



# Diploma Mills: A Legal Overview

**name redacted**

Legislative Attorney

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## Summary

This report provides an analysis of state and federal laws regarding diploma mills, which offer students academic degrees for little or no meaningful academic work. Specifically, this report addresses the criminal, civil, and common law ramifications for both the manufacturers and distributors of phony degrees, as well as for the buyers and users of such degrees. This analysis does not address counterfeit degrees that purport to be from existing accredited universities, but rather focuses primarily on the legal issues surrounding phony degrees from entities that provide diplomas without requiring an appropriate level of academic achievement.

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## I. Introduction

This report provides an analysis of state and federal laws regarding diploma mills, which offer students academic degrees for little or no meaningful academic work. Specifically, this report addresses the criminal, civil, and common law ramifications for both the manufacturers and distributors of phony degrees, as well as for the buyers and users of such degrees. This analysis does not address counterfeit degrees that purport to be from existing accredited universities, but rather focuses primarily on the legal issues surrounding phony degrees from entities that provide diplomas without requiring an appropriate level of academic achievement.

Although no formal legal definition exists, a diploma mill is generally regarded as an entity that lacks accreditation from a state or professional accreditation organization, but that nonetheless sells college and graduate degrees that are fraudulent or worthless because of the lack of standards imposed on the purchasers of such degrees. While experts estimate that diploma mills have existed for hundreds of years,<sup>1</sup> such entities have proliferated in recent decades due to lax law enforcement and technological advances such as the rise of the Internet. By some estimates, there are several hundred diploma mills operating at any given time,<sup>2</sup> with revenue in excess of \$500 million per year.<sup>3</sup>

Because many diploma mills use the Internet to operate their phony institutions of higher education, it is sometimes difficult to distinguish between purveyors of phony degrees and legitimate online institutions that operate traditional distance learning degree programs. This difficulty is one reason that federal and state policy makers have trouble drafting laws that can be used to shut down phony institutions. Nevertheless, most diploma mills display some or all of the following hallmarks of a fraudulent operation: (1) they are unaccredited or they claim to be accredited but the organization that they cite is not one of the legitimate accrediting agencies recognized by the Council on Higher Education Accreditation or the United States Department of Education (ED); (2) they do not require previous academic records, such as grade point average or test scores, for admission; (3) they charge tuition based on the number of degrees purchased rather than the number of credit hours or courses taken; (4) they offer many or all degree credits based on a student's life experience; (5) they guarantee that students will receive diplomas in far less time than it would take at a traditional university; (6) their professors often have degrees from unaccredited universities and have little or no contact with students; (7) they are located in a foreign country or have addresses that are post office box numbers; and (8) they have names that are strikingly similar to legitimate, accredited universities.<sup>4</sup>

Diploma mills pose dangers to consumers and employers, as well as the general public and to legitimate institutions of higher education. Although some individuals who obtain degrees from diploma mills are active conspirators in fraud, others are innocent victims of financial scams in

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<sup>1</sup> John B. Bear and Mariah Bear, *Degree Mills*, March 10, 2002, <http://www.quackwatch.org/04ConsumerEducation/dm0.html>.

<sup>2</sup> Beverly Geber, *Diploma Mills in the Cyber Age*, TRAINING, June 1, 1999.

<sup>3</sup> Thomas Bartlett and Scott Smallwood, *Inside the Multimillion-Dollar World of Diploma Mills*, *The Chronicle of Higher Education* (June 25, 2004), at 8. The June 25, 2004 edition of *The Chronicle of Higher Education* provided an in-depth series of articles about diploma mills.

<sup>4</sup> Better Business Bureau, *Is the Internet Becoming a Haven for Diploma Mills?*, July 12, 2000, <http://www.bbb.org/alerts/article.asp?ID=185;geteducated.com>, *Consumer Alert: Top Ten Signs You Might Be Dealing With A Distance Learning Degree Mill*, 2003, <http://www.geteducated.com/articles/degremills.htm>.

which they pay hundreds or thousands of dollars for worthless degrees. If the fraudulent credentials are discovered, such individuals may lose their jobs or face civil or criminal charges. Regardless of whether such individuals have fraudulent intent, employers who hire individuals with fake degrees may, at best, have inadequately trained employees and, at worst, expose themselves to liability for the mistakes of such employees. Finally, diploma mills may harm members of the general public who receive professional services from individuals with fake academic credentials, and they may damage the reputation of legitimate degree-granting institutions.<sup>5</sup>

Despite the potential harm caused by diploma mills, state and federal efforts to shut down these entities have been somewhat erratic over the years, depending in part on the jurisdiction and enforcement priorities involved. For example, enforcement has been weak at times for reasons that range from the difficulty in distinguishing between fraudulent and legitimate institutions to the ability of diploma mills to move jurisdictions quickly if authorities in one state begin an aggressive enforcement campaign. Further complicating matters is the fact that every state has its own diploma mill laws, which vary in strength and effectiveness. Meanwhile, the federal government pursues enforcement actions against diploma mills under a separate set of laws. These federal and state laws regarding diploma mills are discussed in detail below.

