (b) employees of the DoD (or any other government agency) be maintained in confidence and not be made a part of any public writing and not be disclosed to any person. This request is made for reasons of

business confidentiality, protection from disclosure of trade secrets, personal privacy and any other applicable reason under 5 U.S.C. § 552(b). Should the DoD receive any request for these documents, either pursuant to the Freedom of Information Act or otherwise, please contact Gil M. Soffer at Katten Muchin Rosenman LLP, 525 W. Monroe Street, Chicago, Illinois 60661, (312) 902-5474, immediately. We request that you contact us by telephone rather than rely on mail for such notice. We object to any public disclosure of these confidential materials and ask that we be given at least ten business days advance notice of any intended disclosure of these materials so that we pursue any remedies available.

Mike Bibbee, MBA, MS
Vice President - Military Operations

University of Phoenix

Operational Services | 1625 W. Fountainhead Parkway | [REDACTED] | [REDACTED]
| [REDACTED] | [REDACTED]

From: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance [REDACTED]
Sent: Sunday, August 30, 2015 1:33 PM
To: Mike Bibbee
Cc: Tim Slottow; Gary Harrah; OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance
Subject: RE: University of Phoenix: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25_Improper Access

Dear Mr. Bibbee,

Thank you for your correspondence dated August 24, 2015, as well as the additional documentation provided August 28, 2015. As noted in your letter, "The University devotes significant resources to compliance with the DoD MOU and vigorously endorses the directives of the DoD MOU." Additionally, we note that you believe the actions of the University of Phoenix do not rise to any level of violation of section 3a(1)(b)1, 3j, and/or 5a(2) and that the "University considered the various installations' agreements to the University's sponsorship of the specific events, as confirmed in the MWR and HOH Agreements, as having generally complied with the written access requirements of DoDI 1322.25." However, as of the date of this letter you have not provided us sufficient evidence recognizing the requirement to go through the responsible education advisor for each business related activity requiring access to a DoD installation. In this report, there was no and/or inconsistent application of a written request to the responsible education advisor to access the cited DoD Installations and events, which is not cognizant of the DoDI 1322.25 requirement surrounding educational institution access to DoD Installations. Specifically, the role of the responsible education advisor to facilitate the review and adjudication of DoD Installation access requests/procedures by an educational institution on behalf of the installation commander. While we note that the University of Phoenix may have entered into written sponsorship agreement(s) with each installation and may have a written agreement between the Apollo Education Group, Inc. and the U.S. Chamber of Commerce Foundation regarding the Hiring Our Heroes program, those agreements do not negate the installation access provisions of the Voluntary Education Partnership MOU signed with the DoD.

In accordance with DoD Instruction 1322.25, DoD intends to work with educational institutions to resolve any filed complaints. To resolve this notification of potential non-compliance, we request additional clarification reference the aforementioned. Please submit your written response to [REDACTED] within seven (7) days from receipt of this correspondence.

Compliance Team
State Liaison & Educational Opportunity
OUSD(P&R), Military Community & Family Policy (MC&FP) [REDACTED]

-----Original Message-----

From: Mike Bibbee [REDACTED]
Sent: Monday, August 24, 2015 4:30 PM
To: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance
Cc: Tim Slottow; Gary Harrah
Subject: RE: University of Phoenix: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25_Improper Access

CONFIDENTIAL TREATMENT REQUESTED

Dear Compliance Team:

Thank you for the opportunity to respond to your August 10, 2015 notice of potential non compliance with the U.S. Department of Defense ("DoD") Voluntary Education Partnership Memorandum of Understanding ("DoD MOU") (the "Notice"). The Notice requested information to determine whether University of Phoenix (the "University") may have improperly accessed, or engaged in unfair recruiting and marketing activities on certain military installations and that the University may be in violation of DoD MOU paragraphs 3a(1)(b)1, 3j, and 5a(2). The University believes that it has not violated the cited DoD MOU provisions. The University devotes significant resources to compliance with the DoD MOU and vigorously endorses the directives of the DoD MOU, including DoD Instruction 1322.25, Voluntary Education Programs ("DoDI 1322.25").

The University's involvement in each of the events identified in the Notice was based on either a written sponsorship agreement between the University and each individual installation (the "MWR Agreements") or pursuant to a written agreement between the Apollo Education Group, Inc. and the U.S. Chamber of Commerce Foundation (the "U.S. Chamber of Commerce") relating to the Hiring Our Heroes ("HOH") program (the "HOH Agreement"). Under the MWR Agreements, each installation authorized the University to sponsor certain specifically and previously identified events to be held on the installations. (See generally DOD_UOPX_0000001-14.) Under the HOH Agreement, the University agreed to sponsor certain HOH events that had also previously been identified and that the University understood had been approved by the specific installations. The University considered the various installations' agreements to the University's sponsorship of the specific events, as confirmed in the MWR and HOH Agreements, as having generally complied with the written access requirements of DoDI 1322.25.

In addition, as reflected in the University's agreement with HOH, the University sponsors HOH Employment Workshops at approximately 50 locations annually. As a sponsor of the events, the University's logo is included in materials presented at the Employment Workshops by HOH personnel. The HOH Agreement also expressly permits the University to attend the hiring events and the Employment Workshops. The University's mandated policy with regard to the HOH events, however, was and continues to be that, under no circumstances, may employees use the events for recruitment purposes. Moreover, with respect to the non-HOH events, the University believes that the University's sponsorship of the events and presence on the installations were consistent with the MWR Agreements.

In recent months, the University has received additional guidance from certain installations, regarding approval for access to and conduct while visiting those installations. For example, the University used the access forms provided by Fort Carson in connection with the Newcomer's Social in May of this year. Those forms, along with additional guidance regarding DoDI 1322.25's requirements, were provided to the University, among other educational institutions, at a March 2015 informational meeting held at the Fort Carson Education Center. Similarly, on July 20, 2015, Fort Hood's Education Services Officer ("ESO") provided the University with additional input that addressed the "significant changes to OSD, HRC and IMCOM guidance" concerning the University's access to installations. The University was also given Fort Hood's forms to be completed prior to a calendared event as "part of the standardized IMCOM vetting process," and the University will use those forms to obtain appropriate written approval. (See DOD_UOPX_0000015-20.) Likewise, on August 12, 2015, the Fort Carson ESO provided the University with guidance to "assist in understanding and implementing consistent installation access policies." (See DOD_UOPX_0000021-29.) That guidance related to the procedures for the University's access to an installation and the scope of personal commercial solicitation. The University's Military Division has been informed of this guidance and instructed to obtain specific written approval from

each installation's ESO prior to attending an installation event and not engage in any activity considered as "personal commercial solicitation." The University thus continues its commitment to complying with the terms of the DoD MOU, including DoDI 1322.25, in accordance with the DoD's requirements and updated guidance.

Please do not hesitate to contact me if you have any further questions or concerns. Again, we thank you for the opportunity to respond to the Notice, and repeat our commitment to adhering to the DoD MOU's mission.

