

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between DeVry University (OPE ID Number 01072700) (“DVU”), 3005 Highland Parkway, Downers Grove, Illinois 60515, and the United States Department of Education (the “Department”) acting through the Chief Enforcement Officer at Federal Student Aid (collectively “the Parties”), and is effective the latest date opposite the signatures below (“Effective Date”).

RECITALS

WHEREAS, DVU is a school participating in the Federal student aid programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (“Title IV, HEA programs”); and

WHEREAS, DVU received a request for documents and information on August 28, 2015 from the Department’s Multi-Regional and Foreign School Participation Division of the Federal Student Aid Office; and

WHEREAS, the Department issued a Notice of Intent to Limit to DVU on January 27, 2016 (the “Notice”); and

WHEREAS, DVU timely filed a written request for a hearing contesting the Notice on February 12, 2016, and the Notice is now the subject of a Federal Student Aid proceeding entitled *In the Matter of DeVry University*, Docket No. 16-07-O (the “Limitation Action”); and

WHEREAS, the Parties have endeavored to resolve this matter and have engaged in good faith negotiations for that purpose; and

WHEREAS, the Parties now desire to settle this matter.

NOW, THEREFORE, in consideration of the mutual promises and the performance of the actions described herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. DVU agrees to the following:
 - a. To the extent DVU has not already done so, DVU will immediately cease publishing or otherwise using the Since 1975 Representation and will not resume publishing or otherwise using the Since 1975 Representation. As used in this Agreement, “Since 1975 Representation” means any representation, regardless of manner, form or means of utterance or publication by DVU to a student, prospective student, accrediting agency, state agency, the Secretary of Education (“Secretary”), or any member of the public stating or suggesting the graduate employment outcomes for DVU graduates since 1975. Without limitation, the phrase “Since 1975 Representation” shall include representations that state that (1) since 1975, 90% (or some close variation thereof) of DVU graduates system-

wide in the active job market were employed in career-related positions within 6 months of graduation; or (2) since 1975, 90% (or some close variation thereof) of DVU graduates system-wide in the active job market held positions in their fields of study within 6 months of graduation. The phrase “Since 1975 Representation” shall exclude any representation of graduate employment outcomes for DVU graduates that does not cumulatively include DVU graduates since 1975.

- b. DVU will not make any representations to a student, prospective student, accrediting agency, state agency, the Secretary, or any member of the public that are based, in whole or in part, on the post-graduation employment outcomes of any student who graduated from DVU between 1975 and October 1980.
- c. DVU certifies that it has taken or will take steps, as identified in Exhibit A, to remove certain past uses or publications by DVU and third parties of the Since 1975 Representation.
- d. To the extent DVU makes any representations to any student, prospective student, accrediting agency, state agency, the Secretary, or member of the public that are based, in whole or in part, on graduate employment rates, DVU will possess and maintain graduate-specific data to substantiate such representations and will make such graduate-specific data available to the Department upon request. As used herein, “graduate-specific data” shall mean all information about individual graduates, individually and in the aggregate, necessary to support such a representation and includes graduate names, social security numbers, student ID numbers, graduation dates, degrees earned (*e.g.*, bachelors, associates, masters), programs or majors (*e.g.*, business administration, technical management), specializations or other concentrations (if applicable), and information regarding both pre- and post-graduation employment, including employer name, occupation, position title, hours worked, salary, start date, full or part time status, and whether the position is funded by DVU, and any other information necessary to substantiate the truthfulness of the representation. Without limitation, “graduate-specific data” shall include:
 - i. To the extent necessary to substantiate the truthfulness of the representation, all student files relating to students or graduates whose graduate employment information serves as a basis for the representation, including student files relating to students or graduates who are part of a cohort of students as to which the representation pertains, but whose information is nonetheless excluded from the calculation for any reason;
 - ii. All documentation collected or maintained by DVU necessary to substantiate the truthfulness of the representation, including its employees, contractors, and agents, relating to the employment of any such student before, during, and after the student's graduation from DVU and maintained in DVU's Registrar or Career Services files;