## II. Federal Oversight of Diploma Mills

In general, the regulation of education in the United States is a state responsibility. Nevertheless, the federal government plays a role in education oversight, and diploma mills are no exception. Although federal law does not explicitly prohibit diploma mills, the sale of fraudulent academic credentials is punishable under several federal statutes relating to mail fraud, wire fraud, and conspiracy, and at least five different governmental agencies have some direct involvement in or authority over the legal issues raised by diploma mills, namely the Federal Bureau of Investigation (FBI), which is housed within the Department of Justice (DOJ); the U.S. Postal Inspection Service; the Federal Trade Commission (FTC); the Department of Education; and the Department of Homeland Security (DHS).<sup>6</sup> In addition, where tax fraud is involved, the Internal Revenue Service (IRS) has been known to participate in prosecutions of diploma mill operators, and attorneys with a separate division of DOJ prosecute cases involving fraud against the federal government. Finally, the Office of Personnel Management (OPM) has personnel rules that prohibit applicants and employees from making misrepresentations to federal agencies. Each of these agencies, and the relevant laws and regulations, are discussed in detail in this section.

The two agencies with the greatest degree of legal authority to regulate and prosecute diploma mills are the FBI and the U.S. Postal Inspection Service. Both agencies have the authority to

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<sup>5</sup> John Bear, *Diploma Mills: The \$200-Million-a-Year Competitor You Didn't Know You Had*, March 10, 2002, <http://www.quackwatch.org/04ConsumerEducation/dm1.html>.

<sup>6</sup> DAVID W. STEWART & HENRY A. SPILLE, *DIPLOMA MILLS: DEGREES OF FRAUD* 153 (American Council on Education and Macmillan Publishing Company 1988). The authors also identify the Department of State as a federal agency that may have responsibilities concerning diploma mills because of the number of inquiries that they receive regarding questionable institutions located in the United States and overseas, but they identify no legal basis for such a conclusion, and the Department of State does not appear to exercise regulatory authority over diploma mills. *Id.* at 159. The State Department does, however, provide information on its website about diploma mill and accreditation issues that may be relevant to foreign students who are seeking to study in the U.S.

investigate crimes involving mail fraud, wire fraud, and other types of fraud,<sup>7</sup> and diploma mills are often prosecuted under these statutes if they use the mail or telephone wire to commit fraud. Under the federal mail fraud statute, use of the mail with intent to commit fraud is punishable both civilly and/or criminally, respectively, by a fine and/or by up to twenty years in prison.<sup>8</sup> Use of a fictitious name or address in connection with mail fraud or any other unlawful purpose is punishable by monetary fines and/or up to five years in prison.<sup>9</sup> Likewise, violations of the wire fraud statute are punishable with fines and/or up to twenty years in prison.<sup>10</sup> In addition, any attempt or conspiracy to commit the types of fraud described above is subject to the same penalties that would have applied if the underlying crime had successfully been committed.<sup>11</sup> If an individual is violating or about to violate these anti-fraud provisions, DOJ can seek an injunction in federal court to prevent such violations.<sup>12</sup> Finally, the Post Office is authorized to take certain preventative actions if an individual conducts “a scheme or device for obtaining money or property through the mail by means of false representations.”<sup>13</sup>

Over the years, federal enforcement of laws against diploma mills has waxed and waned. For example, the FBI and the Postal Inspection Service have periodically engaged in collaborative criminal investigations of diploma mills. Indeed, these investigations were particularly active from the late 1970s to the early 1990s, when the FBI spearheaded the DipScam operation. Short for diploma scam, DipScam consisted of an FBI task force whose successful investigations of diploma mills led to multiple arrests and convictions under federal anti-fraud statutes and to a decline in phony institutions. Ultimately, the DipScam task force disbanded shortly after the retirement of its top diploma mill expert, and phony institutions have made a comeback in the years since.<sup>14</sup> Investigations and prosecutions of diploma mills also appear to have declined in recent years as federal agencies have focused enforcement efforts on other priorities. For example, since the events of September 11, 2001, combating terrorism has been the FBI’s top priority, while the Postal Inspection Service has aggressively targeted the issue of identity theft in recent years.

The FTC is another federal agency with some regulatory authority over diploma mills. Under the Federal Trade Commission Act, the FTC is authorized to enforce consumer protection laws that prohibit fraud, deception, and unfair business practices.<sup>15</sup> As defined by the statute, unlawful deceptive trade practices include false and misleading advertising.<sup>16</sup> With respect to vocational and distance learning schools, the FTC has interpreted the ban on false and misleading advertising to prohibit such schools from using deceptive trade or business names, misrepresenting the extent or nature of accreditation or approval, or issuing deceptive diplomas, degrees, or certificates.<sup>17</sup> Specifically, FTC guidance notes that

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<sup>7</sup> *Id.* at 157.

<sup>8</sup> U.S.C. § 1341.

<sup>9</sup> *Id.* at § 1342.