We request that this message and the accompanying materials be treated as confidential and non public, and maintained in a nonpublic file, in accordance with the Freedom of Information Act, 5 U.S.C. § 552, and all applicable regulations adopted by the DoD, including 32 C.F.R. § 286. We also request that any memoranda, notes or other writings of any sort whatsoever which are made by any employee of the DoD (or any other government agency) which incorporate, include or relate to any of the information (1) contained in these materials or (2) referred to in any conference, meeting, telephone conversation or interview between (a) employees, representatives, agents and/or counsel of the University and (b) employees of the DoD (or any other government agency) be maintained in confidence and not be made a part of any public writing and not be disclosed to any person. This request is made for reasons of business confidentiality, protection from disclosure of trade secrets, personal privacy and any other applicable reason under 5 U.S.C. § 552(b). Should the DoD receive any request for these documents, either pursuant to the Freedom of Information Act or otherwise, please contact [REDACTED] immediately. We request that you contact us by telephone rather than rely on mail for such notice. We object to any public disclosure of these confidential materials and ask that we be given at least ten business days advance notice of any intended disclosure of these materials so that we pursue any remedies available.

Mike Bibbee, MBA, MS
Vice President - Military Operations

University of Phoenix
Operational Services | 1625 W. Fountainhead Parkway | [REDACTED] | Tempe, AZ 85282 direct [REDACTED]
| [REDACTED] | [REDACTED]

From: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance [REDACTED]
Sent: Monday, August 10, 2015 8:18 AM
To: Mike Bibbee
Cc: OSD Pentagon OUSD P-R Mailbox Vol Edu Compliance; Gary Harrah; Tim Slottow
Subject: University of Phoenix: Notification of Potential Non-Compliance with DoD MOU/DoDI 1322.25_Improper Access

Dear Educational Institution Representative,

This is to inform you of potential non-compliance issue(s) with your signed Department of Defense (DoD) Voluntary Education Partnership Memorandum of Understanding (MOU) regarding the Department of Defense Instruction 1322.25, "Voluntary Education Programs."

It has come to our attention that the University of Phoenix may have improperly accessed the DoD installation for the purpose of participating in recruitment-type activities (i.e., job training, career events or education fairs) at five distinct DoD installations (detailed below). In this case, the non-compliance report was referred to our compliance inbox (osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil) with respect to a Reveal News article published June 30, 2015 (attached). Non-compliant with the terms of the Voluntary Education Partnership MOU the University of Phoenix signed with DoD, the report indicates the institution may have: 1) improperly accessed the DoD installation and 2) engaged in unfair recruiting and marketing activities as outlined below.

1) Navy Operational Support Center, Fort Worth, TX (Navy Reserve): The report alleges the University of Phoenix engaged in recruiting and marketing activities through its participation in a Hiring Our Heroes event at the Navy Operational Support Center building held October 29, 2014. Further, the responsible Education Advisor indicates no knowledge of an access request for the specific event/date prior to receiving the publication of the Reveal News article nor do they have a record of an approved DoD installation access request for the aforementioned event/date.

2) Fort Bragg, NC (Army): The report alleges the University of Phoenix engaged in recruiting and marketing activities through its participation in a Hiring Our Heroes event at the Fort Bragg Transition Summit held August 12-13, 2014. Further, the responsible Education Advisor indicates no knowledge of an access request for the specific event/date prior to receiving the publication of the Reveal News article nor do they have a record of an approved DoD installation access request for the aforementioned event/date.

3) Fort Carson, CO (Army): The report the University of Phoenix provided briefings to newly assigned Service members at Fort Carson, CO. We note that the specific event/date referenced is related to the institution's sponsorship of the Newcomer's Social at Fort Carson held February 3, 10, 17, and 24, 2015 and May 5, 12, 19, and 26, 2015. Further, the responsible Education Advisor indicates no knowledge of an access request for the February events/dates prior to receiving the publication of the Reveal News article nor do they have a record of an approved DoD installation access request for the February events/dates. While we note that the responsible Education Advisor received a properly completed access request and approved access for the institution's sponsorship of the Newcomer's Social events held May 5, 12, 19, and 26, 2015, the institution may have participated in unfair recruiting and marketing activities at the permitted events/dates non-compliant with the terms of the Voluntary Education Partnership MOU signed with DoD.

4) Fort Hood, TX (Army): The report alleges the University of Phoenix engaged in recruiting and marketing activities through its sponsorship of an Easter Egg Hunt at the Belton Lake Outdoor Recreation Area of Fort Hood held April 2, 2015. Further, while the responsible Education Advisor confirmed awareness of the commercial sponsorship agreement signed between the institution and the DoD installation, they indicate no knowledge of an access request for the specific date/event prior to receiving the publication of the Reveal News article nor do they have a record of an approved DoD installation access request for the aforementioned event/date.

5) Fort Campbell, KY (Army): The report alleges the University of Phoenix engaged in recruiting and marketing activities through its sponsorship of a Big Smo Concert at the Division Parade Field of Fort Campbell held October 17, 2014. Further, the responsible Education Advisor indicates no knowledge of an access request for the specific event/date prior to receiving the publication of the Reveal News article nor do they have a record of an approved DoD installation access request for the aforementioned event/date.

The aforementioned place your institution in apparent violation of several provisions of your MOU with DoD, specifically, but not limited to paragraphs 3a(1)(b)1, 3j, 5a(2). By signing the DoD Voluntary Education Partnership MOU, your educational institution agrees to comply with its terms. Please note that in accordance with Changed 3, educational institutions failing to comply may receive a range of penalties from a written warning to revocation of the DoD Voluntary Education Partnership MOU and removal from participation in the DoD Tuition Assistance Program.

Your institution has fourteen days (14) from the receipt of this notification to submit your written response to [REDACTED] for each of the aforementioned.

Compliance Team
State Liaison & Educational Opportunity
OUSD(P&R), Military Community & Family Policy (MC&FP) [REDACTED]



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

MANPOWER AND
RESERVE AFFAIRS

October 7, 2015

University of Phoenix
1625 West Fountainhead Parkway
Tempe, AZ 85282-2371

Dear Sir/Madam:

On June 20, 2014, William Pepicello, President of the University of Phoenix, signed the Department of Defense (DoD) Voluntary Education Partnership Memorandum of Understanding (DoD MOU). In response to allegations published by the Center for Investigative Reporting on June 30, 2015 ([see https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/](https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/)), the Department has conducted a review of the agreements between the University of Phoenix and the DoD, as reflected in the DoD MOU. This review revealed several violations of the DoD MOU attributed to the University of Phoenix, including, but not limited to, transgression of Defense Department policies regarding use of its official seals or other trademark insignia and failure to go through the responsible education advisor for each business related activity requiring access to the DoD installations identified in the aforementioned article (i.e., Navy Operational Support Center, Fort Worth, TX; Fort Bragg, NC; Fort Carson, CO; Fort Hood, TX; and Fort Campbell, KY). Although the University of Phoenix has responded to these infractions with appropriate corrective action at this time, the frequency and scope of these previous violations of the DoD MOU is disconcerting.

Now it has come to our attention that the University of Phoenix is under review by both the Federal Trade Commission (FTC) and the California State Attorney General. University of Phoenix, Inc. is a wholly-owned subsidiary of The Apollo Education Group, Inc., which on July 29, 2015 filed a Form 8-K Report with the United States Securities and Exchange Commission noting that it received a Civil Investigative Demand from the FTC, which requested documentation to determine if the University of Phoenix "... engaged or are engaging in deceptive or unfair practices in or affecting commerce in the advertising, marketing, or sale of secondary or postsecondary educational products or services or education accreditation products or services." The Apollo Education Group, Inc. also disclosed that the California State Attorney General issued an investigative subpoena requiring it to turn over information "relating to members and former members of the U.S. military and California National Guard, including marketing, recruiting, billing, financial aid, accommodation and other services for military personnel." The information requested dates back to July 1, 2010 regarding the University of Phoenix's use of U.S. military logos and emblems in marketing and its compliance with Executive Order 13607, "Establishing Principles of Excellence for Educational Institutions Servicing Service Members, Veterans, Spouses, and Other Family Members."

