

EXHIBIT H

COPY



**The New England
Institute of ArtSM**

50 Years of Creative Education in Art & Communications

2004/2005 Student Handbook

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letter from the Office of Student Affairs, explaining what accommodations are appropriate, will be given to the student to share with her/his instructors, department chair, and staff as deemed appropriate by the student. We support the concept of self-advocacy in all students and do not provide faculty or staff with prior notification of a student's disability. Since all accommodations are individualized to meet the needs of each student, they may vary depending upon the disability and/or course content. The Office of Student Affairs considers all information and documentation concerning a student's disability confidential and will not share the information without the permission of the student.

If you have a concern or complaint in this regard, please contact the Associate Dean of Student Affairs or Dean of Student Affairs. Complaints will be handled in accordance with the school's complaint procedures.

Health Information and Referrals

Boston has long been known for its excellent health care facilities. The Student Affairs Department can help you locate an area facility for your health care needs. The Department maintains a referral list of local services including walk-in health centers, mental health clinics, and targeted services for substance abuse, nutrition, and many others. All referrals are confidential.

Emergency Medical Information Form

All students are requested to complete and return the Emergency Medical Information Form to the Associate Dean of Student Affairs. Any information provided on this form will be relayed to emergency medical personnel in the event of illness in order to facilitate better medical treatment.

Health Insurance/Immunization

Massachusetts law requires that all students must have health insurance and certain immunizations and provide proof of such insurance and immunization prior to class start. The New England Institute of Art makes available a health insurance package for any student who needs insurance. For more information on health insurance, please contact the Student Accounting Department on the second floor Administrative area. For more information on immunizations, please contact the Admissions Department. Please be aware that students will not be permitted to attend classes until proof of insurance and required immunizations is received.

CAREER SERVICES

We know that the vast majority of students, upon completion of their program, wish to secure professional employment in their field of study. Therefore, The New England Institute of Art offers many career-related



services designed to guide you during your time as a student and after graduation.

Internships

At The New England Institute of Art we believe hands-on experience and internships are an integral part of how our students learn about the industry they plan to enter. Therefore, it is a requirement that all students complete at least 120 hours of internship experience prior to graduation. All students must register for this internship, complete all necessary documentation, and take this internship in conjunction with the Seminar Course. Students are welcome to take additional internships for experience earlier in their academic career as long as those internships are appropriately registered. Please be aware that some degree programs may require additional internships in order to graduate. Please refer to the college catalog or your academic advisor for more information. For more information and assistance with acquiring an internship, please contact the Career Services Office.

Career Advising/Placement Assistance

Students are assigned a Career Advisor who works with all students in a particular program major. The Advisor provides career counseling and job placement assistance prior to and after graduation. These services are designed to assist each student with the job search process and identify appropriate employers and positions. Career Advisors are available for all students at any point in their academic career. During your last semester and after graduation, your Career Advisor will guide you and assist you as you search for your first job in your field of study. Some examples of career advising assistance include resume review, interview practice, an evaluation of career prospects, individual strengths, and job search techniques.

Career Workshops

Career Advisors conduct workshops to assist students with job search skills. These workshops are given in the Seminar Course to prepare students for internships and the eventual job search. Workshop topics covered include resume and cover letter writing, interview techniques and researching the industry among others. For individual assistance, you may schedule an appointment with Career Services.

Student Employment

A Student Employment Advisor is available to meet with all currently registered students regarding part time employment opportunities for students. There are a variety of employment opportunities including on and off campus jobs.

Career Fair/Career Events

Each year, Career Services hosts a Career Fair and other career-related networking events for students and alumni. Students and alumni meet industry professionals and participate in panel discussions and seminars pertaining to careers and topics of relevance. Past guest speakers have included representatives from MTV Networks, Interactive Planet, ESPN, major record labels and design firms.

Alumni Services

The New England Institute of Art has a full time Alumni Coordinator who works with graduates of the College. The Alumni Coordinator highlights alumni success and helps to establish and

maintain a cohesive alumni community. Alumni can take advantage of the system-wide alumni web site, graduate newsletters and events.

Transfer of The New England Institute of Art Credits to other Institutions

The New England Institute of Art is licensed by the Commonwealth of Massachusetts, Board of Higher Education to confer Bachelor and Associate of Science degrees and accredited by the New England Association of Schools & Colleges, Inc., an accrediting agency recognized by the United States Department of Education. However, the fact that a school is licensed and accredited is not necessarily an indication that credits earned at that school will be accepted by another school. In the U.S. higher education system, transferability of credit is determined by the receiving institution taking into account such factors as course content, grades, accreditation and licensing.

The mission of The New England Institute of Art is to help you to prepare for entry-level employment in your chosen field of study. The value of degree programs like those offered by The New England Institute of Art is their deliberate focus on marketable skills. The credits earned are not intended as a stepping stone for transfer to another institution. For this reason, it is unlikely that the academic credits you earn at The New England Institute of Art will transfer to another school.

Programs offered by one school within The Art Institutes system may be similar to but not identical to programs offered at another school within the system. This is due to differences imposed by state law, use of different instructional models, and local employer needs. Therefore, if you decide to transfer to another school within The Art Institutes system, not all of the credits you earn at The New England Institute of Art may be transferable into that school's program.

If you are considering transferring to either another Art Institute or an unaffiliated school, it is your responsibility to determine whether that school will accept your Art Institute credits. We encourage you to make this determination as early as possible. The New England Institute of Art does not imply, promise, or guarantee transferability of its credits to any other institution.

POLICIES AND PROCEDURES

At The New England Institute of Art, we strive to provide a student-centered environment conducive to learning. We have created procedures and policies to ensure that all students have a safe, comfortable environment for learning, a support network, and access to services. Please review these policies and procedures and refer any questions to the appropriate department.

Attendance

Course work at The New England Institute of Art is very hands-on and students are expected to attend class on a regular basis. Poor attendance will affect a student's final grade in a class as follows:

A student with more than 3 absences (2 during Summer Semester) will have their earned academic grade lowered one letter grade (ex: B+ to C+). More than 4 absences (3 during Summer Semester) will lower their grade to D.

If a student arrives late or leaves early from class, it is noted in the attendance roster. Four late arrivals/early departures count the same as a full absence. Further, if a student is more than 30 minutes late to a class or leaves more than 30 minutes before the conclusion of a class he or she will be marked with a one-half absence for that class. Two half absences count the same as missing an entire class.

Faculty members may set individual attendance policies that are stricter than the above policy. Their individual course syllabi will provide information on allowed absenteeism and the effects that absenteeism will have on a student's final grade if it is stricter than the standard. In no case can a student fail a course based on their attendance. Course failure is strictly based on academic performance.

Students are responsible for making up assignments and communicating with their instructors regarding missing classes. All faculty members have school voice mail and email to help students contact them.

The New England Institute of Art does not distinguish between excused or unexcused absences.

A student who misses all of his or her classes for two consecutive weeks will be withdrawn from the college.

Grades

Grades for each course are issued at the conclusion of each semester. The numerical equivalent of grades is as follows:

A	4.0	93-100	C+	2.4	77-79
A-	3.7	90-92	C	2.0	73-76
B+	3.4	87-89	C-	1.7	70-72
B	3.0	83-86	D	1.0	60-69
B-	2.7	80-82	F	0.0	59 and below

Additional Letter Codes

I	Incomplete
NR	No grade submitted
W	Withdrawal
K	External Transfer Credit
P	Proficiency Credit by Exam or Portfolio
S	Suspension from Course
T	Termination from College
WV	Waived Course
WF	Withdrawal Failing

EXHIBIT I

Creative Education Loan		SallieMae		Academic Year 2006-2007	
Application and Promissory Note		1-800-984-2944		XS	9009510000
For Loan Applications Received by May 31, 2007					
Section A: Borrower Information Please read instructions before completing this section.					
Social Security Number 021-66-2887		Last Name and Suffix JACOBSON		First Name JESSICA MI M	
Permanent Address (No P.O. Boxes) 189 HOWARD ST		City LUNENBURG		State MA ZIP Code 02467	
Permanent Phone Number (978) 582-7279		Cellular Phone Number		Time at Address (if less than one year, provide prior address) Years 23 Months 0	
Prior Address		City		State ZIP Code	
Address While in School		City		State ZIP Code	
Phone Number While in School		Date of Birth (mm/dd/yy) 08/01/1983		Email Address NONE@SLMA.COM	
Citizenship (check one) a) U.S. Citizen <input checked="" type="checkbox"/> b) Non-Citizen Permanent Resident <input type="checkbox"/> c) Foreign Resident <input type="checkbox"/> d) Foreign Resident not eligible for a Social Security Number <input type="checkbox"/> Note: For options b, c or d see instructions				Have you ever defaulted on a student loan? (check one) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, see instructions for required action	
Total Loan Amount Requested \$ 6,000.00 (see instructions)		We encourage you to borrow conservatively, but try to borrow the full amount you need so you will not have to submit another application.		Enrollment Period for which you want to borrow money (cannot exceed 12 months) From (mm/yy) 09/06 To (mm/yy) 04/07	
School Name THE NEW ENGLAND INSTITUTE OF ART		City BROOKLINE		State MA	
Grade Level (refer to instructions) 03		Course of Study (refer to instructions) OTH		Current Outstanding Student Loan Debt (refer to instructions) \$	
References—You must provide two (2) adult references other than the cosigner					
1) Last Name and Suffix JACOBSON		First Name Donna		MI M Relationship to Borrower MOM	
Email Address		Permanent Phone Number 978-582-7279		Alternate Phone Number	
2) Last Name and Suffix Gray		First Name Judy		MI Relationship to Borrower MOM	
Email Address		Permanent Phone Number 978-345-06784		Alternate Phone Number	
Section B: Cosigner Information Please read instructions before completing this section.					
Social Security Number		Last Name and Suffix		First Name MI	
Address (No P.O. Boxes)		City		State ZIP Code	
Permanent Phone Number		Cellular Phone Number		Time at Residence (if less than one year, provide prior address) Years Months	
Prior Address (No P.O. Boxes)		City		State ZIP Code	
Citizenship (check one) a) U.S. Citizen <input type="checkbox"/> b) Non-Citizen Permanent Resident <input type="checkbox"/> Note: For option b, see instructions				Date of Birth (mm/dd/yy)	
Present Employer Name				Employer Address (City, State, ZIP Code)	
Gross Monthly Income (see instructions) Notes: You do not have to reveal alimony, child support or separate maintenance income unless you wish it to be considered as a basis for loan repayment Salary \$ Other \$ Source				Monthly Mortgage/Rent Amount (check one) Own <input type="checkbox"/> Rent <input type="checkbox"/>	
Cosigner's Email Address					
References—You must provide two (2) adult references other than the borrower					
1) Last Name and Suffix		First Name MI		Relationship to Cosigner	
Email Address		Permanent Phone Number		Alternate Phone Number	
2) Last Name and Suffix		First Name MI		Relationship to Cosigner	
Email Address		Permanent Phone Number		Alternate Phone Number	
Section C: Borrower and Cosigner Signature					
<p>CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT. I, THE COSIGNER, HAVE READ THE APPLICABLE COSIGNER NOTICE.</p>		<p>Notice to Customer (a) Do not sign this before you read the Promissory Note even if otherwise advised. (b) Do not sign this if it contains any blank spaces. (c) You are entitled to an exact copy of any agreement you sign. (d) You have the right at any time to pay in advance the unpaid balance due under this agreement and you may be entitled to a partial refund of the finance charge.</p>		<p>I declare that the information provided above is true and complete to the best of my knowledge and belief. I have read the Promissory Note accompanying this application and the Notice to Cosigner. Promise to pay: Jointly and severally with the other signers below, I promise to pay the lender or any other holder of this loan all sums disbursed under the terms of the Promissory Note, plus interest and all other charges that may become due. The terms and conditions set forth in the Promissory Note constitute the entire agreement between us.</p>	
Borrower Signature 				(seal) Date 10/19/06	
Cosigner Signature (if applicable)				(seal) Date	
Section D: School Certification Must be completed by an authorized school official.					
School Name THE NEW ENGLAND INSTITUTE OF ART		School Code/Branch 0074860000		Disbursement Date (mm/dd/yy)	
For the Enrollment Period (not to exceed 12 months) From Date (mm/dd/yy) 09/05/2006 To Date (mm/dd/yy) 04/28/2007		Grade Level (circle one) Please refer to instructions. Undergraduate 1 2 3 4 5 Graduate A B C D		1. / / 1. \$	
Enrollment Status (check one) Full-time <input checked="" type="checkbox"/> Half-time <input type="checkbox"/>		Course of Study (refer to instructions) OTH		2. / / 2. \$	
		Anticipated Graduation Date (mm/dd/yy)		3. / / 3. \$	
				4. / / 4. \$	
				Total Certified Amount \$	
I hereby certify that the Borrower is eligible for a Creative Education Loan; that the Total Certified Amount does not exceed the student's cost of attendance minus other financial aid; that the School will, at the request of the lender, provide the lender with subsequent information regarding the Borrower's whereabouts; that this School will comply with all applicable loan policies and provisions; and that information provided in Sections A and B is true, complete and correct to the best of my knowledge and belief.					
Authorized school official Sign and date:		Print or type name and title:		Phone (617) 582-4482	



EXHIBIT J

Tips for applying to a job from Craigslist.

Reply to: anon-101949754@craigslist.org

Date: Tue Oct 04 18:51:46 2005

Dear prospective job hunters.

Thank you for taking the time to look at our site, and thank you for being interested in working with us.

Most applications I receive go straight to the deleted-items folder because of a few simple mistakes. I'm beginning to feel bad, so if you are going to make the effort to apply for a job here, or anywhere else, I'd like to offer you some advice.

To successfully interest me in hiring you, you need understand what we as business owners face on the other side of the fence. Hiring is the most important task I face, but it is also 76th on my list of a hundred other things to do today. When we put a posting on Craigslist, we usually get around 100 responses within 48 hours. They flood into my inbox, and I have to push them aside until I have time to give them the attention they deserve. In the meantime, I have phones ringing, deadlines to meet, problems with our systems, employees with questions, and much more to compete for the limited capacity of my brain.

But, don't let this put you off. It doesn't take much to distinguish yourself. Here's how :

1. YOUR COVER LETTER MUST ANSWER OUR NEEDS.

When I do get round to your email, I do not have time to look at every detail. I make quick and rapid decisions about whether I will call you or not. I don't even get to most resume's because the cover letter is so drab. If you want to stand a chance at getting a response, you **ABSOLUTLY MUST** spend some time on this.

So, how should you write a cover letter? - Simple, read our post, and tell me quickly how you can meet the needs we have listed. Use examples wherever possible. Take a look at these two different letters....

EXHIBIT K

Federal Direct Consolidation Loan Application and Promissory Note

OMB No. 1845-0053
Form Approved
Exp. Date 02/28/2014

WARNING: Any person who knowingly makes a false statement or misrepresentation on this form or any accompanying documentation is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

Borrower's Name (please print) Jessica m Jacobson

Social Security Number 021662887

Section E: Borrower Understandings, Certifications, and Authorizations

22. I understand that:

- A. My Direct Consolidation Loan will, to the extent used to pay off loans made under the Federal Family Education Loan (FFEL), Direct Loan, and Federal Perkins Loan (Perkins Loan) programs, count against the applicable aggregate loan limits under the Act. The term "the Act" is defined under "Governing Law" on page 4 of this Note.
- B. The amount of my Direct Consolidation Loan is the sum of the balances of my outstanding eligible loans that I have chosen to consolidate. My outstanding balance on each loan to be consolidated includes unpaid principal, unpaid accrued interest and late charges as defined by federal regulations and as certified by the loan holder. Collection costs may also be included. For a Direct Loan Program or FFEL Program loan that is in default, the amount of any collection costs that may be included in the payoff balances of the loans is limited to a maximum of 18.5% of the outstanding principal and interest. For any other defaulted federal education loans, all collection costs that are owed may be included in the payoff balances of the loans.
- C. Applying for a Direct Consolidation Loan does not obligate me to agree to take the Direct Consolidation Loan. The U.S. Department of Education (ED) will provide me with: (1) a notice containing information about the loans and payoff amounts that ED has verified with the holders of my loans or through ED's National Student Loan Data System (NSLDS) before the actual payoffs occur; and (2) the deadline by which I must notify ED if I want to cancel the Direct Consolidation Loan, or if I do not want to consolidate any of the loans that ED has verified. The notice that ED sends will include information about loans eligible for consolidation that I listed in Section C1 of this Note ("Education Loan Indebtedness - Loans You Want to Consolidate"). It may also include information about additional loans eligible for consolidation that I did not list in Section C1, if I have additional eligible loans with a holder of a loan listed in Section C1. If I do not inform ED otherwise by the deadline specified in the notice that ED sends to me, all of the loans listed in the notice will be consolidated.
- D. If the amount ED sends to my loan holders is more than the amount needed to pay off the balances of the selected loans, the holders will refund the excess amount to ED and this excess amount will be applied against the outstanding balance of my Direct Consolidation Loan. If the amount that ED sends to my holders is less than the amount needed to pay off the balances of the loans selected for consolidation, ED will include the remaining amount in my Direct Consolidation Loan.
- E. Unless I am: (1) consolidating a delinquent Federal Consolidation Loan that the lender has submitted to the guaranty agency for default aversion; (2) consolidating a defaulted Federal Consolidation Loan; (3) consolidating a Federal Consolidation Loan to use the Public Service Loan Forgiveness Program; or (4) consolidating a Federal Consolidation Loan to use the no accrual of interest benefit for active duty service members, I may consolidate an existing Federal Consolidation Loan or Direct Consolidation Loan only if I include at least one additional eligible loan in the consolidation.
- F. If I am consolidating a delinquent Federal Consolidation Loan that the lender has submitted to the guaranty agency for default aversion or a defaulted Federal Consolidation loan, and I am not including another eligible loan, I must agree to repay my Direct Consolidation Loan under the ICR Plan or the IBR Plan.
- G. If I consolidate my loans, I may no longer be eligible for certain deferments, subsidized deferment periods, certain types of loan discharges or loan forgiveness, or reduced interest rates that were available on the loans I am consolidating.
- H. Any payments made prior to the date of consolidation on the loans I am consolidating will not count toward (1) the 25 years of repayment required for loan forgiveness under the IBR Plan or the ICR Plan (see Item 10 of the Borrower's Rights and Responsibilities Statement in this Note), or (2) the 120 qualifying payments required for Public Service Loan Forgiveness (see Item 17 of the Borrower's Rights and Responsibilities Statement).
- I. If I am consolidating a Perkins Loan: (1) I will no longer be eligible for interest-free periods while I am enrolled in school at least half time, in the grace period on my loan, and during deferment periods; and (2) I will no longer be eligible for full or partial loan cancellation under the Perkins Loan Program based on years of service in one of the following occupations: teacher in a low-income elementary or secondary school; staff member in a eligible preschool program; special education teacher; member of the Armed Forces who qualifies for special pay; Peace Corps volunteer or volunteer under the Domestic Volunteer Service Act of 1973; law enforcement or corrections officer; attorney in an eligible defender organization; teacher of mathematics, science, foreign languages, bilingual education or any other high-need field; nurse or medical technician providing health care services; employee of a public or private nonprofit child or family service agency that services high-risk children from low-income families and their families; fire fighter; faculty member at a Tribal College or University; librarian; or speech language pathologist.
- J. If I am consolidating a Direct PLUS Loan or a Federal PLUS Loan that I obtained to help pay for my dependent child's undergraduate education, I will not be eligible to repay my Direct Consolidation Loan under the IBR Plan. However, I may repay my Direct Consolidation Loan under the ICR Plan.
- K. If I am consolidating any Direct Loan Program loans on which I received an up-front interest rebate, and I have not yet made the first 12 required on-time payments on those loans at the time the loans are consolidated, I must make the first 12 required monthly payments on my Direct Consolidation Loan on time to keep the interest rebate (see Item 9 of the Borrower's Rights and Responsibilities Statement).

23. Under penalty of perjury, I certify that:

- A. The information that I have provided on this Note is true, complete, and correct to the best of my knowledge and belief and is made in good faith.
- B. All of the loans selected for consolidation have been used to finance my education or the education of my dependent child(ren).
- C. All of the loans selected for consolidation are in a grace period or in repayment ("in repayment" includes loans in deferment or forbearance).
- D. If I owe an overpayment on a Federal Perkins Loan, Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Academic Competitiveness Grant (ACG), National Science and Mathematics Access to Retain Talent (SMART) Grant, or Leveraging Educational Assistance Partnership Grant, I have made satisfactory arrangements with the holder to repay the amount owed.
- E. If I am in default on any loan I am consolidating (except as provided above in Item 22.F.), I have either made a satisfactory repayment arrangement with the holder of that defaulted loan, or I will repay my Direct Consolidation Loan under the ICR Plan or the IBR Plan.
- F. If I have been convicted of, or pled *nolo contendere* or guilty to, a crime involving fraud in obtaining federal student aid funds under the Act, I have completed the repayment of those funds to ED, or to the loan holder in the case of a Title IV federal student loan.

24. I make the following authorizations:

- A. I authorize ED to contact the holders of the loans selected for consolidation to determine the eligibility for consolidation and the payoff amounts of the loans listed in Section C1 of this Note and any of my other federal education loans that are held by a holder of a loan listed in Section C1. I further authorize release to ED or its agent of any information required to consolidate my education loans in accordance with the Act.
- B. I authorize ED to issue the proceeds of my Direct Consolidation Loan to the holders of the selected loans to pay off the debts.
- C. I authorize ED to investigate my credit record and report information about my loan status to persons and organizations permitted by law to receive that information.
- D. I authorize my school(s) and ED to release information about my Direct Consolidation Loan to the references on the loan and to members of my immediate family, unless I submit written directions otherwise.
- E. I authorize my school(s), ED, or their agents to verify my Social Security Number with the Social Security Administration (SSA) and, if the number on my loan record is incorrect, then I authorize SSA to disclose my correct Social Security Number to these parties.
- F. I authorize my schools, ED, and their respective agents and contractors to contact me regarding my loan request or my loan, including repayment of my loan, at the current or any future number that I provide for my cellular telephone or other wireless device using automated dialing equipment or artificial or prerecorded voice or text messages.

Section F: Promissory Note (continued on page 4) - to be completed and signed by the borrower.

25. Promise to Pay. I promise to pay to the ED all sums disbursed under the terms of this Note to pay off my prior loan obligations, plus interest and other charges and fees that may become due as provided in this Note. Unless I make interest payments, interest that accrues on my loan during forbearance periods and on the unsubsidized portion of my loan during deferment periods may be added, as provided under the Act, to the principal balance of my loan. If I do not make payments on this Note when due, I will also pay reasonable collection costs, including but not limited to attorney's fees, court costs, and other fees.

If ED accepts my application, I understand that ED will send funds to the holders of the loans that I want to consolidate to pay off those loans. I further understand that the amount of my Direct Consolidation Loan will equal the sum of the payoff balances on the loans selected for consolidation. My signature on this Note serves as my authorization to pay off the balances of the loans selected for consolidation as provided by the holders of the loans.

Promissory Note – continued from page 3

The payoff amount may be greater than or less than the estimated total balance I have indicated in Section C1. Further, I understand that if any collection costs are owed on the loans selected for consolidation, these costs may be added to the principal balance of my Direct Consolidation Loan.

I will not sign this Note before reading the entire Note, even if I am told not to read it. I am entitled to an exact copy of this Note and the Borrower's Rights and Responsibilities Statement. My signature certifies that I have read, understand, and agree to the terms and conditions of this Note, including the Borrower Understandings, Certifications, and Authorizations in Section E, and the Borrower's Rights and Responsibilities Statement.

I UNDERSTAND THAT THIS IS A LOAN THAT I MUST REPAY.

26. Borrower's Signature Jessica m Jacobson
(Electronic Signature)

Today's Date (mm-dd-yyyy) 08/30/2013

Governing Law

The terms of this Federal Direct Consolidation Loan Application and Promissory Note (Note) will be interpreted in accordance with the Higher Education Act of 1965, as amended (20 U.S.C. 1070 *et seq.*), the U.S. Department of Education's (ED's) regulations, as they may be amended in accordance with their effective date, and other applicable federal laws and regulations (collectively referred to as the "Act"). Applicable state law, except as preempted by federal law, may provide for certain borrower rights, remedies, and defenses in addition to those stated in this Note.

Disclosure of Loan Terms

This Note applies to a Federal Direct Consolidation Loan (Direct Consolidation Loan). Under this Note, the principal amount that I owe and am required to repay will be equal to all sums disbursed to pay off my prior loan obligations, plus any unpaid interest that is capitalized and added to the principal amount.

My Direct Consolidation Loan may have up to two separate loan identification numbers depending on the loans I choose to consolidate. These loan identification numbers will represent prior subsidized loans and prior unsubsidized loans. Each applicable loan identification number is represented by this Note.

When the loans that I am consolidating are paid off, a disclosure statement will be provided to me. The disclosure will identify the amount of my Direct Consolidation Loan, the associated loan identification number(s), and additional terms of the loan, such as the interest rate and repayment schedule. If I have questions about the information disclosed, I may contact my servicer. Important additional information is also contained in the Borrower's Rights and Responsibilities Statement. The Borrower's Rights and Responsibilities Statement and any disclosure I receive in connection with the loan made under this Note are hereby incorporated into this Note.

I understand that ED may use a servicer to handle billing and other communications related to my loan.

Interest

Interest will be calculated using a formula provided for by the Act. Unless ED notifies me in writing of a lower rate, the interest rate on my Direct Consolidation Loan will be based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but will not exceed 8.25%. This is a fixed interest rate, which means that the rate will remain the same throughout the life of the loan.

I agree to pay interest on the principal amount of my Direct Consolidation Loan from the date of disbursement until the loan is paid in full or discharged, except for interest ED does not charge me during a deferment period on the subsidized portion of my Direct Consolidation Loan. ED may add interest that accrues but is not paid when due to the unpaid principal balance of this loan, as provided under the Act. This is called capitalization.

Late Charges and Collection Costs

ED may collect from me: (1) a late charge of not more than six cents for each dollar of each late payment if I fail to make any part of a required installment payment within 30 days after it becomes due, and (2) any other charges and fees that are permitted by the Act related to the collection of my Direct Consolidation Loan. If I default on my loan, I will pay reasonable collection costs, plus court costs and attorney fees.

Repayment

I must repay the full amount of the Direct Consolidation Loan made under this Note, plus accrued interest. I will repay my loan in monthly installments during a repayment period that begins on the date of the first disbursement of the loan, unless it is in a deferment or forbearance period. Payments made by me or on my behalf will be applied first to late charges and collection costs that are due, then

to interest that has not been paid, and finally to the principal amount of the loan, except during periods of repayment under the Income-Based Repayment (IBR) Plan. Under the IBR Plan, payments will be applied first to interest that is due, then to fees that are due, and then to the principal amount.

ED will provide me with a choice of repayment plans. Information on these plans is included in the Borrower's Rights and Responsibilities Statement. I must select a repayment plan. If I do not select a repayment plan, ED will choose a plan for me in accordance with the Act.

ED will provide me with a repayment schedule that identifies my payment amounts and due dates. My first payment will be due within 60 days of the first disbursement of my Direct Consolidation Loan unless it is in a deferment or forbearance period. If I am unable to make my scheduled loan payments, ED may allow me to temporarily stop making payments, reduce my payment amount, or extend the time for making payments, as long as I intend to repay my loan. Allowing me to temporarily delay or reduce loan payments is called forbearance.

ED may adjust payment dates on my Direct Consolidation Loan or may grant me forbearance to eliminate a delinquency that remains even though I am making scheduled installment payments.

I may prepay any part of the unpaid balance on my loan at any time without penalty. After I have repaid my Direct Consolidation Loan in full, ED will send me a notice telling me that I have paid off my loan.

Acceleration and Default

At ED's option, the entire unpaid balance of the Direct Consolidation Loan will become immediately due and payable (this is called "acceleration") if either of the following events occurs: (1) I make a false representation that results in my receiving a loan for which I am not eligible; or (2) I default on the loan.

The following events will constitute a default on my loan: (1) I fail to pay the entire unpaid balance of the loan after ED has exercised its option under the preceding paragraph; (2) I fail to make installment payments when due, provided my failure has persisted for at least 270 days; or (3) I fail to comply with other terms of the loan, and ED reasonably concludes that I no longer intend to honor my repayment obligation. If I default, ED may capitalize all outstanding interest. This will increase the principal balance, and the full amount of the loan, including the new principal balance and collection costs, will become immediately due and payable.

If I default, the default will be reported to national consumer reporting agencies and will significantly and adversely affect my credit rating. I understand that a default will have additional adverse consequences to me as disclosed in the Borrower's Rights and Responsibilities Statement. Following default, I may be required to repay the loan (including potential collection of amounts in excess of the principal and interest) under the Income Contingent Repayment (ICR) Plan or the IBR Plan in accordance with the Act.

Legal Notices

Any notice required to be given to me will be effective if sent by first class mail to the most recent address that ED has for me, by electronic means to an address I have provided, or by any other method of notification permitted or required by applicable statute or regulation. I will immediately notify ED of a change of contact information or status, as specified in the Borrower's Rights and Responsibilities Statement.

If ED fails to enforce or insist on compliance with any term on this Note, this does not waive any right of ED. No provision of this Note may be modified or waived except in writing by ED. If any provision of this Note is determined to be unenforceable, the remaining provisions will remain in force.

Information about my loan will be submitted to the National Student Loan Data System (NSLDS). Information in NSLDS is accessible to schools, lenders, and guarantors for specific purposes as authorized by ED.

Borrower's Rights and Responsibilities Statement

Important Notice: This Borrower's Rights and Responsibilities Statement provides additional information about the terms and conditions of the loan you will receive under the accompanying Federal Direct Consolidation Loan (Direct Consolidation Loan) Application and Promissory Note (Note). Please keep a copy of the Note and this Borrower's Rights and Responsibilities Statement for your records.

In this document, the words "we," "us," and "our" refer to the U.S. Department of Education.

1. The William D. Ford Federal Direct Loan Program. The William D. Ford Federal Direct Loan (Direct Loan) Program includes the following types of loans, known collectively as "Direct Loans":

- Federal Direct Stafford/Ford Loans (Direct Subsidized Loans)
- Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans)
- Federal Direct PLUS Loans (Direct PLUS Loans)
- Federal Direct Consolidation Loans (Direct Consolidation Loans)

The Direct Loan Program is authorized by Title IV, Part D, of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070 *et seq.* (HEA).

Direct Loans are made by the U.S. Department of Education. We contract with servicers to service, answer questions about, and process payments on Direct Loans. We will provide you with the address and telephone number of the servicer for your loan.

2. Laws that apply to this Note. The terms and conditions of loans made under this Note are determined by the HEA and other applicable federal laws and regulations. These laws and regulations are referred to as "the Act" throughout this Borrower's Rights and Responsibilities Statement. State law, unless it is preempted by federal law, may provide you with certain rights, remedies, and defenses in addition to those stated in the Note and this Borrower's Rights and Responsibilities Statement.