- iii. All communications or documents necessary to substantiate the truthfulness of the representation reflecting communications between DVU, including its employees, contractors, and agents, with any student or graduate regarding post-graduation employment;
 - iv. All documents obtained by DVU relating to any audit, survey, analysis, or other review contracted for or by DVU, relating to any representations that are based, in whole or in part, on graduate employment outcomes;
 - v. All other evidence on which DVU relies to substantiate the facts underlying any representation about the employability of DVU graduates, including, without limitation, representations about the employment rates of DVU graduates.
- e. DVU will maintain information sufficient to establish the methodology it used to formulate any representations regarding post-graduation employment outcomes of DVU students and make such information available to the Department upon request. As used herein “information sufficient to establish the methodology” shall include, without limitation, detailed information about the methodology used to categorize students for purposes of any representations including, as appropriate, the methodology used to determine whether a graduate was employed in his or her field of study, the methodology used to assess the differences, if any, between pre-enrollment or pre-graduation employment, on the one hand, and post-graduation employment, on the other, and the methodology used to determine the veracity of any information compiled by DVU employees or agents responsible for compiling information and making such determinations. Without limitation, “information sufficient to establish the methodology” shall also include:
- i. All internal or external publications, including, without limitation, Career Services Manuals, training materials, guidelines, and instructions, that describe, detail, or relate to the methodology used by DVU to calculate or create such representation based, in whole or in part, on graduate employment rates; and
 - ii. All other evidence on which DVU relies to substantiate the methodology underlying any representation about the employability of DVU graduates, including, without limitation, representations about the employment rates of DVU graduates.
- f. With respect to the records and information required to be maintained pursuant to Paragraphs 1(d) and 1(e) of this Agreement, DVU shall maintain such records for a period not less than six (6) years following the last making of the representation triggering an obligation in those Paragraphs.

- g. For a period of six years from the Effective Date, DVU will engage a qualified, independent, third-party (“Third Party”) to review the records and information relating to DVU graduates from January 2017 and beyond required to be maintained pursuant to Paragraphs 1(d) and 1(e) of this Agreement and DVU’s plans to maintain such records for the period required by Paragraph 1(f) of this Agreement. The Third Party shall issue a Report, on no less than an annual basis, that confirms DVU has satisfied, in all material respects, its responsibilities under Paragraphs 1(d) and 1(e) of this Agreement relating to DVU graduates from January 2017 and beyond, and has implemented policies designed to achieve and maintain compliance with Paragraph 1(f) of this Agreement. This Report: (A) shall identify the information that DVU has provided to the Third Party, including a listing and brief description of all representations DVU has made (since the most recent report provided pursuant to this Paragraph) to any student, prospective student, accrediting agency, state agency, the Secretary, or member of the public that are based, in whole or in part, on graduate employment rates, and the steps that the Third Party has taken to confirm DVU’s compliance with Paragraphs 1(d) and 1(e), and its policies to comply with Paragraph 1(f), of this Agreement; (B) is provided to the Director of Enforcement at Federal Student Aid or his or her designee; and (C) is accompanied by a statement by the Third Party affirming that, to the knowledge of the Third Party, the Report does not contain any false, fictitious, or fraudulent information, or omit any material fact. In the event DVU is unable to secure the engagement of a Third Party to provide the Report prescribed under this Paragraph 1(g) after exhausting all reasonable good faith efforts to do so, the Parties agree to work cooperatively to amend this Paragraph to accomplish their shared objective of obtaining a third-party report. In such event, DVU will provide the Department with a written report describing the steps taken to secure such an engagement, the reasons for DVU’s inability to secure such an engagement, and the names of any Third Party actually retained for the purpose of providing the Report required by this Paragraph.
- h. For a period of six years from the Effective Date, and on no less than an annual basis, DVU will provide the Department a certification attesting to DVU’s compliance with Paragraphs 1(d) and 1(e) of this Agreement, and its policies for complying with Paragraph 1(f) of this Agreement. Such certification shall: (A) identify and briefly describe to the Department all representations DVU has made (since the most recently provided certification pursuant to this Paragraph) to any student, prospective student, accrediting agency, state agency, the Secretary, or member of the public that are based, in whole or in part, on graduate employment rates; (B) affirm that DVU has not knowingly excluded from the graduate-specific data required to be maintained pursuant to Paragraph 1(d) any other information created or maintained by DVU that could reasonably be used to substantiate a representation subject to Paragraph 1(d); (C) be provided to the Director of Enforcement at Federal Student Aid or his or her designee; and (D) acknowledge that the provision of any false, fictitious, or fraudulent information, or the omission of any material fact, may subject DVU to criminal, civil or