The allegations associated with these inquiries, if substantiated, would violate several additional provisions of the University of Phoenix MOU with DoD, specifically, but not limited to: section 3a(2), for failing to comply with governing Federal law and the requirements set forth in the DoD MOU; and section 3j and its subsections, which seek to eliminate unfair, deceptive and abusive marketing. Further, while we note that you are a participating member in Servicemembers Opportunity Colleges (SOC), the allegations also raise a concern regarding the University of Phoenix's adherence to SOC Principles and Criteria and the Military Student Bill of Rights, as required by section 3m(1) of the DoD MOU.

Please be advised that, as of the date of this letter, we have placed the University of Phoenix in probationary status and we are considering whether to terminate our MOU with you pursuant to paragraphs 1.r(1) and 6(f) of the MOU. Such termination would preclude your participation in the DoD Tuition Assistance (TA) program. While in a probationary status, and with a view to minimizing harm to students, the University of Phoenix will be permitted to "teach-out." This means that a current University of Phoenix student receiving DoD TA will be permitted to complete courses already in progress and enroll in new courses deemed to be part of that student's established academic program. However, other than as required to complete the "teach-out" process for current students, the University of Phoenix will not be authorized access to DoD installations for the purposes of participating in any recruitment-type activities, including but not limited to job training, and career events and fairs. Further, no new or transfer students at your institution will be permitted to receive DoD TA.

You have fourteen (14) days from the date of receipt of this letter to submit your response to the aforementioned. During this period, the University of Phoenix's MOU with the DoD will remain in a probationary status. Should your institution elect to respond during this timeframe, any information you submit will be considered by the DoD in its determination of the status of University of Phoenix's MOU with the DoD. This review will consider whether continued participation in the DoD TA program will be allowed and, if so, in what status, and whether further action, to include termination in accordance with paragraph 6(f) of the University of Phoenix MOU with the DoD, is warranted.

Sincerely,



Dawn Bilodeau
Chief, DoD Voluntary Education
Military Community and Family Policy

Sent via Certified Mail/Return Receipt Requested

United States Senate

WASHINGTON, DC 20510

October 22, 2015

The Honorable Ashton Carter
Secretary
Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Carter,

We write to ask that you review an October 7, 2015, decision by Ms. Dawn Bilodeau, Chief of Voluntary Education for the Department of Defense ("DoD"), to place the University of Phoenix ("the University") on probationary and potential termination status with respect to its participation in the DoD Tuition Assistance (TA) Program for active duty military personnel. We strongly support efforts to monitor the integrity of colleges and universities serving our nation's servicemembers. However, based on our review of the relevant documents associated with this decision, we are concerned that the DoD's decision is unfair, requires additional review, and may warrant reconsideration.

The TA program is an important benefit that enables active duty military personnel to choose a postsecondary education program that best fits their needs to enhance both career and personal goals. The program also serves as an important tool for the DoD to further the recruitment and retention efforts of our nation's volunteer armed forces. We strongly believe that these earned benefits and educational opportunities for our servicemembers should not be jeopardized because of political or ideological opinions of some Members of Congress regarding the types of institutions that provide postsecondary education to our troops.

As you know, the University of Phoenix participates in the TA program through the DoD's Voluntary Education Partnership Memorandum of Understanding (MOU), which conveys the commitments and agreements between colleges and universities and DoD and ensures that the TA funds are spent wisely to support servicemembers attending quality educational programs. However, it is our understanding that Ms. Bilodeau's decision and threats of termination of participation in the TA program rely on overly technical violations of the MOU, fail to acknowledge any of the University's corrective action or pledged cooperation and are based, in part, on unsubstantiated allegations associated with inquiries not initiated by the DoD.

With respect to the University's violation of DoD policies on the use of official seals or other trademark insignia with "challenge coins," Ms. Bilodeau's letter concedes that "the University of Phoenix has responded to infractions *with appropriate corrective action at this time.*" While the University has remedied this infraction, we are concerned that traditional public or private, non-

profit universities, including Southern Illinois University, utilize similar challenge coins with impunity. (See attached photographs.) We remain skeptical that the DoD is evenly and uniformly enforcing its policies on all institutions of higher education and appears to be unfairly singling out certain institutions of higher education based on a letter from the Vice Chairman of the Defense Subcommittee of the Senate Appropriations Subcommittee. (See Letter to Secretary of Defense, June 30, 2015, attached.) It has also come to our attention that on the evening of October 20th, DoD issued additional new guidance on the use of these coins clearly indicating that the regulatory field remained vague and was not settled.

With respect to the University's apparent failure to obtain specific approval for conducting partnership activities at several military installations, it is our understanding that the University obtained approval from the respective base leadership to sponsor, sometimes at their request, partnership events. While the University may have technically violated the MOU's requirement that the University coordinate with the Education Services Officer, those who have served in the military readily understand and respect the chain of command. Approval from the base leadership should be sufficient to meet the requirements of the MOU regardless of the Education Services Officer's involvement and, should not be cited as a basis for probation and possible termination.

More concerning, however, is Ms. Bilodeau's rationale to suspend participation in the TA program based on requests for University documents by two government agencies that are not in fact the DoD. It is worth noting that a request of documents does not indicate a violation or admittance of guilt. In fact, Ms. Bilodeau appears to agree, indicating that the allegations by other entities have not yet been substantiated. However, without fair warning or a sufficient opportunity to be heard, the DoD informed the University of Phoenix that, among other things, "no new or transfer students at your institution will be permitted to receive DoD [tuition assistance]" and it is actively considering terminating its MOU with the University. Ms. Bilodeau's decision to give the University fourteen (14) days to respond to the probation decision effectively puts the University in the position of having to respond to reviews undertaken by agencies other than the DoD. These actions seemingly assume the guilt of the University before they are proven and ignore the remedied infractions identified by and directly within the jurisdiction of the DoD.

The University of Phoenix has a long history of serving working adults and others for whom traditional university schooling is unavailable, including more than 200,000 enrolled civilian and military students spread out across more than 100 locations in 17 states. With almost 20,000 faculty and 8,800 staff in every state and the territories as well as just over 1,400 faculty and 6,300 staff in Arizona alone, the University of Phoenix is a significant member of the Arizona and broader higher education community. Like any organization that chooses to partner with the DoD to serve our servicemembers, the University has a legitimate expectation to be dealt with fairly and reasonably. Given our aforementioned concerns, we believe that the DoD's decision

should be evaluated for considerations of fairness and cooperation and ask that you independently and carefully review this bold decision.