NOTE: Any change to the Act applies to loans in accordance with the effective date of the change.

3. Direct Consolidation Loan identification numbers. Depending on the type(s) of federal education loan(s) that you choose to consolidate, your Direct Consolidation Loan may have up to two individual loan identification numbers. However, you will have only one Direct Consolidation Loan and will receive only one bill.

3a. The subsidized portion of your Direct Consolidation Loan ("Direct Subsidized Consolidation Loan") will have one loan identification number representing the amount of the following types of loans that you consolidate:

- Subsidized Federal Stafford Loans
- Direct Subsidized Loans
- Subsidized Federal Consolidation Loans
- Direct Subsidized Consolidation Loans
- Federal Insured Student Loans (FISL)
- Guaranteed Student Loans (GSL)

3b. The unsubsidized portion of your Direct Consolidation Loan ("Direct Unsubsidized Consolidation Loan") will have one identification number representing the amount of the following types of loans that you consolidate:

- Unsubsidized and Nonsubsidized Federal Stafford Loans
- Direct Unsubsidized Loans
- Unsubsidized Federal Consolidation Loans
- Direct Unsubsidized Consolidation Loans
- Federal PLUS Loans (for parents or for graduate and professional students)
- Direct PLUS Loans (for parents or for graduate and professional students)
- Direct PLUS Consolidation Loans
- Federal Perkins Loans
- National Direct Student Loans (NDSL)
- National Defense Student Loans (NDSL)
- Federal Supplemental Loans for Students (SLS)
- Parent Loans for Undergraduate Students (PLUS)
- Auxiliary Loans to Assist Students (ALAS)
- Health Professions Student Loans (HPSL)
- Health Education Assistance Loans (HEAL)
- Nursing Student Loans (NSL)
- Loans for Disadvantaged Students (LDS)

4. Adding eligible loans to your Direct Consolidation Loan. You may add eligible loans to your Direct Consolidation Loan by submitting a request to us within 180 days of the date your Direct Consolidation Loan is made. (Your Direct Consolidation Loan is "made" on the date we pay off the first loan that you are consolidating.) After we pay off any loans that you add during the 180-day period, we will notify you of the new total amount of your Direct Consolidation Loan and of any adjustments that must be made to your monthly payment amount and/or interest rate.

If you want to consolidate any additional eligible loan(s) after the 180-day period, you must apply for a new Direct Consolidation Loan.

5. Loans that may be consolidated. *General.* Only the federal education loans listed in Items 3a. and 3b. of this Borrower's Rights and Responsibilities Statement may be consolidated into a Direct Consolidation Loan. You may only consolidate loans that are in a grace period or in repayment (including loans in deferment or forbearance). At least one of the loans that you consolidate must be a Direct Loan Program loan or a Federal Family Education Loan (FFEL) Program loan.

Defaulted loans. You may consolidate a loan that is in default if (a) you first make satisfactory repayment arrangements with the holder of the defaulted loan, or (b) you agree to repay your Direct Consolidation Loan under the Income Contingent Repayment (ICR) Plan or the Income-Based Repayment (IBR) Plan (see Item 10).

Existing consolidation loans. Generally, you may consolidate an existing Direct Consolidation Loan or Federal Consolidation Loan into a new Direct Consolidation Loan only if you include at least one additional eligible loan in the consolidation. However, you may consolidate a Federal Consolidation Loan into a new Direct Consolidation Loan without including an additional loan if the Federal Consolidation Loan is delinquent and has been submitted by the lender to the guaranty agency for default aversion, or if the Federal Consolidation Loan is in default. In such cases, you must agree to repay the new Direct Consolidation Loan under the ICR Plan or the IBR Plan. You may also consolidate a single Federal Consolidation Loan into a new Direct Consolidation Loan to use the Public Service Loan Forgiveness program described in Item 17 of this Borrower's Rights and Responsibilities Statement, or the no accrual of interest benefit for active duty service members described in Item 8.

6. Information you must report to us. Until your loan is repaid, you must notify your servicer if you:

- Change your address or telephone number;
- Change your name (for example, maiden name to married name);
- Change your employer or your employer's address or telephone number changes; or
- Have any other change in status that would affect your loan (for example, if you receive a deferment while you are unemployed, but you find a job and therefore no longer meet the eligibility requirements for the deferment)

7. Interest rate. The interest rate on your Direct Consolidation Loan will be the lesser of the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, OR 8.25%. We will send you a notice that tells you the interest rate on your loan.

The interest rate on a Direct Consolidation Loan is a fixed rate. This means that the interest rate will remain the same throughout the life of your loan.

If you qualify under the Servicemembers Civil Relief Act, the interest rate on your loans obtained prior to military service may be limited to 6% during your military service. To receive this benefit, you must contact your servicer for information about the documentation you must provide to show that you qualify.

8. Payment of interest. Except as provided below for borrowers who serve in the military, interest accrues on a Direct Consolidation Loan from the date the loan is made until it is paid in full or discharged, including during periods of deferment or forbearance. You are responsible for paying all interest that accrues, except for interest that accrues on the subsidized portion of a Direct Consolidation Loan ("Direct Subsidized Consolidation Loan" – see Item 3a.) during deferment periods.

If you do not pay the interest as it accrues during the periods described above, we will add the interest to the unpaid principal amount of your loan at the end of the deferment or forbearance period. This is called "capitalization." Capitalization increases the unpaid principal balance of your loan, and interest will then accrue on the increased principal amount.

The chart below shows the difference in the total amount you would repay on a \$15,000 Direct Unsubsidized Consolidation Loan if you pay the interest as it accrues during a 12-month deferment or forbearance period, compared to the amount you would repay if you do not pay the interest and it is capitalized.

	If you pay the interest as it accrues...	If you do not pay the interest and it is capitalized...
Loan Amount	\$15,000	\$15,000
Capitalized interest for 12 Months (at the maximum rate of 8.25%)	\$0	\$1,238
Principal to be Repaid	\$15,000	\$16,238
Monthly Payment (Standard Repayment Plan)	\$146	\$158
Number of Payments	180	180
Total Amount Repaid	\$26,209	\$28,359

In this example, you would pay \$12 less per month and \$2,150 less altogether if you pay the interest as it accrues during a 12-month deferment or forbearance period.

You may be able to claim a federal income tax deduction for interest payments you make on Direct Loans. For further information, refer to IRS Publication 970, which is available at <http://www.irs.ustreas.gov>.

Under the no interest accrual benefit for active duty service members, during periods of qualifying active duty military service interest does not accrue on the portion of a Direct Consolidation Loan that repaid a Direct Loan Program or FFEL Program loan first disbursed on or after October 1, 2008 (for up to 60 months).

9. Repayment incentive programs. A repayment incentive is a benefit that we offer to encourage you to repay your loan on time. Under a repayment incentive program, the interest rate we charge on your loan may be reduced. Some repayment incentive programs require you to make a certain number of payments on time to keep the reduced interest rate. For Direct Consolidation Loans, the following repayment incentive program may be available to you:

Interest Rate Reduction for Automatic Withdrawal of Payments

Under the automatic withdrawal option, your bank automatically deducts your monthly loan payment from your checking or savings account and sends it to us. Automatic withdrawal helps to ensure that your payments are made on time. In addition, you receive a 0.25% interest rate reduction while you repay under the automatic withdrawal option. We will include information about the automatic withdrawal option in your first bill. You can also get this information on your servicer's web site, or by calling your servicer. Your servicer's web site address and toll-free telephone number are provided on all correspondence that your servicer sends you.

Your servicer can provide you with more information on other repayment incentive programs that may be available.

Note: Another repayment incentive program, the up-front interest rebate, is available on Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans that were first disbursed before July 1, 2012. The rebate is equal to a percentage of the loan amount, and is the same amount that would result if the interest rate on the loan were lowered by a specific percentage. To permanently keep an up-front interest rebate, a borrower must make each of the first 12 required monthly payments on time when the loan enters repayment. If you consolidate a Direct Loan on which you received an up-front interest rebate before you permanently earn the rebate (the correspondence you received about your loan will tell you if you received a rebate), you will have to make the first 12 required monthly payments on your Direct Consolidation Loan on time to keep the interest rebate. "On time" means that we must receive each payment no later than 6 days after the due date. You will lose the rebate if you do not make all of

your first 12 required monthly payments on your Direct Consolidation Loan on time. If you lose the rebate, we will add the rebate amount back to the principal balance on your loan account. This will increase the amount that you must repay.

10. Repaying your loan. Unless you receive a deferment or forbearance on your loan (see Item 16), your first payment will be due within 60 days of the first disbursement of your Direct Consolidation Loan. Your servicer will notify you of the date your first payment is due.

You must make payments on your loan even if you do not receive a bill or repayment notice.

Generally, you must repay all of your Direct Loans under the same repayment plan. You may choose one of the following repayment plans to repay any Direct Consolidation Loan:

- **Standard Repayment Plan** – Under this plan, you will make fixed monthly payments and repay your loan in full within 10 to 30 years (not including periods of deferment or forbearance) from the date the loan entered repayment, depending on the amount of your Direct Consolidation Loan and the amount of your other student loan debt (not to exceed the amount you are consolidating) as listed in Section C2 of your Note (see the chart below). Your payments must be at least \$50 a month (\$600 a year) and will be more, if necessary, to repay the loan within the required time period.
- **Graduated Repayment Plan** – Under this plan, your payments will be lower at first and will then increase over time, usually every two years. You will repay your loan in full within 10 to 30 years (not including periods of deferment or forbearance) from the date the loan entered repayment, depending on the total amount of your Direct Consolidation Loan and the amount of your other student loan debt (not to exceed the amount you are consolidating) as listed in Section C2 of your Note (see the chart below). No single payment under this plan will be more than three times greater than any other payment.

Total Education Loan Indebtedness	Maximum Repayment Period
Less than \$7,500	10 years
\$7,500 to \$9,999	12 years
\$10,000 to \$19,999	15 years
\$20,000 to \$39,999	20 years
\$40,000 to \$59,999	25 years
\$60,000 or more	30 years

- **Extended Repayment Plan** – You may choose this plan only if: (1) you had no outstanding balance on a Direct Loan Program loan as of October 7, 1998, or on the date you obtained a Direct Loan Program loan on or after October 7, 1998; and (2) you have an outstanding balance on Direct Loan Program Loans that exceeds \$30,000. Under this plan, you may choose to make either fixed or graduated monthly payments and will repay your loan in full over a repayment period not to exceed 25 years (not including periods of deferment or forbearance) from the date your loan entered repayment. If you choose to make fixed monthly payments, your payments must be at least \$50 a month (\$600 a year) and will be more, if necessary, to repay the loan within the required time period. If you choose to make graduated monthly payments, your payments will start out lower and will then increase over time, generally every two years. Under a graduated repayment schedule, your monthly payment must at least be equal to the amount of interest that accrues each month, and no single payment will be more than three times greater than any other payment.
- **Income Contingent Repayment (ICR) Plan** – Under this plan, your monthly payment amount will be based on your adjusted gross income (and that of your spouse if you are married), your family size, and the total amount of your Direct Loans. Until we obtain the information needed to calculate your monthly payment amount, your payment will equal the amount of interest that accrues

monthly on your loan unless you request a forbearance. As your income changes, your payments may change. If you do not repay your loan after 25 years under this plan, the unpaid portion will be forgiven. You may have to pay income tax on any amount forgiven.

In addition to the repayment plans listed above, you may also choose the following repayment plan to repay a Direct Consolidation Loan if you are not consolidating a parent Direct PLUS Loan or a parent Federal PLUS Loan (see Note below):

- **Income-Based Repayment (IBR) Plan** – Under this plan, your required monthly payment amount will be based on your income. To initially qualify for this plan and to continue to make income-based payments, you must have a partial financial hardship. Your monthly payment amount may be adjusted annually. The maximum repayment period under this plan may exceed 10 years. If your loan is not repaid in full after you have made the equivalent of 25 years of qualifying payments and at least 25 years have elapsed, you may qualify for forgiveness of any outstanding balance on your loans. You may have to pay income tax on any amount forgiven.

NOTE: A parent PLUS loan is a PLUS loan that you obtained to help pay for your dependent child's undergraduate education. Direct Consolidation Loans that repaid parent Direct PLUS Loans or parent Federal PLUS Loans may not be repaid under the IBR Plan. However, such loans may be repaid under the ICR Plan.

If you can show to our satisfaction that the terms and conditions of these repayment plans are not adequate to meet your exceptional circumstances, we may provide you with an alternative repayment plan.

If you do not choose a repayment plan, we will choose a plan for you in accordance with the Act.

You may change repayment plans at any time after you have begun repaying your loan. There is no penalty if you make loan payments before they are due, or pay more than the amount due each month.

Except for payments made under the IBR Plan, we apply your payments in the following order: (1) late charges and collection costs, (2) outstanding interest, and (3) outstanding principal. For payments made under the IBR Plan, we apply your payments in the following order: (1) outstanding interest, (2) late charges and collection costs, and (3) outstanding principal.

When you have repaid your loan in full, your servicer will send you a notice telling you that you have paid off your loan. You should keep this notice in a safe place.

11. Transfer of loan. We may transfer one or all of your loans to another servicer without your consent. If the address to which you must send payments or correspondence changes, you will be notified of the new servicer's name, address and telephone number, the effective date of the transfer, and the date when you must begin sending payments or directing communications to that servicer. Transfer of a loan to a different servicer does not affect your rights and responsibilities under that loan.

12. Late charges and collection costs. If you do not make any part of a payment within 30 days after it is due, we may require you to pay a late charge. This charge will not be more than six cents for each dollar of each late payment. If you do not make payments as scheduled, we may also require you to pay other charges and fees involved in collecting your loan.

13. Demand for immediate repayment. The entire unpaid amount of your loan becomes due and payable (this is called "acceleration") if you:

- Make a false statement that causes you to receive a loan that you are not eligible to receive; or
- Default on your loan.

14. Defaulting on your loan. Default (failing to repay your loan) is defined in detail under "Acceleration and Default" on page 4 of this Note. If you default:

- You will be required to immediately repay the entire unpaid amount of your loan.
- We may sue you, take all or part of your federal tax refund or other federal payments, and/or garnish your wages so that your employer is required to send us part of your wages to pay off your loan.
- You will be required to pay reasonable collection fees and costs, plus court costs and attorney fees.
- You will lose eligibility for other federal student aid and assistance under most federal benefit programs.
- You will lose eligibility for loan deferments.
- We will report your default to national consumer reporting agencies (see Item 15).

15. Consumer reporting agency notification. We will report information about your loan to each national consumer reporting agency on a regular basis. This information will include the disbursement dates, amount, and repayment status of your loan (for example, whether you are current or delinquent in making payments). Your loan will be identified as an education loan.

If you default on a loan, we will report the default to national consumer reporting agencies. We will notify you at least 30 days in advance that we plan to report default information to a consumer reporting agency unless you resume making payments on the loan within 30 days of the date of the notice. You will be given a chance to ask for a review of the debt before we report it.

If a consumer reporting agency contacts us regarding objections you have raised about the accuracy or completeness of any information we have reported, we are required to provide the consumer reporting agency with a prompt response.

16. Deferment and forbearance (postponing payments). If you meet certain requirements, you may receive a **deferment** that allows you to temporarily stop making payments on your loan. If you cannot make your scheduled loan payments, but do not qualify for a deferment, we may give you a **forbearance**. A forbearance allows you to temporarily stop making payments on your loan, temporarily make smaller payments, or extend the time for making payments.

Deferment

You may receive a deferment:

- While you are enrolled at least half time at an eligible school;
- While you are in a full-time course of study in a graduate fellowship program;
- While you are in an approved full-time rehabilitation program for individuals with disabilities;
- While you are unemployed (for a maximum of three years; you must be diligently seeking, but unable to find, full-time employment); or
- While you are experiencing an economic hardship (including Peace Corps service), as determined under the Act (for a maximum of three years).
- While you are serving on active duty during a war or other military operation or national emergency, or performing qualifying National Guard duty during a war or other military operation or national emergency, and if you were serving on or after October 1, 2007, for an additional 180-day period following the demobilization date for your qualifying service; or
- If you are a member of the National Guard or other reserve component of the U.S. Armed Forces (current or retired) and you are called or ordered to active duty while enrolled at an eligible school, or within 6 months of having been enrolled at least half time, you are eligible for a deferment during the 13 months following the conclusion of the active duty service, or until you return to enrolled student status on at least a half-time basis, whichever is earlier.

You may be eligible to receive additional deferments if, at the time you received your first Direct Loan, you had an outstanding balance on a loan made under the Federal Family Education Loan (FFEL) Program before July 1, 1993. If you meet this requirement, contact your servicer about additional deferments that may be available.

You may receive a deferment while you are enrolled in school on at least a half-time basis if: (1) you submit a deferment request form to your servicer along with documentation of your eligibility for the deferment; or (2) your servicer receives information from the school you are attending that indicates you are enrolled at least half time. If your servicer processes a deferment based on information received from your school, you will be notified of the deferment and will have the option of canceling the deferment and continuing to make payments on your loan.

For all other deferments, you (or, for a deferment based on active military duty or qualifying National Guard duty during a war or other military operation or national emergency, your representative) must submit a deferment request form to your servicer, along with documentation of your eligibility for the deferment. In certain circumstances, you may not be required to provide documentation of your eligibility if your servicer confirms that you have been granted the same deferment for the same period of time on a FFEL Program loan. Your servicer can provide you with a deferment request form that explains the requirements for the type of deferment you are requesting. You may also obtain deferment request forms and information on deferment eligibility requirements from your servicer's web site.

If you are in default on your loan, you are not eligible for a deferment.

You are responsible for paying the interest that accrues on a Direct Unsubsidized Consolidation Loan during a deferment period. You are not responsible for paying the interest that accrues on a Direct Subsidized Consolidation Loan during a deferment period.

Forbearance

We may give you a forbearance if you are temporarily unable to make your scheduled loan payments for reasons including, but not limited to, financial hardship and illness.

We will give you a forbearance if:

- You are serving in a medical or dental internship or residency program, and you meet specific requirements;
- The total amount you owe each month for all of the student loans you received under Title IV of the Act is 20% or more of your total monthly gross income (for a maximum of three years);
- You are serving in a national service position for which you receive a national service education award under the National and Community Service Act of 1990 (AmeriCorps). In some cases, the interest that accrues on a qualified loan during the service period will be paid by the Corporation for National and Community Service;
- You qualify for partial repayment of your loans under the Student Loan Repayment Program, as administered by the Department of Defense;
- You are performing service that would qualify you for loan forgiveness under the teacher loan forgiveness program that is available to certain Direct Loan and FFEL program borrowers; or
- You are a member of the National Guard who qualifies for a post-active duty student deferment but not for a military service deferment or other deferment, and you are engaged in active state duty for a period of more than 30 consecutive days.

To request a forbearance, contact your servicer. Your servicer can provide you with a forbearance request form that explains the requirements for the type of forbearance you are requesting. You may also obtain forbearance request forms and information on forbearance eligibility requirements from your servicer's web site. Under certain circumstances, we may also give you a forbearance without requiring you to submit a request or documentation. These circumstances include, but are not limited to, the following:

- Periods necessary for us to determine your eligibility for a loan discharge;
- A period of up to 60 days for us to collect and process documentation related to your request for a deferment, forbearance, change in repayment plan, or consolidation loan (we do not capitalize interest charged during this period); or
- Periods when you are involved in a military mobilization or are affected by a local or national emergency.

You are responsible for paying the interest that accrues on your entire Direct Consolidation Loan during a forbearance period.

17. Discharge (having your loan forgiven). We will discharge (forgive) your Direct Consolidation Loan if:

- Your servicer receives acceptable documentation of your death. We will also discharge the portion of a Direct Consolidation Loan that repaid one or more Direct PLUS Loans or Federal PLUS Loans obtained on behalf of a student who dies.
- Your loan is discharged in bankruptcy. However, federal student loans are not automatically discharged if you file for bankruptcy. To have your loan discharged in bankruptcy, you must prove to the bankruptcy court in an adversary proceeding that repaying the loan would cause undue hardship.
- You become totally and permanently disabled (as defined in the Act) and meet certain other requirements.

In certain cases, we may also discharge all or a portion of your Direct Consolidation Loan if:

- One or more Direct Loan Program, FFEL Program, or Federal Perkins Loan Program loans that you consolidated was used to pay for a program of study that you (or the dependent student for whom you borrowed a PLUS loan) were unable to complete because the school closed;
- Your eligibility (or the eligibility of the dependent student for whom you borrowed a PLUS loan) for one or more of the Direct Loan Program or FFEL Program loans that you consolidated was falsely certified by the school;
- Your eligibility for one or more of the Direct Loan Program or FFEL Program loans that you consolidated was falsely certified as a result of a crime of identity theft; or

- The school did not pay a required refund of one or more Direct Loan Program or FFEL Program loans that you consolidated.

We may forgive a portion of your Direct Consolidation Loan that repaid Direct Subsidized or Direct Unsubsidized Loans you received after October 1, 1998, or subsidized or unsubsidized Federal Stafford Loans you received under the FFEL program after October 1, 1998 if you: (1) teach full time for five consecutive years in certain elementary and/or secondary schools or educational service agencies that serve low-income families; (2) meet certain other qualifications; and (3) did not owe a Direct Loan or a FFEL Program loan as of October 1, 1998, or as of the date you obtain a loan after October 1, 1998.

A Public Service Loan Forgiveness program is available that provides for the cancellation of the remaining balance due on your eligible Direct Loan Program loans after you have made 120 full, on-time, scheduled monthly payments (after October 1, 2007) on those loans under certain repayment plans while you are employed full-time by certain public service organizations.

The Act may provide for certain loan forgiveness or repayment benefits on your loans in addition to the benefits described above. If other forgiveness or repayment options become available, your servicer will provide information about these benefits.

To request a loan discharge based on one of the conditions described above (except for discharges due to death or bankruptcy), you must complete an application that you may obtain from your servicer.

In some cases, you may assert, as a defense against collection of your loan, that the school did something wrong or failed to do something that it should have done. You can make such a defense against repayment only if the school's act or omission directly relates to your loan or to the educational services that the loan was intended to pay for, and if what the school did or did not do would give rise to a legal cause of action against the school under applicable state law. If you believe that you have a defense against repayment of your loan, contact your servicer.

We do not guarantee the quality of the academic programs provided by schools that participate in federal student financial aid programs. You must repay your loan even if you do not complete your education, are unable to obtain employment in your field of study, or are dissatisfied with, or do not receive, the education you paid for with the loan.

18. Department of Defense and other federal agency loan repayment. Under certain circumstances, military personnel may have education loans repaid by the Secretary of Defense. This benefit is offered as part of a recruitment program that does not apply to individuals based on their previous military service or to those who are not eligible for enlistment in the U.S. Armed Forces. For more information, contact your local military service recruitment office.

Other agencies of the federal government may also offer student loan repayment programs as an incentive to recruit and retain employees. Contact the agency's human resources department for more information.

END OF BORROWER'S RIGHTS AND RESPONSIBILITIES STATEMENT

IMPORTANT NOTICES

Gramm-Leach-Bliley Act Notice

In 1999, Congress enacted the Gramm-Leach-Bliley Act (Public Law 106-102). This Act requires that lenders provide certain information to their customers regarding the collection and use of nonpublic personal information.

We disclose nonpublic personal information to third parties only as necessary to process and service your loan and as permitted by the Privacy Act of 1974. See the Privacy Act Notice below. We do not sell or otherwise make available any information about you to any third parties for marketing purposes.

We protect the security and confidentiality of nonpublic personal information by implementing the following policies and practices. All physical access to the sites where nonpublic personal information is maintained is controlled and monitored by security personnel. Our computer systems offer a high degree of resistance to tampering and circumvention. These systems limit data access to our staff and contract staff on a "need-to-know" basis, and control individual users' ability to access and alter records within the systems. All users of these systems are given a unique user ID with personal identifiers. All interactions by individual users with the systems are recorded.

Privacy Act Notice

The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authority for collecting the requested information from and about you is §451 et seq. of the Higher Education Act (HEA) of 1965, as amended (20 U.S.C. 1087a et seq.) and the authorities for collecting and using your Social Security Number (SSN) are §484(a)(4) of the HEA (20 U.S.C. 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the Direct Loan Program, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) become delinquent or in default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment status, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

Financial Privacy Act Notice

Under the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401-3421), ED will have access to financial records in your student loan file maintained in compliance with the administration of the Direct Loan Program.

Paperwork Reduction Notice

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless the collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 1.0 hour (60 minutes) per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain a benefit in accordance with 34 CFR 685.201(c)(1). Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, 400 Maryland Ave., SW, Washington, DC 20210-4537 or e-mail ICDocketMgr@ed.gov and reference OMB Control Number 1845-0053. **Note: Please do not return the completed Federal Direct Consolidation Loan Application and Promissory Note to this address.**

If you have any questions regarding the status of your individual submission of this form, write directly to:

U.S. Department of Education
Consolidation Department
P.O. Box 242800
Louisville, KY 40224-2800

Transaction History

Below is a summary of actions that you completed during the electronic consolidation application and promissory note process:

Your identity was confirmed by the PIN web site on	08/30/2013 at 13:32:20 CT
You agreed to use an electronic consolidation application and promissory note on	08/30/2013 at 15:32:53 ET
You confirmed that you read, understood, and agreed to the statement of Borrower's Rights and Responsibilities on	08/30/2013 at 15:33:23 ET
You reviewed your draft consolidation application and promissory note and confirmed that you read, understood, and agreed to the Certification and Authorization, Promise to Pay, Disclosure of Terms, and Important Notices on	08/30/2013 at 15:33:50 ET
You signed your consolidation application and promissory note on	08/30/2013 at 15:34:21 ET
You reviewed your signed consolidation application and promissory note and entered your Confirmation Code on	08/30/2013 at 15:37:23 ET
You confirmed your acceptance of the terms and conditions of this consolidation application and promissory note and submitted it to us on	08/30/2013 at 15:37:30 ET

Your consolidation application and promissory note Confirmation Code is: 29D

ATTACHMENT 2



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

August 4, 2014

Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter of June 25, 2014, concerning Corinthian Colleges, Inc. (Corinthian). The U.S. Department of Education (Department) is doing everything it can to protect students as a result of the sale or closure of Corinthian's institutions of higher education, including seeking to avoid or minimize the disruption to students' lives and educational aspirations that you note could otherwise result from their abrupt closure. At the same time, we are continuing to perform our important oversight work of Corinthian and will hold the company accountable for compliance with the requirements of the Higher Education Act of 1965, as amended (HEA) and our regulations.

I am pleased to report that on July 9, 2014, the Department reached an agreement with Corinthian on a process to govern the eventual closure and sale of its institutions. The Operating Agreement covers certain issues that are directly responsive to some of the issues you raised in your letter, and I appreciate the opportunity to provide further detail. However, please note that the recent events unfolded at an accelerated pace; that the scope of potential institutional closures and sales associated with a single corporate entity is unprecedented; and that circumstances remain quite fluid and will continue to evolve. As a result, we will continue to review our plans and processes going forward to ensure that we are continuing to do all we can to protect both students' and taxpayers' interests as Corinthian's participation in the Federal Student Aid programs ends.

The agreement reached with Corinthian includes features that your letter urged the Department to consider. For example, Corinthian will cease to enroll new students in certain circumstances described below, and will make disclosures to affected students concerning their options and the status of their respective institutions. In particular, and with respect to your specific questions:

- As of July 9, 2014, Corinthian has identified those institutions it plans to sell, as well as those institutions it plans to close *after* providing students who are already enrolled with time to complete their educational programs ("teach-out" institutions). Corinthian is required, under the Operating Agreement, to cease enrollment of new students at teach-out institutions. In some cases, Corinthian may work with another institution so that an enrolled student would complete his/her educational program at such other institution.
- Under the Operating Agreement, certain students in a teach-out school may have options that vary depending on their date of enrollment.

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- Students who enrolled prior to June 23, 2014—the date the Department placed Corinthian on heightened financial oversight—will be able to either (1) continue and complete their educational program or (2) withdraw and obtain a full refund of all tuition and other fees paid for their program. Under the agreement, Corinthian will determine whether to provide these students the option of a full refund of tuition and charges paid or the ability to complete their education as originally intended. Students who complete their education under this option would not be eligible for a closed school loan discharge. Students who qualify for a Corinthian refund will have the refund applied to their Federal loan balances, and may qualify for a closed school loan discharge of the remaining amount owed, if any. Students will have an opportunity to appeal Corinthian’s decision regarding the option they may pursue.
- Students who enrolled on or after June 23, 2014, and before July 8, 2014, have the option to choose to (1) continue and complete their educational program or (2) withdraw and obtain a full refund of all tuition and other fees paid for their program. Under the Operating Agreement, Corinthian must provide these students the ability to choose whichever option benefits them the most. Further, under the agreement, students who fail to make a choice will be withdrawn from their program and provided a full refund. Students who complete their education would not qualify for a closed school loan discharge of their Federal loans. Students who qualify for a Corinthian refund will have the refund applied to their Federal loan balances, and may qualify for a closed school discharge of the remaining amount owed, if any.
- Under the Operating Agreement, Corinthian is also required to disclose to students enrolled at those institutions it plans to sell information regarding the status of the institutions and the options and protections afforded to those students. In addition to specific disclosures drafted for use for students at teach-out institutions discussed above, the Department has drafted disclosures for Corinthian to provide to prospective students enrolling in institutions identified as being for sale. The disclosures inform prospective students that certain Federal and State authorities are investigating the institution and that these investigations could result in future enforcement actions that might negatively affect students’ ability to complete their educational programs. The disclosure further informs prospective students that if a school is sold, any new owner might make changes to their educational program, and that it is possible that any credits they earn at a Corinthian institution may not transfer to another school. Further, the Operating Agreement requires Corinthian to obtain signed acknowledgments from new students that they have received the disclosure prior to enrollment to ensure, to the best of the Department’s ability, that students are fully aware of the pending sale of the school and what that could mean for their studies.

Please note that the Operating Agreement contemplates that the status of any particular Corinthian institution could change as a result of the Department’s ongoing review of Corinthian’s compliance with statutory and regulatory requirements. In January, the Department

Page 3

denied Corinthian's request for approval to add certain new locations and programs at selected institutions because it had admitted to falsifying placement rates and/or grade and attendance records at various institutions and because of ongoing State and Federal investigations into serious allegations with respect to Corinthian's administration of the Federal Student Aid programs. Because these issues suggested systemic deficiencies in the operations of Corinthian as a parent corporation of its individual institutions, the Department instructed the company to provide certain required documentation and information with respect to placement rate percentages, and grade and attendance record changes at all Corinthian institutions. Corinthian's failure to substantially comply with our request is what led the Department to place it on a heightened level of Departmental financial oversight and precipitated the establishment of the Operating Agreement.