administrative penalties for fraud, false statements, false claims, or other violations of law.

- i. Within thirty days of the Effective Date, DVU will prominently post on the home page of its website in a simple and meaningful manner, the following language (“Disclosure Language”), to be maintained for two years:

DeVry University previously advertised that “Since 1975, 90% of DeVry graduates system-wide in the active job market held positions in their fields of study within 6 months of graduation.” The U.S. Department of Education has asserted that the records maintained by DeVry University for the period 1975-1983 were not sufficient to substantiate the Since 1975 Representation, and thus that DeVry University could not substantiate this representation to the extent required by law. Accordingly, the University agreed to cease making the Since 1975 Representation and post this notification on its website.
 - j. Within thirty days of the Effective Date, and for five years following the Effective Date, DVU must include the Disclosure Language in any and all enrollment agreements or other such documents memorializing the enrollment of a student at DVU.
 - k. For a period of five years following the Effective Date, DVU will submit to the Department, to the attention of the Director of Enforcement, no later than ten days after the event described below, written notice of the occurrence of any of the following:
 - i. Any adverse action whatsoever, including, without limitation, written warnings, adverse factual determinations, show cause orders, lawsuits filed, probation and similar actions, taken against DVU by an accrediting agency, State authorizing agency, Federal or State agency, or any other civil or criminal law enforcement agency, or any civil case (including an arbitration) filed by a private party relating to representations made by DVU regarding the employability of its graduates (including representations that are based, in whole or in part, on graduate employment rates), and any judgments rendered in such case; or
 - ii. DVU's receipt of a subpoena, civil investigative demand, or other inquiry by an accrediting agency, State authorizing agency, Federal or State agency, or any other civil or criminal law enforcement agency relating to representations made by DVU regarding the employability of its graduates (including representations that are based, in whole or in part, on graduate employment rates).
2. Within 30 days of the Effective Date of this agreement, DVU shall post a letter of credit (“LOC”) for the benefit of the Department in the amount of \$68,435,908, which is

approximately equal to ten percent of the Title IV, HEA program funds disbursed by DVU in the 2014-2015 award year.