To help us obtain a better understanding of the DoD's actions in this matter, and to help ensure that all institutions of higher education – for-profit, public and private, non-profit colleges and universities – are held to the same standard of conduct relative to DoD rules and regulations, we ask that you provide us with the following information by October 30th before you take any additional action on this matter:

- 1) What are the specific, factual, and evidentiary bases for the DoD's recent decision to place the University of Phoenix on probationary status?
- 2) Did anyone besides Ms. Bilodeau review this decision? Please provide any internal decision memorandum that reflects that decision when it was originally made.
- 3) Please describe why the DoD official who reviewed the decision believes he/she can place the University on probation when, as Ms. Bilodeau stipulates in her October 7th letter, the University has already remedied identified infractions of the MOU?
- 4) Please provide all documents, including communications from Members of Congress, or their staff, and any outside party regarding the University of Phoenix and this matter. Also, provide the guidelines relating to the establishment of a probation sanction or imposition of probationary status against the University of Phoenix.
- 5) Please provide a list of all institutions of higher education participating in the DoD's Voluntary Education Partnership and/or Tuition Assistance programs that have been placed on probationary status in connection with a violation of their MOU; the reasons each of those schools were placed on probationary status; and whether each such school was given opportunity to make corrective actions before being placed on probationary status.
- 6) Please provide a list of those schools where the DoD MOU was terminated and the reasons for such termination.
- 7) Is it the DoD's practice to place both for-profit and not-for profit universities on probation when another federal or state agency makes a civil investigative demand for documents? If so, please identify other instances where this has taken place and the reasons for taking such action.
- 8) Please list those schools that currently use or previously used challenge coins with DoD official seals or other trademark insignia; indicate whether such schools obtained prior DoD authorization for such use; describe any sanctions imposed for such use; and provide any documents or correspondence relating to such use or sanction determination.
- 9) Please describe the military chain of command as it relates to the MOU and a decision by the base leadership to permit an institution to sponsor an event on base.

The Honorable Ashton Carter
October 22, 2015
Page 4

- 10) If this probationary period is extended or the MOU with the University of Phoenix is terminated, how many active duty military personnel do you estimate will be impacted by this decision?

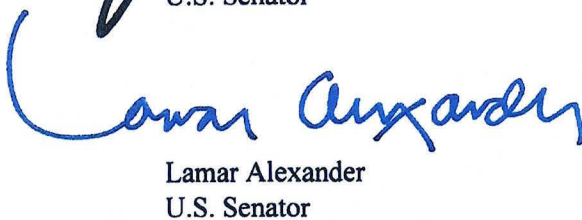
The TA program is critical to our nation's servicemembers' educational and career opportunities, primarily to prepare them to serve in positions of increased responsibility within the military, but also to prepare them to transition to productive civilian careers. While we support efforts to root out waste, fraud, and abuse, we hope that you will review this situation with great caution and care. The Senate Committee on Health, Education, Labor and Pensions is additionally in the process of reauthorizing the Higher Education Act and exploring ways to ensure quality at all of our colleges and universities is of utmost importance and concern.

We look forward to your timely response and should you have additional questions, please feel free to ask your staff to contact our [REDACTED]
[REDACTED]
[REDACTED]

Sincerely,


John McCain
U.S. Senator


Jeff Flake
U.S. Senator


Lamar Alexander
U.S. Senator



University of Phoenix

Timothy P. Slottow

President

1625 W. Fountainhead Pkwy.
Tempe, AZ 85282



Confidential Treatment Requested
5 U.S.C. § 552(b)(4); 18 U.S.C. § 1905; 5 C.F.R. § 2635.703

October 30, 2015

Via Email and United Parcel Service

Dawn Bilodeau
Chief, DoD Voluntary Education
Military Community and Family Policy
4800 Mark Center Drive, Suite 14E08
Alexandria, Virginia 22350

Subject: Meeting Request

Dear Ms. Bilodeau:

I am writing to follow up regarding my prior request to schedule a meeting to discuss the matters in your October 7, 2015 letter to the University of Phoenix. As you know, in that letter, the University was offered the opportunity to respond to the "probationary status" imposed by the Department upon the University within fourteen days. On October 21, 2014, the University timely submitted a detailed response. We also requested a meeting to pursue a mutually acceptable resolution of the cited concerns.

As I am sure you are aware, the imposition of probation had an immediate and detrimental impact on the ability of the University to provide educational programming to the military community and abruptly reduced the educational opportunities available to active duty service members. In light of this fact, I respectfully reiterate my request for a meeting to discuss this pressing matter in the spirit of the partnership envisioned under our Memorandum of Understanding.

I understand that Mike Bibbee, the University's Vice President, Military Operations, and Conway Casillas, Vice President, Federal and Government Affairs for Apollo Education Group, attempted to contact you by telephone on October 23, 2015 to discuss this matter, and that Mr. Bibbee sent an email later that day again requesting an opportunity to talk with you. I also understand that Mr. Casillas and Spider Marks, Executive Dean for the University's College of Security and Criminal Justice, spoke with you at a Department of Veterans Affairs Veterans Advisory Committee on Education meeting on October 22 and reiterated the University's desire to schedule a meeting with the Department. To the best of my knowledge, the University has not received a response to these requests.

I assure you that the University remains fully committed to addressing your concerns while continuing to responsibly serve the military community. To that end, I would ask that please suggest a date and time for us to discuss this important matter in the very near future.

Thank you.

Very respectfully,


Timothy P. Slotow

cc: Deputy Assistant Secretary Rosemary Freitas Williams, United States Department of Defense
James "Spider" Marks, Executive Dean, College of Security and Criminal Justice, University of
Phoenix

JOHN McCAIN
ARIZONA

CHAIRMAN, COMMITTEE ON
ARMED SERVICES
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
COMMITTEE ON INDIAN AFFAIRS

United States Senate

November 13, 2015

The Honorable Ashton Carter
Secretary
Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Carter:

I write in furtherance of my letter dated October 22, 2015, regarding a decision made by Dawn Bilodeau, the Department of Defense's (DoD) chief of voluntary programs, to place the University of Phoenix on probation with respect to its participation in the DoD's Tuition Assistance (TA) program for active duty military personnel. As stated in the letter, I believe that how Ms. Bilodeau made her decision and the basis she cited in support of that decision are fundamentally unfair and warrant your reconsideration. In my letter, I asked that you respond to the questions I posed by October 30, 2015. As of today, a final response remains outstanding.

For as long as public officials outside of the DoD who directed Ms. Bilodeau to put the University of Phoenix on probation continue to cite the fact of that decision as evidence of "guilt", undue delay in your reconsidering her decision only adds to the fundamentally unfair way with which it was originally made. Consider that the victim of that unfairness is a fully accredited business, which even Ms. Bilodeau stipulated in connection with her probation decision is in good standing with the DoD, that employs thousands of men and women around the nation in service to, among others, thousands of servicemen and women and veterans with their educational needs. I respectfully suggest that this observation inform not only the substance of your deliberation but also how soon it should be made.

With this in mind, I respectfully ask that you indicate (1) when will you provide me with a response to the questions provided in the October 22, 2015, letter and (2) when will you make a final decision regarding Ms. Bilodeau's probation decision as to the University of Phoenix?

As the University of Phoenix is a valued constituent in Arizona and provides higher-education options for working adults for whom traditional university schooling is unavailable, all that I seek, within all applicable ethical rules and regulations, is a timely, conclusive decision regarding Ms. Bilodeau's probation decision that is based on fair and substantiated findings.

225 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-0303
(202) 224-2235

2201 EAST CAMELBACK ROAD
SUITE 115
PHOENIX, AZ 85016
(602) 952-2410

122 NORTH CORTEZ STREET
SUITE 108
PRESCOTT, AZ 86301
(928) 445-0833

407 WEST CONGRESS STREET
SUITE 103
TUCSON, AZ 85701
(520) 670-6334

TELEPHONE FOR HEARING IMPAIRED
(602) 952-0170

I look forward to an immediate response and should you have any questions, your staff may contact my Chief of Staff, Pablo E. Carrillo, at [REDACTED]

Sincerely,

A handwritten signature in blue ink, reading "John McCain". The signature is fluid and cursive, with the first name "John" and the last name "McCain" clearly distinguishable.