Under the Operating Agreement, if the Department finds, based on its reviews, that certain Corinthian institutions are ineligible for recertification to participate in Federal Student Aid programs, or are otherwise determined to be ineligible to participate, Corinthian is required to provide students their choice of whether to (1) continue and complete their educational program in accordance with regulations that govern school closures, as in the case that institutions are found to be ineligible, or (2) withdraw from school and receive a full refund of all tuition and other fees paid for their program. In addition, in these circumstances, students may be eligible for closed school loan discharges of any Federal student loans they took out for attendance at the formerly eligible institution. The conditions and qualifications pertaining to closed school discharges are different from those for the refund Corinthian is obligated to provide under the Operating Agreement; an affected student borrower may qualify for both, either, or neither.

You also asked how the Department will seek to ensure relief for Corinthian students with private student loan debt. In the Operating Agreement, we require Corinthian to include private student loans within the refunds that the company provides to students. In particular, we defined refunds in such cases to include repaying any private student loan or debt to any other lender from whom Corinthian received direct disbursements for such student's cost of attendance at Corinthian the amount of such disbursements, including reimbursing the student for any origination and other fees incurred by the student in obtaining a private student loan. Absent this explicit provision in the Operating Agreement, the HEA does not otherwise authorize the Department to seek such relief, and closed school loan discharges pertain only to Federal, not private, student loans. As to other relief that may be available for students who have obtained private loans, the terms of the loan agreement may permit the borrower to assert, as defenses to repayment, claims that the borrower has against the school. Borrowers should review their private loan agreements to determine whether they include a provision allowing such defenses.

The Operating Agreement makes no distinction between students enrolled in online-only programs and students who enroll in programs that require physical attendance.

In addition, you ask how the Department plans to ensure that students are properly notified of their options in cases of school closures and sales, and the consequences for students in cases of program changes by a new owner of a school consequent to a sale. A number of the disclosure requirements within the Operating Agreement are outlined above, and the Department is currently developing a more detailed plan to ensure it is prepared for both an entirely orderly

Page 4

closure and transition of all Corinthian's institutions, as well as a precipitous closure of all of its institutions, should either occur.

School closures and sales are not uncommon. However, the simultaneous closure and sale of as many institutions as comprise Corinthian, and that affect as large a student population, is without precedent. The Department is building upon and modifying existing plans for school closures and sales to bring them into line with the scale of Corinthian's operations. These plans include how the Department will coordinate with accrediting agencies and State authorizing agencies that, under the HEA, have principal roles and authorities in these cases. For example, the potential consequences and options for students as the result of any particular change in ownership will depend on, among other things, the interest and willingness of a buyer to accept and comply with any particular condition, the particular requirements or conditions that an accrediting agency may impose, and the conditions a State may require, given that the HEA does not generally preempt State law or override States' responsibilities for authorizing institutions that operate within their borders. As a result, the features and conditions of any particular sale, and the consequences and options for students, could vary on a case-by-case basis. In the end, however, the Department's concerns and interests are the concerns and interests of students and taxpayers, and the Department will strive to ensure their welfare in the subsequent closure and sale of Corinthian's institutions. To be clear, the Department will not approve a sale to another entity if that entity is currently under State and/or Federal investigation or is unable to meet the qualifications established under the HEA to qualify for Federal Student Aid.

With respect to your question about borrowers' right to present claims to the Department, the Department recognizes as a defense to repayment of Direct Loans a claim that the borrower has against the school that is based on the making of the loan or the provision of educational services, if State law recognizes such a claim and if the borrower proves the elements required to establish the claim.

A borrower or class of borrowers who obtain a judgment against a school upholding a claim can more readily establish that claim as a defense to repayment, but the borrower is not required to sue or obtain a judgment against the school in order to assert the claim against the school as a defense to repayment of a Direct Loan. Department regulations explicitly provide that a defaulted borrower may assert that the defaulted loan is not legally enforceable, but a borrower who is not in default can also assert a claim that the loan is not legally enforceable on the basis of a claim against the school. To do so, the borrower should present the claim to the servicer handling the Direct Loan for the Department.

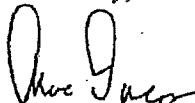
Finally, as part of the Operating Agreement, the Department required that an independent monitor would be appointed to oversee Corinthian's actions. I am pleased to report that Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates, under the leadership of former U.S. Attorney Patrick Fitzgerald, has been selected to take on this monitoring role. The Department is confident that Mr. Fitzgerald and his team will strengthen our efforts to oversee this process.

I appreciate your recommendations to the Department as we move forward in addressing issues arising from matters related to Corinthian's decision to wind down and cease operations. We continue to analyze how we can best protect students and taxpayers, and in so doing, will

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continue to actively consider your recommendations. If you have additional questions, please have your staff contact Lloyd Horwich, Acting Assistant Secretary, Office of Legislation and Congressional Affairs, at (202) 401-0020.

Sincerely,



Arne Duncan

ATTACHMENT 3



10 Brookline Place West, Brookline, MA 02445
617.739.1700 • 800.903.4425 • www.artinstitutes.edu/boston

**Disclosure Required by Massachusetts Regulation 940 CMR 31.00
Media Arts & Animation – Bachelor of Science**

Program cost:

- Average program tuition is \$92,700
- Average cost of books and digital resources is \$3,000
- Average cost of program fees is \$430
- Average cost of program room and board is \$72,900*
- The average total cost of the program is \$169,030

30% of students graduated from the program during 2012 – 2013 calendar years. **

The average student graduates in 43 months.

50% of The New England Institute of Art students defaulted on, or failed to repay, their loans during the period of cohort year 2010. The official federal cohort default rate is 17.10%. The U. S. Department of Education does not officially calculate an institution's deferment or forbearance rate and, thus, The New England Institute of Art internally calculated the total percentage of student borrowers who had at least one of their federal loans in deferment or forbearance to be 32.9%. In general terms, a deferment or forbearance is a temporary suspension of payment of up to 12 months, approved by a borrower's federal loan servicer, due to a student's economic hardship, unemployment, continuing education, or military status.***

You must repay money that you borrow as student loans to pay for this program, including interest. You must repay any portion of the money you borrow to pay for this program, even if you fail to complete or drop out of the program. Failure to repay student loans is likely to have a serious negative effect on your credit, future earnings, and your ability to obtain future student loans.

22% of graduates during 2012 - 2013 calendar years obtained full-time, non-temporary jobs in their field of study. 7% of students who enrolled in the program during 2012 - 2013 calendar years obtained full-time, non-temporary jobs in their field of study. ****

Employment statistics substantiating these placement rates are available for inspection on request.

Signature of prospective student Date

Parent/guardian (if prospective student is under the age of 18) Date

* Transportation between student housing and the campus is included in the cost of student housing.

** The New England Institute of Art provides this graduation rate in compliance with Massachusetts 940 CMR 31.00. The Massachusetts graduation rate is a specific calculation based on the number of students who received certificates, diplomas, or degrees in the program during the last two calendar years, divided by the number of students who enrolled in the program during the last two calendar years. Students are included in the calculation based strictly on whether they enrolled in the program in the last two calendar years; the rate does not take into consideration whether the student has been enrolled long enough to complete the program.

*** The federal FY10 cohort default rate is calculated by dividing the number of student borrowers who entered repayment between October 1, 2009 and September 30, 2010 and defaulted by September 30, 2011 by the number of student borrowers who entered repayment during that same period. (Generally the borrowers are students who left school between April 1, 2009 through March 31, 2010.)

**** The New England Institute of Art provides this placement rate in compliance with Massachusetts 940 CMR 31.00. The Massachusetts graduate placement rate is a specific calculation based on the number of students obtaining full time (at least 32 hours per week) and non-temporary employment in the field of study during the latest two calendar years for which the institution has obtain verification, divided by the number of all students graduating from the program during the latest two calendar years, as determined within 180 days from the end of each calendar year. The Massachusetts total placement rate is the product of the graduate placement rate and the graduation rate determined within 180 days from the end of each calendar year. There is no minimum period of time that a graduate must work in order to be included in the statistic. Graduates who were employed prior to or during their enrollment who remain in the same position after graduation are included if their employment relates to their field of study.

ATTACHMENT 4

COPY

AI The New England
 Institute of Art™
 10 Brookline Place West
 Brookline, MA 02445-7295
 www.neia.ai.edu
 1.617.739.1700 or 1.800.903.4425

Evolve

from student to →



Evolve your talent. Your thinking. Yourself.

Personal and professional growth are the hallmarks of an Art Institutes education in the creative and applied arts. Your talent evolves. Your thinking evolves. Even your career plans can evolve, once you know what opportunities exist out there in the real world. Preparing you for that real world is what Career Services is all about. Résumé writing, networking, and keeping you abreast of what employers are looking for are just a few of our services. But, as they say, proof is in the numbers. Below you'll find detailed information about our graduates' performance in the workplace. Careers begin here. You'll see.

	Number of Graduates Available for Placement Within Six Months of Graduation	Number of Graduates Employed	Percentage of Graduates Employed in Related Field	Average Starting Salary
Bachelor's Degree Program				
Multimedia & Web Design	2	2	100.0%	\$43,050
Total Bachelor's Degree Program	2	2	100.0%	\$43,050
Associate's Degree Programs				
Audio Production	105	94	89.5%	\$25,615
Broadcasting	68	58	85.3%	\$25,106
Graphic Design	15	13	86.7%	\$29,471
Multimedia & Web Design	15	13	86.7%	\$28,438
Total Associate's Degree Programs	208	183	88.0%	\$25,827
Totals	210	185	88.1%	\$26,014

Doing Our Homework: Successful Career Planning at The Art Institutes

The Art Institutes are known as leaders in career-oriented education in design, media arts, fashion, and the culinary arts. Our partnership with local and national employers helps us to deliver industry-relevant education and curricula that benefit both students and employers. This means that students develop practical skills, using the technology that's recognized in the workplace. What's more, our faculty includes award-winning and industry-recognized professionals who train students in the fundamental skills required for success in their field. Many of our students gain on-the-job skills through participation in internship or externship programs at local companies and nationally-recognized corporations. And our concern for employer satisfaction and awareness of industry trends allows us to provide employers with candidates who fulfill their needs and leads to graduates' career success, both now and in the future.

Where Our Graduates Are Working

The New England Institute of Art graduates have been employed by some of the most prominent companies in the United States and beyond, such as:

- Cramer Productions
- Tweeter Center
- Pro Audio Design
- Universal Music Group
- Bose Corporation
- Greater Boston Radio Group
- WHDH-TV NBC
- Boston Common Press
- FastChannel Network
- The Gillette Company
- Comcast

How Our Graduates Measure Up

Of all 2003 New England Institute of Art graduates available for employment, 88.1% were working in a field related to their program of study within six months of graduation and earning an average salary of \$26,014. The chart at left reflects employment statistics for all 2003 calendar year New England Institute of Art graduates available for placement.

Programs no longer offered as of June 30, 2004 are not listed in the table above; however, placement activity for these programs is included in overall statistics.

→ graduate and make an impact with your creative ideas.



What Our Graduates Are Doing

The New England Institute of Art prepares students to launch their careers with entry-level positions such as:

- Web/Graphic Designer
- Recording Studio Assistant
- Live Sound Technician
- Web Developer
- Television Production Assistant
- Air Talent
- Assistant Multimedia Producer
- Promotions Assistant

Partners Working Together

Dedicated Career Services staff offer a range of services that support your efforts as you plan for your career. Our experience and employer contacts in this community, in addition to the resources of The Art Institutes across the country, give us (and therefore you) an edge. There are proven tips and techniques that can help you begin your job search. That's why we provide the following support:

- Instruction in job search skills, résumé writing, interviewing, and networking.
- Job search assistance for full-time employment in your field and a part-time job while you complete your program of study.
- Participation in career days, internships, and job fairs that enable you and employers to interact.
- Insight into what employers are looking for when it comes to skill set and portfolio content.

Contact the Director of Career Services at the following locations:

- The Art Institute of Atlanta® GA
770.394.8300 or 1.800.275.4242
- The Art Institute of California™ — Los Angeles
1.510.752.4700 or 1.888.646.4610
- The Art Institute of California™ — Orange County
1.714.830.0200 or 1.888.548.3055
- The Art Institute of California™ — San Diego
1.858.598.1399 or 1.800.591.2422
- The Art Institute of California™ — San Francisco
1.415.865.0198 or 1.888.493.3251
- The Art Institute of Charlotte® NC
1.704.357.8020 or 1.800.872.4417
- The Art Institute of Colorado® (Denver)
303.837.0825 or 1.800.275.2420
- The Art Institute of Dallas® TX
1.214.692.8080 or 1.800.275.4243
- The Art Institute of Fort Lauderdale® FL
1.954.463.3000 or 1.800.275.7603
- The Art Institute of Houston® TX
1.713.523.2040 or 1.800.275.4244
- The Art Institute of Las Vegas® NV
1.702.369.9944 or 1.800.833.2578
- The Art Institute of New York City® NY
1.212.226.5500 or 1.800.654.2433
- The Art Institute of Ohio™ — Cincinnati™
1.513.771.2821 or 1.866.613.5184
- The Art Institute of Philadelphia® PA
1.215.567.7090 or 1.800.275.2474
- The Art Institute of Phoenix® AZ
1.602.231.7500 or 1.800.474.2479
- The Art Institute of Pittsburgh® PA
1.412.251.6200 or 1.800.275.2470
- The Art Institute of Portland® OR
1.503.228.6528 or 1.888.228.6528
- The Art Institute of Seattle® WA
1.206.448.8600 or 1.800.275.2471
- The Art Institute of Tampa™ FL
A branch of Miami International University of Art & Design
1.813.873.2112 or 1.866.703.3277
- The Art Institute of Toronto™ ON
1.416.351.8400 or 1.866.202.0481
- The Art Institute of Vancouver™ BC
1.604.683.9200 or 1.866.717.8080
- The Art Institute of Vancouver™ — Burnaby, BC
1.604.298.5400 or 1.800.861.1885
- The Art Institute of Washington®
A branch of The Art Institute of Atlanta, GA (Arlington, VA)
1.703.358.9560 or 1.877.303.3771
- The Art Institute Online™
A Division of The Art Institute of Pittsburgh, PA
1.412.291.5100 or 1.877.872.8869
- The Art Institutes International Minnesota™ (Minneapolis)
1.512.352.3361 or 1.800.777.3643
- Bradley Academy for the Visual Arts™ (York, PA)
1.717.765.2300 or 1.800.864.7725
- California Design College™ (Los Angeles — Wilshire Blvd)
1.213.251.8636 or 1.877.468.6232
- The Illinois Institute of Art® — Chicago
1.312.280.3500 or 1.800.351.3450
- The Illinois Institute of Art® — Schaumburg™
1.847.519.3450 or 1.800.314.3450
- Miami International University of Art & Design™ FL
1.305.428.5700 or 1.800.225.9023
- The New England Institute of Art™ (Boston, MA)
1.617.789.1700 or 1.800.903.4425

Not all programs are offered at all locations. Equipment and facilities vary by location.

™ The Art Institute of Ohio — Cincinnati, 1011 Bendale-Milford Road, Cincinnati, OH 45215-1107, OH Reg # 04-07-16988

™ The Illinois Institute of Art — Schaumburg is accredited by ACCSCT as a branch of The Illinois Institute of Art — Chicago.

A range of online course opportunities is available.

Want to learn online and in the classroom? Explore our Plus program that lets you do both.

Exhibit 40

Exhibit 41

Initial Review of Medium Batch Applications

BACKGROUND

Name of Institution	Davenport University
Corporate Owner(s)	Davenport University, Inc.
Open or Closed	OPEN but several of the branches closed between 2005 and 2018
Total Number of Applications	40
Patterns of Alleged Misconduct	Several of the allegations state that the school failed to provide career services or promised that there would be jobs in the student's field. There are also allegations that credits from previous schools would not transfer to Davenport. There is no mention of lawsuits or investigations.
Evidence/Litigation	<ul style="list-style-type: none"> • 2014 article about settlement with Higher One-students who went to schools that contracted with Higher One to distribute financial aid are eligible for portion of the settlement because the company allegedly charged improper fees and made misleading statements regarding account costs. Davenport was one of these schools. No allegations against Davenport specifically. (https://www.mlive.com/lansing-news/2014/02/higher_one_debit_card_settleme.html) • 2016 Complaint to the U.S. Department of Education that Davenport University discriminated against a student on the basis of disability. The allegation states that the University discriminated against students with vision impairments on their homepage and online platform. The school made the necessary changes and the complaint is resolved.

	https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/15162175-a.pdf
Name of Reviewer	Alana Smith
Date Review Completed	7/1/19

SUMMARY APPLICATION OVERVIEW

BD Case Number	School/Campus listed on App	Program(s)	Year of Enrollment	Nature of Allegation(s)	Evidence
01249022	Kalamazoo, MI	Systems Analyst	2005	Financial Aid, Transferability, Other	Signed Statement
01276267	Online	Post Grad Medical Case Management	2010	Educational Services, Financial Aid, Other	Signed Statement
01286867	Midland, MI	IT	2001	Educational Services, Program Cost, Urgency to Enroll	Signed Statement
01418113	Merrilville, IN	Business Management, Bachelor and Human Resource Management, Masters	2002	Career Services, Transferability, Other	Signed statement
01440551	Warren, MI	Accounting and Management, Bachelor	1996	Transferability, Other	Signed Statement
01441923	Kalamazoo, MI	Medical Transcriptionist, AS	2001	Guaranteed Job, Other	Signed Statement
01448544	Flint, MI	Nursing	2004	Educational Services	Signed Statement
01481796	Grand Rapids, MI	Nursing Medical Assistant, AS	1999	Financial Aid, Career Services, Other	Signed Statement
01484136	Merillville, MI	Medical Assistant	2002	Career services, Financial Aid, Program Cost,	Signed Statement

				Pressure to Enroll	
01523524	Online	Medical Coding	2007	Other	Signed Statement

RECOMMENDATION

The majority of allegations in these cases do not rise to the level of misrepresentations that violates state law. Most of the allegations are that the school failed to offer career services or job placement assistance, that the school misstated the job market, or that the school failed to accept credits that transferred in from other schools. There is little corroboration between the allegations and cases.

The only evidence against the school consists of a 2016 allegation of discrimination filed with the US Department of Education. The complaint was resolved in 2017. Also, one of the loan companies Davenport University contracted with, Higher One, settled a lawsuit with students from Davenport and other schools for allegations of improperly charging fees and misrepresenting costs and fees. There were no allegations against Davenport University specifically, just against Higher One.

Given the lack of evidence and corroboration, I recommend adjudicating these cases.

Exhibit 42

Initial Review of Medium Batch Applications

BACKGROUND

Name of Institution	Southwest University
Corporate Owner(s)	Southwest University
Open or Closed	Open
Total Number of Applications	5
Patterns of Alleged Misconduct	N/A
Evidence/Litigation	N/A
Name of Reviewer	Maureen Taylor
Date Review Completed	10/11/2019

SUMMARY APPLICATION OVERVIEW

BD Case Number	School/Campus listed on App	Program(s)	Year of Enrollment	Nature of Allegation(s)	Evidence
01249555	Southwest University	Medical Assistant	2/17/2015	Other, Career Services, Program Cost, Pressure to Enroll	Emailed Statement
01276186	Southwest University	Medical Assistant	2/16/2015	Guaranteed Job, Financial Aid, Transferability, Career Services, Educational Services, Pressure to Enroll, Other	Emailed Statement
01282353	Southwest University	Medical Assistant	9/22/2009	Career Services, Financial Aid, Pressure to Enroll, Other	Emailed Statement
01531031	Southwest University	Medical Assistant	9/8/2014	Guaranteed Job, Pressure to Enroll, Other, Transferability	Emailed Statement

01595932	Southwest University	Health Administration	2/18/2019	Transferability, Educational Services	Emailed Statement
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RECOMMENDATION:

The Allegations made by the applicants vary but do not violate state law. No lawsuits against the school were discovered. Further investigation is not recommended.

APPROVED BY: John Stephenson

DATE: 10/11/2019

Exhibit 43

Initial Review of Medium Batch Applications

BACKGROUND

Name of Institution	San Diego College/ Career College of San Diego
Corporate Owner(s)	San Diego College
Open or Closed	Closed
Total Number of Applications	9
Patterns of Alleged Misconduct	N/A
Evidence/Litigation	N/A
Name of Reviewer	Maureen Taylor
Date Review Completed	10/10/2019

SUMMARY APPLICATION OVERVIEW

BD Case Number	School/Campus listed on App	Program(s)	Year of Enrollment	Nature of Allegation(s)	Evidence
01284129	Career College of San Diego	Medical Billing and Coding	8/1/2011	Career Services, Guaranteed Job, Other	Emailed Statement
01452281	Career College of San Diego	Not Listed	5/1/2011	Financial Aid, Transferability, Career Services, Pressure to Enroll, Other	Emailed Statement
01471742	Career College of San Diego	Business	1/1/2011	Career Services, Financial Aid, Educational Services, Pressure to Enroll, Other	Emailed Statement
01533060	San Diego College	Medical Billing and Coding	10/1/2014	Transferability, Program Cost, Career Services, Educational Services, Other	Emailed Statement
01538795	San Diego	Medical	10/30/2013	Career	Emailed

	College	Billing and Coding		Services, Educational Services, Other	Statement
01579343	San Diego College	Medical Assistant	4/16/2013	Career Services, Pressure to Enroll	Emailed Statement
01603605	San Diego College	Medical Billing and Coding	10/13/2013	Educational Services, Pressure to Enroll	Emailed Statement
01607534	San Diego College	Medical Assistant	11/17/2014	Guaranteed Jo, Career Services, Pressure to Enroll, Other	Emailed Statement
01897267	San Diego College	Medical Assistant	9/6/2014	Other, Educational Services,	Emailed Statement

RECOMMENDATION:

The allegations made by the applicants vary and do not violate state law. No lawsuits against the school were discovered. Further investigation is not recommended.

APPROVED BY: John Stephenson

DATE: 10/11/2019

Exhibit 44

MEMORANDUM

TO: Colleen Nevin

FROM: Erin Conroy

DATE: May 12, 2020

RE: Borrower Defense Unit Investigation of Charlotte School of Law prior to 2015

Charlotte School of Law (CSL) was founded in 2004 as part of the Infilaw System, a group of for-profit law schools that also includes Arizona Summit Law School and Florida Coastal School of Law.¹ CSL was granted a license to operate by the state of North Carolina in 2005, and the school was actively enrolling students at its sole campus in Charlotte, North Carolina from 2006 until its closure in 2017.²

As of May 18, 2020, the Borrower Defense Unit (BDU) has received approximately 1,000 applications from borrowers who attended CSL. These cases span the entire history of CSL's existence, with the bulk of the cases coming from borrowers who first enrolled from 2011 to 2015.³

As of the date of this memorandum, the BDU has obtained evidence relevant to the borrower defense allegations filed against CSL. In particular, in addition to what is attached by borrowers in their applications, the BDU has reviewed evidence in connection with the following: (1) an American Bar Association (ABA) investigation against CSL which resulted in the ABA placing CSL on probationary accreditation status in November of 2016; (2) The Department's decision to deny CSL's application for recertification to participate in federal student financial assistance programs; and (3) a letter to the Department of Education from North Carolina Department of Justice requesting that the Department extend the closed school discharge window for CSL borrowers.

Based on its review of the above evidence, the BDU recommends individual adjudication of all claims where the borrower separated from CSL prior to February 24, 2015. While the ABA's investigation officially began in 2014 and its report from its March 2014 site visit represents the BDU's earliest evidence against CSL, the ABA did not issue its first decision letter to CSL until February 24, 2015⁴ and did not find CSL to be out of compliance with the Standards that led to it being put on probation until February 3, 2016.⁵ Further, there is no indication that the ABA's findings were intended to be retroactive. Similarly, the Department's decision to deny CSL's application for recertification was based on the ABA's findings, as well as statements made by CSL in 2016.⁶ Finally, while both the University of North Carolina Board of Governors and the North Carolina Department of Justice requested documents from CSL

¹ U.S. Department of Education Denial of Recertification Letter, at 2 (Dec. 19, 2016).

² ABA Inspection Report on Charlotte School of Law, at 2 (Sept. 15, 2014).

³ Salesforce reports generated by BDU personnel (on file with the Department).

⁴ ABA Decision Letter to President Lively and Dean Conison (February 24, 2015).

⁵ ABA Decision Letter to President Ogene and Dean Conison, at 1 (February 3, 2016).

⁶ U.S. Department of Education Denial of Recertification Letter (Dec. 19, 2016).

going back as far as 2014, this was largely to obtain the documents that the ABA used to make its decision.⁷

February 24, 2015 represents the earliest date that CSL was on clear notice of the gravity of the ABA's ongoing investigation into its compliance, and therefore it is appropriate to adjudicate borrowers who separated from the school prior to that date individually. February 2015 also serves as an appropriate cutoff date because the evidence suggests that CSL began administering its Path Program in 2015, which paid students to postpone sitting for the bar exam and therefore would only apply to their bar data reported past 2015. The BDU is not in possession of, nor aware of, any evidence to corroborate borrowers' claims of misconduct prior to this cut-off date. As of May 11, 2020, BDU is in possession of 406 cases where the borrower alleges a date of separation prior to February 24, 2015.⁸

In order to adjudicate these cases, the BDU will open each case and review each allegation and any evidence the borrower attached to the case. If the borrower has provided evidence sufficient to support their allegations, then the application will be set aside for further review. In cases where the borrower provides no evidence or the evidence provided does not prove any allegation, then the case will be flagged for denial. If additional evidence is discovered in the future, these pre-February 24, 2015 cases may be revisited.

⁷ University of North Carolina Required Documents Letter to Dean Conison (Jan. 24, 2017).

⁸ Extracted on 5/11/20 using Salesforce program report, filtering for program end dates less than Feb. 24, 2015.

Exhibit 45

**Summary of Information Requested by Diane
Regarding Loan Discharges Pursuant to 2016 Regulation**

1. Overview of Status of Implementation of the 2016 Regulation

FSA is in the process of gathering information and compiling questions and issues for discussion with OUS, OPE, and OGC in connection with the implementation of the 2016 regulation. With respect to the Automatic Closed School Discharge (“ACSD”), work is underway to set up processes at the servicers for implementation once we have the list of borrowers who are eligible for discharge.

2. How do we determine who qualifies for ACSD?

Under the 2016 regulation, ACSD applies with respect to schools that closed on or after November 1, 2013. The regulation stipulates that the Secretary shall discharge loans without an application from a borrower if the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years from the date the school closed. Borrowers who qualify for an ACSD include those who did not complete their program of study at the school because the school closed while the student was enrolled, or those who withdrew from the school not more than 120 days before the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school’s closing justify an extension. In the case of Corinthian, the former Secretary extended the period to include borrowers who withdrew on or after June 20, 2014.

FSA has developed, and is currently refining, an algorithm to query the National Student Loan Data System (NSLDS) to identify those borrowers who are eligible for ACSD. We currently are making adjustments to the algorithm to account for the multiple OPEID numbers under which Corinthian operated to ensure that an accurate list of borrowers who are eligible for relief is compiled. With respect to Corinthian, the algorithm will produce a list of non-completers who had attended a Corinthian school when it closed, or who had withdrawn from such a school on or after June 20, 2014, and who had not subsequently re-enrolled in any title IV-eligible institution within a period of three years from April 27, 2015.

- Closing Date

Program Compliance has an official closure date for each school closure. It is the date that the school last offered instruction. This is the date reflected as the closing date in NSLDS, which is what will be pulled into the algorithm developed to address a specific school closure.

- Subsequent Enrollment

Another component of the algorithm pulled from the NSLDS data is the borrower's student aid information (specifically, grant and loan disbursements subsequent to the school closure) to determine whether or not the student had a subsequent enrollment.

The ACSD process only applies to those borrowers as described above. For other situations, the closed school discharge process operates as it otherwise has. These other situations include, for example, borrowers who re-enroll in another institution, but not in a comparable program; and, borrowers who re-enroll in a comparable program at another institution but do not complete the program. In these cases, borrowers must apply for the discharge, and only the loans the borrowers received at the closed school are eligible for discharge. Borrowers who transfer credits and complete their program at another institution are not eligible for a closed school discharge.

3. Processes and Timeline for ACSD and Approximate Number of Eligible Borrowers

FSA recommends a phased approach to implementing the ACSD. Specifically, the first phase probably would be limited to borrowers who had attended a Corinthian school that closed and who had no loan disbursements after the school closure. The second phase will include borrowers who attended other closed schools.

On a parallel track with finalizing the algorithm, FSA is working on the servicer requirements and other operational pieces. We will supplement our response with a projected timeline for implementing Phase I early next week, including the timing for an initial email to the borrower from FSA advising that he or she is eligible for ACSD and will be receiving a notice of the loan discharge from the servicer.

The estimate of approximately 5,000 eligible borrowers previously referenced by OGC was a preliminary number generated using a preliminary version of the algorithm. FSA found some data anomalies in the result, and we currently are in the process of making adjustments to the algorithm that will likely change the number of eligible Corinthian borrowers identified.

4. ACSD Overlap with Borrower Defense Claims

The above-referenced 5,000 number was not solely borrowers who also have a borrower defense application – it was intended to include Corinthian borrowers eligible for ACSD, regardless of whether they have filed a BD or standard CSD application. Once we have finalized and re-run the algorithm, FSA will cross-reference the ACSD list with the list of Corinthian borrowers who have pending BD claims to determine the overlap.

The algorithm will identify borrowers who previously received partial relief in connection with a BD claim because these borrowers' loans were not fully discharged. Those loans will be discharged in full under the ACSD and any payments made on the loans will be refunded.

5. ITT Tech Claims Eligible for ACSD

ITT's official closure date was September 3, 2016. Therefore, no borrowers from ITT will be eligible for ACSD until September 2019. Because it is possible that some former ITT students may enroll in other schools between now and next September, any projections likely would be over-inclusive. However, once the algorithm is finalized, FSA can run a modified version to provide projected numbers and anticipated cost based on the closure date. FSA also will provide projected costs assuming an expanded window for discharge that would allow for immediate discharges.

FSA is in the process of compiling data to provide the loan total for pending BD claims from ITT Tech students. Because the data currently is on two different systems, FSA estimates that it will take two to three weeks to gather and merge the data, which then will have to be validated. In the interim, FSA will provide next week the total number of currently pending BD claims from ITT borrowers.

6. Closed School History re: Corinthian and ITT

To date, there have been no closed school discharges without an application; students were required to apply individually. Although there are many borrowers from Corinthian who applied for both BD and closed school, the processes are separate. Part of the BD intake process includes a review of whether the borrower already has received a closed school discharge; if so, the BD claim is closed. Additionally, there is a follow-up step during the BD adjudication phase to carve out any claims for borrowers who received a closed school discharge after the BD application was filed but while BD application was still pending.¹

Currently, for borrowers who applied for BD only and have not filed a closed school discharge application, there is no assessment of the borrower's eligibility for closed school discharge (even if it would provide greater relief). The closed school discharges are a separate process handled by the servicers under the supervision of Business Operations, and an application is required. FSA can explore adding a preliminary closed school discharge assessment to the BD review process, if desired.