<sup>10</sup> *Id.* at § 1343. Limits on all the above fines are set forth at 18 U.S.C. § 3571.

<sup>11</sup> *Id.* at § 1349.

<sup>12</sup> *Id.* at § 1345.

<sup>13</sup> 39 U.S.C. § 3005.

<sup>14</sup> Bear, *supra* note 1.

<sup>15</sup> 15 U.S.C. § 45.

<sup>16</sup> *Id.* at § 52.

<sup>17</sup> Guides for Private Vocational and Distance Education Schools, 63 FR 42570, 42573-74 (Aug. 10, 1998).

(a) It is deceptive for an industry member to issue a degree, diploma, certificate of completion, or any similar document, that misrepresents, directly or indirectly, the subject matter, substance, or content of the course of study or any other material fact concerning the course for which it was awarded or the accomplishments of the student to whom it was awarded.

(b) It is deceptive for an industry member to offer or confer an academic, professional, or occupational degree, if the award of such degree has not been authorized by the appropriate State educational agency or approved by a nationally recognized accrediting agency, unless it clearly and conspicuously discloses, in all advertising and promotional materials that contain a reference to such degree, that its award has not been authorized or approved by such an agency.<sup>18</sup>

For false or misleading advertisements made with intent to defraud or mislead, penalties for a first offense consist of a fine of up to \$5,000 or imprisonment for up to six months, or both. Penalties for a second offense consist of a fine of up to \$100,000 or imprisonment for up to one year, or both.<sup>19</sup> Unlike the FBI or Postal Inspection Service, the FTC is also authorized to sue individuals or companies that violate the trade statute in order to seek legal redress for injuries to consumers.<sup>20</sup> Thus, the FTC may sue diploma mills in order to secure refunds or damages for consumers who have been deceived by phony degree-granting institutions. In addition, the FTC is authorized to seek injunctions in federal court to prevent false and misleading advertising.<sup>21</sup> Despite this extensive authority, the FTC does not appear to have pursued many enforcement actions against diploma mills.<sup>22</sup>

ED is another agency with some involvement in the issue of diploma mills. Although ED is responsible for overseeing federal education efforts, the agency does not have any statutory authority to accredit colleges and universities. Rather, for purposes of identifying institutions that are eligible to receive federal student financial aid, the Higher Education Act (HEA) authorizes ED to recognize independent accrediting agencies that meet certain criteria. These accrediting agencies, in turn, verify the legitimacy of institutions of higher education.<sup>23</sup> Because ED's regulatory authority is limited to overseeing entities that receive federal funding under statutes that provide federal financial assistance for education activities, the agency "has no oversight or regulatory authority over institutions that do not participate in the programs included in the HEA. Thus, we have no independent authority or ability to determine if such a school is a diploma mill."<sup>24</sup> Furthermore, although ED recognizes legitimate accrediting agencies, some diploma

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<sup>18</sup> *Id.* at 42574.

<sup>19</sup> 15 U.S.C. § 54. The fines set forth in the statute were superceded by the general fines set forth in the Sentencing Reform Act of 1984, which applies across the board to all federal crimes. 18 U.S.C. §§ 3559, 3571.

<sup>20</sup> 15 U.S.C. § 57b(b).

<sup>21</sup> *Id.* at § 53.

<sup>22</sup> Bear, *supra* note 5; STEWART, *supra* note 6, at 159. A search of federal legal databases uncovered only one reported diploma mill case that was litigated in the federal courts (*Branch v. Federal Trade Com.*, 141 F.2d 31 (U.S. App., 1944)) and two reported cases at the agency adjudication level (80 F.T.C. 815 (FTC 1972); 71 F.T.C. 193 (FTC 1967)), but all of these reported cases occurred before 1972. However, it is possible that the FTC chooses to resolve diploma mill cases informally or that the cases are not reported in federal legal databases.

<sup>23</sup> 20 U.S.C. § 1099b. Indeed, institutions of higher education must be accredited in order to receive federal funds under Title IV of the Higher Education Act. *Id.* at §§ 1002, 1099c. *See also*, CRS Report RL32989, *Accreditation and the Reauthorization of the Higher Education Act*, by (name redacted) and (name redacted).

<sup>24</sup> Letter from Rod Paige, Secretary of Education, to Senator Susan M. Collins (Oct. 9, 2003), <http://www.ed.gov/policy/highered/guid/secletter/031009.html?exp=0>.



mills falsely claim that they are accredited, but the accrediting agency that they cite is not recognized by ED or by the Council for Higher Education Accreditation, which is a private organization that also recognizes accrediting agencies. ED, however, does not have the authority to recognize these fake accreditation agencies.