- a. The LOC will be adjusted annually to remain at a level equal to ten percent of DVU's Title IV, HEA program disbursements in the preceding fiscal year, but in no event shall the LOC be less than \$68,435,908. The LOC shall expire on the fifth anniversary of its issuance. Pursuant to lender requirements, the LOC may contain an annual expiration date and allow for automatic renewal. Should DVU fail to renew or replace the LOC within ten (10) days prior to any interim expiration with a new LOC that becomes effective immediately upon the expiration of the extant LOC (so as not to create any lapse in an LOC), the Department may call the extant LOC and place the funds in an escrow account at the Department pending a determination of the extent to which those funds will be used in accordance with Paragraph 2(b) of this Agreement.
- b. The LOC posted pursuant to this Agreement will be deemed to satisfy any and all requirements for DVU to post an LOC triggered by the past performance requirement of financial responsibility under 34 C.F.R. § 668.174(a)(1) based on the settlement of the Notice.
- c. The LOC will permit the Department to draw against the letter of credit only under the following circumstances, and in any case only after such action has been finally determined to be justified under a process in which DVU is afforded all the rights and protections to which it is entitled:
 - i. To pay refunds of institutional or non-institutional charges owed to or on behalf of current or former students of DVU, whether DVU remains open or has closed;
 - ii. To provide for the "teach-out" of students enrolled at DVU at the time of the closure of DVU, including with respect to activities conducted pursuant to a "teach out agreement," as that term is defined in 34 C.F.R. § 602.3, and/or other services reasonably designed to facilitate the transition of such students to another educational program, such as funding transfer fees, transcript costs, and similar expenses; and
 - iii. To pay any fines, penalties, or liabilities whatsoever owing to the Secretary arising from acts or omissions by DVU in violation of Title IV, HEA program requirements, including the violation of any agreement entered into by DVU with the Secretary regarding the administration of Title IV, HEA programs. Without limitation, this shall include any liability owed to the Secretary pursuant to Section 455(h) of the HEA, 20 U.S.C. §1087e(h), or any regulation promulgated thereunder.
- d. As used in this Agreement, "Covered Conduct" shall mean conduct regarding DeVry's substantiation, or lack thereof, for the Since 1975 Representation.

“Covered Conduct” shall exclude any conduct other than that regarding DVU’s substantiation for the Since 1975 Representation and shall also exclude conduct relating to DVU’s use of any other representation, including other representations related to post-graduation outcomes of DVU students, irrespective of whether such representation was made as part of the *We Major in Careers* campaign. Covered conduct shall also exclude any conduct that may form a basis for a determination by the Secretary that DVU has engaged in substantial misrepresentation pursuant to 34 C.F.R. Part 668 Subpart F or 20 U.S.C. § 1094(c)(3).

3. The Parties agree that the settlement of the Notice constitutes a condition of past performance as set forth in 34 C.F.R. § 668.174(a)(1). DVU will therefore participate in the Title IV, HEA programs under provisional certification through April 1, 2018, provided that:
 - a. The Department retains the right to revoke DVU’s provisional certification for cause, consistent with the procedural requirements set out in 34 C.F.R. § 668.13(d) and the provisional program participation agreement attached hereto as Exhibit B. The provisions set forth in Paragraph 3(b) below shall not apply to any revocation action taken by the Department.
 - b. Before taking any action regarding DVU’s eligibility under or participation in the Title IV, HEA programs other than a revocation pursuant to 34 C.F.R. § 668.13(d), or before imposing any fine, penalty, or liability against DVU, irrespective of whether such fine, penalty, or liability is imposed using the processes afforded in 34 C.F.R. Part 668 Subpart G or following a Final Program Review Determination or Final Audit Determination (and subject to appeal rights under 34 C.F.R. Part 668 Subpart H), the Department will:
 - i. Provide DVU written notice specifying the Department’s basis for such action; and
 - ii. Afford DVU an opportunity to challenge the action through a proceeding pursuant to 34 C.F.R. Part 668, Subparts G or H, as applicable, with all attendant rights;
 - iii. Written notice, as that phrase is used in Paragraph 3(b)(i) of this Agreement may be satisfied by the Department’s issuance of a Final Program Review Determination or Final Audit Determination.
 - c. DVU will have until six-months after the last day of DVU’s fiscal year to submit its audited financial statements and an independent compliance audit, consistent with 34 C.F.R. § 668.23.
 - d. The Department shall process all applications for programs and locations as it would in the ordinary course and without undue delay.