7. Group Claims from AGs

Regarding requests from Attorneys General seeking group discharges on behalf of their constituents, FSA has received the following lists:

- American Career Institute ("ACI"):
 - MA AG list identifying 4,458 borrowers (all loans previously were discharged in connection with group BD discharge process in January 2017)

¹ This step was added in late 2016. Prior to the addition of that step to the process, there were borrowers who had BD applications approved after their loans already had been discharged under the closed school discharge process.

- Anthem:
 - MN AG submitted four different lists identifying a total of 49 borrowers (most or all borrowers listed appear to have submitted individual applications as well)
- Corinthian:
 - IL AG list identifying 3,368 borrowers
 - MA AG list identifying 2,444 borrowers
 - WA AG list identifying 3,637 borrowers
- Globe/Minnesota School of Business:
 - MN AG list identifying 1,949 borrowers
- Kaplan:
 - MA AG submitted two lists identifying a total of 97 borrowers
- Lincoln Tech:
 - MA AG list identifying 351 borrowers
- Westwood:
 - IL AG list identifying 1,243 borrowers

8. Breakdown of Costs – Borrowers Currently eligible for ACSD from Corinthian, ITT, ACI and Globe and Aggregate Loan Balance for Each

Once FSA finalizes the algorithm, it will re-run it to determine the borrowers who currently are eligible for ACSD. Phase I will focus on borrowers who attended a Corinthian school that closed. FSA will pull the aggregate loan total once the list is generated.

As previously noted, the list of borrowers currently eligible for ACSD will not include any ITT borrowers; ITT did not close until September 2016 and, therefore, no ITT borrowers will be eligible until next September unless the window is extended. Similarly, because Globe campuses closed at various times between June 24, 2016 and September 14, 2017, the first Globe borrowers will not be eligible until June 24, 2019 unless the 120 day window is extended. The list also will not include any ACI borrowers because the school closed in January of 2013, and the ACSD regulation only applies to borrowers from schools that closed on or after November 1, 2013.

9. Additional cost if time period for ACSD is extended to the longer timeframe afforded to Corinthian borrowers – for ITT, Globe and ACI

Once the algorithm is finalized, FSA can run a modified algorithm to provide a projection of costs using both the closing date and any other time period requested for comparison and policy decisions regarding ITT and Globe borrowers. For the reason noted above, the 2016 ACSD provisions do not apply to ACI.

10. How do we notify the holder of student records of the names of those who received loan discharge and are therefore not entitled to an official transcript?

There currently is no process in place to advise closed schools (or the holder of records for a closed school) that the borrower has received a closed school discharge. Although it does not

appear that such notification is required under title IV or regulation, FSA can explore options in consultation with OGC for providing such a notice, if desired.

11. School Closures Since 2013

FSA has compiled a list of schools with closures between November 1, 2013 and November 7, 2018. Please see the attached Excel spreadsheet.

12. BD Claims Subject to 2016 Regulation (Loans issued on or after July 1, 2017)

Our very rough preliminary estimate is that fewer than 5% of the pending BD claims will be reviewed under the 2016 regulation. We currently are transitioning BD data from one system to another, so we are in the process of pulling and merging the data from the two different systems. We will have a more accurate/complete picture in 2-3 weeks and will provide the requested data as soon as it is validated.

For borrowers who have loans both before and after July 1, 2017, FSA has had preliminary discussions with OGC on this issue and will provide a response once OGC has confirmed the required approach.

13. Closed School Discharge Applications from Mount Ida

FSA will request this data from the servicers.

14. Closing Date and Approach for Closed School Discharge Applications from Art Institute Students

Regarding whether we have received applications from Art Institute borrowers, FSA will request this information from the servicers. Art Institute borrowers currently attending school will not be eligible for ACSD until 3 years from the date of closure, which is planned for December 31, 2018.

The ACSD provision requires that the closing date be the basis for determining eligibility (rather than the proposed announcement date). However, as a policy matter, the Secretary could decide to extend the 120 day window in order to provide additional relief as was done in connection with Corinthian's closure.

15. Weekly Report from FSA Re: Implementation of 2016 Regulation

FSA will develop a weekly report advising of discharge numbers, costs and other data and information requested.

Exhibit 46

To: Under Secretary Ted Mitchell
 From: Borrower Defense Unit
 Date: January 10, 2017
 Re: Recommendation for ITT Borrowers Alleging That They Were Guaranteed Employment -- California Students

ITT Technical Institute (“ITT”) consistently represented that all graduates obtained jobs after graduation or, relatedly, that its students were guaranteed employment after graduation. These representations were false and misleading. This memorandum addresses borrower defense (BD) claims premised on these misrepresentations submitted by borrowers who attended an ITT campus in California.¹ As set forth below, the Borrower Defense Unit recommends full relief (subject to the statute of limitations) for borrowers² who (1) enrolled at any ITT California campus between January 1, 2005³ and ITT’s closing and (2) whose claim is premised on a promise, guarantee, or other assurance that they would receive a job upon graduation, including representations that all graduates obtain employment.

I. Summary of ITT’s Representations to Borrowers Promising Employment

Like former Corinthian students,⁴ former ITT students have submitted guaranteed employment claims that are factually consistent, pervasive across campuses, and constant over a span of years. In these BD applications, ITT borrowers (both from California and throughout the country) consistently allege, each in their own words,⁵ that ITT staff promised, guaranteed, or otherwise assured that they would be placed in jobs. These oral representations occurred both in person and during phone calls with prospective students. The Department has received guaranteed employment claims from borrowers at every campus sampled, dating back to the 1990s. Based on those statements, as well as corroborating evidence from former ITT employees, a preponderance of the evidence demonstrates that ITT guaranteed or otherwise assured borrowers future job placement.⁶

¹ As discussed below, guaranteed jobs misrepresentations were evident throughout ITT’s campuses nationwide. Because California law has already been thoroughly analyzed by the Department for the same claim in connection with Corinthian Colleges, we recommend proceeding with discharges for ITT California students with guaranteed jobs allegations, as set forth below.

² For purposes of this memorandum, Parent PLUS borrowers are included in the definition of California students.

³ Although this memorandum only addresses borrowers who enrolled on or after January 1, 2005, additional evidence (including from additional BD claims) may support future relief for applicants who enrolled prior to 2005. The Department will evaluate this evidence on an ongoing basis and may update this recommendation accordingly.

⁴ See Memorandum from Borrower Defense Unit to Under Secretary Mitchell re: Corinthian Borrowers Alleging That They Were Guaranteed Employment (Jan. 9, 2017).

⁵ The Department has received ITT BD applications submitted via narratives in Word documents and emails, as well as via forms provided to borrowers by the Debt Collective. A vast majority of these allegations are unprompted. Some versions of the Debt Collective form ask about “false and misleading conduct relating to job prospects,” but the Department’s BD website has only instructed borrowers to provide “other information...that you think is relevant.”

⁶ We have reviewed the ITT evidence on a nationwide level as well as on a California-specific level. As set forth below, ITT’s conduct with respect to guaranteed jobs was consistent nationwide; we have found nothing unique about ITT’s conduct in California as compared to other states. Thus, the fact section addresses both California-specific evidence as well as nationwide evidence.

A. Guaranteed Employment Representations Consistent in Nature

Of 320 randomly sampled BD applications submitted by ITT borrowers, 103 (32% of the total) state that the borrower was promised, guaranteed, or otherwise assured employment.⁷ The unprompted factual similarity of these BD claims evidence a strong indicia of reliability. For example, at ITT-San Diego, where 7 of 19 BD applications sampled alleged guaranteed employment, borrowers submitted the following highly consistent statements:

- “The school assured me that I would find employment in my field of study and that the industry of my field of study was in high demand.”⁸
- “I was also told by the recruiters from the school about wages I could make that I have yet to be able to earn due to the fact that the school is and was not very credible. . . .The ITT Tech recruiters assured me A.A. students graduate making around 50-60K a year and the B.S. graduates would be around \$80k a year. They misrepresented their product, their name brand and their education.”⁹
- “The promises were that it would be easy to find a high paying job right away.”¹⁰
- “I was promised that once I graduated I would be able to get into any field of my choice from Crime Scene Investigator, Crime Mapping, Probation to Detective to many many more. The promise of salaries starting at 50K upward depending on my field of choice and my recruiter said employers are beating down their door saying we want to hire the graduates as they know the latest and the best information available.”¹¹
- “They promised to place me into a good job making a middle class wage but were unable to put myself or other students into anything but a low paying temp job. Then it was promised that I would be better off with a Bachelors from ITT in order to get the higher pay job. I and multiple other students were duped into thinking that.”¹²
- “They additionally gave promises of placement in good jobs, while in reality I have been swamped with a large amount of debt, inability to attain a job in the degree field or of even better earnings.”¹³
- “I was also told that they have a great job placement program and that all students that seek help would be placed with a job within my new field after the first six months of school.”¹⁴

B. Guaranteed Employment Representations Pervasive Throughout ITT

Guaranteed employment representations were not limited to ITT-San Diego. In fact, such representations were pervasive throughout ITT’s network of campuses in California and nationwide. Former students alleged guaranteed employment at each of the 22 ITT campuses sampled, which were located across 17 states (CA, IL, MI, PA, WA, AK, VA, MO, FL, NM, TX, OR, TN, AL, NY, OK, and WI). A sample of these claims, detailed below, demonstrates the pervasiveness of guaranteed employment misrepresentations throughout ITT:

⁷ This total excludes allegations that may pertain to guaranteed jobs but were not sufficiently specific to qualify for relief. For example, allegations that ITT’s career services offices did not assist the borrower in finding a job were not interpreted as guaranteed employment claims.

⁸ BD1655184.

⁹ BD1639392.

¹⁰ BD1655377.

¹¹ BD1605233.

¹² BD1655410.

¹³ BD1655354.

¹⁴ BD1638087.

- ITT-Orange (CA): “I was told that ITT had a 100% job placement upon graduating students.”¹⁵
- ITT-Anaheim (CA): “I was promised that immediately after graduating, I would be placed in a job within my field of study.”¹⁶
- ITT-Sylmar (CA): “I was told that my degree would guarantee me employment.”¹⁷
- ITT-Rancho Cordova (CA): “The sales representative stated that after completion of my education courses I would make between \$50,000 and \$75,000 USD per year.”¹⁸
- ITT-Oak Brook (IL): “They advised me that I would have a job waiting for me. The credits for the field I was in were not accredited. The degree is not worth anything and the school is a scam.”¹⁹
- ITT-Swartz Creek (MI): “They guarantee jobs right after graduating.”²⁰
- ITT-Harrisburg (PA): “I was told on several occasions by ITT Admissions Representatives that the school has 100% job placement upon completion for students.”²¹
- ITT-Seattle (WA): “They said that 100% job placement and that I should have no problem finding a job in my field.”²²
- ITT-Little Rock (AK): “They promised that they had companics like Blizzard Entertainment, Electronic Arts, Sony, Nintendo, etc. fighting for graduates for their companies . . . They not only lied about the job placement but they lied about the fact that we could be making a 5 figure salary.”²³
- ITT-Springfield (VA): “I WAS LED BY THE RECRUITER TO BELIEVE THAT THE JOB OPPORTUNITIES WOULD BE POURING IN.”²⁴
- ITT-Arnold (MO): “I was told that I would get a job in my field”²⁵
- ITT-Albuquerque (NM): “ITT lied about job prospects and guaranteed a job after graduation.”²⁶
- ITT-Richardson (TX): “After the tour ended, the counselor told me the multimedia program was game development and stated that upon completion of the program I would have a guaranteed job through their job placement program and that the starting base pay for such a job was \$70,000/year.”²⁷
- ITT-Portland (OR): “Told me they would have me in a career by the end of my first year in school.”²⁸
- ITT-Knoxville (TN): “I was told that they had 100's of jobs waiting for only their graduates. No one but ITT Tech graduates could apply to these jobs”²⁹
- ITT-Bessemer (AL): “I was promised job placement upon completing my courses . . . I was also given an estimated range of amount of starting salary/hourly pay.”³⁰
- ITT-Greenfield (WI): “They also provided misleading stories about how their program would land me the job of tomorrow and how much people in my field were being paid during and after graduation.”³¹
- ITT-Tulsa (OK): “They said they would have me working in the gaming industry....they told me to look in the classifieds.”³²

¹⁵ BD156693.
¹⁶ BD1651614.
¹⁷ BD1639208.
¹⁸ BD1601288.
¹⁹ BD156627.
²⁰ BD153161.
²¹ BD156697.
²² BD1600120.
²³ BD153747.
²⁴ BD155274.
²⁵ BD1659434.
²⁶ BD1604365.
²⁷ BD1659402.
²⁸ BD1607247.
²⁹ BD1619298.
³⁰ BD1655120.
³¹ BD1604587.

ITT Claims			
Campus	Applications reviewed	Applications alleging guaranteed employment representation	%
San Diego (CA)	19	7	42.11%
Anaheim (CA)	10	4	40.00%
Rancho Cordova (CA)	15	2	13.33%
Sylmar (CA)	16	2	12.5%
Dayton (OH)	12	5	41.66%
Arnold (MO)	23	6	26.09%
Greenfield (WI)	17	6	35.29%
Knoxville (TN)	18	5	27.78%
Portland (OR)	14	2	14.29%
Richardson (TX)	15	3	20.00%
Spokane Valley (WA)	30	10	33.33%
Tampa (FL)	17	4	23.53%
Arlington Heights (IL)	11	3	27.27%
Getzville (NY)	10	1	10%
Albuquerque (NM)	9	3	33.33%
Various Campuses ³³	84	39	46.43%
TOTAL	320	102	31.90%

Moreover, BD applications alleging guaranteed employment are buttressed by numerous borrower statements in connection with government investigations and private litigation, as well as statements provided to the Borrower Defense Unit by veterans targeted by ITT for enrollment.³⁴

C. Guaranteed Employment Representations Constant Across Years

Guaranteed employment representations also are constant across a span of years. Importantly, the claims of borrowers who attended in earlier years are consistent with claims submitted by students who attended more recently. Just as the claims sampled at each campus corroborate each other, the following allegations over time strongly suggest that representations of guaranteed employment were endemic at ITT:

- [2005]: “Promised great jobs and prosperous careers . . .”³⁵

³² BD153174.

³³ This number includes a random sample of 84 claims from 22 campuses across 18 states.

³⁴ In response to government investigations, ITT borrowers consistently alleged that they were “guaranteed to get a job,” *Consumer Financial Protection Bureau v. ITT Educational Services, Inc.*, Civil Action 14-00292-SEB-TAB (S.D. Ind.) (hereinafter “CFPB Case”), Declaration of MT at ¶ 3 (July 11, 2016); that they would be placed in “jobs in their field of study within nine months of graduating,” *Commonwealth of Massachusetts v. ITT Educational Services, Inc.*, Civil Action 16-0411 (Mass. Sup. Ct. Compl. at ¶ 55, filed Mar. 31, 2016) (hereinafter “MA AG Case”); and that “recruiters guarantee ITT will find you a job,” S. Health, Educ., Labor & Pensions Comm., *For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (2012) (hereinafter “Harkin Report”), p. 539, available at https://www.help.senate.gov/imo/media/for_profit_report/PartII/ITT.pdf. These statements are corroborated by 90 allegations of guaranteed employment cited in a recent class action filed by the Harvard Legal Services Center, *Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-7A)* (Bankr. S.D. Ind. Compl. filed Jan. 3, 2017), as well as by dozens of guaranteed employment allegations submitted by veterans who attended ITT, *Veterans Education Success*, “ITT Trends” (2016) (compiling summaries of interviews and student quotations) (on file) (hereinafter “ITT Trends”).

³⁵ BD156898 (ITT Torrance).

- [2006]: “I was told that I would be able to make about 64K once I graduated because I was going into a Bachelors program degree. I got promised the stars and the sky.”³⁶
- [2007]: “I was also led to believe that what I was going to school for would be a sure job after graduation.”³⁷
- [2009]: “I was told that I would definitely have a job if I enrolled.”³⁸
- [2011]: “We were told that there would be no problem getting a job and they would help.”³⁹
- [2013]: “I was told I would obtain a job in the field upon graduation, easily with a high salary.”⁴⁰

As further discussed below, these claims are supported by corroborating evidence from former employees and spanning the period of at least 2005 to the school’s closure.

D. Statements of Former ITT Employees Corroborate Guaranteed Employment Claims

ITT borrower defense claims based on guaranteed employment misrepresentations are substantiated by the affidavits, interviews, and testimony of former employees at campuses nationwide. This former employee evidence establishes that, in response to oral directives from management, recruiters from at least 2005 through ITT’s closing led prospective students to believe that employment was guaranteed.

ITT orally directed staff to present recruitment documents in a manner that guaranteed or otherwise assured employment. ITT employees were trained to provide these oral promises of employment despite the existence of written documents to the contrary.⁴¹ For example, one former employee explained that “[w]ritten instruction from ITT headquarters was contradicted by oral instructions from the District Manager or a Senior Vice President . . . [ITT] was interested in getting students into the school no matter what it took to do so.”⁴² Another former employee, in testimony before the National Advisory Committee on Institutional Quality and Integrity (NACIQI), explained that recruiters “were consistently trained . . . to go verbally around the requirements” and that, even if recruiters did not expressly guarantee employment, “it was taken that way.”⁴³

As a result, former employees at ITT consistently report that staff guaranteed or otherwise assured employment. Some employees guaranteed employment expressly. For example, one former employee stated, “[m]arketing told students not to worry about prior felonies and they would get placed in jobs.”⁴⁴ Another stated, “I heard recruiters assure students that they would get a great job that would enable them to pay back

³⁶ BD156228 (ITT-Sylmar).

³⁷ BD1659496 (ITT-Rancho Cordova).

³⁸ BD157549 (ITT-Indianapolis).

³⁹ BD156506 (ITT-Swartz Creek).

⁴⁰ BD154555 (ITT-Murray).

⁴¹ *State of New Mexico v. ITT Educational Services, Inc.*, Civil Action D-202-CV-2014 (D.N.M.) (hereinafter “*NM AG Case*”), ITT Training Document entitled “The Importance of our Language: Comments to Avoid,” dated July 18, 2011, ITT-NMAG 0006448 (Feb. 26, 2014) (explaining that ITT disseminated a document on “Comments to Avoid,” which barred personnel from promising job placement and stated, “[w]e do not guarantee jobs to any student or graduate”).

⁴² *CFPB Case*, Interview of Wendy Maddox-Wright, former employee from April 2005 to August 2011, ITT-Louisville (Jan. 28, 2014). See also *id.*, Interview of Amy St. Clair Lachman, former employee, ITT-Johnson City (April 9, 2014) (“[E]mployees knew what ITT wanted and it was not about helping people. Rather, it was about how many people ITT could get into a chair.”).

⁴³ Transcript of Testimony of ITT Recruiter Matthew Mitchell before NACIQI at 217 (June 23, 2016) (Mitchell was employed as a recruiter in 2013).

⁴⁴ *CFPB Case*, Interview of former employee Sarah Doggett (employed from late 2005 to 2009) at 6 (ITT-Louisville, Feb. 26, 2014).

their loans.”⁴⁵ And another explained that “[b]efore showing any forms or numbers to students, financial aid staff was trained to emphasize all of the benefits students would receive from their education. From 2004 to 2007, this was done with the guidance of a ‘return on investment document’ that [the President and CEO of ITT] developed” which “contained misleading information about the average salaries of graduates of different programs.”⁴⁶

Recruiters, under pressure to enroll students, used a variety of tactics to pave the way for these false employment promises, including presenting documents in a manner that led students to believe employment was assured. A review of ITT’s internal “Mystery Shopper” audio files corroborated testimony that recruiters deceived prospective students with a “wink and a nod.” In one recording, for example, a recruiter displayed a “Career Wheel” and reassured the borrower regarding his chances of landing one of the entry level jobs listed: “As long as you have the foundation to be able to go in there and experience some of this, you’ll be good to go.”⁴⁷

Guaranteed employment claims are further corroborated by recent ACICS findings against ITT⁴⁸ as well as by numerous former employee statements regarding falsification of student documents and manipulation of job placement statistics.⁴⁹ Based on the widespread evidence cited herein that ITT guaranteed or otherwise assured employment to its prospective students during the period of 2005 until the school’s closure in 2016, we recommend no further year-by-year or campus-by-campus breakdown for additional ITT campuses.

II. Evidence of the Falsity of the Alleged Representations

ITT’s own records show that for the students who managed to graduate, the school was unsuccessful at placing thousands of them. Moreover, former employee statements show the school knew it could not live up to its employment promises. For example, according to a former employee from ITT-Louisville, marketing representatives told prospective students that they could get jobs creating PlayStation games with a certain Bachelor’s degree; however, not a single student with the degree obtained employment.⁵⁰ Another former

⁴⁵ *CFPB Case*, Affidavit of former employee Rodney Lipscomb at ¶ 25 (ITT-Tallahassee, Aug. 17, 2016) (Lipscomb was Dean of Academic Affairs at Tallahassee from April 4, 2011 to January 28, 2015).

⁴⁶ *Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-7A)* (Bankr. S.D. Ind. Compl. filed Jan.3, 2017), Affidavit of Dawn Lueck (Dec. 20, 2016) Lueck began working at ITT’s Henderson, Nevada, campus in 1999. In 2002, she began working at ITT’s corporate office in Carmel, Indiana, as a student loan refund coordinator. In 2003, she moved to ITT’s Murray, Utah campus, where she began working as a financial aid administrator, and was promoted to director of finance in 2006. In 2007, she moved to ITT’s new Phoenix, Arizona campus to set up their financial aid department, and was employed there until she left ITT in 2009.

⁴⁷ *Audiotape: ITT Mystery Shopper Investigation*, ITDS0000009 at 30 mins (Nov. 21, 2012) (on file).

⁴⁸ ACICS found that ITT violated its requirements for reporting job placements rates. See Letter from Roger Williams (Interim President, ACICS) to Kevin Modany (President and CEO, ITT) re: Continue Show-Cause Directive (Aug. 17, 2016), available at <http://acics.org/commission%20actions/content.aspx?id=6712>.

⁴⁹ *CFPB Case*, Interview of former employee Bradley Parrish, ITT-Knoxville (April 23, 2014) (explaining that some graduate employment verification forms, or GEI’s, “had been falsified and student signatures had been fabricated . . . These were called ‘magic GEI’s’ because magic tape was used to either transfer a student signature from another form to the GEI or to have the student sign a blank GEI”); *CFPB Case*, Complaint at ¶ 33 (alleging that “placement rates do not include former students who did not graduate . . . may include jobs that do not require the degrees students paid for . . . and may include positions that were merely seasonal”); *City of Austin Police Ret. Sys. v. ITT Educ. Servs., Inc.*, 388 F. Supp. 2d 932, 938 (S.D. Ind. 2005) (former ITT employee who worked as a mater admissions representative at ITT-San Bernardino (CA) allegedly “concealed adverse student statistics by switching students from program to program”); *id.* (former ITT employee from the Torrence, California Campus stated that ITT fabricated and stretched its student statistics and that ITT’s graduate placement figures were inaccurate by at least 20%).

⁵⁰ *CFPB Case*, Interview of former employee Sarah Doggett, ITT-Louisville (Feb. 26, 2014) (employed from late 2005 to 2009).

employee, who served as the Dean of Academic Affairs at ITT-Tallahassee, stated that recruiters asked prospective students if they were familiar with the show “CSI Miami” and then guaranteed future employment as crime scene investigators, even though he was “not aware of a single student who graduated from the Criminal Justice program and became a CSI.”⁵¹ Instead, most of those students became security guards – “positions that didn’t require a degree at all.”⁵²

The narratives in borrower defense applications also support these conclusions. Many students that make guaranteed employment allegations – and many other ITT BD applicants – state that they were unable to find a job at graduation; that they were unable to find employment that used their degree; and/or that they were forced to remain in a job that they had prior to enrolling at ITT.⁵³ These narratives are consistent with student accounts provided to law enforcement agencies⁵⁴ and non-profit organizations regarding their inability to find employment related to their fields of study.⁵⁵ In sum, the evidence overwhelmingly shows that ITT could not truthfully guarantee employment upon graduation.

III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for California Students Making Guaranteed Employment BD Claims Under California Law, Subject to Reduction for Borrowers Affected by the Statute of Limitations

For the reasons set forth below, California students with borrower defense claims predicated on a guaranteed employment allegation have a valid claim under the “unlawful” and “fraudulent” prongs of California’s Unfair Competition Law (“UCL”),⁵⁶ which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations.⁵⁷

Moreover, California students with guaranteed employment allegations should, under California law, be granted full loan discharges and refunds of amounts already paid, subject to reduction for borrowers affected by the statute of limitations.

A. The Department Will Apply California Law to Claims by California Students

The Higher Education Act directs the Secretary, “[n]otwithstanding any other provision of State or Federal law,” to “specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a [Direct] loan, except that in no event may a borrower recover from

⁵¹ *CFPB Case*, Affidavit of former employee Rodney Lipscomb at ¶ 25 (ITT-Tallahassee, Aug. 17, 2016) (Lipscomb was Dean of Academic Affairs at Tallahassee from April 4, 2011 to January 28, 2015).

⁵² *Id.*

⁵³ *See supra*, Section I and *infra* Section III(E).

⁵⁴ *CFPB Case*, Complaint at ¶¶ 36-49 (providing that numerous students complained that ITT promised better results than they were able to achieve and that ITT misled potential students through job placement rates which inappropriately included temporary work); *Id.* Declaration of Jacy Belyeu at ¶ 8 (ITT-Tucson July 14, 2016) (stating that “[i]n the three years since I graduated, my ITT degree hasn’t increased my pay of my job opportunities as promised”); *Id.* Declaration of Michael Tolliver at ¶ 10 (ITT-Chattanooga, July 11, 2016) (stating that since graduating, the “degree has been worthless to me. I have applied for hundreds of jobs in the IT field and I haven’t been hired in the field. The job opportunities the recruiter talked about have not been available as he promised”).

⁵⁵ *See ITT Trends* (providing dozens of statements by veteran borrowers attending California campuses, as well as campuses nationwide, that ITT promised them jobs upon graduation).

⁵⁶ CAL. BUS. & PROF. CODE § 17200.

⁵⁷ Although we elected to review applications of borrowers attending California campuses based on California law, *see supra* note 1, we note that claims by such borrowers may also be reviewed under Indiana law, the location of ITT’s corporate headquarters. Indiana law would support relief for guaranteed jobs claims under the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a) *et seq.*, as well as under the Indiana common law theory of constructive fraud, *Rice v. Strunk*, 670 N.E.2d 1280, 1284 (Ind. 1996); *Harmon v. Fisher*, 56 N.E.3d 95, 100 (Ind. App. 2016).

the Secretary, in any action arising from or relating to a [Direct] loan..., an amount in excess of the amount such borrower has repaid on such loan.”⁵⁸ The current borrower defense regulation states that “the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.”⁵⁹

At the time of its closing, there were more ITT students *and* campuses in California than in any other state.⁶⁰ ITT was incorporated in Delaware but operated no campuses there. ITT’s corporate headquarters were located in Indiana, but at the time of closing fewer than 3% of its students were Indiana residents, a smaller number of residents than each of the following eleven states (in order from most to least)—California, Texas, Florida, Ohio, Virginia, Pennsylvania, Michigan, Georgia, Tennessee, North Carolina and Alabama.

Here, the Department has determined that it is appropriate to apply California law to claims by California students. This approach is reasonable and consistent with common state choice-of-law analyses, which look primarily to the location of the wrong (and only secondarily to the place of incorporation or location of corporate headquarters). Indeed, the key factor in the choice-of-law analysis under California law,⁶¹ Indiana law,⁶² and the Restatement (2nd) of Conflict of Laws is the location “where the wrong occurred.”⁶³ Accordingly, because the wrong for California students occurred in California, it is reasonable for the Department to determine that a California court would apply California law in addressing the claims of ITT’s California students.

B. California Students Making Guaranteed Employment Allegations Have A Valid Claim Under the “Unlawful” and “Fraudulent” Prongs of the California UCL

California’s UCL prohibits unfair competition, providing civil remedies for “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law].”⁶⁴ Here, ITT’s statements leading prospective students to believe that they were guaranteed employment constitute “unlawful” and “fraudulent” business practices under the UCL.

1. The Unlawful Prong

The UCL bars “anything that can properly be called a business practice and that at the same time is forbidden by law.”⁶⁵ Thus, if a business practice violates any law, this is *per se* a UCL violation.⁶⁶ Corporate

⁵⁸ 20 USC § 1087e(h).

⁵⁹ 34 C.F.R. § 685.206(c)(1).

⁶⁰ At the time of closing, ITT operated fourteen campuses in California. No other state operated more than nine. Similarly, ITT enrolled 4,482 California residents, over 1,100 more than Texas, the state with the second largest student population.

⁶¹ *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 593–94 (9th Cir. 2012). See also *Hernandez v. Burger*, 102 Cal.App.3d 795, 802, 162 Cal. Rptr. 564 (1980), cited with approval by *Abogados v. AT & T, Inc.*, 223 F.3d 932, 935 (9th Cir. 2000) (holding that the state with “the predominant interest” is the state “where the wrong occurred.”)

⁶² Indiana treats a consumer protection claim as recovery in tort. See *McKinney v. State*, 693 N.E.2d 65, 72 (Ind. 1998) (finding that, despite the fact that “fraud is not an element of” an IDCSA claim, “the action is nonetheless based on fraud”). Under Indiana law, the choice-of-law rule governing tort actions is *lex loci delicti*—“the law of the place where the tort was committed is the law of the resulting litigation.” *Eby v. York-Div., Borg-Warner*, 455 N.E.2d 623, 626 (Ind. Ct. App. 1983).

⁶³ Restatement (Second) of Conflict of Laws § 145 (1971) (“Subject only to rare exceptions, the local law of the state where conduct and injury occurred will be applied to determine whether the actor satisfied minimum standards of acceptable conduct and whether the interest affected by the actor’s conduct was entitled to legal protection.”).

⁶⁴ CAL. BUS. & PROF. CODE § 17204, *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 320 (Cal. App. Ct. 2011); see also *Cel-Tech Communications v. Los Angeles Cellular Telephone Co.*, 973 P.2d 527, 540 (Cal. 1999).

⁶⁵ *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1266 (1992) (citations omitted).

misrepresentations like ITT's promises of employment are prohibited by a number of state and federal laws.⁶⁷ In particular, ITT's misrepresentation regarding its student's employment prospects violates the prohibition against "unfair or deceptive acts or practices" in the Federal Trade Commission Act ("FTC Act").⁶⁸ Determining whether statements to consumers violate the FTC Act involves a three-step inquiry considering whether: "first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material."⁶⁹

Applying that three step inquiry, ITT clearly violated the FTC Act.

1. As described above, ITT made representations to students regarding guaranteed employment;
2. Also as described above, those representations were false, erroneous, and misleading; and
3. As discussed below, the representations regarding guaranteed employment were material.