ED also lacks regulatory jurisdiction over foreign accrediting agencies or foreign educational institutions that do not participate in HEA programs, although U.S. accrediting agencies that have been recognized by ED may accredit foreign institutions that they determine to be comparable to U.S. institutions.<sup>25</sup> Because many U.S.-based employers, academic institutions, and professional licensing organizations require evidence of academic achievement before they will hire, admit, or license applicants, individuals that have earned degrees or credits from institutions that are not accredited in the U.S. can verify their foreign academic credentials by consulting private organizations that provide credential evaluation services in order to establish that such foreign degrees or credits are comparable to those received from U.S. institutions.<sup>26</sup>

Despite ED's lack of oversight responsibility with respect to diploma mills, the agency has taken several steps to curb the proliferation of these phony institutions. To that end, ED has established a section on its website with detailed information on diploma mills and how to avoid them.<sup>27</sup> In particular, ED maintains on this website a list of recognized accrediting agencies and accredited institutions so that students can verify that they will be attending a legitimate college or university.<sup>28</sup> In addition, ED has taken a leading role in facilitating interagency coordination with respect to diploma mills. Recently, for example, ED convened a meeting of federal and state officials in order to "share information and create awareness about federal and state efforts to address the problem of diploma mills and to lay the groundwork for greater coordination in the future."<sup>29</sup>

In its capacity to issue visas that allow entry into the U.S., the U.S. Citizenship and Immigration Services (USCIS) of DHS also confronts the problem of diploma mills. For example, in order to receive a student visa, students must be enrolled in a federally approved academic institution.<sup>30</sup> Likewise, some types of employment visas require a baccalaureate or advanced degree to qualify.<sup>31</sup> Thus, existing immigration requirements and procedures provide guidelines for examining academic or professional credentials, including provisions for requesting an advisory evaluation from a credential evaluation service such as those described above.<sup>32</sup> Despite concerns from some observers about the possible national security implications of diploma mills,<sup>33</sup> existing

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<sup>25</sup> Department of Education, *Diploma Mills and Accreditation—Diploma Mills*, <http://www.ed.gov/students/prep/college/diplomamills/diploma-mills.html>.

<sup>26</sup> *Id.* See also, Alex Mindlin, *Vetting Those Foreign College Applications*, NY Times (Sept. 29, 2004), at B1.

<sup>27</sup> See <http://www.ed.gov/students/prep/college/diplomamills/index.html>.

<sup>28</sup> See <http://www.ed.gov/admins/finaid/accred/index.html> and <http://ope.ed.gov/accreditation/>. As ED notes, however, "the database [of accredited institutions] does not include a number of postsecondary educational institutions and programs that elect not to seek accreditation but nevertheless may provide a quality postsecondary education." *Id.*

<sup>29</sup> Press Release, Department of Education, *Statement by Assistant Secretary for Postsecondary Education Sally L. Stroup* (Jan. 15, 2004), <http://www.ed.gov/news/pressreleases/2004/01/01152004a.html>.

<sup>30</sup> 8 U.S.C. § 101(a)(15)(F) and (M).

<sup>31</sup> *Id.* at §§ 1184(i)(1)(B), 1153(b)(2), 1153(b)(3)(A)(ii).

<sup>32</sup> See 8 C.F.R. § 214.2(h)(4)(iii)(C & D); and Department of Homeland Security Adjudicator's Field Manual §§ 10.5, 31.3(d & g), Appendix 22-1 (Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants), Appendix 31-2 (H-1B Standard Operating Procedures).

<sup>33</sup> CNN transcript 121501CN.V99, *Paula Zahn Now: Diploma Mills Represent Security Threat to United States?* (Dec. (continued...))



immigration requirements and procedures provide for the screening of all visa applicants for terrorism and criminal grounds of inadmissibility.<sup>34</sup> Therefore, an alien who is a known or suspected terrorist would be denied a visa regardless of whether the alien offers a fraudulent diploma as supporting documentation for an employment-based visa application or attempts to apply for a student visa at an unapproved institution.

Other federal agencies have some involvement with the problems posed by diploma mills, although these agencies appear to have no direct regulatory authority over the activities of diploma mills. For example, as noted above, the IRS has been known to participate in prosecutions of diploma mill operators where tax fraud is involved, and attorneys with DOJ prosecute cases involving fraud against the federal government. The Secret Service has also been involved in diploma mill investigations.<sup>35</sup> Finally, certain OPM regulations that bar federal job applicants and employees from making misrepresentations to federal agencies, as well as other federal laws that punish individuals who make false or fraudulent statements to the federal government, appear to affect individuals whose claims of educational achievement are based on degrees received from diploma mills. It is these personnel rules and anti-fraud laws that most directly apply to situations involving use of diploma mill degrees in federal employment.

## **Use of Diploma Mill Degrees in Federal Employment**

Under federal law, both OPM and relevant agencies are authorized to establish a minimum educational requirement for a given job “if the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education.”<sup>36</sup> As a result, many federal jobs require applicants to have degrees in specific fields, such as law or medicine.<sup>37</sup> Although federal personnel rules do not appear to address the issue of fraudulent academic credentials directly, federal law does direct OPM to consider the character of job applicants and to examine their suitability for federal employment.<sup>38</sup> As part of this suitability review, OPM is authorized to take action against applicants, appointees, and employees to “protect the integrity or promote the efficiency of the service.”<sup>39</sup> According to the regulations, OPM may consider “dishonest conduct” and “material, intentional false statements or fraud in examination or appointment” as a basis for such a determination.<sup>40</sup> Thus, it appears that individuals who knowingly use fraudulent academic credentials in order to secure federal employment are subject to disciplinary action, including cancellation of eligibility, denial of

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15, 2005) (available on Lexis/Nexis).