John McCain
United States Senator

United States Senate
WASHINGTON, DC 20510

November 17, 2015

The Honorable Arne Duncan
Secretary
Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan,

We write to request information regarding a non-public interagency task force on for-profit postsecondary institutions led by the Department of Education ("the Department"), which the Department noticed in October 2014.

This formal task force is comprised of not only the Department but also the Federal Trade Commission, the Consumer Financial Protection Bureau, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, the Department of Defense, the Department of Veterans Affairs and the Department of Labor in active engagement with states' attorneys general. Yet, key questions regarding the task force's authority, duties, responsibilities, goals, structure and actions remain unanswered. Despite that, individual members of the task force have propounded investigative requests for documents and information and taken adverse administrative or civil action against individual for-profit institutions in a manner apparently violative of due process. With this in mind, we ask that you answer the following questions in an effort to gain a better understanding of the workings of the Department's interagency task force and provide a response no later than December 1, 2015.

1. Under what authority is the Department operating its interagency task force for for-profit postsecondary institutions?
2. Identify all officials who have headed the task force since its inception.
3. What federal and state agencies are involved in the interagency task force? And, please identify the agency representatives assigned to the task force?
4. When has the task force met? Please identify dates when the task force has met from inception to date.
5. Under what funding source(s) are the Department and the other federal agencies involved using to operate this task force?
6. From the task force's inception to date, how much has the Department obligated and spent on activities associated with the task force? Please describe those activities.
7. What are the stated goals and priorities of the task force? And, what actions have been taken to accomplish the aforementioned goals and priorities?
8. Are there outside organizations who have appeared before, provided input or in some way been affiliated with the task force? If so, please identify those organizations.

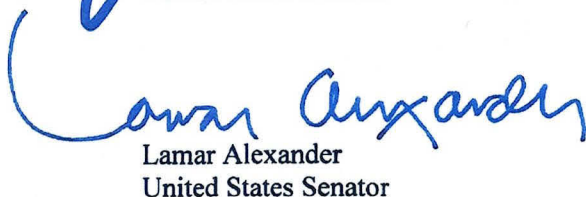
9. Either internally among federal or state agency members or partners of the task force or with any outside third party, does/has the interagency task force share/shared documents obtained through formal or informal information requests or other investigative proceedings by federal or state agencies or officials? If so, what process is used to protect privileged, confidential, or proprietary information?
10. Does the interagency task force operate according to the guidelines of the *Federal Advisory Committee Act* regarding reporting, open meetings, and public involvement? If not, why not?
11. What steps has the task force taken to ensure its actions are transparent and accountable to Congress, the taxpayer students attending for-profit institutions?
12. To what extent are meeting records or recommendations among task force participants available for public review?
13. Has the task force received letters from Members of Congress regarding oversight of for-profit institutions? If so, please provide copies of those letters.

We support proper oversight by the Department of Education of all post-secondary institutions to ensure traditional and non-traditional students have access to quality education. Those oversight actions must be transparent, fair and accountable to the American taxpayer. We look forward to your timely response and should you have additional questions, please feel free to contact David Cole (Senator McCain) at [REDACTED] David Shearman (Senator Isakson) [REDACTED] Robert Moran (Senator Alexander) at [REDACTED] Sarah Towles (Senator Flake) at [REDACTED] and Sean Riley (Senator Johnson) at [REDACTED]

Sincerely,


John McCain
United States Senator


Johnny Isakson
United States Senator


Lamar Alexander
United States Senator


Jeff Flake
United States Senator


Ron Johnson
United States Senator

United States Senate

WASHINGTON, DC 20510-2101

November 20, 2015

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan:

We write on the heels of our letter of November 17, 2015, regarding the non-public interagency task force on for-profit postsecondary institutions, with an expectation of an in-person discussion with the leaders of this task force before the end of the year.

In addition to our letter requesting information about the mission and purpose of the task force, some of our staff received a briefing by Department of Education officials last week regarding the task force. During this briefing, our staff received few details and information about the task force and were led to believe that this task force was simply a mechanism for each member agency to provide information about its authorities and best practices. Staff were further told no one outside the agencies – either individuals or groups – have addressed, or were invited to address, the taskforce.

It has come to our attention, however, that the task force recently held a meeting with one of our Senate colleagues, specifically, Senator Durbin, to discuss his views on for-profit higher education. In fact, Senator Durbin has used social media to boast about his attendance at this recent meeting. As Chairmen of Senate Committees with direct interest in, and responsibility for, issues surrounding for-profit higher education in this country, we feel it is important that the task force hear our views on for-profit higher education. We expect to receive an invitation to address the leadership of the task force to discuss these views as well as the mission, goals, intentions and expected output of this group.

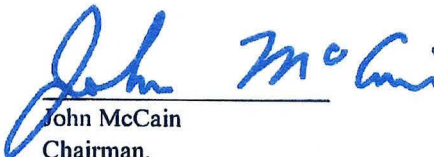
As Congressional leaders on these most critical issues, we are seeking clear and consistent oversight of all postsecondary institutions to ensure students and families are afforded a quality and accessible education. It is our understanding that this task force is comprised of at least eight federal agencies and will utilize staff and other resources of those agencies. It is our hope that these publicly-funded resources will be directed toward a fair and transparent review of issues facing for-profit and non-profit institutions, and not for a pre-conceived, political agenda to stir the pot of public perception. To do so otherwise would neither be productive nor benefit the public trust.

Please contact our staff, Robert Moran (Senator Alexander) at [REDACTED] or David Cole (Senator McCain) at [REDACTED] to schedule a time for us to meet with the task force.

Sincerely,



Lamar Alexander
Chairman,
Committee on Health, Education, Labor
and Pensions



John McCain
Chairman,
Committee on Armed Services



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

January 28, 2016

The Honorable John McCain
United States Senate
Washington, DC 20515

Dear Senator McCain:

Thank you for your November 17, 2015 letter to Secretary Arne Duncan regarding the Department of Education's (ED) efforts to provide oversight of for-profit institutions of higher education. Your letter was referred to the Under Secretary's office, and I am pleased to respond on behalf of the Department. An identical response is also being sent to the co-signers of your letter.

As you know, in October 2014, ED announced the formalizing of an interagency task force to complement, and build upon, other efforts taken by the Administration to protect students by addressing problems at poor performing institutions of higher education, particularly in the for-profit sector. It was with this goal in mind that the task force was established. Each of the specific questions you raised in your letter is answered below.

1. *Under what authority is the Department operating its interagency task force for for-profit postsecondary institutions?*

The Secretary has authority to convene the task force, deriving most explicitly from the General Education Provisions Act, which states as follows:

"The Secretary is authorized to enter into arrangements with other Federal agencies to jointly carry out projects of common interest, to transfer to such agencies funds appropriated under any applicable program, and to receive and use funds from such agencies, for projects of common interest." 20 U.S.C. 1231(a) (emphasis added)

2. *Identify all officials who have headed the task force since its inception.*

The task force has been solely chaired, since its inception, by the Deputy Under Secretary of Education, Mr. Jeff Appel.