To be material, "a claim does not have to be the *only* factor or the *most* important factor likely to affect a consumer's purchase decision, it simply has to be an important factor"; furthermore, express claims are presumptively material.⁷⁰ Representations that students are guaranteed employment meet the FTC Act's materiality threshold because borrowers considered the promise of employment to be important when making their enrollment decisions. In attestations submitted to the Department, these borrowers have specifically identified false promises of employment as the misconduct giving rise to their claim. Moreover, given that ITT schools were heavily career-focused, the guarantee of a job would have been highly material to a prospective student's evaluation of the school. Indeed, for many students, the principal purpose of attending a career college like ITT was to obtain employment in a particular field.⁷¹ Based on the school's misrepresentations, individuals considering enrollment reasonably believed that they were certain to find employment upon graduation. Accordingly, ITT's false or misleading misrepresentations regarding guaranteed employment were material and therefore violated the unlawful prong of the FTC Act and constituted an unlawful business practice under the UCL.

⁶⁶ See *Kasky v. Nike*, 27 Cal. 4th 939, 950 (2002); see also *People v. E.W.A.P. Inc.*, 106 Cal. App. 3d 315, 317 (Ct. App. 1980); *Sw. Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 808 (N.D. Cal. 1989) (finding that a plaintiff had standing to sue under the UCL based in part on alleged violations of federal environmental regulations).

⁶⁷ Though the analysis below focuses exclusively on the FTC Act, ITT's misrepresentations to students may also violate other state and federal laws. For example, the California Education Code states that an institution shall not "promise or guarantee employment, or otherwise overstate the availability of jobs upon graduation." Cal. Educ. Code §94897, et seq. However, because the conclusion below is that ITT's conduct violates the FTC Act, this memorandum does not reach the issue of whether it may be unlawful under other applicable rules.

⁶⁸ See FTC Act § 5(a)(1), 15 U.S.C. § 45(a)(1); FTC Act § 12(a), 15 U.S.C. § 52(a). While the FTC Act does not provide a private right of action, California courts have consistently recognized that a valid UCL claim under the "unlawful" prong does not require that the underlying law provide such a right. Thus, for example, the California Supreme Court has permitted plaintiffs to bring actions under the California Penal Code that do not allow for private lawsuits. See *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 950 P.2d 1086, 1091 (Cal. 1998) ("whether a private right of action should be implied under [the predicate] statute ... is immaterial since any unlawful business practice ... may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200") (citing cases); see also *Rose v. Bank of Am., N.A.*, 304 P.3d 181, 186 (Cal. 2013) ("It is settled that a UCL action is not precluded merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the [UCL], another provision must actually bar the action or clearly permit the conduct.").

⁶⁹ *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

⁷⁰ *Novartis Corp.*, 127 F.T.C. 580 at 686, 695 (1999); see also *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) ("Express claims ... are presumed to be material.").

⁷¹ Under these circumstances, students' reliance on a guarantee of employment was reasonable. Prospective students would have taken seriously a guarantee of employment and not interpreted it as mere "puffery." The large volume of ITT claims making guaranteed employment allegations is a clear indication that students believed what they were told.

2. The Fraudulent Prong

ITT's misrepresentations regarding employment prospects are also a fraudulent business practice under the UCL, and are therefore another form of unfair competition providing an independent basis for borrower defense relief for ITT students. To show that a business practice is fraudulent, "it is necessary only to show that members of the public are likely to be deceived."⁷² The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.⁷³ Even true statements are actionable under the UCL if they are presented in a manner likely to mislead or deceive consumers, including by the omission of relevant information.⁷⁴ As noted, the representations ITT made to students guaranteeing employment were false and likely to deceive, for the reasons discussed above.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and . . . lost money or property" as a result of the deceptive practice alleged.⁷⁵ However, for a consumer who was deceived into purchasing a product⁷⁶—or a student who was deceived into enrolling at a school—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions of the entity.

Reliance on the misrepresentation does not have to be "the sole or even the predominant or decisive factor influencing"⁷⁷ the individual's decision. Rather, "[it] is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision."⁷⁸

Express or implied claims like those made by ITT about employment prospects are presumptively material,⁷⁹ and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."⁸⁰ However, as discussed above, the preponderance of evidence also demonstrates, independently, that employment was a central consideration for these borrowers—one which each of the applications in question identified, unprompted, as the crux of their dissatisfaction with their decision to enroll.⁸¹ Statements by large numbers of borrowers across ITT campuses make clear that the promise of employment entered substantially into their choice to attend ITT.

C. Weak Disclaimers In Some of ITT's Written Materials Do Not Cure Its False and Misleading Representations Guaranteeing Employment

ITT's promises of employment were false and misleading, despite the limited, fine print disclaimers on some enrollment agreements that the school does not guarantee "job placement" or "a salary." As set forth

⁷² See *Bank of the West*, 2 Cal. 4th at 1254.

⁷³ CAL CIV. C. §1709.

⁷⁴ *Boschma v. Home Loan Center*, 198 Cal. App. 4th 230, 253 (2011).

⁷⁵ *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1480 n. 13 (2005).

⁷⁶ See *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 316 (Cal. 2011).

⁷⁷ *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).

⁷⁸ *Id.* (internal quotation marks omitted).

⁷⁹ See, e.g., *Telebrands Corp.*, 140 F.T.C. at 292 (presuming that claims are material if they pertain to the efficacy, safety, or central characteristics of a product); *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) (holding that claims about the watts and lifetime of the LED light bulbs were *per se* material because they were express, and "that even if they were implied claims, they were material because the claims relate to the efficacy of the product."); *FTC v. Bronson Partners, LLC*, 564 F. Supp. 2d 119, 135 (D. Conn. 2008) (noting that an implied claim where the advertiser intended to make the claim was presumed to be material).

⁸⁰ *In re Tobacco II Cases*, 46 Cal.4th at 298.

⁸¹ Because deception occurs at the time of decision, it is sufficient for ITT students to say that they chose to enroll based upon a guaranteed employment misrepresentation, regardless of any subsequent employment.

below, these fine print disclaimers do not change the overall impression created by the oral representations described above.

For example, if a student examined an ITT enrollment agreement, the student would have to read through two pages of fine print to find a list of twenty-eight fine print disclaimers, the eleventh of which states that ITT “does not represent, promise or guarantee that Student or any other student will obtain employment.”⁸² This disclaimer is not highlighted or bolded in any way. The agreement then continues on with four more pages of fine print.

These disclaimers do not cure the falsity of ITT’s oral promises regarding employment prospects. Courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations.⁸³ The California Supreme Court also has held that misleading statements enticing consumers to enter into a contract may be a basis for a UCL claim, even though accurate terms may be provided to the consumer before entering into the contract.⁸⁴

The written disclaimers were hidden in text and provided only after admissions representatives orally promised employment. Moreover, here, ITT’s disclaimers were particularly ineffective when considered in the context of its unsophisticated student population and high-pressure admissions practices.⁸⁵ Indeed, there is evidence that some ITT students were not afforded the opportunity to even review the enrollment agreement prior to enrollment and that admission representatives would go so far as to e-sign enrollment paperwork on behalf of students, without their consent.⁸⁶ Moreover, as with Corinthian, ITT advertised heavily on daytime TV, targeting the un- or under-employed. Indeed, admissions representatives were under such tremendous pressure to enroll new students that even homeless veterans were recruited despite the additional challenges

⁸² See, e.g., ITT Albuquerque Enrollment Agreement (September 1, 2011) (on file).

⁸³ See, e.g., *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); see also *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype’s oral representation that a calling plan was “unlimited” was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers).

⁸⁴ *Chern v. Bank of Am.*, 15 Cal. 3d 866, 876 (Cal. 1976) (“[T]he fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant’s practice of quoting a lower rate in its initial dealings with potential customers. The original, lower rate may unfairly entice persons to commence loan negotiations with defendant in the expectation of obtaining that rate.”).

⁸⁵ The nature of the enrollment process made it unlikely that students ever read such disclosures prior to admission. Students consistently reported that they were rushed through the enrollment process and subjected to high pressure sales tactics. ITT’s high pressure enrollment tactics are described in detail by numerous sources. See, e.g., Harkin Report at 527-531; *CFPB Case*, Complaint at ¶¶64-66 (“In contrast to the lengthy sales pitch, the enrollment and financial aid processes were much faster, so that many consumers did not know or did not understand what they signed up for. Recruiters induced prospective students to sign forms without giving them sufficient information about what they were signing [and] required potential students to sign an Enrollment Agreement before they could receive information about their financial aid options . . .”)

⁸⁶ *CFPB Case*, Affidavit of former admissions representative Ricky Bueche at ¶ 15 (ITT-Baton Rouge, 2010-2014) (explaining that “[m]any times, when students left the campus without agreeing to apply, the Director of Admissions would instruct representatives to go back to the computer to e-sign on behalf of the students to apply to ITT, without the students being present and without the students’ knowledge or agreement”); *Villalba* Compl. at Ex. 19, Student Statement 14 (“First and foremost I never physically signed an enrollment agreement (I have a copy). The recruiter signed for myself and my dad via computer, and because of this dishonest tactic my dad is on the hook for a parent plus loan.”); *Id.* at Student Statement 49 (“There are MANY instances that I have found on all the enrollment paperwork (that I have since gotten copies of) where my signature/initials were forged, and not in my handwriting. There were many things that weren’t explained to me AT ALL, where I was told to ‘sign’ electronically.”).

they would face in completing their studies.⁸⁷ In sum, the net impression of the oral misrepresentations on the typical ITT student likely would not have been altered by buried written disclosures.

Finally, the fact that the ITT guaranteed employment claims reviewed to date make no mention of any written disclaimer further supports the conclusion that the disclaimers were ineffective. As discussed above, viewed in light of the unsophisticated population ITT targeted, and the high pressure sales tactics and oral representations that ITT personnel employed, these disclaimers do not offset the net impression of the school's misrepresentations.

D. Eligible Borrowers

Based on the above analysis, the following ITT students should be eligible for relief: any BD claimant who enrolled at an ITT campus in California on or after January 1, 2005 and whose claim is premised on a promise, guarantee, or other assurance that they would receive a job upon graduation, including those told that all graduates obtain employment.

The Department will not undertake a case-by-case analysis of borrowers to determine whether they ultimately secured employment. As we found in the job-placement-rate analysis for Corinthian, the type of misrepresentation at issue here went to the overall value of the education (a school that can guarantee its students jobs must be a very good school indeed), and was substantial regardless of a borrower's ultimate ability to secure employment. Furthermore, in this case, the Department's review of borrower applications suggests that a presumption should be made that borrowers who raised this issue were not, in fact, able to secure employment.

E. Full BD Relief Should Be Provided to Eligible Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations

When determining the amount of relief due to plaintiffs under the UCL, California courts rely on cases interpreting the Federal Trade Commission Act.⁸⁸ In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.⁸⁹

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the *Figgie* and *Ivy Capital*

⁸⁷ *CFPB Case*, Affidavit of former admissions representative Pearl Gardner at ¶¶ 11-12 (ITT-Atlanta South, 2008-2014) (“There was enormous pressure on me and the other representatives and financial aid coordinators (“FACS”) to make sales calls, enroll students, complete financial aid packages, and get students to attend an ITT class. This pressure was relentless . . . To solicit interest in ITT programs, I would go to job fairs, workforce events, and Stand Down events for homeless veterans (events where homeless veterans are given supplies and services, such as food, clothing, shelter, health screenings, and other assistance.”); see also *CFPB Case*, Complaint at ¶¶ 55-84 (summarizing mystery shopper evidence related to high pressure sales tactics).

⁸⁸ See, e.g., *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015).

⁸⁹ See, e.g., *FTC v. Stefanich*, 559 F.3d 924, 931 (9th Cir. 2009) (determining that restitution should include “the full amount lost by consumers rather than limiting damages to a defendant’s profits”); *FTC v. Figgie International*, 994 F.2d 595, 606 (9th Cir. 1993) (“The injury to consumers . . . is the amount consumers spent . . . that would not have been spent absent [the] dishonest practices.”); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991) (“restoration of the victims of [defendant’s] con game to the status quo ante” by use of defendant’s gross receipts is proper for restitution); *FTC v. Ivy Capital, Inc.*, No. 2:11-CV-283 JCM (GWF), 2013 WL 1224613 at *17 (D. Nev. 2013) (ordering full monetary relief for consumers harmed by misleading marketing regarding a business coaching program).

approach and found that a restitution model that aims to “restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief.⁹⁰

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value provided by ITT.⁹¹ The facts described above closely resemble those relating to Corinthian Colleges, where the Department determined that borrowers should receive full relief. That determination was based in substantial part on the lack of value attendant to a Corinthian education, as evidenced by:

- Repeated misleading statements to students, regulators and accreditors;
- Elaborate job placement fraud; and
- Many student accounts stating that their affiliation with the school was an impediment rather than an asset as they sought employment.

Given such pervasive and highly publicized misconduct, the Department determined that the value of the education provided by Corinthian was severely limited.

ITT’s conduct was as flagrant as Corinthian’s. Hundreds of unprompted student statements confirm the lack of value of an ITT education, as ITT students time and again report that their education was sub-standard and that their degree or affiliation with the school was an impediment rather than an asset as they sought employment. These include numerous statements in BD claims,⁹² statements to VES,⁹³ and over 500 statements attached to the *Villalba* Class Action Complaint.⁹⁴

Furthermore, the ITT “brand” became severely tarnished in the lead-up to and wake of its collapse. Over the past several years, ITT has been the subject of a steady stream of federal, state, and private lawsuits and investigations detailing misleading statements to students regarding (among other things) placement rates, employment prospects, expected salaries, transferability of credits, and the quality of the education.⁹⁵ This

⁹⁰ *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015) (internal quotations removed).

⁹¹ *See Makaeff*, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery).

⁹² *See, e.g.* BD1655232, BD1619298, BD1658596, BD155745, and BD153269 (alleging that employers “will not hire ITT grads because they find the college to be subpar,” that borrowers “had to take ITT off [their] resume” in order to get a job, that ITT grads were considered to have “no college education,” and that they were “mocked because of [their] education at ITT”).

⁹³ *See, e.g., ITT Trends* (containing statements from dozens of veterans who attended various ITT California campuses alleging, among other things, that “I feel scammed out of a proper education,” that “employers do not see the school as a real school,” that “no one would even consider me for employment,” and that “I wasted over 50k and 2 years of my life I can never get back”).

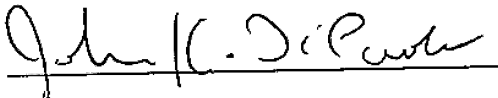
⁹⁴ The exhibits attached to the *Villalba* Complaint include the following: 521 statements explaining how an ITT degree operates as a disadvantage in the job market (Ex. 1); 326 statements explaining how ITT misrepresented the quality of instructors, training, curriculum, or facilities (Ex. 6); 62 statements describing how ITT is “ruining people’s lives” (Ex. 25); 473 statements about how ITT prevented other opportunities (Ex. 27); and 18 statements about how ITT debt has driven borrowers into or to the brink of homelessness (Ex. 28).

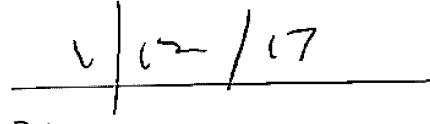
⁹⁵ *See, e.g. CFPB Case, MA AG Case, NM AG Case, Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-7A)* (Bankr. S.D. Ind. Compl. filed Jan.3, 2017), and *Lipscomb v. ITT Ed. Servs. Inc.* (M.D. FL Compl. filed Apr. 8, 2015). In addition, over 15 state AGs have issued subpoenas or CIDs relating to fraud and deceptive marketing against ITT from the beginning of 2004 through the end of May 2014. These states include: Arkansas, Arizona, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee and Washington. *See* ITT Form 10-Q Quarterly Report (June 30, 2014).

conduct has also led to actions against ITT by the Department⁹⁶ and ACICS,⁹⁷ as well as to numerous negative national news stories.⁹⁸

Given this extensively well-documented, pervasive, and highly publicized misconduct, the Department has determined that the value of an ITT education—like Corinthian—is likely either negligible or non-existent. In a court proceeding, ITT would very likely be unable to produce any persuasive evidence showing why the amount of recovery should be offset by value received by the borrowers from ITT education so as to preclude full recovery. Accordingly, it is appropriate for the Department to award eligible borrowers full relief.

CONCUR:


Office of the General Counsel


Date

⁹⁶ In the years leading up to its closure, the Department increased financial oversight over ITT and required it to increase its cash reserves to cover potential damages to taxpayers and students. The nature and scope of the Department's actions against ITT are contained within a series of letters from the Department to ITT dated: August 19, 2014, August 21, 2014, May 20, 2015, June 08, 2015, October 19, 2015, December 10, 2015, June 6, 2016, July 6, 2016, and August 25, 2016.

⁹⁷ See Letter from Roger Williams (Interim President, ACICS) to Kevin Modany (President and CEO, ITT) re: Continue Show-Cause Directive (Aug. 17, 2016).

⁹⁸ See, e.g. Mary Beth Marklein, Jodi Upton and Sandhya Kambhampati, "College Default Rates Higher Than Grad Rates," USA TODAY (July 2, 2013) (listing more than 50 ITT campuses as "red flag" schools because student loan default rates were higher than graduation rates); Kim Clark, "The 5 Colleges that Leave the Most Students Crippled by Debt" Time.com (Sept. 24, 2014) (ranking ITT second on the list of schools that leave the most students crippled by debt).

Exhibit 47

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Draft of May 14, 2015

I. Elements of the UCL applied to Heald Borrowers

A. The misrepresentation of placement rates identified in ED's Heald fine letter constitutes unfair competition under the Unfair Competition Law.

The UCL prohibits unfair competition, which it defines in a number of categories established by the UCL. A business practice need only fall under one of these categories to constitute unfair competition.¹

1. Heald's misrepresentation of placement rates violated federal law, specifically, 34 C.F.R. § 668, as determined by ED. The UCL defines unfair competition to include any "unlawful...business act or practice." The Legislature intended unfair competition "to include anything that can properly be called a business practice and that at the same time is forbidden by law."² If a business practice violates any law, this is *per se* a UCL violation.³ Therefore, Heald's misrepresentations constitute unlawful business practices and unfair competition under the UCL.
2. Heald's misrepresentation of placement rates also constitute fraudulent business practices under the UCL, another form of unfair competition. To show that a business practice is fraudulent, "it is necessary only to show that members of the public are likely to be deceived."⁴ The UCL does not require knowledge of misrepresentation (*scienter*) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.⁵ True statements are actionable under the UCL if they are presented in a manner likely to mislead or deceive consumers, including by the omission of relevant information.⁶

In the Heald fine letter, ED found as follows:

Heald's inaccurate or incomplete placement rate disclosures were misleading or false; [] they overstated the employment prospects of graduates of Heald's programs; and [] current and prospective graduates of Heald could reasonably have been expected to rely to their detriment upon the information in Heald's placement rate disclosures.

¹ *Cel-Tech Communications v. Los Angeles Cellular Telephone Co.*, 973 P.2d 527, 540 (Cal. 1999).

² *Bank of the West v. Superior Court*, 833 P.2d 545, 553 (Cal. 1992) (citations omitted).

³ See *Kasky v. Nike*, 45 P.3d 243, 249 (Cal. 2002); see also *People v. E.W.A.P. Inc.*, 165 Cal.Rptr. 73, 75 (Cal. Ct. App. 1980).

⁴ *Committee on Children's Television, Inc. v. General Foods Corp.*, 673 P.2d 660, 668 (Cal. 1983) 35 Cal.3d 197, 211 (Sup. Ct. 1983) superseded by statute, 2004 Cal. Legis. Serv. Prop. 64 on other grounds, as recognized in *Branick v. Downey*, 138 P.3d 214 (Cal. 2006). Note: The "likely to be deceived" standard does not establish a private plaintiff's standing.

⁵ CAL CIV. C. § 1709.

⁶ *Boschma v. Home Loan Center*, 129 Cal.Rpt.3d 874, 893 (Cal. Ct. App. 2011).

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Heald fine letter at 10. This finding places Heald's misrepresentations squarely within the UCL's definition of fraudulent business practices and thus within its definition of unfair competition.

3. Heald's misrepresentation of placement rates may also be unfair competition under two other prongs of 17200, "unfair, deceptive or untrue advertising" and "unfair...business act or practice." The advertising prong is considered to be very similar to the fraudulent business practice prong. *See Stern, Business and Professional Code § 172000 Practice at 3-70 (2015).*

Regarding unfair business practices, "[t]he state of the law...is somewhat unsettled."⁷ However, the trend appears to be in favor of using section 5 of the Federal Trade Commission Act ("FTCA") to define unfairness. To find unfairness under the FTCA: (1) The consumer injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided.⁸ ". . . [C]onsumers cannot have reasonably avoided the injury . . . if their free market decisions were unjustifiably hampered by the conduct of the seller."⁹ The placement rate misrepresentations at issue here easily could be described as meeting these standards.

B. Borrowers who relied on Heald's misrepresented placement rates in deciding to attend Heald programs suffered economic harm.

Section 17204 requires that an individual seeking relief under the UCL have "suffered injury in fact and [have] lost money or property as a result of" the unfair completion of which the person complains. In *Kwikset v. Superior Court*, the California Supreme Court set out numerous ways a consumer can show economic injury and meet these requirements. "A plaintiff may (1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he or she has a cognizable claim; or (4) be required to enter into a transaction, costing money or property, that would otherwise have been unnecessary."¹⁰

Regarding false labeling, the *Kwikset* court also stated,

A consumer who relies on a product label and challenges a misrepresentation contained therein can satisfy the standing requirement of section by alleging, as plaintiffs have here, that he or she would not have bought the product but for the misrepresentation. That assertion is sufficient to allege causation—the purchase would not have been made but for the misrepresentation. It is also sufficient to allege economic injury. From the original purchasing decision we know the consumer

⁷ *Davis v. Ford Motor Credit Co.*, 101 Cal.Rptr.3d 697, 706 (Cal. Ct. App. 2009).

⁸ *Id.* at 709.

⁹ *Camacho v. Automobile Club of Southern California*, 48 Cal.Rptr.3d 770, 777-78 (Cal. Ct. App. 2006).

¹⁰ *Kwikset Corp.*, 246 P.3d at 885-86.

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valued the product as labeled more than the money he or she parted with; from the complaint's allegations we know the consumer valued the money he or she parted with more than the product as it actually is; and from the combination we know that because of the misrepresentation the consumer (allegedly) was made to part with more money than he or she otherwise would have been willing to expend, *i.e.*, that the consumer paid more than he or she actually valued the product. That increment, the extra money paid, is economic injury and affords the consumer standing to sue.¹¹

Other cases have made clear that a consumer suffers economic harm when he or she makes a purchase in reliance on false representations and thereby is denied benefits or value promised by the seller. For example, a federal district court ruled in *Johnson v. Gen. Mills, Inc.* that a consumer satisfied the UCL's harm requirement based on his reliance on false statements about a food's health benefits. The court stated,

[The plaintiff] has UCL ... standing because he alleges that he bought YoPlus in reliance on General Mills' allegedly deceptive representations concerning the digestive health benefit of YoPlus as communicated by the second generation YoPlus packaging and a television commercial for YoPlus. He further asserts that he suffered economic injury because he purchased YoPlus but did not receive the promised digestive health benefit.¹²

In *Daghlian v. DeVry University, Inc.*, plaintiff student enrolled at the school and incurred debt "in reliance on defendants' misrepresentations and omissions about the transferability of credits."¹³ Plaintiff did not attempt to transfer the credits, and he did not allege that he had to restart his education at a different school.¹⁴ Plaintiff alleged "he did not receive what he bargained for."¹⁵ The court found the plaintiff suffered an injury in fact sufficient to bring a UCL cause of action.¹⁶

Here, students who were deceived by Heald's inflated placement rates can plausibly argue that they got far less than they bargained for, thus suffering an economic injury. Judging the quality and value of education is a notoriously difficult task. It would be reasonable for prospective students to look at placement rates (especially placement rates disclosed under legal requirements) as one significant benchmark of quality. For example, a student selecting a medical assistant training program might well have looked differently at Heald's offering had he known that the placement rate was 33% rather than the advertised 78%. *See* Heald Fine Letter of April 14, 2015 at 9-10. The prospective

¹¹ *Id.* at 329-30.

¹² 275 F.R.D. 282, 286 (C.D. Cal. 2011).

¹³ 461 F.Supp.2d 1121, 1156 (C.D. Cal. 2006).

¹⁴ *Id.*

¹⁵ *Id.* at 1155.

¹⁶ *Id.* at 1156. *See also Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013), *as amended on denial of reh'g and reh'g en banc* (July 8, 2013) (consumer alleged economic harm where he purchased merchandise advertised as having been marked down from a fictitious original price; "the bargain hunter's expectations about the product he just purchased is *precisely* that it has a higher perceived value and therefore has a higher resale value.")

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student might have determined the Heald program was not worth the offering price. (A factual note is relevant here: the tuition at Heald was significantly higher than at community colleges. Indeed, one argument we have heard is that some students have said that had they known the actual success rate of the Corinthian schools, they would have chosen community colleges.)

The reputational and credentialing purpose of education further supports the argument that an inflated placement rate was part of what a purchaser might have valued in selecting a Heald program. Besides the training one receives in one's education, part of the utility of a degree is what it represents to others. According to some, Heald has enjoyed a relatively good local reputation. It is over 100 years old and was regarded as the best asset among the Corinthian chains. That reputation is largely in tatters with the Department of Education's revelations about the school's inflated placement rates. Had students known the true placement rates in the Heald programs, they would have known that Heald's reputation was inflated beyond its reality, and they might have judged that the value of their credential was vulnerable to significant deflation if the truth were discovered. In this sense, too, then, students got far less than they bargained for, and this loss will be suffered every time one shows a resume that shows a Heald degree.

E. Statute of Limitations

In 2013, the California Supreme Court resolved a split regarding whether Section 17208's four-year statute of limitations was rigid, or whether the discovery rule and other equitable doctrines applied to UCL claims. In *Aryeh v. Canon Business Solutions*, the court held the discovery rule applied, and thus the statute of limitations only begins accruing "when a reasonable person would have discovered the factual basis for a claim."¹⁷ Because a reasonable person would not have known about Heald's placement rate violations until ED's Heald fine letter, published April 14, 2015, no claims based on those misrepresentations are now barred by the statute of limitations.

¹⁷ 55 Cal.4th 1185, 1195-96 (Cal. 2013).

Exhibit 48

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To: Under Secretary Ted Mitchell
From: Borrower Defense Unit
Date: October 20, 2016
Re: Recommendation for Borrower Defense Relief for Heald College Borrowers Alleging Transfer of Credit Claims

The Borrower Defense Unit proposes loan relief for students who enrolled in degree, certificate or Associate in Applied Science (“AAS”) programs at the California campuses of Heald College after the school was acquired by Corinthian Colleges, Inc. (“Corinthian”)¹, and who state that Heald misrepresented their ability to transfer to other schools after completing a degree at Heald. Heald made false and misleading representations to these students that they could generally transfer their credits, including to schools in the California State University (“CSU”) system. These students are eligible for relief under the borrower defense regulation, 34 C.F.R. § 685.206(c), because these misrepresentations constitute a valid consumer protection claim under California’s Unfair Competition Law (“UCL”). Moreover, full loan discharges, subject to the UCL’s four-year statute of limitations, are appropriate in this circumstance given the lack of value conferred by Heald credits and/or degrees. Such relief is consistent with the Department’s prior borrower defense relief to Corinthian borrowers.

I. Heald Represented That Heald Credits Were Transferable And Would Permit Students to Transfer to the CSU System To Earn A Bachelor’s Degree

Numerous borrowers report that Heald representatives told them that attending Heald would permit them to transfer into other schools, particularly in the CSU system, and that their Heald credits would be accepted by those schools. Moreover, documents collected by the California AG’s office and submitted in support of a default judgment against Heald corroborate these students’ general transferability claims.

A. Oral Representations of Transferability

In a recent review of 738 borrower defense (“BD”) claims submitted by former students of Heald’s California campuses, 49 students enrolled in degree, certificate or Associate in Applied Science (“AAS”) programs seek borrower defense relief based on oral representations about their ability to transfer their Heald credits to other schools, particularly schools in the CSU system.² In addition, in sworn witness statements obtained by the California Attorney General’s Office, seven former students of Heald allege that school staff made oral representations that credits earned at Heald would transfer to other colleges and universities.³ Heald borrowers seeking BD relief report that school representatives orally promised that they would be able to

¹ Further research needs to be conducted regarding the falsity of Heald’s representations to students at its two non-California campuses, in Honolulu, Hawaii and Portland, Oregon.

² Our review of Heald claims is ongoing and we anticipate reviewing additional BD applications making transferability allegations.

³ See Declaration of Nancy Quach, AGPA, in Support of Plaintiff’s Application for Entry of Default Judgment Against All Defendants, *California v. Heald et al.* (Mar. 14, 2016) (“Quach Decl.”), Ex. 105-11.

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transfer to other schools and use their Heald credits towards a degree at those schools. For example, borrowers state the following:

1. “When I first enrolled at Heald College in March of 2010, I explained to my representative that was assigned to me, that I wanted to go to Fresno State for my Bachelors Degree after graduating from Heald and while working...I was told by Elias Astuto my Heald Representative, that all of my credits would transfer to Fresno State...”⁴
2. “Also throughout my time at Heald I was told they are accredited (which I believe they were) and that if we wanted to continue our education at Fresno State (for example) our credits would transfer and we could continue our education. What they failed to tell us is that when you go to apply to Fresno State they do not accept any of your units as they are not accredited the same as Heald led you to believe. We had meetings with the head of Heald’s financial aid department and I remember a student asked ‘will my units transfer to Fresno State’ without hesitation he stated ‘Yes they will transfer.’”⁵
3. “They had told me I was going to be able to transfer to a university such as San Jose State.”⁶
4. “I was told I would be able to transfer to any 4 year college with my Heald credits.”⁷
5. “They lied saying I could take my credits anywhere if I decided to leave the school...They said I could transfer my credits anywhere which I found out later was a lie.”⁸
6. “I was also told when i was done i could transfer out to any university.”⁹
7. “they told me that all the classes i took from heald college will be transferred to other schools.”¹⁰
8. “I was also informed by my admissions advisor that all of my credits would be completely transferable, which I also later found to be false.”¹¹

⁴ Claim No. BD1614388.

⁵ Claim No. BD154156.

⁶ Claim No. BD152391.

⁷ Claim No. BD1604229.

⁸ Claim No. BD151373.

⁹ Claim No. BD156458.

¹⁰ Claim No. BD150682.

¹¹ Claim No. BD1619101.