<sup>34</sup> See CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by (name redacted) and (name redacted); CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by (name redacted); and CRS Report RL32366, *Terrorist Identification, Screening, and Tracking Under Homeland Security Presidential Directive 6*, by (name redacted). See also, 9 F.A.M. §§ 40.32 notes (consular guidelines on inadmissibility for terrorist activities), 40.37 (Visa Viper terrorist reporting program), 202 (Consular Lookout and Support System [CLASS]), and 501 (special clearance procedures).

<sup>35</sup> Thomas Bartlett, *Government Raids a Diploma Mill*, *The Chronicle of Higher Education* (Sept. 2, 2005), at 39.

<sup>36</sup> 5 U.S.C. § 3308.

<sup>37</sup> Stephen Barr, *Agencies Learn to Check That Degrees Are From Accredited Colleges*, *WASH. POST*, Aug. 14, 2003, at B2.

<sup>38</sup> 5 U.S.C. § 3301.

<sup>39</sup> 5 C.F.R. § 731.201.

<sup>40</sup> *Id.* at § 731.202.

appointment, removal, cancellation of reinstatement eligibility, or debarment for a period of up to three years.<sup>41</sup> Moreover, according to OPM, falsification of security clearance forms, which require information about education history, is a separate offense that could lead to loss of employment and/or security clearance.<sup>42</sup>

In order to combat the use of diploma mills in federal employment, OPM recently announced revisions to federal employment application forms and to OPM's USAJOBS website, which provides information about federal jobs and application documents. These revisions include the addition of an accreditation field that asks applicants whether their academic institutions were accredited by ED at the time of attendance. The revised documents also instruct applicants not to list credentials obtained from diploma mills, degrees based only on life experience, or degrees obtained from schools with few or no academic standards.<sup>43</sup>

In addition to revising federal employment forms, OPM has recently held a series of training sessions for managers at federal agencies in order to provide information about diploma mills and guidance for detecting the use of fraudulent credentials by federal employees. OPM has also indicated that it plans to hire additional staff to "oversee the adjudication of and conduct appropriate follow-up to personnel background investigations where diploma mill and other significant issues are identified."<sup>44</sup>

In addition to regulations regarding employee suitability, federal law allows agencies to pay for any academic degree training received by their employees, as long as such training is provided by a college or university that is accredited by a nationally recognized body.<sup>45</sup> Since one hallmark of diploma mills is a lack of accreditation, such regulations appear to bar the use of federal funds to pay for employees to receive phony degrees from diploma mills. No such bar, however, appears to be applicable to the use of agency funds to pay for individual training courses offered by unaccredited school. Rather, OPM regulations specify only that "the agency head shall evaluate training to determine how well it meets short and long-range program needs by occupations, organizations, or other appropriate groups and that the "agency head may conduct the evaluation in the manner and frequency he or she considers appropriate."<sup>46</sup>

Several years ago, the Government Accountability Office (GAO; formerly the General Accounting Office) conducted an investigation to determine whether the federal government has paid for diploma mill degrees and whether federal employees who hold senior-level positions claim degrees from diploma mills. As a result of this investigation, GAO identified nearly \$170,000 in fees that the federal government has paid on behalf of employees who have obtained

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<sup>41</sup> *Id.* at § 731.203-04.

<sup>42</sup> Patience Wait and Wilson P. Dizzard, *Paper Chase: Diploma Buyers Beware*, GOVERNMENT COMPUTER NEWS, June 16, 2003.

<sup>43</sup> See Proposed Collection; Comment Request; Review of a Revised Information Collection: OPM Form of 612, Optional Application for Federal Employment Resume Builder in USAJOBS website and the USAJOBS website, 69 FR 62101 (Oct. 22, 2004); and Submission for OMB Review; Comment Request for the Elimination of OPM Optional Form 510, Applying for a Federal Job; the Revision of OPM Optional Form 612, Optional Application for Federal Employment; the Resume Builder in the USAJOBS website; and the USAJOBS website, 70 FR 44699 (Aug. 3, 2005).

<sup>44</sup> News Release, Office of Personnel Management, *OPM Director Kay Coles James Sets Aggressive Agenda for Bogus Degree Training* (May 4, 2004), <http://www.opm.gov/news/opm-director-kay-coles-james-sets-aggressive-agenda-for-bogus-degree-training,270.aspx>.

<sup>45</sup> 5 U.S.C. § 4107.