- e. Other than as expressly set forth herein, the Department shall not impose growth or other conditions or restrictions on DVU's participation in the Title IV, HEA programs due to the Covered Conduct, or arising from the Notice or the settlement of the Notice. Except as otherwise provided by law, the Department is not otherwise limited in its authority to impose such conditions or restrictions.
 - f. Except as otherwise provided herein, no person or entity exercising substantial control over DVU as determined under 34 C.F.R. § 668.174 shall be required to submit a financial guarantee to the Department as a condition of initial provisional certification, or due to the Covered Conduct, or arising from the Notice or the settlement of the Notice.
4. DVU accepts and acknowledges that for five years after the effective date of this Agreement and following the expiration of the Provisional Program Participation Agreement executed pursuant to Paragraph 3 of, and concurrently with, this Agreement, the condition of past performance resulting from the settlement of the Notice may result in DVU's certification to participate in Title IV, HEA programs only under an alternative standard set forth in 34 C.F.R. § 668.175.
5. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall restrict the Department from considering the Covered Conduct when devising or implementing a remedy for any conduct by DVU (which is not within the Covered Conduct) that violates Title IV of the HEA or any regulation promulgated thereunder.
6. The Department will not impose conditions on the timing of disbursement of aid or documentation requirements due to the Covered Conduct, other than requiring DVU, at the Department's sole discretion, to participate in the Title IV, HEA programs under a method of payment no more restrictive or burdensome than Heightened Cash Monitoring 1 status, set forth at 34 C.F.R. § 668.162(d)(1). Except as so stated, the Department retains the sole discretion to determine the method under which the Secretary provides Title IV, HEA program funds pursuant to 34 C.F.R. § 668.162.
7. The Department agrees to accept the commitments made by DVU in this Agreement in full and final resolution of all matters, present or future, based on the Covered Conduct, or arising out of the Notice or the Settlement of the Notice. The Department agrees that it shall not institute, direct, maintain, continue or join any action of any nature, including but not limited to any civil or administrative monetary claim against DVU, or any DVU entities and related parties, arising from or based on the Covered Conduct, the act of settlement, or this Agreement.
8. DVU releases the Department (together with its agents and employees) from any claims, known and unknown, suspected and unsuspected, including claims for attorneys' fees, costs, and expenses of every kind and however denominated, that DVU has asserted or could assert against the Department (together with its agents and employees) concerning the Covered Conduct, the Department's investigation into the Covered Conduct, the

Department's bringing of the Limitation Action, or the Department's actions in prosecuting the Limitation Action.

9. Within five days of the Effective Date, the Parties agree that they shall jointly enter a motion to dismiss the Limitation Action with prejudice.
10. This Agreement does not waive, compromise, restrict, or settle any past, present, or future actions by the Department pursuant to 34 C.F.R. Part 668, Subparts G and H that are not arising from or based on the Covered Conduct or this Agreement.
11. This Agreement does not waive, compromise, restrict, or settle any past, present, or future violations by DVU, its Trustees, Officers, or employees of the criminal laws of the United States or any action initiated against DVU, its Trustees, Officers, agents, or employees for civil fraud against the United States.
12. DVU neither admits nor denies any wrongdoing regarding the Covered Conduct.
13. The Parties will each bear their own costs in connection with this action and this Agreement.
14. All signatories to this Agreement acknowledge that they have read this Agreement and have freely and voluntarily executed it after having consulted with counsel and received the advice of counsel as to its effect.
15. Each individual signing this Agreement warrants that he or she has full authority to do so. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.
16. Neither Party will contest the enforceability of this Agreement in a future proceeding.
17. A breach of this Agreement by DVU shall constitute a breach of DVU's standard of care and diligence in administering Title IV programs, a breach of any Program Participation Agreement in effect at the time of the breach, and cause for revocation pursuant to a provisional Program Participation Agreement.
18. This Agreement, including the Exhibits attached hereto, sets forth the entire agreement and understanding of the Parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings, and agreements, whether oral or written, between them relating to the subject matter hereof.



Robert Paul
President
DeVry University

Date



Robert S. Kaye
Chief Enforcement Officer
Federal Student Aid
U.S. Department of Education

Date

[Signature Page to Settlement Agreement]