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B. Corroborating Written Representations of Transferability

The Heald website and promotional materials corroborate and/or support students' reports of oral assurances that they would be able to transfer to other schools and use their Heald credits towards a degree at those schools.¹² Heald's marketing materials contain the following statements:

1. The Heald website advertised that, "Because Heald is regionally accredited, it has articulation agreements with other regionally accredited institutions that accept Heald credits toward bachelor's degree programs. This means that you can transfer your credits if you choose to pursue further education."¹³
2. The website also stated: "For those students who transfer coursework from Heald to apply to a higher degree, Heald has articulation agreements or documented transfer practices with several accredited institutions that accept Heald credits toward bachelor's degree programs."¹⁴ Moreover, the website listed the "California State University (CSU) system" and seven specific schools in the CSU system as schools with which Heald has articulation agreements and/or documented transfer practices.
3. On another page on the Heald website, the "California State University (CSU) system" and eight specific CSU campuses were described as "Partner Schools," along with the statement "For students who want to transfer coursework from Heald to apply to a higher degree, Heald has articulation agreements or documented transfer practices with several accredited institutions that accept Heald credits toward bachelor's degree programs."¹⁵
4. The Heald College "Viewbook" promised: "use your Heald credits towards a bachelor's degree" and "*Heald has articulation agreements or documented transfer guidance with a number of accredited institutions that accept Heald credits toward bachelor's degree programs. This allows students to transfer and apply coursework toward a higher degree.*"¹⁶ (emphasis added.) The Viewbook listed the CSU system and seven specific CSU schools as institutions that had articulation agreements or documented transfer guidance with Heald.

As discussed further below in Section III.C., limited disclaimers attendant to the claims on the website and in the Viewbook fail to cure the deceptive net impression of the transferability claims Heald representatives made to students.

¹² The Heald written representations described in this section are attached as Exhibit A to this memorandum. All red markings on the documents were made by the California AG.

¹³ Quach Decl. Ex. 90.

¹⁴ *Id.*

¹⁵ Quach Decl. Ex. 91-92.

¹⁶ Quach Decl. Ex. 94.

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II. Heald's Representations of Transferability Were False and Misleading

Heald's representations that credits earned at Heald were generally transferable to other schools and would allow Heald students to transfer into the CSU system to earn a bachelor's degree were false and misleading. Obtaining a Heald diploma, certificate or AAS degree did not permit students to transfer into the CSU system using Heald credits alone. These students would have insufficient credits to transfer as upper-division transfer students, and the CSU schools generally only accept upper-division transfer students. Therefore, as a practical matter, Heald credits were not transferable to the CSU system.

Significantly, in its answer to the California Attorney General's first amended complaint, Heald admitted that "students who complete Heald diploma, certificate, or AAS degree programs do not, without further coursework, appear to qualify for admission as upper division transfers to CSU."¹⁷ A review of Heald's Course Catalog and Transfer Guide confirms that the diploma and certificate programs did not provide the 90 quarter units that CSU schools require for upper-division transfers.¹⁸ The AAS degree programs required 100 quarter credits, but some of the courses within these programs were not considered "college level" by the CSU system, and therefore AAS degree program graduates also would not have the 90 quarter units required for an upper-division transfer. Even if individual Heald credits were technically transferable to a CSU school, Heald students could not actually transfer their credits because they could not enroll as an upper-division transfer using just their Heald credits.

The falsity of Heald's representations about transfer into the CSU system is particularly significant for several reasons. First, the CSU system is "California's primary undergraduate teaching institution" and the "greatest producer of bachelor's degrees"¹⁹ in the state, making it likely that students who sought to transfer credits from Heald's California campuses would seek to transfer those credits to the CSU system. Second, Heald's representations regarding transferability focused on the ease of transferring to the CSU system—its website and other marketing materials specifically discuss the process for transferring to the CSU system.

The California State University system's public statements confirm that, dating back to at least 2012, students typically cannot transfer to CSU as lower-division transfer students. The California State University System's CSUMentor website contains a page with information for transfer applicants. That page states:

*Most CSU campuses do not accept lower-division transfers, so be sure to check with the campus if you are considering transferring as a lower-division student.*²⁰

¹⁷ The School's Amended Verified Answer to First Amended Complaint for Civil Penalties, Permanent Injunction, and Other Equitable Relief at ¶ 86(b), 26, *California v. Heald et al.*, No. CGC-13-534793 (Ca. Super. Ct. Mar. 17, 2014).

¹⁸ "Heald College Transfer Guide," Student Guide to Transfer, 10/14/14 (Aug. 23, 2016), <http://www.cci.edu/multimedia/closure/Heald-Student-Guide-to-Transfer.pdf>; Heald College Academic Catalog, Effective July 2014.

¹⁹ "2016 Facts About the CSU," The California State University (Aug. 23, 2016), available at <http://www.calstate.edu/csufacts/2016Facts/>.

²⁰ "Transfer Applicant Overview and Definitions," CSU Mentor (May 31, 2016), <https://secure.csumentor.edu/planning/transfer/> (emphasis added).

The CSU Lower-Division Transfer Requirements website further states: “Please be aware that most CSU campuses do not admit lower-division transfer students.”²¹ In fact, twenty out of twenty-three individual CSU campuses report on their websites that they do not accept lower-division transfer students:

1. **Channel Islands:** On a site entitled “Transfer Admission Requirements,” the school states: “California State University Channel Islands (CI) accepts transfer applications for upper-division transfer students: students with more than 60 transferable semester units, or 90 transferable quarter units.”²² The website does not mention the admission of lower-division transfer students. The reasonable interpretation of this omission is that no lower-division transfer students are accepted.
2. **Chico:** The school’s “Eligibility Requirements” for transfer admissions website states: “Please Note: CSU, Chico is not accepting applications from lower-division transfer students (less than 60 units by the time of enrollment at CSU, Chico).”²³
3. **Dominguez Hills:** On a site entitled “Admissions Criteria for Transfer Students,” the school lists only requirements for upper-division transfer students, and does not mention lower-division transfer students.²⁴ The reasonable interpretation of this omission is that no lower-division transfer students are accepted.
4. **East Bay:** The school’s “Transfer Admission” page states “CSUEB only accepts applications from upper-division transfer students.”²⁵
5. **Fresno:** The school’s transfer website states “Fresno State does not accept lower division transfer students at this time.”²⁶
6. **Fullerton:** Fullerton’s “Transfer Undergraduate Students” website states that “CSU Fullerton does not accept lower division transfer applicants.”²⁷

²¹ “Lower Division Transfer Requirements,” CSU Mentor (May 31, 2016), https://secure.csumentor.edu/planning/transfer/lower_div.asp; see also Quach Decl. Ex. 95; and “Transfer Applicant Overview and Definitions,” CSU Mentor (Dec. 10, 2012), https://web.archive.org/web/20121610333100/http://www.csumentor.edu/planning/transfer/lower_div.asp.

²² “Transfer Admission Requirements,” CSU (May 31, 2016), <http://www.csuci.edu/admissions/transfer/ud-requirements.htm>.

²³ “Eligibility Requirements: Transfer Students,” California State University: Chico (May 31, 2016), <http://www.csuchico.edu/admissions/want-to-apply/transfer/eligibility.shtml>.

²⁴ “Admissions Criteria for Transfer Students,” California State University: Dominguez Hills (May 31, 2016), <http://www4.csudh.edu/admissions/transfer-students/admission-requirements/index>.

²⁵ “Transfer Student Admission,” California State University: East Bay (May 31, 2016),

<http://www.csueastbay.edu/prospective/how-to-apply/transfer-student-admission/>; see also Quach Decl. Ex. 98.

²⁶ “Student Affairs and Enrollment Management,” Fresno State (May 31, 2016),

<http://www.fresnostate.edu/studentaffairs/outreach/transfers/requirements.html>; see also Quach Decl. Ex. 99.

²⁷ “Upper Division Transfers,” California State University Fullerton (May 31, 2016),

<http://admissions.fullerton.edu/prospectivestudent/transferlocaladmissionarea.php>.

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7. **Humboldt:** The school's Admissions website for lower-division transfer students states "HSU is not currently accepting lower division transfer applications."²⁸
8. **Los Angeles:** The "Transfer Admission" page of the school's website states "Cal State LA is currently not accepting lower division transfer applicants."²⁹
9. **Monterey Bay:** The school's "Transfer Admissions" website states "Cal State Monterey Bay is currently not accepting lower division transfer students. You must meet the upper division requirements for admissions purposes."³⁰
10. **Northridge:** On a site entitled "Apply Lower-Division Transfer Student," the school states "NOTE: Due to increased enrollment demands, Cal State Northridge does not currently admit lower-division transfer applicants. No exceptions are anticipated at this time."³¹
11. **Pomona:** The Pomona transfer admissions website includes the following statement: "NOTE: We are currently not accepting applications from Lower-Division Transfers - applicants who have completed less than 60 semester transferable college units (90 quarter units)."³²
12. **Sacramento:** The "Transfer Admission" webpage on the Sacramento State website states: "CSU, Sacramento is not accepting applications from lower division transfers."³³
13. **San Bernardino:** In a section called "Lower-Division Transfer Students" on its Transfer FAQs, the school states "CSUSB is not able to accept applications from or admit lower division transfer students."³⁴
14. **San Diego:** San Diego State's Fall 2016 Admissions Criteria include the following: "SDSU accepts transfer applications only from upper-division transfer or readmission applicants who will have completed 60 or more transferable semester (or 90 or more quarter) units by the end of spring 2016. We do not

²⁸"Lower Division Transfer Requirements," Humboldt State University (May 31, 2016), <http://www2.humboldt.edu/admissions/apply/transfers/lowerdivision.html>.

²⁹"Transfer Admission," Cal State LA (May 31, 2016), <http://www.calstatela.edu/admissions/transfer-admission>.

³⁰"Transfer Requirements," CSU Monterey Bay (May 31, 2016), <https://csumb.edu/admissions/transfer-requirements>; *see also* Quach Decl. Ex. 100.

³¹"Apply Lower Division Transfer Student," CSU Northridge (May 31, 2016), <http://www.csun.edu/admissions-records/apply-lower-division-transfer-student>.

³²"Admission Requirements and Deadlines," CAL POLY POMONA (May 31, 2016), <https://www.cpp.edu/~admissions/undergraduate/transfer/before/requirements-deadlines.shtml>.

³³"Transfer Admission," Sacramento State (May 31, 2016), <http://catalog.csus.edu/10-12/first%20100%20pages/transferadmission.html>; *see also* Quach Decl. Ex. 101.

³⁴"Admissions and Student Recruitment," CSU San Bernardino (May 31, 2016), http://admissions.csusb.edu/transfer/h_transferstatus.shtml.

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accept transfer applications from lower-division students with fewer than 60 transferable semester units.”³⁵

15. **San Francisco:** On the transfer section of the school’s website, the school provides: “SF State is not currently accepting applications from lower division transfer students. Freshman and sophomore students who have completed fewer than 60 transferable semester units (90 quarter units) are considered lower-division transfer students.”³⁶
16. **San Jose:** On a page called “Lower division transfers (Freshmen/Sophomores),” the school notes that “SJSU no longer admits lower division transfers. A lower division transfer has completed 59 transferable semester units (89 quarter units) or fewer.”³⁷
17. **San Luis Obispo:** The school’s Transfer Students Admissions website states: “Cal Poly does NOT accept applications for these categories: ... Lower-division transfer applicants (less than 60 transferable semester units or 90 transferable quarter units upon transfer).”³⁸
18. **San Marcos:** Under the “Transfer” section of its website, the school states “California State University San Marcos accepts upper-division transfer student applications each year between October 1 and November 30 for admission to the following fall term.”³⁹ The website does not mention the admission of lower-division transfer students. The reasonable interpretation of this omission is that no lower-division transfer students are accepted.
19. **Sonoma:** Under “Fall 2016 Admissions” the school’s website states “Lower Division Transfer – CLOSED.” Under “Spring 2017 Admissions” the website states “Closed to lower-division applicants.”⁴⁰

³⁵ “Fall 2016 Transfer Admission Criteria,” San Diego State University (May 31, 2016), <http://arweb.sdsu.edu/es/admissions/transfers/index.html>.

³⁶ “How to Apply – Transfer,” San Francisco State University (May 31, 2016), <http://www.sfsu.edu/future/apply/transfer.html>.

³⁷ Quach Decl. Ex. 102; *see also* “Lower Division Transfers,” San Jose State University (May 31, 2016), <http://info.sjsu.edu/web-dbggen/narr/admission/rec-7327.10793.html>.

³⁸ “Transfer Students,” Cal Poly San Luis Obispo (May 31, 2016), <http://admissions.calpoly.edu/applicants/transfer/>.

³⁹ “Transfer Student,” California State University San Marcos (May 31, 2016), <https://www.csusm.edu/admissions/how-to-apply/transfer/index.html>. This campus appears to accept out-of-state and international lower-division transfers, but not in-state lower-division transfers. *See* “Out-of-State Students,” California State University San Marcos (May 31, 2016), <https://www.csusm.edu/admissions/how-to-apply/out-of-state/index.html>. Heald California students would be applying as California residents and therefore would not be able to obtain admission this way.

⁴⁰ “Filing Information, Dates, and Deadlines,” Sonoma State University (May 31, 2016), <http://www.sonoma.edu/admissions/filing.html>; *see also* Quach Decl. Ex. 104, “Office of Admissions: Admission Requirements for Transfers,” Sonoma State University (Jan. 28, 2014), <http://www.sonoma.edu/admissions/ts/requirements>.

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20. **Stanislaus:** The Stanislaus website states that “[w]e are closed to Lower-Division Transfers (transfers with fewer than 60 semester/90 quarter units)” for both the Fall 2016 and Spring 2016 semesters.⁴¹

The only CSU schools that do appear to accept lower-division transfer students are CSU Bakersfield⁴², the Maritime Academy, and CSU Long Beach. The Maritime Academy is a specialized school with a student body of less than 1,000 students offering six majors relating to the maritime industry.⁴³ CSU Long Beach only accepts lower-division transfers for a few majors.⁴⁴ CSU Bakersfield seems to be the only CSU institution that offers a standard undergraduate curriculum and accepts lower-division transfer students.

We also conducted a historical review of websites of seven CSU campuses identified by Heald as “partner schools” in the school’s marketing materials. None of our research into the historical transfer policies at CSU campuses, dating as far back as 2010, suggests the policies described above have changed.⁴⁵

In sum, it is nearly impossible for a student to transfer into the CSU system as a lower-division transfer student. Since no Heald degree, certificate or AAS graduate would have sufficient credits to qualify for transfer as an upper-division transfer student, representations that Heald graduates could transfer to the CSU system or specific CSU schools to “pursue further education” were false and misleading.⁴⁶

⁴¹ “Dates and Deadlines,” Stanislaus State (May 31, 2016), <https://www.csustan.edu/admissions/dates-deadlines>.

⁴² “Admission Requirements for Transfer Students,” CSU Bakersfield (May 31, 2016), http://www.csusb.edu/admissions/apply/transfer/admission_requirements/.

⁴³ “Academics,” California State University Maritime (May 31, 2016), <https://www.csum.edu/web/academics>.

⁴⁴ “Lower Division Transfer Requirements,” California State University Long Beach (May 31, 2016), http://web.csulb.edu/divisions/aa/catalog/current/admissions/ld_transfer_requirements.html.

⁴⁵ See “Eligibility Requirements, Transfer Students,” CSU Chico (Jan. 5, 2010), <https://web.archive.org/web/20110105090936/http://www.csuchico.edu/admissions/want-to-apply/transfer/eligibility.shtml> (“Please Note: CSU, Chico is not accepting applications from lower-division transfer students (less than 60 units by the time of enrollment at CSU, Chico).”); “Transfer Student Admission,” CSU East Bay (Apr. 9, 2010), <https://web.archive.org/web/20100409052353/http://www20.csueastbay.edu/prospective/how-to-apply/transfer-student-admission/> (“Cal State East Bay no longer accepts applications from lower-division transfers.”); “Transfer Requirements,” CSU Fresno (November 17, 2012), <https://web.archive.org/web/20121117011918/http://www.fresnostate.edu/studentaffairs/outreach/transfers/requirements.html> (“Fresno State does not accept lower division transfer students at this time.”); “Transfer Admission,” CSU Sacramento (Aug. 18, 2010), <https://web.archive.org/web/20100818083106/http://catalog.csus.edu/10-12/first%20100%20pages/transferadmission.html> (“CSU, Sacramento is not accepting applications from lower division transfers.”); “Lower division transfers (Frosh/Sophomore),” CSU San Jose (October 21, 2014), <https://web.archive.org/web/20141021203825/http://info.sjsu.edu/web-dbggen/narr/admission/rec-7327.10793.html> (“SJSU no longer admits lower division transfers.”); “Office of Admissions: Admission Requirements for Upper-Division Transfers,” CSU Sonoma (July 5, 2011), <https://web.archive.org/web/20110705071536/http://sonoma.edu/admissions/ts/requirements> (No process is described for lower division transfers); “Dates and Deadlines,” CSU Stanislaus (Mar 29, 2014), <https://web.archive.org/web/20140329215220/http://www.csustan.edu/admissions/dates-deadlines> (“We are closed to Lower-Division Transfers”).

⁴⁶ Heald’s statements may have been particularly misleading to students seeking to transfer into the CSU system, given recent changes in the law governing the transfer of credits into the CSU system. On September 29, 2010 the Student Transfer Agreement Reform Act (“STAR Act”) was signed into law, making it easier for students attending

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It should be noted that there is an articulation agreement between Heald and the CSU system, which provides that certain Heald coursework will be accepted by CSU to meet certain general education requirements.⁴⁷ Also, according to a higher education advisory publication listing the transfer credit practices of major public institutions, CSU Northridge did have a general policy of accepting Heald credits from certain Heald campuses.⁴⁸ The possibility that some Heald courses might be transferable into the CSU system, however, does not change the misleading nature of Heald's transferability representations, because students who enrolled in Heald's diploma, certificate and AAS programs would never have enough credits from Heald to qualify for transfer admission into the CSU system in the first place. The fact that some Heald credits might be transferable after a Heald student was accepted as a transfer into CSU is immaterial when the student could not transfer into CSU at all using Heald credits alone.

Heald California students also faced challenges trying to transfer to other institutions outside the CSU system. For example, in reviewed applications students report that they were unable to transfer all or a majority of their credits to the following institutions:

1. Modesto Junior College,⁴⁹
2. Contra Costa College,⁵⁰
3. University of California, Berkeley,⁵¹ and
4. Unnamed Nevada community college.⁵²

In fact, one student stated that Everest College – another school owned by Corinthian – would not accept Heald credits.⁵³ Other students reported that their credits were not transferable to the school they transferred to, but did not specify the institution.⁵⁴

California public community colleges to transfer into the CSU system as an upper division student. SB 1440 – Padilla. This program went into effect in the 2011-2012 academic year. Under that law, students who have earned a transfer associate degree at a public California community college are guaranteed junior standing and priority admission consideration over all other transfer students when applying to a CSU program that has been deemed similar to the student's community college program. Once admitted to CSU, the transfer associate degree student will only be required to complete 60 additional units to earn a bachelor's degree in the program. The misleading nature of Heald's statements about the ease of transferring to CSU may have been enhanced by the new law.

⁴⁷ See CSU General Education-Breadth Certification List for Heald College, last updated April 2010 *available at* <https://www.calstate.edu/APP/documents/GeneralEducation/Heald-GE-Breadth-certifications.pdf>. An articulation agreement, as defined by the Higher Education Act, is an "agreement between or among institutions of higher education that specifies the acceptability of courses in transfer toward meeting specific degree or program requirements." Section 486A of the Higher Education Act, 20 U.S.C. §1093a.

⁴⁸ See American Association of Collegiate Registrars and Admissions Officers, TRANSFER CREDIT PRACTICES OF DESIGNATED EDUCATIONAL INSTITUTIONS: AN INFORMATION EXCHANGE, 2012 and TRANSFER CREDIT PRACTICES OF DESIGNATED EDUCATIONAL INSTITUTIONS: AN INFORMATION EXCHANGE, 2015 (noting that Heald credits were transferable to CSU Northridge).

⁴⁹ Claim No. BD156389 (Heald Salida/Modesto student).

⁵⁰ Claim No. BD153784 (Heald San Francisco student).

⁵¹ Claim No. BD152473 (Heald Heyward student).

⁵² Claim No. BD150563 (Heald Stockton student).

⁵³ Claim No. BD154681 (Heald Concord student).

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In sum, the nearly-universal inability of Heald diploma, certificate and AAS students to transfer into the CSU system, combined with student-submitted evidence of credits not transferring to other schools, establishes that Heald's representations of general transferability were false and misleading.

III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for These Borrowers

Under the current borrower defense regulation, students must allege an "act or omission" of their school "that would give rise to a cause of action against the school under applicable State law" to be eligible for relief.⁵⁵ The applicable state law here is California's UCL, which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations. For the following reasons, the cohort of Heald students identified below applying for borrower defense relief predicated on Heald's transferability misrepresentations: 1) have standing under the California UCL; and 2) are eligible for relief under the "unlawful" and "fraudulent" prongs of the UCL. Moreover, given the lack of value conferred by Heald credits and/or degrees, these students should be granted full loan discharges and refunds of amounts already paid as applicable, subject to the UCL's four-year statute of limitations.⁵⁶ Such relief is consistent with the Department's award of full borrower defense relief to Corinthian students to date.

A. Heald Students Have Standing Under California's UCL

Students attending Heald programs in California demonstrate standing under the UCL by alleging that they relied on misrepresentations made by Heald regarding the transferability of Heald course credits. Any person "who has suffered injury in fact and has lost money or property as a result of the unfair competition" has standing to bring a claim under the UCL.⁵⁷ California courts have interpreted the UCL to apply only to violations occurring inside the state.⁵⁸ Significantly, however, injured non-residents have standing to assert UCL claims for such conduct provided they allege that the conduct occurred in the state.⁵⁹ Here, all the students attended Heald's California campuses, and the misrepresentations at issue were made by Heald employees of campuses located in California. Thus, whether or not the students resided in California when they submitted their BD claim or at the time they enrolled, they have standing to bring a California UCL claim.

⁵⁴ Claim No. BD151150 (Heald Milipitas student); Claim No. BD153655 (Heald Milipitas student); Claim No. BD156458 (Heald Salinas student); Claim No. BD152391 (Heald Salinas student); Claim No. BD157356 (Heald Hayward student); Claim No. BD152589 (Heald Stockton).

⁵⁵ 34 C.F.R. § 685.206(c).

⁵⁶ CAL. BUS. & PROF. CODE §17208.

⁵⁷ CAL. BUS. & PROF. CODE §17204.

⁵⁸ *Norwest Mortgage, Inc. v. Superior Court*, 72 Cal.App.4th 214, 222 (1999).

⁵⁹ *Id.*

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B. Heald Students Alleging Transfer of Credits Misrepresentations Are Eligible for Relief Under the “Unlawful” and “Fraudulent” Prongs of the UCL

California’s UCL prohibits, and provides civil remedies for, unfair competition, which it broadly defines to include “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law].”⁶⁰ Here, Heald’s misrepresentations regarding the transfer of credits constitute “unlawful” and “fraudulent” business practices under the UCL.⁶¹

1. The Unlawful Prong

The UCL bars “anything that can properly be called a business practice and that at the same time is forbidden by law.”⁶² Thus, if a business practice violates any law, this is *per se* a UCL violation.⁶³

Corporate misrepresentations like those Heald made regarding transferability are prohibited by a number of state and federal laws. In particular, Heald’s misrepresentation of the transferability of its credits violates the prohibition against deceptive advertising in the Federal Trade Commission Act (“FTC Act”).⁶⁴ Determining whether an advertisement violates the FTC Act involves a three-step inquiry considering: “(i) what claims are conveyed in the ad, (ii) whether those claims are false, misleading, or unsubstantiated, and (iii) whether the claims are material to prospective purchasers.”⁶⁵

As described above, Heald made oral and written representations that its credits were generally transferable to other schools and would allow Heald students to transfer into the CSU system to earn a bachelor’s degree. These statements were false and misleading. Heald’s

⁶⁰ *Id.*; *Kwikset Corp. v. Superior Court*, 51 Cal. App. 4th 310, 320 (2011); *see also Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999).

⁶¹ Although not discussed here, Heald’s transferability misrepresentations may also be unfair competition under two other prongs of Section 17200: “unfair, deceptive or untrue advertising” and “unfair...business act or practice.” Courts typically fail to distinguish the false advertising prong from the fraudulent business practices prong; this memorandum focuses on the fraudulent business practices prong. *See Stern, Business and Professional Code § 172000 Practice at 3:212* (2016).

⁶² *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1266 (1992) (citations omitted).

⁶³ *See Kasky v. Nike*, 27 Cal. 4th 939, 950 (2002); *see also People v. E.W.A.P. Inc.*, 106 Cal. App. 3d 315, 317 (Ct. App. 1980); *Sw. Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 808 (N.D. Cal. 1989) (finding that a plaintiff had standing to sue under the UCL based in part on alleged violations of federal environmental regulations).

⁶⁴ *See* FTC Act § 5(a)(1), 15 U.S.C. § 45(a)(1); FTC Act § 12(a), 15 U.S.C. § 52(a). While the FTC Act does not provide a private right of action, California courts have consistently recognized that a valid UCL claim under the “unlawful” prong does not require that the underlying law provide such a right. Thus, for example, the California Supreme Court has permitted plaintiffs to bring actions under the California Penal Code that do not allow for private lawsuits. *See Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 950 P.2d 1086, 1091 (Cal. 1998) (“whether a private right of action should be implied under [the predicate] statute ... is immaterial since any unlawful business practice ... may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200”) (citing cases); *see also Rose v. Bank of Am., N.A.*, 304 P.3d 181, 186 (Cal. 2013) (“It is settled that a UCL action is not precluded merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the [UCL], another provision must actually bar the action or clearly permit the conduct.”).

⁶⁵ *POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478, 490 (D.C. Cir. 2015), *cert. denied*, 136 S. Ct. 1839 (2016) (citing cases).

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transfer of credits representations misled students about the value of the credits they would be earning at Heald. Based on the school's misrepresentations, individuals considering enrolling at Heald would have the false belief that Heald credits would not only allow them to obtain a Heald degree, but would also give them a direct entrée into the CSU system as a transfer student, where they would be able to complete a bachelor's degree using their Heald credits. This was in nearly all cases impossible.

A false or misleading misrepresentation violates the FTC Act if it is material. To be material, "a claim does not have to be the *only* factor or the *most* important factor likely to affect a consumer's purchase decision, it simply has to be an important factor;" furthermore, express claims are presumptively material.⁶⁶ Heald's transferability representations meet the FTC Act's materiality threshold, because borrowers relied on the promise of transferable credits when making their enrollment decision. In attestations submitted to the Department,⁶⁷ these borrowers have noted the importance of Heald's transferability claim. Furthermore, their reliance on such claims is reasonable given the importance of transferability to students, as evidenced by the plight of many Heald students after the institution closed. Moreover, Heald's express assurances in its marketing and other materials that Heald credits transferred to other schools make such statements presumptively material, and demonstrate that Heald recognized how important the issue was for its students. Thus, Heald's transferability misrepresentations constitute unlawful business practices under the FTC Act, and therefore the UCL.

2. The Fraudulent Prong

Heald's misrepresentations regarding the transferability of its credits also are a fraudulent business practice under the UCL, and are therefore another form of unfair competition providing an independent basis for borrower defense relief for Heald students. To show that a business practice is fraudulent, "it is necessary only to show that members of the public are likely to be deceived."⁶⁸ The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.⁶⁹ Even true statements are actionable under the UCL if they are presented in a manner likely to mislead or deceive consumers, including by the omission of relevant information.⁷⁰ As noted, the transferability representations that Heald made to students were false and likely to deceive, for the reasons discussed above and in Section II.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and... lost money or property" as a result of the deceptive practice alleged.⁷¹ However, for a consumer who was deceived into purchasing a product—or a student who was

⁶⁶ *Novartis Corp.*, 127 F.T.C. 580 at 686, 695 (1999); see also *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) ("Express claims ... are presumed to be material.").

⁶⁷ Although the large majority of these applications submitted statements signed under penalty of perjury, some applicants submitted their materials prior to the publication of Department's form and therefore made unsigned statements.

⁶⁸ See *Bank of the West*, 2 Cal. 4th at 1254.

⁶⁹ CAL CIV. C. § 1709.

⁷⁰ *Boschma v. Home Loan Center*, 198 Cal. App. 4th 230, 253 (2011).

⁷¹ *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1480 n. 13 (2005).

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deceived into enrolling at a school⁷²—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions of the entity.⁷³ Reliance on the misrepresentation does not have to be “the sole or even the predominant or decisive factor influencing”⁷⁴ the individual’s decision. Rather, “[it] is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision.”⁷⁵

As discussed above, the evidence shows that students relied on Heald’s transferability representations when they enrolled. Moreover, Heald widely advertised the transferability of its credits online and in other marketing materials, thereby recognizing its materiality to a prospective student’s enrollment. Indeed, express claims like those made by Heald about the transferability of credits are presumptively material.⁷⁶ Under the UCL, a showing of materiality gives rise to “a presumption, or at least an inference, of reliance.”⁷⁷ Here, statements by borrowers support the presumption that promises of transferable credits were a substantial factor in their decision to enroll.

C. Weak Disclaimers In Some of Heald’s Written Materials Do Not Cure Its False and Misleading Transferability Representations

Heald’s representations regarding its students’ ability to transfer were false and misleading, despite the school’s limited disclaimers in some written materials as follows:

1. At the bottom of the Heald webpages containing representations regarding transferability is the following disclaimer: “It is always up to the receiving institution to make the final determination regarding acceptance of transfer credits and class standing.”⁷⁸
2. Similarly, after misleading statements about transferability, the Heald Viewbook contains the following statement: “Acceptance standards vary by program and institution. Transfer of credits from Heald to another college is determined by the receiving school.”⁷⁹
3. In its answer to the California AG’s complaint, Heald argued that a disclosure form signed by incoming students titled “Notice Concerning Transferability of Units and Degrees Earned at Our School,” gave notice to students that credits

⁷² See *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 316 (Cal. 2011).

⁷³ See, e.g., *Daghlian v. DeVry University, Inc.*, 461 F.Supp.2d 1121, 1156 (C.D. Cal. 2006) (“Although Daghlian does not allege that he attempted to transfer the credits to another educational institution, or that he was forced to begin his education anew at another institution, he does assert that he enrolled at DeVry and incurred \$40,000 in debt ‘[i]n reliance on’ defendants’ misrepresentations and omissions about the transferability of credits. This sufficiently alleges that Daghlian personally suffered injury as a result of defendants’ allegedly false and/or misleading advertising and unfair business practices.”).

⁷⁴ *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).

⁷⁵ *Id.* (internal quotation marks omitted).

⁷⁶ See, e.g., *Telebrands Corp.*, 140 F.T.C. 278, 292 (2005); *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013).

⁷⁷ *In re Tobacco II Cases*, 46 Cal. 4th at 298.

⁷⁸ Quach Decl. Ex. 90-92.

⁷⁹ Quach Decl. Ex. 93.