<sup>46</sup> 5 C.F.R. § 410.601. See also 5 U.S.C. § 4109.

degrees from diploma mills and 28 senior-level federal employees with diploma mill degrees at the eight agencies selected for review. For a variety of reasons, GAO has indicated that both figures appear to understate the extent of federal payments and the number of federal employees associated with diploma mills.<sup>47</sup>

To clarify federal employment policy with respect to academic credentials and employee training programs, OPM recently issued revisions to its Qualifications Standards Operating Manual. Under these revisions, OPM specified that applicants from institutions accredited by ED-recognized accrediting agencies or pre-accredited by ED meet the minimum qualification requirements for federal employment, but that applicants with credentials from pre-accredited schools, unlike those from accredited schools, are not eligible for student loan repayments. Although federal employees may not attend degree training programs at an institution unless it is accredited, they are eligible for tuition reimbursement for attending individual training classes at schools that are pre-accredited or that are deemed comparable to accredited institutions. Applicants from institutions in the latter category, including foreign schools, may also be deemed qualified for federal employment if they meet certain criteria set forth in the operating manual. Federal agencies, however, may not consider or accept credentials from diploma mills for any aspect of federal employment, including eligibility standards, student loan repayment, or employee training of any kind.<sup>48</sup>

In addition to OPM's personnel rules barring the use of diploma mill credentials in federal employment, other federal statutes may also be relevant to combating the use of fraudulent degrees. For example, a federal employee who knowingly and intentionally makes false or fraudulent statements or uses fake documents containing false or fraudulent statements may violate federal criminal law. According to the statute:

whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully . . . makes any materially false, fictitious, or fraudulent statement or representation; or . . . makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.<sup>49</sup>

Since issues related to personnel or employment practices may be considered to be matters that fall within the jurisdiction of the various branches of government, a federal employee who knowingly and intentionally uses a phony degree to secure federal employment or advancement could potentially be criminally liable. It is important to note, however, that this statute requires evidence of a specific intent to defraud, which is often difficult to establish. In addition, because of the intent requirement, this law would not apply to federal employees who, believing that their

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<sup>47</sup> General Accounting Office (now Government Accountability Office), *Federal Employees Have Obtained Degrees From Diploma Mills and Other Unaccredited Schools, Some at Government Expense (GAO-04-771T)* (May 11, 2004), <http://www.gao.gov/new.items/d04771t.pdf>; *see also*, General Accounting Office (now Government Accountability Office), *Diploma Mills Are Easily Created and Some Have Issued Bogus Degrees to Federal Employees at Government Expense (GAO-04-1096T)* (Sept. 23, 2004), <http://www.gao.gov/new.items/d041096t.pdf>.

<sup>48</sup> Office of Personnel Management, *Qualification Standards for General Schedule Positions, Part E.4-E.4(a)*, <http://www.opm.gov/qualifications/SEC-II/s2-e4.asp>. *See also*, Memorandum for Department and Agency Heads from Kay Coles James, Director, Office of Personnel Management, *Strengthening Oversight of the Use of Diploma Mill Credentials in Federal Employment* (May 13, 2004), [http://www.opm.gov/Strategic\\_Management\\_of\\_Human\\_Capital/Guidance/2004/DiplomaMills.pdf](http://www.opm.gov/Strategic_Management_of_Human_Capital/Guidance/2004/DiplomaMills.pdf).

<sup>49</sup> 18 U.S.C. § 1001.

degrees are legitimate, innocently claim educational achievement based on degrees from diploma mills.

Likewise, an employee who knowingly and intentionally secures agency funding to pay for his or her fraudulent degree may violate federal criminal laws. Indeed, any individual who “knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined under this title or imprisoned not more than five years, or both.”<sup>50</sup> Although it does not appear that this provision has been applied to diploma mill fraud in the context of federal employment, the language of this provision suggests that federal employees could potentially incur criminal penalties for collaborating with a diploma mill in order to get a federal agency to pay for a phony degree. Like the more general provision regarding false or fraudulent statements, this provision requires evidence of a specific intent to defraud. Finally, conspiracy to commit fraud against the United States government is also a federal crime punishable by fine, imprisonment for up to five years, or both.<sup>51</sup>

### **III. State Oversight of Diploma Mills**

As noted above, state governments, rather than the federal government, have primary responsibility for overseeing education in the United States. Laws regarding diploma mills, however, vary widely in strength and effectiveness from state to state. While some states have strong laws that explicitly prohibit diploma mills and enforce these laws vigorously, other states have weak laws, lax enforcement, or both. This section examines a representative sample of state laws pertaining to diploma mills. It is important to note, however, that in addition to laws that specifically address diploma mills, many states have general anti-fraud statutes or professional licensing laws that may also apply when states are seeking to curtail diploma mill activities.<sup>52</sup> These laws are beyond the scope of this report and therefore are not included in the discussion below.

States that have strong laws regarding diploma mills include Oregon, New Jersey, and Illinois. Under Oregon law, for example, the Office of Degree Authorization (ODA) in the Oregon Student Assistance Commission is empowered to approve schools that offer academic degrees, validate claims of degree possession, and terminate substandard or fraudulent degree activities.<sup>53</sup> Schools are prohibited from awarding degrees or from providing services purporting to lead to a degree unless they are approved by ODA,<sup>54</sup> and individuals are barred from claiming that they possess an academic degree unless: that degree has been awarded by an institution that is approved by ODA or that is accredited by an agency recognized by ED; or the claim is accompanied by a disclaimer regarding the lack of accreditation and ODA approval. The penalty

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<sup>50</sup> *Id.* at § 1002.