3. *What federal and state agencies are involved in the interagency task force? And, please identify the agency representatives assigned to the task force?*

The task force includes, in addition to ED, the Departments of Justice, Defense, Treasury, Veterans Affairs, and Labor, as well as the Consumer Financial Protection Bureau,

400 MARYLAND AVE. SW, WASHINGTON, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Federal Trade Commission, and Securities and Exchange Commission. Please find enclosed a contact list that identifies the senior staff participating on the task force and the agencies they represent.

4. *When has the task force met? Please identify dates when the task force has met from inception to date.*

The task force has held two in-person meetings, on May 28 and September 29 with some participants joining via teleconference. There were no formal meetings prior to the formation of the task force. However, ED and other agencies have collaborated as the need arose in the context of various Federal investigatory, litigation, research and policy matters. Since these meetings occurred on an as-needed basis and did not always include ED, I am unable to provide a definitive number of meetings that occurred.

To improve our agencies' coordination of activities and information around enforcement, we have created an enforcement working group. This smaller group of task force members meets regularly, and has held in-person or teleconference meetings on: July 23, August 20, September 25, November 17, and January 21.

5. *Under what funding source(s) are the Department and the other federal agencies involved using to operate this task force?*

The task force is operated using funds available to operate the Department of Education. I am unable to provide information regarding the sources of funding used by the other agencies.

6. *From the task force's inception to date, how much has the Department obligated and spent on activities associated with the task force? Please describe those activities.*

The Department does not require staff to report their time by task performed. Therefore, I do not have the necessary data to respond. I would estimate that there are minimal costs related to the time spent by staff on meetings and phone calls.

7. *What are the stated goals and priorities of the task force? And, what actions have been taken to accomplish the aforementioned goals and priorities?*

The purpose of the task force is to provide a means for Federal agencies to understand the tools available to various agencies to oversee proper administration of government funds, share strategies and collaborate on the most effective ways to produce complementary protections for the public. These include streamlining disclosures, producing effective consumer tools, and sharing program expertise to identify best practices that minimize negative impacts from poor performing institutions. Examples of these efforts include sharing relevant information of interest to task force members, such as the work underway at ED to develop processes and systems to provide relief to Federal student loan borrowers who have legal claims against the institutions of higher education they

attended. Much of the work of the task force to date, in particular the enforcement working group, has been the identification of, and discussion among, the member agencies' oversight authorities and enforcement tools. This is consistent with the goals discussed at the launch of the task force to engage in regular coordination to design a framework that will support more consistent, impactful and efficient enforcement practices across the Federal government. In addition, task force members have been discussing the sharing of information and expertise to deepen agencies' capacities to serve and protect America's students, families, taxpayers and the public at large. In the future, these efforts could assist member agencies in formulating potential recommendations for program improvement.

8. *Are there outside organizations who have appeared before, provided input or in some way been affiliated with the task force? If so, please identify those organizations.*

To date, no organizations beyond those listed in the enclosure have participated in the work of the task force. The task force has been invited to speak with Members of Congress and has accepted those invitations.

9. *Either internally among federal or state agency members or partners of the task force, or with any outside third party, does/has the interagency task force share/shared documents obtained through any formal or information requests or other investigative proceedings by federal or state agencies or officials? If so, what process is being used to protect privileged, confidential, or proprietary information?*

The task force has served as a mechanism to share information among member agencies about the member agencies' roles, responsibilities, authorities, and enforcement tools governing institutions of higher education. And it is exploring other steps to build on the collective knowledge and experience of the agencies to identify opportunities to optimize the oversight activities and resources of the agencies. This includes the types of information sharing arrangements that have been used among member agencies to help the agencies further their missions and better serve and protect students and taxpayers. To be clear, member agencies have certainly used information sharing arrangements, in accordance with applicable law, to carry out their work prior to the creation of the task force, and they continue to do so. The processes used for information sharing arrangements typically involve establishing a memorandum of understanding between the agencies that govern how the information will be shared, the restrictions on its use, and the manner in which any privileged, confidential, or proprietary information is to be protected.

10. *Does the interagency task force operate according to the guidelines of the Federal Advisory Committee Act regarding reporting, open meetings, and public involvement? If not, why not?*

A task force composed of Federal government employees is not covered under the Federal Advisory Committee Act. That is because the term "advisory committee" in

FACA excludes "any committee that is composed wholly of ... employees of the Federal Government," (5 U.S.C. app. at §3(2)), as is the case here.

11. *What steps has the task force taken to ensure its actions are transparent and accountable to Congress, the taxpayer, and students attending for-profit institutions?*

The task force recognizes how critical transparency and public participation are to strengthening the work across our agencies. As such, the task force has discussed, and will continue working collaboratively to identify, ways in which the task force and its members can engage and inform the public and others about its efforts and results. The task force, however, has not formalized decisions about nor determined a process for addressing these issues.

Additionally, it should be noted that engagement has been underway with Members of Congress. For instance, senior leaders who participate on the task force accepted two separate invitations extended by Members of Congress. On November 19 members of the task force met with Senator Durbin and, as you know, on December 15 members of the task force met with you and your Senate colleagues to discuss the task force's activities to date and respond to general questions.

12. *To what extent are meeting records or recommendations among task force participants available for public review?*

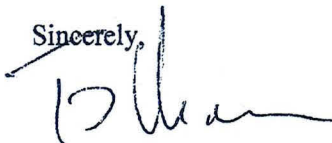
A specific process for disclosures has not been formally established. The task force is committed to taking appropriate action, consistent with all applicable laws, to make information available to the public.

13. *Has the task force received letters from Members of Congress regarding oversight of for-profit institutions? If so, please provide copies of those letters.*

Please find our list of oversight letters enclosed.

Thank you again for your interest in this task force and helping to ensure that students and taxpayers are protected from fraud, waste, and abuse. If you have any further questions, please do not hesitate to contact Lloyd Horwich, Acting Assistant Secretary for the ED's Office of Legislation and Congressional Affairs at [REDACTED]

Sincerely,



Ted Mitchell
Under Secretary

Enclosures



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

The Honorable John McCain
United States Senate
Washington, DC 20510

Dear Senator McCain:

Thank you for your letter of October 22, 2015, to the Secretary of Defense, requesting documents and information related to the Department's placement of the University of Phoenix on probationary status with respect to its participation in voluntary education programs, including the Department of Defense (DoD) Tuition Assistance program. As this matter falls under my purview, I have been asked to provide you with this response. While it is important to note that the Department has since removed the University of Phoenix from its probationary status, effective January 15, 2016, I hope the following information is of interest to you.

The Department shares your view of the importance of the Tuition Assistance program, and believes it is critical that Service members have the information they need to make informed decisions concerning their well-earned Federal military and veterans' educational benefits. To that end, effective September 5, 2014, all institutions receiving DoD Tuition Assistance funding were required to sign an updated Memorandum of Understanding (MOU) with the DoD. This requirement significantly improved the Department's oversight capacity and institutionalized the "Principles of Excellence" prescribed in Executive Order 13607. See <http://www.gpo.gov/fdsys/pkg/FR-2012-05-02/pdf/2012-10715.pdf>. The new DoD MOU increased protections for our Service members and their families through the enactment of provisions forbidding unfair, deceptive, and abusive recruiting practices, and enhanced requirements for accessing DoD installations.