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might not transfer to other schools. Allegedly, the disclosure states: “As with any accredited school, the transferability of credits to another institution is determined exclusively by each receiving institution. Units I earn in my programs, in most cases, will not be transferable to any other college or university.... I acknowledge that it has not been guaranteed or implied by any employee of the School that my credits, diploma or degree will be transferable to another institution.”⁸⁰ However, this document was not attached to the answer and we have been unable to locate it to date.⁸¹

These disclaimers do not cure the falsity of Heald’s oral promises regarding transferability. First, courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations. *See, e.g., FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); *see also Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype’s representation that a calling plan was “unlimited” was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers). The California Supreme Court has also held that misleading statements enticing consumers to enter into a contract may be a basis for a UCL claim, even though accurate terms may be provided to the consumer before entering into the contract. *Chern v. Bank of Am.*, 15 Cal. 3d 866, 876 (Cal. 1976) (“the fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant’s practice of quoting a lower rate in its initial dealings with potential customers. The original, lower rate may unfairly entice persons to commence loan negotiations with defendant in the expectation of obtaining that rate.”).

Indeed, the disclaimers described above are not even sufficient to cure the otherwise false and misleading statements made by Heald regarding transferability in the written marketing materials. An advertisement “may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.”⁸² The written marketing materials, when reviewed as a whole, still clearly convey that enrolling at Heald would allow a student to directly transfer from Heald to a CSU school in order to complete a bachelor’s degree program, which, as explained above, is generally false and misleading. The materials’ prominent references to CSU and other institutions as “Partner Schools” create the impression that a student would be able to transfer easily to Heald’s “partner school,” CSU. A disclaimer at the bottom of the webpage that the receiving institution would ultimately decide which specific credits transfer does not diminish the expectation that students could transfer to CSU, which they generally could not do.

Moreover, here, Heald’s disclaimers were particularly ineffective when considered in the context of Corinthian’s unsophisticated student population and high-pressure admissions practices. Corinthian documents show that the school sought to enroll vulnerable people who

⁸⁰ The School’s Amended Verified Answer to First Amended Complaint for Civil Penalties, *supra* note 20 at 87.

⁸¹ Heald did not allege in its answer in the California litigation that there were any disclaimers its course catalog that cured any misrepresentations about transferability. A 2014 edition of a Heald course catalog contains similar language to the written disclaimers described above, but there is no reason to think that any student would have reviewed the course catalog prior to enrollment, given what students report about the enrollment process.

⁸² *F.T.C. v. Cyberspace.Com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006) (collecting cases).

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had “low self-esteem,” were “stuck, unable to see and plan well for the future” and “isolated,” had “few people in their lives who care about them,” and were “impatient, want quick solutions.”⁸³ Corinthian’s CEO, in a letter to Federal Student Aid, wrote that the school enrolled “a predominantly high risk student body that is underserved by traditional higher education institutions. Many of our campuses are located in or near difficult inner-city areas and provide access to students who have not previously achieved educational success.”⁸⁴ Corinthian advertised on daytime TV,⁸⁵ targeting the un- or under-employed. In some instances,, Corinthian personnel actively recruited homeless individuals as students, despite the additional challenges they would face in completing their studies, even offering monetary incentives to take campus tours.⁸⁶

Furthermore, regardless of the precise language in any documents provided at the time of enrollment, the nature of the enrollment process made it unlikely that students ever read them. Students repeatedly reported being pressured by school sales representatives to enroll immediately, including being rushed through the enrollment process and not being provided an opportunity to read and review the enrollment agreement.⁸⁷

D. Eligible Borrowers

Based on the above analysis, the following Heald students alleging transfer of credits claims should be eligible for relief, subject to the UCL’s four-year statute of limitations:

1. Any claimant who attended a Heald California campus and who:
 - a. enrolled in any diploma, certificate, or AAS degree program (i.e., programs for which fewer than 90 quarter units were transferable to CSU schools) on or after January 4, 2010⁸⁸, and

⁸³ CA AG Quach Decl. Ex 113.

⁸⁴ Letter from Jack D. Massimino, CEO, Corinthian, to James W. Runcie, Chief Operating Officer, U.S. Office of Federal Student Aid (Nov. 12, 2014).

⁸⁵ CA AG Quach Decl. Ex 113.

⁸⁶ CA AG Decl. of Holly Harsh.

⁸⁷ See, e.g., BD Claim No. BD152166 (“I told [the admissions representative] I wasn't comfortable . . . and didn't understand the process and why I was signing for a loan if I was covered. I asked for more time to think. She continued to pressure and reassure me my financial aid was fully covered, how Heald guarantees student job placement and how the drop out ratings at Heald was lower than other schools in Honolulu. I felt pressured but trusted and enrolled in Heald College anyway.”); Affidavit of D’Anne Coffie MA Ex. 08 at AGO-MA01891 (“After meeting with an Everest representative in October 2011, I wished to discuss my options with family but I felt pressure to enroll on the spot. I wanted a career in the medical field and the representative told me to act now since I was already there. They rushed the whole enrollment process.”); Affidavit of Courtney Petrie, MA Ex. 08 at AGO-MA01914 (“The tour of the school felt very rushed, as if the school did not want to give the people on the tour time to make a decision.”); Affidavit of Matisha Chao MA Ex. 08 at AGO-MA01887 (“They were like used car salesmen. They made sure I signed up before I walked out the door during my first visit, even though I only went there for a tour.”).

⁸⁸ Because Corinthian purchased all of the Heald campuses on January 4, 2010 (through its purchase of Heald Capital, LLC), for the purposes of granting any potential relief to students, we can reasonably assume that these practices occurred from that point going forward. The transaction was signed on October 19, 2009. However, in its answer to the California AG’s first amended complaint, Heald’s acknowledgment that the diploma, certificate and AAS degree programs were not transferrable to CSU schools was not time-limited. There is also evidence that Heald College made representations regarding the transferability of its credits to the CSU schools as far back as

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- b. states the school misrepresented that credits were generally transferable, or that credits would be transferable to the CSU system or one of the 23 CSU campuses.

IV. Full BD Relief Should Be Provided to Eligible Borrowers

When determining the amount of relief due to plaintiffs under the UCL, courts rely on cases interpreting the Federal Trade Commission Act. *See, e.g., Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015). In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers. *See, e.g., FTC v. Stefanichik*, 559 F.3d 924, 931 (9th Cir. 2009) (determining that restitution should include “the full amount lost by consumers rather than limiting damages to a defendant’s profits”); *FTC v. Figgie International*, 994 F.2d 595, 606 (9th Cir. 1993) (“The injury to consumers... is the amount consumers spent... that would not have been spent absent [the] dishonest practices.”); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991) (“restoration of the victims of [defendant’s] con game to the status quo ante” by use of defendant’s gross receipts is proper for restitution); *FTC v. Ivy Capital, Inc.*, No. 2:11-CV-283 JCM (GWF), 2013 WL 1224613 at *17 (D. Nev. 2013) (ordering full monetary relief for consumers harmed by misleading marketing regarding a business coaching program).

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the *Figgie* and *Ivy Capital* approach and found that a restitution model that aims to “restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief. *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015) (internal quotations removed).

However, nothing in the borrower defense statute or regulation requires the Department to apply state law remedies when reviewing a borrower’s claim. The only statutory limit on the Secretary’s ability to grant relief is that no student may recover in excess of the amount the borrower has repaid on the loan.⁸⁹

Indeed, under the current regulation, while a claimant must allege an act or omission that would “give rise to a cause of action” under “applicable state law” in order to be eligible for BD relief, the rule does not direct the Department to award relief to a claimant based on state law principles of restitution or damages. Instead, the borrower defense regulation clearly provides that the Secretary has discretion to fashion relief as suited to the facts of a particular case:

If the borrower’s defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and

January 2006. *See* http://www.heald.edu/programs/partner_colleges.htm (“For those students who want to transfer coursework from Heald to apply to a higher degree, Heald has articulation agreements with many other accredited institutions that accept Heald credits toward bachelor’s degree programs. Below is a sampling of those schools: ... California State University (CSU) system”) (accessed January 2, 2006 via the Wayback Machine). Therefore, after further research and review, there may be a basis on which to provide relief to a larger cohort of students alleging a misrepresentation regarding transferability of credits.

⁸⁹ Section 455 of Title IV of the Higher Education Act, 20 U.S.C. § 1087e(h).

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associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief *as the Secretary determines is appropriate under the circumstances* [including reimbursement to the borrower of amounts paid towards the loan].⁹⁰

Moreover, the Supreme Court has recognized that, when an agency is fashioning “discretionary relief,” such decisions “frequently rest upon a complex and hard-to-review mix of considerations,” and therefore, “for the sake of uniformity, it is usually better to minimize the opportunity for reviewing courts to substitute their discretion for that of the agency.” *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 621 (1966).

The D.C. Circuit has also consistently recognized the “long-standing principle” that federal agencies must be afforded particularly wide latitude in fashioning remedies consistent with the statutes they are charged with administering. An agency’s discretion is, “if anything, at zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of ... remedies.” *Fallbrook Hosp. Corp. v. N.L.R.B.*, 785 F.3d 729, 735 (D.C. Cir. 2015) (internal quotations and citations removed) (rejecting a challenge to the National Labor Relations Board’s decision to require a hospital to pay for a nurse’s unions full costs for negotiating a labor agreement); *see also U.S. Postal Serv. v. Postal Regulatory Comm’n*, 747 F.3d 906, 910 (D.C. Cir. 2014) (approving a remedy order by the Postal Regulatory Commission requiring the U.S. Postal Service to reduce its rates for certain mailers); *Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, 1216 (D.C. Cir. 2009) (“When FERC is fashioning remedies, we are particularly deferential.”); *Am. Tel. & Tel. Co. v. FCC*, 454 F.3d 329, 334 (D.C. Cir. 2006) (approving the FCC’s decision to apply an administrative order retroactively). Thus, while California and FTC Act case law is instructive as to the quantum of relief to be provided, the Department is not constrained by that authority.

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value attendant to their Heald education. *See Makaeff*, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery). First, if a student cannot transfer credits without great difficulty, a chief value conferred by such credits is greatly diminished. Likewise, there is diminished value in a degree conferred by an institution that issues credits generally not worthy of transfer towards admission.

Second, and perhaps more importantly, the Department has found that Heald and its parent company Corinthian repeatedly misled students, regulators and accreditors regarding its ability to place students in jobs, systematically inflated its job placement rates, misrepresented job placement rates to a programmatic accreditor, and even engaged in an elaborate job placement fraud to maintain its accreditation.⁹¹ Given this well-documented, pervasive, and

⁹⁰ 34 C.F.R. § 685.206(c)(2).

⁹¹ *See* Letter from Robin S. Minor, Acting Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Apr. 14, 2014); *see also* Letter from Mary E. Gust, Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Aug. 22, 2014) (finding that “Everest Institute submitted false placement data to ACCSC to maintain the accreditation of Everest Decatur” and that the school’s job placement rates were based on “CCI-designed programs through which Everest Decatur paid employers to hire its graduates” for short time periods in order to inflate placement rates).

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highly publicized misconduct at Corinthian, the value of a Heald education has been severely limited.

Indeed, borrower defense applications confirm the lack of value of a Heald education as many Heald students report that their coursework from Heald has been an impediment rather than an asset as they seek employment. For example, a Heald student reported that “After graduation, I was not able to get any jobs whatsoever with my degree and in many interviews, the employer questioned the validity of my degree with a Heald institution.”⁹² Another reports: “there is a stigma that follows [Heald]. I feel that when employers see where my degree comes from it will be seen as a joke because it came from a school that committed fraud and lied to their students.”⁹³ Yet another student states “The word ‘Heald’ in my resume actually made employers turn down my [job application].”⁹⁴

Finally, awarding full relief to students who make transferability claims is consistent with the Department’s approach to providing relief to Corinthian students seeking BD relief on the basis of false job placement rates. Indeed, the Department granted full relief to students who alleged that they relied on Corinthian job placement rate representations, without offsetting the relief based on any value that students may have received by attending Corinthian. Given the Department’s approach to date, it would be inequitable to limit the relief of students who allege transferability claims while providing full relief to those students who qualify for job placement rate relief.

In sum, in these circumstances, and consistent with the Department’s prior actions related to Corinthian, it is appropriate to award eligible borrowers full relief, subject to the UCL’s four-year statute of limitations.

⁹² Claim No. BD154195.

⁹³ Claim No. BD151006.

⁹⁴ Claim No. BD150260.

Exhibit 49

To: Under Secretary Ted Mitchell
From: Borrower Defense Unit
Date: January 9, 2017
Re: Recommendation for Corinthian Borrowers Alleging That They Were Guaranteed Employment

Corinthian Colleges, Inc. (“Corinthian”) consistently represented that all graduates obtained jobs after graduation or, relatedly, that its students were guaranteed employment after graduation. These representations were false and misleading. Accordingly, the Borrower Defense Unit recommends full relief for Corinthian borrower defense (BD) applicants who submit “guaranteed employment allegations” – that is, borrowers who (1) enrolled at any Corinthian-operated Heald, Everest, or WyoTech campus between the time Corinthian opened or acquired the campus and April 2015; and (2) alleged that they were promised, guaranteed, or otherwise assured that they would receive a job upon graduation, or that all graduates obtain employment (implicitly including themselves).

I. Summary of Corinthian’s Representations to Borrowers Promising Employment

In BD applications, borrowers who attended Heald, Everest, and WyoTech consistently allege, each in their own words, that Corinthian staff orally promised, guaranteed, or otherwise assured them that they would be placed in jobs. These oral representations sometimes took the form of a guarantee regarding the individual student and sometimes took the form of a guarantee of universal employment for graduates. In both cases, the obvious impression to students would have been that 1) the value of the education would be substantial; and 2) they would get jobs upon graduation.

These representations occurred both in person and during telephone calls with prospective students. Borrowers’ allegations of “guaranteed employment” are unprompted,¹ specific, and consistent across a span of years. Indeed, the Department has received consistent guaranteed employment claims from borrowers at every campus sampled, including borrowers who enrolled between 1998 and 2013, demonstrating that personnel made consistent guaranteed employment representations throughout the entire time that Corinthian operated its schools. Taken together, based on an evaluation of the credibility of those statements, as well as Corinthian’s record of making misrepresentations to prospective students,² a preponderance of the evidence demonstrates that Corinthian promised borrowers that they would receive jobs upon graduation.

A. Guaranteed Employment Representations at Heald College

At Heald, of the 1015 claims sampled, 141 (13.9% of the total) include allegations of guaranteed employment.³ The high incidence of guaranteed employment allegations was evident at all Heald campuses. At Heald Modesto, for example, of 61 BD claims sampled, 9 allege guaranteed employment (14.8% of the

¹ All of the above student statements came from a variety of different types of applications including the Heald, Everest, and WyoTech attestation forms ED created for job placement rate claims, various versions of the Debt Collective forms, and narratives in Word documents or the bodies of emails. The majority of these allegations are unprompted—some versions of the Debt Collective form ask about “false and misleading conduct relating to job prospects,” but ED’s attestation form only instructs borrowers to provide “any other information...that you think is relevant.”

² See discussion below, Section II, describing Corinthian’s misrepresentations regarding job placement rates.

³ This count excludes allegations that may pertain to guaranteed jobs but that were not sufficiently clear or specific to qualify for relief. For example, allegations that Corinthian’s career services offices did not assist the borrower in finding a job were not interpreted as guaranteed employment allegations.

total).⁴ A sample of claims from Modesto borrowers demonstrates the consistency and specificity of guaranteed employment representations made by school representatives:

- “Heald college recruiters stated, ‘I was guaranteed’ to obtain a job after graduation.”⁵
- “I was told that when I finished my program I would automatically have job placement and never received that placement.”⁶
- “Heald promised me a job placement in the field. To this day, I haven’t been able to find a job in my field, or a good paying job.”⁷
- “I was given the false pretense that I could obtain a career in law enforcement with an Associate’s degree and was guaranteed job placement.”⁸

Guaranteed employment allegations appeared with similar pervasiveness and consistency at all of the other 11 Heald campuses. A sample of these claims, detailed below, demonstrates the high incidence of guaranteed employment misrepresentations at the school.

- Heald Concord: “During my experience, they promised me jobs after graduation . . . I still have the same jobs after graduation and Heald did nothing to help me . . . Heald College promised that they will find job for me upon graduation.”⁹
- Heald Honolulu: “Upon admission, my admission’s advisor, Roy Honjo, informed that an associate’s degree in applied science in Health Information Technology (HIT) would provide me many job opportunities . . . He insisted I would find a job that would suit me and would be a smart decision to pursue.”¹⁰
- Heald Roseville: “When I first looked into Heald College and spoke with the Academic Advisor, I was promised a job position within six months. It is now 2015 and I have yet to have ever worked in a medical office. The degree has done nothing for me.”¹¹
- Heald Salinas: “When I first enrolled, they said I had a job at the end of my education.”¹²
- Heald San Jose: “They stated on many occasions that after I graduate and complete the program that I would be placed in job where I would be able to pay off my student loans easily... They guaranteed job placement and never delivered.”¹³
- Heald San Francisco: “Heald College’s promises of guaranteed job placement after graduation sold me on becoming a student.”¹⁴

⁴ The Modesto campus was selected because relatively few Modesto borrowers qualified for relief based on ED’s findings regarding job placement rates. Modesto was a relatively new campus, and therefore had calculated placement rates for fewer years in the period surveyed.

⁵ BDI55524.

⁶ BDI55784.

⁷ BDI55698.

⁸ BDI54018.

⁹ BDI51426.

¹⁰ BDI600328.

¹¹ BDI57436.

¹² BDI51163.

¹³ BDI53799.

¹⁴ BDI53784.

Heald Claims			
Campus	Applications reviewed	Applications alleging guaranteed employment representation	%
Heald Modesto	61	9	14.8%
Heald San Jose	151	29	19.2%
Heald Rancho Cordova	40	5	12.5%
Heald Roseville	56	9	16.1%
Heald Hayward	138	18	13.0%
Heald Stockton	125	11	8.8%
Heald Concord	150	22	14.7%
Heald Fresno	103	11	10.7%
Heald Honolulu	63	10	15.9%
Heald Portland	24	3	12.5%
Heald Salinas	43	4	9.3%
Heald San Francisco	61	10	16.4%
TOTAL	1015	141	13.9%

B. Guaranteed Employment Representations at Everest and WyoTech

The high incidence of guaranteed employment allegations at Heald was evident at Everest and WyoTech, as well. At Everest, 231 out of 1277 BD claims sampled, or 18.1%, made guaranteed employment allegations. At Everest Brandon, for example, 45 of 305 claims sampled, or 14.8% of the total, alleged guaranteed employment. A sample of claims from Everest Brandon borrowers follows:

- “They told me that every student that graduated the program was placed.”¹⁵
- “I was told that I would be able to attain a job in my field with no problem. I have applied to multiple agencies and was told I was not qualified.”¹⁶
- “I was told I would find a job in my field . . . I ‘graduated’ and still can’t find a job that will honor my degree.”¹⁷
- “I was told that I would be placed into a career field of my studies, but I was not.”¹⁸

The Department sampled claims at 22 Everest campuses¹⁹ across ten separate states (AZ, FL, MI, MA, TX, VA, CO, WI, NY, CA). Just like the Everest Brandon campus discussed above, the guaranteed employment allegations were common at all of these campuses and were distributed roughly evenly throughout the period those campuses were owned and controlled by Corinthian. Most importantly, the review of these claims across campuses and years demonstrates that students made substantially similar guaranteed employment allegations – whether the student enrolled at Brandon in 1998 or Rochester in 2008.

¹⁵ BD151311.

¹⁶ BD150332

¹⁷ BD1612793.

¹⁸ BD1614055.

¹⁹ The oldest Everest campuses were opened in California in 1995. Others opened anywhere between 1996 and 2012. The 22 campuses contained in the chart opened or came under Corinthian control between 1996 and 2004.

Similarly, at WyoTech, 64 out of 455 BD claims sampled, or 14.1%, alleged guaranteed employment. At WyoTech Laramie, for example, 8 of 31 claims, or 25.8% of the total, alleged guaranteed employment. A sample of claims from WyoTech Laramie borrowers follows:

- “They promised me a high paying career and said they would find it for me after graduation. They stated that all of the students who pass the program . . . will have jobs waiting for them.”²⁰
- “The education was sold as a way to guarantee future employment, with access to a nationwide network of job placement experts.”²¹
- “The school was promising a career in the field after schooling.”²²
- “[They] would say that just by speaking the name Wyotech you so get hired and make over 100K a year. They said it would be automatic hiring and that the industry knows the Wyotech name.”²³
- “We were recruited hard and we were promised [that] [name redacted] . . . would have his choice of many fine, well-paying positions once he completed his studies.”²⁴

The tables below summarize the number of guaranteed employment allegations at Everest and WyoTech for all of the sampled campuses:

Everest Claims			
Campus	Applications reviewed	Applications alleging guaranteed employment representation	%
Everest Brandon	305	45	14.8%
Everest Grand Rapids	46	3	6.5%
Everest Largo	31	6	19.4%
Everest Ontario Metro	34	7	20.6%
Everest Orange Park	36	9	25.0%
Everest Orlando North	47	6	12.8%
Everest Orlando South	226	33	14.6%
Everest Phoenix	81	40	49.4%
Everest Pompano Beach	97	9	9.3%
Everest Rochester	53	14	26.4%
Everest Tampa	32	9	28.1%
Everest San Bernardino	15	1	6.6%
Everest Milwaukee	38	6	15.8%
Everest Colorado Springs	37	10	27.0%
Everest Ft. Worth South	54	8	14.8%
Everest Tyson’s Corner	15	2	13.3%
Everest Vienna	21	2	9.5%
Everest Arlington	31	4	12.9%
Everest Aurora	50	3	6%
Everest Thornton	4	1	25%
Everest Chelsea	12	6	50%
Everest Brighton	12	7	58.3%
TOTAL	1277	231	18.1%

²⁰ BD150863.
²¹ BD152602.
²² BD155621.
²³ BD151128.
²⁴ BD151903.

WyoTech@Claims			
Campus	Applications reviewed	Applications alleging guaranteed employment representation	%
WyoTech Laramie	31	8	25.8%
WyoTech Fremont	135	16	11.8%
WyoTech Blairsville	157	18	11.4%
WyoTech West Sacramento	132	22	16.6%
TOTAL	455	64	14.1%

Significantly, just as the aforementioned Heald, Everest, and WyoTech claims at each campus corroborate each other, the number of similar allegations at and across all Corinthian schools and campuses strongly suggests that promises of employment were endemic to Corinthian's institutional culture.

C. Guaranteed Employment Claims Consistent Across a Span of Years

Although the Borrower Defense Unit has received fewer claims from borrowers that attended Corinthian schools in earlier years,²⁵ such claims bear the same indicia of reliability as claims from students who attended more recently. Student statements about admissions representatives' misrepresentations are consistent across a span of years, as demonstrated by claims from former students at Everest – Orlando South:

- [1999]: "Everest recruiters told students that they were 'guaranteed' to obtain jobs."²⁶
- [2001]: "They . . . told me I would be guaranteed a job once I graduated."²⁷
- [2002]: "I was told I would get a job right away..."²⁸
- [2003]: "I was lured into this organization with false promises of 100% job placement..."²⁹
- [2005]: "They said I was guaranteed job placement after I graduated."³⁰
- [2006]: "Everest guaranteed me career placement upon graduation."³¹
- [2007]: "They told me that I will be guaranteed a job placement after I graduate."³²
- [2008]: "They told me I was guaranteed a job."³³
- [2009]: "I was promised job placement, high salaries and success."³⁴
- [2010]: "I was guaranteed a job from my Academic advisor and Career Counselor."³⁵
- [2011]: "...told me I was guaranteed a job in my profession after I graduated making twice as much as minimum wage at least."³⁶
- [2012]: "I was promised employment after graduation."³⁷

²⁵ The Department's outreach has targeted borrowers from more recent years in an attempt to reach borrowers that may be eligible for relief on the basis of misrepresented job placement rates.

²⁶ BD155177.

²⁷ BD156179.

²⁸ BD160004

²⁹ BD151816

³⁰ BD150148.

³¹ BD157758.

³² BD153166.

³³ BD153136.

³⁴ BD156038

³⁵ BD1605002.

³⁶ BD155731.

³⁷ BD1615288.

- [2013]: “They called me over and over and promise jobs after graduating...”³⁸

D. Corinthian Employee Statements and Other Employment-Related Misrepresentations Corroborate Guaranteed Employment Claims

The similarity of student statements across schools, campuses, and years strongly suggests that the misrepresentations were system-wide and, indeed, part of Corinthian’s institutional culture. This conclusion finds further support in the affidavits of former employees, who admitted that Corinthian employees misled prospective students about their employment prospects. For example, a former instructor at Everest’s Chelsea campus stated, “People in corporate told prospective students they guaranteed jobs . . . They saw job placement not as job placement in the students’ fields of study, but as a student getting any job.”³⁹ An admissions representative from the same campus stated, “Admissions representatives told prospective students that medical assistants are in high-demand and that they would have no problem finding jobs . . . and they will definitely find jobs.”⁴⁰

Furthermore, guaranteeing jobs to prospective students appears to have been part of a pattern of employment-related misrepresentations at Corinthian. An internal Corinthian audit of admissions calls from one its campuses found that that 21% of admissions representatives “provided [a] false or misleading statement (such as best case scenario),” which likely pertained to employment outcomes.⁴¹ Further, in a letter issuing a nearly \$30 million fine to Heald, the Department found that Heald “represented with regard to many of its programs that it placed 100% of its graduates in jobs,” but Heald was unable to provide evidence to substantiate these representations. The Department further noted that based on the evidence that Heald was able to provide, the job placement rates appeared to be substantially lower than 100%, and for several programs, below 50%.⁴² At the same time that Corinthian was making false representations about its job placement rates, executives at Corinthian were putting heavy pressure on campuses to attract new students. One admissions director reported that his superiors at Corinthian instructed him to “enroll your brains out.”⁴³ In this context, it is unsurprising that staff at the campus level would be guaranteeing students a job.

Accordingly, we recommend no further year-by-year or campus-by-campus breakdown for additional Corinthian campuses. The hundreds of claims reviewed corroborate that Corinthian personnel made guaranteed employment representations beginning shortly after Corinthian opened or gained control of a campus.

II. Evidence of the Falsity of the Alleged Representations

Corinthian’s own records show that the school was unsuccessful at placing large numbers of Corinthian graduates. The Everest records, for example, reveal that nearly half of the school’s programs placed 50% or fewer of the program graduates. Further, evidence from Corinthian’s internal communications shows that they were aware that the school could not live up to their promises of employment. For example, an internal email from Corinthian’s Vice President for Operations stated that, “at some campuses” they had “not been

³⁸ BD1617088.

³⁹ *Massachusetts v. Corinthian Colleges, Inc.*, Civil Action 14-01093-E, *Medolo* Aff. ¶ 4, June 26, 2015.

⁴⁰ *Massachusetts v. Corinthian Colleges, Inc.*, Civil Action 14-01093-E, *Morrison* Aff. ¶ 5, July 6, 2015.

⁴¹ Exhibit 40 - CA AG Default Motion at 278.

⁴² Heald Fine Letter, <http://www2.ed.gov/documents/press-releases/heald-fine-action-placement-rate.pdf>.

⁴³ Deposition of Scott Lester, Former Admissions Director of Everest Milwaukee, Exhibit 36 - CA AG Default Motion.

consistently delivering” on the promise to students to “find a position that will help them launch a successful career.”⁴⁴

The narratives in borrower defense applications also support these conclusions. Many students that make guaranteed employment allegations—and many other BD applicants—state that they were unable to find a job upon graduation; that they were unable to find employment that used their degree; or that they were forced to remain in the job that they had prior to enrolling at Heald, Everest, or WyoTech. In sum, the evidence overwhelmingly shows that Corinthian campuses could not truthfully guarantee prospective students employment upon graduation.

III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for Borrowers Alleging Guaranteed Employment Misrepresentations Under Applicable State Law, Subject to Reduction for Borrowers Affected by the Statute of Limitations

For the reasons set forth below, the Corinthian borrowers’ applications for borrower defense relief predicated on a guaranteed employment allegation: a) are reviewed under California law; and b) have a valid claim under the “unlawful” and “fraudulent” prongs of California’s Unfair Competition Law (“UCL”),⁴⁵ which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations. Moreover, given the lack of value conferred by Corinthian credits and/or degrees, these students should be granted full loan discharges and refunds of amounts already paid, subject to reduction for borrowers affected by the statute of limitations.

A. The Department will apply California Law to These Claims.

To prevail with a defense to repayment, a borrower must assert acts or omissions “that would give rise to a cause of action against the school under applicable state law.”⁴⁶ With the assistance of the Office of General Counsel, we have examined specifically whether borrowers making the claims described in this memo could bring a cause of action in California and determined that they could. Specifically, the Department has concluded not only that students who were subjected in California to the acts complained of here would have been able to bring their cases in California courts under California law, but also that borrowers who attended Corinthian in other states could have brought their claims in the context of a class action in a California court, which would have applied California law.

California has general jurisdiction over Corinthian.⁴⁷ As to the law a California court would have applied, California courts have recognized that a forum state (such as California) “may apply its own substantive law to the claims of a nationwide class without violating the federal due process clause or full faith and credit clause if the state has a ‘significant contact or significant aggregation of contacts’ to the claims of each class member such that application of the forum law is ‘not arbitrary or unfair.’” *Washington Mut. Bank, FA v. Superior Court*, 15 P.3d 1071, 1080 (Cal. 2001) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985)). California is neither an arbitrary nor an unfair state for a class of Corinthian borrowers to bring a

⁴⁴ Exhibit 36 - CA AG Default Motion.

⁴⁵ CAL. BUS. & PROF. CODE § 17200, et seq.

⁴⁶ 34 C.F.R. § 685.206(e) (emphasis added).

⁴⁷ Corinthian was headquartered in California, and was therefore a resident corporation subject to the state’s general jurisdiction. Furthermore, even a non-resident corporation is subject to a forum’s general jurisdiction “if [its] contacts in the forum state are substantial[,] continuous and systematic.” *Vons Companies, Inc. v. Seabest Foods, Inc.*, 926 P.2d 1085, 1092 (Cal. 1996) (internal quotation marks and alterations omitted). In such a case, “defendant’s contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction,” and there is no need to determine whether the specific acts alleged in the suit meet the threshold for specific jurisdiction. *Id.* Such is the case with Corinthian; the largest numbers of both campuses and students were located in California.

claim, and the conduct at issue had significant contacts with California insofar as the students were enrolling in a California-based school and recruiters were receiving at least some of their training from high levels of administration at the school.

Furthermore, under California's choice-of-law test, the court considers both the defendant's headquarters and the state where many students attended the school.⁴⁸ Another key factor in the choice-of-law analysis under California law is the location "where the wrong occurred."⁴⁹ At Corinthian, the largest numbers of both campuses and students were located in California. Further, as proved to be the case in the Department's investigation of Corinthian, the fact that a school is headquartered in a given state will often mean that "some or all of the challenged conduct emanates" from that state, another common factor in choice of law determinations.⁵⁰ At Corinthian, former employees report that corporate decision makers based in California directed admissions staff to make misleading statements and engage in various high-pressure sales tactics to increase enrollment.⁵¹

Based on these factors – that Corinthian was headquartered and had its principal place of business in California, that the largest numbers of its campuses and students were located in California, and that decisions and policies made by its California based corporate leadership harmed students across the nation – it is reasonable for the Department to determine that a California court would apply California law to these claims. Therefore, BD claims submitted by former students from all Corinthian campuses will be considered under the California UCL.