<sup>51</sup> *Id.* at § 371. Limits on all the above fines are set forth at 18 U.S.C. § 3571.

<sup>52</sup> For example, several states have laws that bar the use of phony degrees by dentists, doctors, veterinarians, chiropractors, opticians, podiatrists, and/or teachers. Joan E. Van Tol, *Detecting, Deterring and Punishing the Use of Fraudulent Academic Credentials: A Play in Two Acts*, 30 Santa Clara L. Rev. 791, 827 n. 83 (1990).

<sup>53</sup> ORS § 348.603.

<sup>54</sup> *Id.* at § 348.606.

for individuals who violate this latter provision is a fine of up to \$1,000.<sup>55</sup> Oregon appears to aggressively enforce this statute, and ODA maintains a website with a list of unaccredited institutions whose degrees may not lawfully be used in the state.<sup>56</sup>

Under New Jersey law, the buying or selling with intent to deceive of any diploma purporting to confer an academic degree is unlawful.<sup>57</sup> Furthermore, individuals are prohibited from using fraudulent academic credentials in connection with any business, trade, profession, or occupation, and may not intentionally misrepresent themselves as having received such a degree.<sup>58</sup> Individuals who violate the New Jersey statute are liable for a civil penalty of \$1,000 per offense.<sup>59</sup>

Similarly, Illinois' Academic Degree Act aims to prevent the use of fraudulent academic credentials. Under the statute, institutions are prohibited from awarding any degrees until they have received authorization and approval from the State Board of Higher Education. In order to qualify for approval, institutions that provide education in residence must require an appropriate period of instruction, while institutions that do not conduct instruction in residence must meet criteria regarding physical facilities, faculty, and record keeping.<sup>60</sup> The Board of Higher Education is authorized to inspect the premises of degree-granting institutions, and refusal to permit such inspections is punishable by a revocation of approval, as well as other penalties available under the act.<sup>61</sup> Since violations of the act are a felony, such penalties include fines, restitution, probation, or imprisonment.<sup>62</sup> According to one diploma mill expert, Illinois is a state that aggressively enforces its diploma mill laws.<sup>63</sup>

Although Oregon, New Jersey, and Illinois are not alone in having strong diploma mill laws that are effectively enforced, some states have weak laws, law enforcement, or both. According to one diploma mill expert, Mississippi, Alabama, and Wyoming offer three examples of states that remain diploma mill havens.<sup>64</sup> Neither Mississippi nor Alabama appears to have laws specifically targeting diploma mills on their books. Wyoming, on the other hand, does have laws requiring institutions that are located in the state and that lack legitimate accreditation to be licensed by the state, to maintain physical facilities, to be inspected by the state, and to employ instructors who meet certain educational criteria.<sup>65</sup> The law also prohibits institutions from awarding degrees solely on the basis of payment of tuition or other suspect criteria or from falsely claiming accreditation.<sup>66</sup> Violations of the statute are punishable as a misdemeanor by a fine of up to

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<sup>55</sup> *Id.* at § 348.609.

<sup>56</sup> Office of Degree Authorization, Oregon Student Assistance Commission, *Unaccredited Colleges*, July 18, 2003, <http://www.osac.state.or.us/oda/unaccredited.html>.

<sup>57</sup> N.J. Stat. § 18A:3-15.1.

<sup>58</sup> *Id.* at § 18A:3-15.2.

<sup>59</sup> *Id.* at § 18A:3-15.5.

<sup>60</sup> 110 ILCS §§ 1010/4, 1010/5.

<sup>61</sup> *Id.* at § 1010/6.

<sup>62</sup> *Id.* at § 1010/8; 730 ILCS 5/5-5-3.

<sup>63</sup> Bear, *supra* note 5.

<sup>64</sup> Dan Carnevale, *Mississippi May Restrict Online Diploma Mills*, THE CHRONICLE OF HIGHER EDUCATION, October 17, 2003.

<sup>65</sup> Wyo. Stat §§ 21-2-401 and 402.

<sup>66</sup> *Id.* at § 21-2-404.