The Department does not disclose specific information regarding pending enforcement actions for non-compliance with the MOU with the DoD. In accordance with the procedures outlined in DoD Instruction 1322.25, "Voluntary Education Programs," at <http://www.dtic.mil/whs/directives/corres/pdf/132225p.pdf> and the MOU signed with DoD at www.dodmou.com, however, the Department provides written notice to an institution when placing it in a probationary status stating that lack of compliance may result in termination of the MOU. While in a probationary status, the educational institution is not authorized to sign up new students using DoD tuition assistance, but may retain currently enrolled military students already using tuition assistance benefits. The current status of each DoD MOU can be monitored at: <http://dodmou.com/Home/InstitutionList> (i.e., Probation or Title IV Non-Compliant).

A similar letter is being sent to the other signatories of your letter. Thank you for your interest in the Department's voluntary education programs.

Sincerely,

Brad Carson
Acting Principal Deputy

JOHN MCCAIN, ARIZONA, CHAIRMAN

JAMES M. INHOFE, OKLAHOMA
JEFF SESSIONS, ALABAMA
ROBERT P. WYDER, MISSISSIPPI
KELLY AYOTTE, NEW HAMPSHIRE
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MAZIE HIRONO, HAWAII
TIM Kaine, VIRGINIA
ANGUS S. KING, JR., MAINE
MARTIN HEINRICH, NEW MEXICO

United States Senate

COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

CHRISTIAN D. BROSE, STAFF DIRECTOR
ELIZABETH L. KING, MINORITY STAFF DIRECTOR

May 23, 2016

The Honorable Ashton Carter
Secretary
Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Carter,

On October 22, 2015, Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Alexander, Senator Flake and I, in my capacity as Senate Armed Services Committee (SASC) Chairman, wrote to you to obtain information regarding the Department of Defense's (DoD) role as a member of the Department of Education's Interagency Task Force on for-profit post-secondary institutions (Task Force), which was formalized in October 2014. In our letter, we sought information on the October 7, 2015, decision by the DoD to place the University of Phoenix ("the University") on probationary status with respect to its participation in the DoD Tuition Assistance (TA) Program. While the DoD and the University brought to close this dispute on January 19, 2016, the Department has failed to provide an adequate response to our October 22 inquiry.

In our letter, we raised due process and fairness concerns and asked a series of questions regarding the DoD's action against the University. At that time, the DoD was unable to provide answers to these simple questions, citing an active investigation against the University. Now that the investigation has concluded and the probation decision has been lifted, I hope to obtain from the Department further information related to the DoD's actions in this matter.

While I support appropriate oversight of all post-secondary institutions to ensure traditional and non-traditional students have access to affordable and quality education, oversight must be transparent, fair, and accountable to the American taxpayer, students, and all institutions of higher-education. With this in mind, actions taken against for-profit institutions of higher education by individual members of the Task Force, presumably as part of their role in the Task Force, raise questions about whether the Task Force's actions represent a just and appropriate use of federal government authority and taxpayer-paid resources.

To help ensure that all institutions of higher education – for-profit, public and private, and non-profit colleges and universities – are held to the same standard of conduct relative to DoD rules and regulations, we ask that you provide us with the following information by June 17, 2016:

1. Identify and describe all of the authorities, laws, rules and regulations under which the DoD operates as part of the Task Force.
2. What is the mission/purpose of your agency's participation in the Task Force?
 - a. Please provide a copy of the document (including any interagency memoranda of understanding or similar document) that delineates that mission/purpose.
3. What are the specific goals identified by the DoD in participating in the Task Force?
 - a. Please provide a copy of the document (including any interagency memoranda of understanding or similar document) that delineates those goals.
4. Does your agency participate in the enforcement working group identified at the May 2 meeting between the Task Force and the Senate Permanent Subcommittee on Investigations?
 - a. If so, please explain your agency's role in the working group.
5. What enforcement or oversight actions related to accredited for-profit post-secondary educational institutions has DoD taken in connection with or in any way related to its participation in the Task Force, since its establishment?
 - a. Identify each for-profit post-secondary educational institution that your agency has taken action against in connection with or in any way related to its participation in the Task Force, since its establishment in October 2014?
 - b. As to each institution described above, describe what action your agency took against it in connection with or in any way related to its participation in the Task Force, since its establishment.
 - c. As to each action described above, describe on what basis was this action taken and who decided to take this action.
 - d. As to each action described above, describe what end-result was obtained.
 - e. As to each action described above, describe what the current disposition is.
 - f. As to each action described above, explain how your agency cooperated or communication with any other Task Force member-agency, in particular, how any information obtained or shared as a result of such cooperation or communication resulted in the action taken.
6. What enforcement or oversight actions related to accredited public and private institutions of post-secondary education has DoD taken within that same time period?
 - a. Identify each accredited public or private institution of post-secondary education that your agency has taken action against since October 2014?
 - b. As to each institution described above, describe what action your agency took against it since October 2014.
 - c. As to each action described above, describe on what basis was this action taken and who decided to take this action.
 - d. As to each action described above, describe what end-result was obtained.
 - e. As to each action described above, describe what the current disposition is.
7. Does the DoD participate in an analogous information-sharing network in the enforcement of laws with respect to not-for-profit institutions of post-secondary education under your agency's jurisdiction?
8. Has DoD established a clear appeals process that provides for appropriate due process when enforcement actions have been taken against for-profit high-education institutions?
 - a. If so, please provide the details of that process.

- b. If not, please explain why not and if you plan to develop an appropriate appeals process and by what date.
- 9. To your knowledge, is there a mechanism established within the Task Force or the enforcement working group to share when corrective actions have been taken and positive findings about for-profit colleges? Or is the intent only to identify and share information related to purported problems?
- 10. Is your agency a member of the Student Aid Enforcement Unit established in February 2016?

To better understand the events surrounding the DoD decision to place the University of Phoenix on probationary status, please provide responses to the questions below, along with any requested materials.

- 11. What were the specific, factual, and evidentiary bases for the DoD's October 7th decision to place the University of Phoenix on probationary status?
- 12. Did anyone besides Ms. Bilodeau review this decision? Please provide any internal decision memorandum that reflects that decision when it was originally made.
- 13. Please describe why the DoD official who reviewed the probationary decision believed he/she could take such action against the University when, as Ms. Bilodeau stipulates in her October 7th letter, the University had already remedied identified infractions of the MOU?
- 14. In your October 7th letter, you referenced an ongoing FTC review into the University of Phoenix to support DoD action placing the University on probationary status.
 - a. How does DoD determine when to utilize actions taken by other state or federal agencies in making TA program decisions?
 - b. Are allegations, requests for information, or enforcement actions taken by other state or federal agencies subject to independent review by the Department before being utilized for DoD enforcement actions?
 - c. Has the DoD placed either for-profit or not-for profit universities on probation when another federal or state agency makes a civil investigative demand for documents? Please identify other instances where this has taken place and the reasons for taking such action.
 - d. Please provide copies of any communications between the DoD and the FTC regarding the University of Phoenix from October 2014 through January 19, 2016, when the DoD reinstated the University in the TA Program.
- 15. To what extent did non-governmental reports or investigations reported in the media serve a basis for the DoD decision to place the University on probation in connection with the TA Program?
- 16. To what extent did the DoD, before making a decision to put the University on probation, independently corroborate the findings of those non-governmental reports or investigations regarding the University's alleged non-compliance with the TA program MOU?
- 17. Please provide all records of communications, including but not limited to e-mails, between any Member of Congress, or their staff, and the DoD regarding the University of

Phoenix compliance with the MOU in the TA Program from June 1, 2015, to their reinstatement back in the program.