\$1,000 or up to six months in prison, or both.<sup>67</sup> Despite these prohibitions and penalties, Wyoming reportedly does not vigorously enforce its higher education licensing laws.<sup>68</sup>

Ultimately, it appears that the majority of states has laws that specifically target diploma mills.<sup>69</sup> In addition, most states have laws of more general applicability, such as statutes pertaining to “civil actions for fraud and misrepresentation and criminal prosecutions for forgery, embezzlement, theft of services, or false pretenses or impersonation,”<sup>70</sup> that they can use to shut down diploma mills should they choose to do so. Enforcement of such laws, however, appears to vary from state to state, with “relatively few reported cases involving the criminal prosecution of persons who have made or used fraudulent academic credentials.”<sup>71</sup> In part, successful prosecutions may be rare since it is difficult to determine jurisdiction if a diploma mill operates in several states at once and since such institutions may relocate quickly and easily if the state in which they reside cracks down. Thus, the popularity of a given state as a haven for diploma mills often changes over time. As one commentator concludes:

In the end, sound legislation at the state level is the first line of defense against unscrupulous diploma mill operators. But legislation by itself is insufficient. A well-equipped enforcement agency and a public mood that will support its efforts are also needed.<sup>72</sup>

## IV. Common Law Tort Actions Against Diploma Mills

In addition to prosecution under state and federal legislation, diploma mills may potentially be subject to a common law tort action for negligent misrepresentation or fraud. Under a lawsuit for fraud, an individual who was injured as a result of receiving a phony degree from a diploma mill could sue for damages if: (1) the owner or operator of the diploma mill knowingly made false representations regarding the quality of the degree and (2) the individual relied on those statements to his or her pecuniary detriment.<sup>73</sup> A suit for negligent misrepresentation may be pursued if the defendant did not exercise reasonable care or competence in obtaining or communicating the false information, even if there was no intention to deceive nor knowledge of the information’s falsity.<sup>74</sup> In addition to common law actions for fraud or misrepresentation,

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<sup>67</sup> *Id.* at § 21-2-407.

<sup>68</sup> Mead Gruver, *Wyoming Called a Diploma-Mill Haven*, Wash. Post (Feb. 13, 2005), at A18.

<sup>69</sup> Although this list is by no means exhaustive, the following states have laws that target fraudulent academic credentials: California (Cal. Ed. Code § 94050); Florida (Fla. Stat. §§ 817.06, 817.566-67); Hawaii (H.R.S. §§ 446E-1 et seq.); Illinois (110 ILCS §§ 1010/0.01 et seq.); Iowa (Iowa Code § 715A.6A); Louisiana (La. R.S. 17:1808); Maine (20-A M.R.S. §§ 10702, 10704, 10705, 10709, 10711); Maryland (Md. Education Code Ann. § 26-301); Michigan (MCLS §§ 390.1601 et seq.); Nevada (NRS §§ 394.620 et seq.); New Hampshire (RSA 638:15-a); New Jersey (N.J. Stat. §§ 18A:3-15.1 et seq.); New York (NY CLS Educ. §§ 224, 225); North Carolina (N.C. Gen. Stat. § 14-122.1); North Dakota (N.D. Cent. Code §§ 15-20.4-15, 15-20.4-17); Oregon (ORS §§ 348.594 et seq.); Rhode Island (R.I. Gen. Laws §§ 11-58-1 et seq.); South Dakota (S.D. Codified Laws § 36-4-30); Tennessee (Tenn. Code Ann. § 39-17-112); Texas (Tex. Educ. Code § 61.304); Virginia (Va. Code Ann. § 18.2-172.1); Washington (Rev. Code Wash. § 28B.85.020); and Wyoming (Wyo. Stat. §§ 21-2-401 et seq.).

<sup>70</sup> Van Tol, *supra* note 52, at 817.

<sup>71</sup> *Id.*

<sup>72</sup> STEWART, *supra* note 6, at 137.

<sup>73</sup> RESTATEMENT (SECOND) OF TORTS §§ 525-26, 537 (1977).

<sup>74</sup> *Id.* at § 552.

many states have enacted unfair or deceptive practices statutes that provide consumers with remedies against false, misleading, and deceptive business practices, unconscionable actions, or breach of warranty. Depending on the circumstances, victims of diploma mill scams might be able to assert claims under these state statutes.

## V. Enforcement

Despite the available array of laws targeting diploma mills, these phony institutions continue to exist. Many observers believe that “[t]here appears to be a lack of prosecutorial interest at both the state and federal level in pursuing cases involving fraudulent academic credentials.”<sup>75</sup> Certainly, there have been notable examples of diploma mill prosecutions over the years.<sup>76</sup> Nevertheless, the strength of overall enforcement efforts is difficult to gauge since it is unclear how many prospective cases have remained unpursued.<sup>77</sup>

## Author Contact Information

(name redacted)  
Legislative Attorney  
[redacted]@crs.lov.g7-....

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<sup>75</sup> Van Tol, *supra* note 52, at 817.

<sup>76</sup> *See id.*, at 827 n. 15, 827 n. 16, 827 n. 77, 827 n. 79 (citing, among other cases, *United States v. Fowler*, 870 F.2d 656 (4<sup>th</sup> Cir. 1989); *Chong v. Sobol*, 540 N.Y.S.2d 382 (App. Div. 1989); *Alexander v. United States*, 95 F.2d 873 (U.S. App. , 1938); and *People v. Sanchez*, 33 Cal. Ap. 3d 413, 109 Cal. Rptr. 56 (1973)).

<sup>77</sup> Because a search of legal databases reveals only cases that have been reported at the federal and state level, it is impossible to determine how many cases have gone unreported or have not been prosecuted to begin with.



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