18. Please provide a list of those schools where the DoD MOU was terminated and the reasons for such termination.
19. Please list those schools that currently use or previously used challenge coins with DoD official seals or other trademark insignia; indicate whether such schools obtained prior DoD authorization for such use; describe any sanctions imposed for such use; and provide any documents or correspondence relating to such use or sanction determination.

Upon completion of the Department's response to the above questions and requests for information, please provide a written certification, signed by the DOD General Counsel, stating that (1) a diligent search has been completed of all documents in the DoD's possession, custody, or control which reasonably could contain responsive documents or information; and (2) all documents and information located during the search that are responsive have been produced to the Senate Armed Services Committee.

We look forward to your timely response and should you have additional questions, please feel free to ask your staff to contact Majority Professional Staff Member Jennifer White, at [REDACTED]

Sincerely,



John McCain
Chairman
Senate Armed Services Committee

JOHN MCCAIN, ARIZONA, CHAIRMAN

JAMES M. INHOFE, OKLAHOMA
JEFF SESSIONS, ALABAMA
ROGER F. WICKER, MISSISSIPPI
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RICHARD BLUMENTHAL, CONNECTICUT
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TIM Kaine, VIRGINIA
ANGUS S. KING, JR., MAINE
MARTIN HEINRICH, NEW MEXICO

United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, DC 20510-6050

August 17, 2016

CHRISTIAN D. BROSE, STAFF DIRECTOR
ELIZABETH L. KING, MINORITY STAFF DIRECTOR

The Honorable Ashton Carter
Secretary
Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Carter,

Thank you for your response to my May 23, 2016, letter regarding the Department of Defense's (DoD) decision to suspend the University of Phoenix (the University) from participating in the DoD Tuition Assistance (TA) Program and related matters. While your letter addressed some of my questions, some answers were not responsive.

As you know, last October, the Chief of DoD Voluntary Education, Dawn Bilodeau, suspended the University from participating in the TA program citing a "transgression of Defense Department policies regarding use of its official seals or other trademark insignia and failure to go through the responsible education advisor for each business related activity requiring access to the DoD installations". As I conveyed to you at that time, I found this attack by DoD on the University to be inexplicable and without merit. Specifically, the deficiencies that Ms. Bilodeau had cited as a basis for her decision were remedied by the time she suspended the University, and DoD had declined to similarly penalize other universities for the same conduct. That DoD continues to be unable to provide answers to simple questions about this decision gives rise to a negative inference that why DoD suspended the University was not because of the reasons it originally cited.

I am concerned by the appearance that the University was singled out, and that the Department has not provided sufficient information to assuage this concern.

After an unduly burdensome deliberative process, during which the University's value precipitously declined, DoD reversed its decision. Since then, a company called The Vistria Group ("Vistria"), co-founded and -headed by Martin Nesbitt, a close personal friend of President Obama's, and former Department of Education Deputy Secretary Anthony Miller, has sought to acquire a stake in the Apollo Education Group ("Apollo"), which currently owns the University. Needless to say, years of regulatory assault by this Administration (including the Department of Education) against for-profit institutions, including the University of Phoenix, had so driven down the University's value that now Vistria is prepared to buy a stake in the company for pennies on the dollar.

There is, you would agree, a patina of unseemliness associated with these facts.

Against this backdrop and to supplement my August 3, 2016, letter to DoD, which focused on contacts between DoD officials and individuals currently associated with Vistria, the Committee needs (1) information on the deliberative process that supported DoD's original probation decision and (2) access to contemporaneous internal DoD records associated with that process. Accordingly, please provide responses to the questions below, along with any requested materials, no later than September 15, 2016.

1. Please provide a detailed chronology that begins with the DoD's execution of the Memorandum of Understanding in connection with the University's participation in the DoD Tuition Assistance (TA) Program; notes when DoD first identified deficiencies it cited as a basis for its decision to suspend the University's participation in the TA program; reflects all internal DoD decision memoranda and key communications with the University reflecting that decision; reflects all communications (including emails) between any DoD official and any Member of Congress (including their staff) regarding DoD's suspension decision; and reflects any communication between any DoD official and any individual currently associated with Vistria, including but not limited to Martin Nesbitt and Anthony Miller from 2009 through the present.
2. At a May 2, 2016, Senate Permanent Subcommittee on Investigations briefing with members of the Department of Education's Interagency Task Force on for-profit colleges and universities, DoD officials, including Ms. Bilodeau, cited additional incidents with the University—other than the deficiencies noted in her probation letter—that led to DoD's decision to temporarily suspend the University from participating in the TA program. Please identify each additional incident other than those deficiencies noted in the probation letter; note whether the University was notified of these infractions and given sufficient time to rectify prior to the probationary period; include documentation of the notification; and confirm if the University rectified the additional areas of concern prior to the probationary period?
3. Please provide the name of the Principal Deputy Assistant Secretary of Defense who contemporaneously reviewed the probationary decision and produce the internal decision memorandum that reflects that decision when it was originally made (and the reasons why it was made).
4. What were the evidentiary factual bases for the finding that proper access procedures were disregarded by the University of Phoenix at Navy Operational Support Center, Fort Worth, Texas; Fort Bragg, North Carolina; Fort Carson, Colorado; Fort Hood, Texas; and Fort Campbell, Kentucky?
5. What was the specific factual basis for the DoD's decision to place the University of Phoenix on probationary status despite the fact that, as Ms. Bilodeau stipulates in her October 7, 2015 letter, the University had already remedied the identified infractions of the MOU? Under what authority was this decision made?
6. Provide copies of all communications between the DoD and the FTC regarding the University of Phoenix from October 2014 through January 19, 2016, when the DoD reinstated the University in the TA Program.
7. In response to my question about the extent to which DoD independently corroborated the findings of non-governmental reports or media reports before placing the University on probation, you simply stated that "the DoD independently confirmed that proper

access procedures were disregarded by the University.” Describe, in detail, the process and the extent to which the DoD, before making the decision to put the University on probation, independently corroborated the findings of those non-governmental reports or investigations regarding the University’s alleged non-compliance with the TA program MOU.

8. As requested in Question 17 of my May 23, 2016, letter and additionally in Question 4 of my October 22, 2015, letter, provide all records of communications, including but not limited to e-mails, between any Member of Congress or their staff and the DoD regarding the University of Phoenix compliance with the MOU in the TA Program from June 1, 2015, to their reinstatement back in the program.
9. In your response to Question 19 of my May 23, 2016, letter, you list educational institutions with a reported challenge coin in which prior DoD authorization was not obtained, and MOU compliance action was taken. For each of these institutions listed, describe the sanctions imposed on the schools and provide any documents or correspondence relating to sanction determination.

Upon completion of the Department’s response to the requests for information and records in this letter, please provide a written certification, signed by the DoD General Counsel, stating that (1) DoD has conducted and completed a diligent search for all records in its possession, custody, or control that could reasonably contain records or information responsive to this request; and (2) DoD has produced all documents and information located during the search that are in fact responsive to this request.

We look forward to your timely response by September 16, 2016. Should you have additional questions, please feel free to ask your staff to contact Majority Professional Staff Member Jennifer White, at [REDACTED]

Sincerely,



John McCain
Chairman

Senate Armed Services Committee