B. Corinthian Students Making Guaranteed Employment Allegations Have A Valid Claim Under the "Unlawful" and "Fraudulent" Prongs of the UCL

California's UCL prohibits unfair competition, providing civil remedies for "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law]."⁵² Here, Corinthian's statements leading prospective students to believe that they were guaranteed employment constitute "unlawful" and "fraudulent" business practices under the UCL.

1. The Unlawful Prong

The UCL bars "anything that can properly be called a business practice and that at the same time is forbidden by law."⁵³ Thus, if a business practice violates any law, this is *per se* a UCL violation.⁵⁴ Corporate

⁴⁸ See, e.g., *In re Clorox Consumer Litig.*, 894 F. Supp. 2d 1224, 1237–38 (N.D. Cal. 2012) (citing *In re Toyota Motor Corp.*, 785 F.Supp.2d 883, 917 (C.D.Cal.2011)) (considering, among other factors, "where the defendant does business [and] whether the defendant's principal offices are located in California...").

⁴⁹ *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 593–94 (9th Cir. 2012). See also *McCann v. Foster Wheeler LLC*, 225 P.3d 516, 534 (Cal. 2010) ("Although California no longer follows the old choice-of-law rule that generally called for application of the law of the jurisdiction in which a defendant's allegedly tortious conduct occurred without regard to the nature of the issue that was before the court, California choice-of-law cases nonetheless continue to recognize that a jurisdiction ordinarily has the predominant interest in regulating conduct that occurs within its borders." (internal citation and quotation marks omitted)).

⁵⁰ See, e.g., *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 612 (Ct. App. 1987).

⁵¹ See Deposition of Scott Lester, Everest Milwaukee Director of Admissions, later President. WI AG, Ex. 15; Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013).

⁵² CAL. BUS. & PROF. CODE §17204, *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 320 (Cal. App. Ct. 2011); see also *Cel-Tech Communications v. Los Angeles Cellular Telephone Co.*, 973 P.2d 527, 540 (Cal. 1999).

⁵³ *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1266 (1992) (citations omitted).

misrepresentations like Corinthian's promises of employment are prohibited by a number of state and federal laws.⁵⁵ In particular, Corinthian's misrepresentation regarding its students' employment prospects violates the prohibition against "unfair or deceptive acts or practices" in the Federal Trade Commission Act ("FTC Act").⁵⁶ Determining whether statements to consumers violate the FTC Act involves a three-step inquiry considering whether: "first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material."⁵⁷

Applying that three step inquiry, Corinthian clearly violated the FTC Act.

1. As described above, Corinthian made representations to students regarding guaranteed employment;
2. Also as described above, those representations were false, erroneous, and misleading; and
3. As discussed below, the representations regarding guaranteed employment were material.

To be material, "a claim does not have to be the *only* factor or the *most* important factor likely to affect a consumer's purchase decision, it simply has to be an important factor"; furthermore, express claims are presumptively material.⁵⁸ Representations that students are guaranteed employment meet the FTC Act's materiality threshold because borrowers considered the promise of employment to be important when making their enrollment decisions. In attestations submitted to the Department, these borrowers have specifically identified false promises of employment as the misconduct giving rise to their claim. Moreover, given that Corinthian schools were heavily career-focused, the guarantee of a job would have been highly material to a prospective student's evaluation of the school. Students enrolled "primarily to gain skills and find a position that will help them launch a successful career."⁵⁹ Corinthian's own marketing materials emphasized that the school was a pathway to employment, often noting "solid industry employment contacts"⁶⁰ and the availability of "lifetime career services." For many students, the principal purpose of attending a career college like

⁵⁴ See *Kasky v. Nike*, 27 Cal. 4th 939, 950 (2002); see also *People v. E.W.A.P. Inc.*, 106 Cal. App. 3d 315, 317 (Ct. App. 1980); *Sw. Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 808 (N.D. Cal. 1989) (finding that a plaintiff had standing to sue under the UCL based in part on alleged violations of federal environmental regulations).

⁵⁵ Though the analysis below focuses exclusively on the FTC Act, Corinthian's misrepresentations to students may also violate other state and federal laws. For example, the California Education Code states that an institution shall not "promise or guarantee employment, or otherwise overstate the availability of jobs upon graduation." Cal. Educ. Code §94897, et seq. However, because the conclusion below is that Corinthian's conduct violates the FTC Act, this memo does not reach the issue of whether it may be unlawful under other applicable rules.

⁵⁶ See FTC Act § 5(a)(1), 15 U.S.C. § 45(a)(1); FTC Act § 12(a), 15 U.S.C. § 52(a). While the FTC Act does not provide a private right of action, California courts have consistently recognized that a valid UCL claim under the "unlawful" prong does not require that the underlying law provide such a right. Thus, for example, the California Supreme Court has permitted plaintiffs to bring actions under the California Penal Code that do not allow for private lawsuits. See *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 950 P.2d 1086, 1091 (Cal. 1998) ("whether a private right of action should be implied under [the predicate] statute ... is immaterial since any unlawful business practice ... may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200") (citing cases); see also *Rose v. Bank of Am., N.A.*, 304 P.3d 181, 186 (Cal. 2013) ("It is settled that a UCL action is not precluded merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the [UCL], another provision must actually bar the action or clearly permit the conduct.").

⁵⁷ *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

⁵⁸ *Novartis Corp.*, 127 F.T.C. 580 at 686, 695 (1999); see also *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) ("Express claims ... are presumed to be material.").

⁵⁹ Exhibit 36 - CA AG Default Motion.

⁶⁰ Exhibit 179, Part 1; Declaration of Jacinto P. Fernandez (CA AG), Exhibit Y

Everest, Heald or WyoTech was to obtain employment in a particular field.⁶¹ Based on the school's misrepresentations, individuals considering enrollment reasonably believed that they were certain to find employment upon graduation. Accordingly, Corinthian's false or misleading misrepresentations regarding guaranteed employment were material and therefore violated the unlawful prong of the FTC Act and constituted an unlawful business practice under the UCL.

2. The Fraudulent Prong

Corinthian's misrepresentations regarding employment prospects also are a fraudulent business practice under the UCL, and therefore are another form of unfair competition providing an independent basis for borrower defense relief for Corinthian students. To show that a business practice is fraudulent, "it is necessary only to show that members of the public are likely to be deceived."⁶² The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.⁶³ Even true statements are actionable under the UCL if they are presented in a manner likely to mislead or deceive consumers, including by the omission of relevant information.⁶⁴ As noted, the representations Corinthian made to students guaranteeing employment were false and likely to deceive, for the reasons discussed above and in Section II.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and... lost money or property" as a result of the deceptive practice alleged.⁶⁵ However, for a consumer who was deceived into purchasing a product⁶⁶—or a student who was deceived into enrolling at a school—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions of the entity.

Reliance on the misrepresentation does not have to be "the sole or even the predominant or decisive factor influencing"⁶⁷ the individual's decision. Rather, "[it] is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision."⁶⁸

Express or implied claims like those made by Corinthian about employment prospects are presumptively material,⁶⁹ and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."⁷⁰ However, as discussed above, the preponderance of evidence also demonstrates, independently, that employment was a central consideration for these borrowers—one which each of the applications in question identified, unprompted, as the crux of their dissatisfaction with their decision to

⁶¹ Under these circumstances, students' reliance on a guarantee of employment was reasonable. Prospective students would have taken seriously a guarantee of employment and not interpreted it as mere "puffery." The large volume of claims making guaranteed employment allegations is a clear indication that students believed what they were told.

⁶² See *Bank of the West*, 2 Cal. 4th at 1254.

⁶³ CAL CIV. C. § 1709.

⁶⁴ *Boschma v. Home Loan Center*, 198 Cal. App. 4th 230, 253 (2011).

⁶⁵ *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1480 n. 13 (2005).

⁶⁶ See *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 316 (Cal. 2011).

⁶⁷ *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).

⁶⁸ *Id.* (internal quotation marks omitted).

⁶⁹ See, e.g., *Telebrands Corp.*, 140 F.T.C. at 292 (presuming that claims are material if they pertain to the efficacy, safety, or central characteristics of a product); *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) (holding that claims about the watts and lifetime of the LED light bulbs were *per se* material because they were express, and "that even if they were implied claims, they were material because the claims relate to the efficacy of the product."); *FTC v. Bronson Partners, LLC*, 564 F. Supp. 2d 119, 135 (D. Conn. 2008) (noting that an implied claim where the advertiser intended to make the claim was presumed to be material).

⁷⁰ *In re Tobacco II Cases*, 46 Cal. 4th at 298.

enroll.⁷¹ Statements by large numbers of borrowers across Corinthian campuses make clear that the promise of employment entered substantially into their choice to attend a Corinthian school.

C. Weak Disclaimers In Some of Everest and WyoTech's Written Materials Do Not Cure Its False and Misleading Representations Guaranteeing Employment

Corinthian's promises of employment were false and misleading, despite the limited disclaimers on some Everest and WyoTech enrollment agreements. Although those enrollment agreements state that the school does not guarantee "job placement" or "a salary," such written information did not change the overall impression created by the oral representations.

For example, if a student examined an Everest enrollment agreement, the student would have to read through two pages of fine print to find a box entitled "Enrollment Agreement" and subtitled "The Student Understands."⁷² Part of the way through that box of fine print, item number 2 states that Everest "does not guarantee job placement to graduates upon program / course completion or upon graduation, and does not guarantee a salary or salary range to graduates."⁷³ That item is not highlighted or bolded in any way. The agreement then continues on with an additional page of fine print disclaimers. The WyoTech enrollment agreement includes a similar disclaimer on its first page: "The school does not guarantee employment following graduation, but does offer placement assistance to graduates." This is included as item "(a)" in a list of nine fine print disclaimers following a paragraph-long disclaimer about the cost of books and tools.

These disclaimers do not cure the falsity of Everest and WyoTech's oral promises regarding employment prospects. First, courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations.⁷⁴ The California Supreme Court has also held that misleading statements enticing consumers to enter into a contract may be a basis for a UCL claim, even though accurate terms may be provided to the consumer before entering into the contract.⁷⁵

The written disclaimers were hidden in text and provided only after admissions representatives orally promised employment. Moreover, here, Corinthian's disclaimers were particularly ineffective when considered in the context of Corinthian's unsophisticated student population and high-pressure admissions practices.⁷⁶

Corinthian documents show that the school sought to enroll vulnerable people who had "low self-esteem," were "stuck, unable to see and plan well for the future" and "isolated," had "few people in their lives who care about them," and were "impatient, want[ed] quick solutions."⁷⁷ Corinthian's CEO, in a letter to

⁷¹ Because deception occurs at the time of decision, or for Everest students, at the time of enrollment, it is sufficient for Everest students to say that they chose to enroll based upon a guaranteed employment misrepresentation, regardless of any subsequent employment.

⁷² See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement.

⁷³ BD150633, Attachment #3, page 7.

⁷⁴ See, e.g., *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); see also *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype's oral representation that a calling plan was "unlimited" was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers).

⁷⁵ *Chern v. Bank of Am.*, 15 Cal. 3d 866, 876 (Cal. 1976) ("the fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant's practice of quoting a lower rate in its initial dealings with potential customers. The original, lower rate may unfairly entice persons to commence loan negotiations with defendant in the expectation of obtaining that rate.").

⁷⁶ The nature of the enrollment process made it unlikely that students ever read such disclosures prior to admission. Students consistently reported that they were rushed through the enrollment process and subjected to high pressure sales tactics.

⁷⁷ CA AG Quach Decl. Ex 113.

Federal Student Aid, wrote that the school enrolled “a predominantly high risk student body that is underserved by traditional higher education institutions. Many of our campuses are located in or near difficult inner-city areas and provide access to students who have not previously achieved educational success.”⁷⁸ Corinthian advertised on daytime TV,⁷⁹ targeting the un- or under-employed. In some instances, Corinthian personnel actively recruited homeless individuals as students, despite the additional challenges they would face in completing their studies, even offering monetary incentives to take campus tours.⁸⁰ In sum, the net impression of the oral misrepresentations on the typical Corinthian student likely would not have been altered by buried written disclosures.

Finally, the fact that the 436 Corinthian claims reviewed to date that allege Corinthian guaranteed employment make no mention of any written disclaimer further supports the conclusion that the disclaimers were ineffective. As discussed above, viewed in light of the unsophisticated population Corinthian targeted, and the high pressure sales tactics and oral representations that Corinthian personnel employed, these disclaimers do not offset the net impression of the school’s misrepresentations.

D. Eligible Borrowers

Based on the above analysis, the following Corinthian students making guaranteed jobs allegations should be eligible for relief: any claimant who attended a Corinthian campus and who alleges that they were promised, guaranteed, or otherwise assured employment or job placement.

The Department will not undertake a case-by-case analysis of borrowers to determine whether they ultimately secured employment. As we found in the job-placement-rate analysis, the misrepresentation in this case went to the overall value of the education (a school that can guarantee its students jobs must be a very good school indeed), and was substantial regardless of a borrower’s ultimate ability to secure employment. Furthermore, in this case, the Department’s review of the borrower applications suggests that a presumption should be made that borrowers who raised this issue were not, in fact, able to secure employment.

E. Full BD Relief Should Be Provided to Eligible Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations

When determining the amount of relief due to plaintiffs under the UCL, courts rely on cases interpreting the Federal Trade Commission Act.⁸¹ In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.⁸²

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the *Figgie* and *Ivy Capital*

⁷⁸ Letter from Jack D. Massimino, CEO, Corinthian, to James W. Runcie, Chief Operating Officer, U.S. Office of Federal Student Aid (Nov. 12, 2014).

⁷⁹ CA AG Quach Decl. Ex 113.

⁸⁰ CA AG Decl. of Holly Harsh.

⁸¹ See, e.g., *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015).

⁸² See, e.g., *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009) (determining that restitution should include “the full amount lost by consumers rather than limiting damages to a defendant’s profits”); *FTC v. Figgie International*, 994 F.2d 595, 606 (9th Cir. 1993) (“The injury to consumers... is the amount consumers spent... that would not have been spent absent [the] dishonest practices.”); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991) (“restoration of the victims of [defendant’s] con game to the status quo ante” by use of defendant’s gross receipts is proper for restitution); *FTC v. Ivy Capital, Inc.*, No. 2:11-CV-283 JCM (GWF), 2013 WL 1224613 at *17 (D. Nev. 2013) (ordering full monetary relief for consumers harmed by misleading marketing regarding a business coaching program).

approach and found that a restitution model that aims to “restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief.⁸³

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value attendant to their Corinthian education. See *Makaeff*, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery). The Department has found that Corinthian repeatedly misled students, regulators and accreditors regarding its ability to place students in jobs, systematically inflated its job placement rates, misrepresented job placement rates to a programmatic accreditor, and even engaged in an elaborate job placement fraud to maintain its accreditation.⁸⁴ Given this well-documented, pervasive, and highly publicized misconduct at Corinthian, the value of an Everest, Heald or WyoTech education has been severely limited.

Borrower defense applications confirm the lack of value of a Corinthian education as many Corinthian students report that their degree or affiliation with the school has been an impediment rather than an asset as they seek employment. For example, one Everest student reports: “I was only working part time when I was attending school and this degree has done nothing to help me obtain better employment. I am also embarrassed to even put this on my resume because any potential employer who looks this school will discover it was a fraud.”⁸⁵ Another reports: “I cannot find a job using my degree. I find one faster if I leave the fact that I didn’t go to college at all. People just laugh in my face about Everest saying that it is not a ‘real school.’”⁸⁶ A student from WyoTech states: “Any association with WyoTech hurts my chances for employment. I was promised jobs with big salaries, a career I would hold for life and all WyoTech gave me was debt and shame. I was told by two interviewers, that they would NEVER hire a WyoTech graduate...”⁸⁷ And a Heald student states: “The school is not reputable no other institution recognizes the credits earned and jobs stray away from Heald graduates, claiming they lack in teaching students current and up to date information in the coding industry. I have yet to work in my field of study and utilize my degree. I have a useless degree from a closed college.”⁸⁸

Finally, awarding full relief to students who make guaranteed employment allegations is consistent with the Department’s approach to providing relief to Corinthian students seeking BD relief on the basis of false job placement rates. Indeed, the Department granted full relief to students who alleged that they relied on Corinthian job placement rate representations, without offsetting the relief based on any value that students may have received by attending Corinthian. Given the Department’s approach to date, it would be inconsistent to limit the relief of students who make guaranteed employment allegations—which are essentially 100% job placement claims—while providing full relief to those students who qualify for job placement rate relief.

⁸³ *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015) (internal quotations removed).

⁸⁴ See Letter from Robin S. Minor, Acting Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Apr. 14, 2014); see also Letter from Mary E. Gust, Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Aug. 22, 2014) (finding that “Everest Institute submitted false placement data to ACCSC to maintain the accreditation of Everest Decatur” and that the school’s job placement rates were based on “CORINTHIAN-designed programs through which Everest Decatur paid employers to hire its graduates” for short time periods in order to inflate placement rates).

⁸⁵ BD1614100.

⁸⁶ BD1602593.

⁸⁷ BD151191.

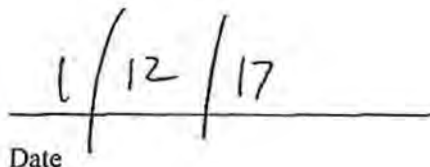
⁸⁸ BD157356.

In sum, in these circumstances, and consistent with the Department's prior actions related to Corinthian,⁸⁹ it is appropriate to award eligible borrowers full relief, subject to reduction for borrowers affected by the statute of limitations.

CONCUR:



Office of the General Counsel


Date

⁸⁹ This approach also is consistent with the Department's new regulations in that the Department has considered whether the value of the education provided by Corinthian was such that it would be appropriate to offset the relief provided to borrowers who were guaranteed employment. The Department has concluded that the Corinthian education lacked sufficient value to do so.

Exhibit 50

Memorandum

To: Colleen Nevin

From: Daniel Davis

Date: August 7, 2020

Re: Borrower Defense Unit Investigation of EDMC Schools (July 1, 2003 – December 31, 2008)¹

I. Introduction

Education Management Corporation (“EDMC”), a for-profit education company organized as a Pennsylvania corporation in 1962,² brought together and consolidated a number of educational institutions under the following brands: (i) The Art Institutes; (ii) Argosy University; (iii) Brown Mackie College; (iv) South University; and (v) Western State College of Law (“EDMC Schools”).³ The EDMC Schools operated across as many as 109 campuses (both physical and exclusively online) with an active enrollment of over 158,000 students.⁴

As of August 7, 2020, the Borrower Defense Unit (“BDU”) has approximately 13,000 pending applications from borrowers who attended EDMC Schools.⁵

This memorandum solely addresses borrower defense applications alleging misconduct at EDMC Schools from July 1, 2003 through December 31, 2008,⁶ excluding borrowers who make professional licensure allegations for psychology masters and doctorate programs at Argosy University.⁷

II. Evidence Regarding Alleged Misconduct at EDMC Schools

¹ The July 21, 2020 version of this memorandum (previously “Borrower Defense Unit Investigation of EDMC Schools (July 1, 2003 – December 31, 2017)”) has been amended, effective August 7, 2020, to also include borrowers who enrolled at EDMC Schools between January 1, 2008 through December 31, 2008. Further, this memorandum should be read in conjunction with the previously submitted “Borrower Defense Unit Investigation of EDMC Schools Prior to July 1, 2013” and “Borrower Defense Unit Investigation of EDMC Schools from January 1, 2016 to September 30, 2017.” Finally, the BDU’s investigation of EDMC Schools is ongoing and the BDU will draft a memorandum to provide a more comprehensive view of the EDMC Schools’ conduct.

² Educ. Mgmt. Corp., Annual Report (Form 10-K), at 2 (June 30, 2003).

³ Educ. Mgmt. Corp., Annual Report (Form 10-K), at 6 (June 30, 2011); Educ. Mgmt. Corp., Annual Report (Form 10-K), at 10 (June 30, 2002).

⁴ Educ. Mgmt. Corp., Annual Report (Form 10-K), at 3 (June 30, 2012); S. Rep No. 112-37, at 451 (2012).

⁵ See Salesforce reports generated by BDU personnel (on file with the department).

⁶ See “Borrower Defense Unit Investigation of EDMC Schools Prior to July 1, 2003” for an assessment of borrower defense applications alleging misconduct against EDMC Schools prior to July 1, 2003 and “Borrower Defense Unit Investigation of EDMC Schools from January 1, 2016 to September 30, 2017” for an assessment of borrower defense applications alleging misconduct against EDMC Schools between January 1, 2016 and September 30, 2017. Further, as noted above, the BDU investigation of EDMC Schools is ongoing and the BDU will provide a more comprehensive analysis of EDMC School conduct.

⁷ BDU’s investigation into borrower defense applications during this period of time who make professional licensure allegations related to nursing and psychology, along with borrowers who enrolled between January 1, 2009 and December 31, 2015 and those who enrolled after September 30, 2017 are subject to ongoing investigation.

Although BDU's investigation is ongoing, the BDU does not have sufficient evidence in its possession to substantiate the borrower defense ("BD") allegations against EDMC schools submitted by borrowers who enrolled between July 1, 2003 through December 31, 2008.

As of the date of this memorandum, the BDU has obtained the following evidence relevant to July 1, 2003 through December 31, 2008: (i) exhibits and congressional testimony referenced in the 2012 U.S. Senate Committee on Health, Education, Labor & Pensions on for profit higher education;⁸ (ii) marketing materials, contractual agreements, and similar documents distributed to students by EDMC Schools;⁹ (iii) EDMC's SEC financial filings;¹⁰ and (iv) borrower applications with attachments.

The BDU has also obtained evidence from the Pennsylvania attorney general's office and the Iowa attorney general's office. While most of this evidence relates to times beyond the scope of this memorandum, some of the materials do relate to the period at issue. These materials include EDMC School's representations of employment prospects and job placement rates to prospective students as well as school brochures. However, BDU does not possess the underlying data and internal policies to assess the accuracy of these representations.¹¹

The above evidence obtained by the BDU relating to the borrower defense applications at issue in this memorandum is not sufficient to corroborate borrower allegations against EDMC Schools. Additionally, no external body has found that EDMC engaged in any misconduct during this period.

Finally, while the BDU has identified a number of lawsuits that included allegations potentially related to some of the allegations asserted by EDMC borrowers, the BDU has not received¹² any evidence to substantiate the BD-related allegations from those cases. The cases include the following:

A. *Washington and Mahoney ex rel. US v. EDMC*

In 2007, Lynntoya Washington, then employed by EDMC Schools, instituted *qui tam* false claims act litigation alleging that EDMC Schools violated the incentive compensation ban as

⁸ See, e.g., *The Federal Investment in For-Profit Education: Are Students Succeeding? Hearing of the Committee on Health, Education, Labor, And Pensions United States Senate*, S. HRG. 111-1162, 111 Cong. 2 (Sept. 30, 2010) (Statement of Kathleen Bittel). Kathleen Bittel, a former EDMC employee testified that the work was "all about hitting [enrollment] quotas" and that the career services numbers were not realistic since EDMC had 1,600 admissions recruiters and only nine career services advisors to work with the graduates of all EDMC online programs. *Id.* Absent external evidence corroborating her allegations, which the BDU does not possess, Kathleen Bittel's testimony does not independently substantiate BD allegations of students who attended EDMC Schools from July 1, 2003 through December 31, 2008.

⁹ See, e.g., The Art Institute employment statistics and representations of graduate job placement rates obtained by the BDU in borrower application attachments (on file with the department).

¹⁰ See, e.g., Educ. Mgmt. Corp., Annual Report (Form 10-K) (June 30, 2003).

¹¹ While BDU has EDMC career services policies and in-field employment data for nine EDMC Schools for graduates starting in 2008, this data was first provided to students in 2009 and does not impact borrowers who enrolled at EDMC Schools in 2008.

¹² See Section II.A. *infra* for a discussion of boxes of materials currently in BDU's possession.

far back as 2003.¹³ The Department of Justice (“DOJ”), along with certain states intervened in the case in 2011.¹⁴ The case ultimately settled without EDMC admitting to any wrongdoing.¹⁵

While the case was pending, and under the supervision of a special master, EDMC Schools and DOJ engaged in extensive written discovery.¹⁶ Based on a review of public records, EDMC produced millions of pages of discovery in this litigation.¹⁷ However, BDU was unable to obtain any of these documents as they were destroyed, or returned to EDMC in light of the confidentiality agreement in the case.¹⁸ As EDMC ceased operating its schools in 2017¹⁹ and subsequently closed, BDU was unable to request the records from the school, and BDU, therefore, is not able to ascertain whether the documents would have provided corroborating evidence for any borrower defense claims.

On or about August 3, 2020, relator Washington’s counsel returned to the Department approximately 60 file boxes of documents that, on information, the Department of Education originally produced in discovery and that are unlikely to corroborate BD applications. However, given the current state of the COVID-19 pandemic, and current COVID-19 Federal Student Aid policies for employees in response to current health and safety risks, BDU has been unable to review the contents of the returned files to confirm that the materials are not relevant to the cases at issue in this memo or are insufficient to corroborate the borrowers’ claims. While BDU recommends proceeding with adjudication based on its current understanding of the Department materials, BDU will confirm the contents of the returned Department materials as soon as it is safe to do so. Once the BDU is able to review these documents, it will update this memorandum accordingly. In the unlikely event that the documents would change the outcome of any borrower cases, BDU would consider this as new evidence and reopen any such case(s).

B. Gaer

¹³ Second Amended Complaint, *Washington v. EDMC, et al.*, No. 2:07-cv-00461-NBF (W.D. Pa. May 2, 2011) (Michael Mahoney was EDMC’s Director of Training for the Online Higher Education Division from 2006 – 2007 and joined the litigation in the Second Amended Complaint).

¹⁴ See Joint Complaint in Intervention by the United States of America, and the States of California, Florida, Illinois, and Indiana. *Washington v. EDMC, et al.*, No. 2:07-cv-00461-NBF (W.D. Pa. August 8, 2011)

¹⁵ See Settlement Agreement in *Washington v. Education Management Corporation*, No. 07-CV-461 (W.D. Pa. Nov. 12, 2015). This settlement agreement also resolved other pending *qui tam* lawsuits against EDMC including the settlement referenced below in *Laukaitis*. *Id.* at 9.

¹⁶ See Docket in *Washington v. EDMC, et al.*, No. 2:07-cv-00461-NBF (W.D. Pa. 2007)

¹⁷ See Report & Recommendation #2 of the Special Master [Plaintiff’s Motions to Compel the Production of Documents and Answers to Interrogatories] filed in *Washington v. EDMC, et al.*, No. 2:07-cv-00461-NBF (W.D. Pa. May 14, 2013); Protective Order Governing Confidential Materials filed in *Washington v. EDMC, et al.*, No. 2:07-cv-00461-NBF (W.D. Pa. April 12, 2013); Case Management Order No. 2 filed in *Washington v. EDMC, et al.*, No. 2:07-cv-00461-NBF (W.D. Pa. September 13, 2013) Report & Recommendation #4 of the Special Master [Plaintiffs’ and Defendants’ Submissions Regarding Ongoing Discovery Disputes] filed in *Washington v. EDMC, et al.*, No. 2:07-cv-00461-NBF (W.D. Pa. November 24, 2013);

¹⁸ *Project Predatory Lending of the Legal Services Center of Harvard Law School v. United States Department of Justice*, 17-CV-00210, ECF No. 80, Memorandum Opinion, p. 22 (W.D. Penn. 2017) (J. Fischer).

¹⁹ See Third Annual Report of the Settlement Administrator Under the Consent Judgments with Education Management Corporation (EDMC) as Succeeded by Dream Center Education Holdings, Thomas J. Perrelli as Settlement Administrator, September 30, 2018, 1.

The complaint in *Gaer*, a securities class action claim brought against EDMC, includes allegations from confidential witnesses who purportedly worked at EDMC Schools during the relevant period of time.²⁰ Allegations from confidential witnesses focused primarily on incentive compensation issues, aggressive enrollment quotas, inadequate career services employee staffing, and inaccurate job placement rates.²¹ The BDU is unable to assess the veracity of the allegations made by the confidential witnesses in the *Gaer* complaint and is not aware of the identities of the confidential witnesses. The case ultimately concluded with no admission of wrongdoing on the part of EDMC.

C. *Laukaitis*

In 2011, former EDMC employees brought a *qui tam* action against EDMC and alleged False Claims Act violations for misrepresenting “recruiter compensation, information provided to prospective students, and the amount of revenue that may be received from federal financial aid sources.”²² The relators in *Laukaitis* also alleged, without providing additional detail, that EDMC and its “admissions representatives misrepresent[ed] graduation and retention rates, employment statistics, and the salaries that students can expect to earn upon completing their program of study.”²³ The case ultimately settled without EDMC admitting liability or admitting to making any misrepresentations.²⁴

D. *Robb*

The complaint in *Robb*, a securities class action claim brought against EDMC, includes allegations from confidential witnesses who purportedly worked at EDMC Schools during the relevant time frame.²⁵ The confidential witnesses alleged that EDMC Schools engaged in predatory recruitment practices including knowingly enrolling students who could not complete the program, and falsifying employment data.²⁶ The *Robb* action settled in 2015 for \$2,500,000 without EDMC admitting to any wrongdoing.²⁷ The BDU has been unable to determine the identities of, or otherwise assess the veracity of claims made by, the confidential witnesses referenced in the *Robb* complaint for the period July 1, 2003 through December 31, 2008.

²⁰ Second Amended Complaint, *Gaer v. Education Management Corporation, et al.*, No. 2:10-cv-01061-NBF-RCM (W.D. Pa. Jan. 10/2011) (the sixteen confidential witnesses purportedly included various admissions representatives, human resources personnel, and an Associate Director of Finance).

²¹ *Id.* at 19-37.

²² Third Amended Complaint, *United States, ex. rel. Laukaitis v. Education Management Corporation, et al.*, at ¶ 4, No. 11-602 (W.D. Pa. Oct. 22, 2013).

²³ *Id.* at 45.

²⁴ Settlement Agreement in *Washington v. Education Management Corporation*, No. 07-CV-461 (W.D. Pa. Nov. 12, 2015) at 9.

²⁵ See Consolidated Amended Complaint, *Robb v. Education Management Corporation, et al.*, No. 2:14-cv-01287-DSC (W.D. Pa. April 8, 2015).

²⁶ *Robb v. Education Management Corporation, et al.*, No. 2:14-cv-01287-DSC (W.D. Pa.); see *id.* at ¶109 (describing a situation where the confidential witness’ manager ordered the witness to enroll a student who could not read or write).

²⁷ Stipulation of Settlement, *Robb v. Education Management Corporation, et al.*, No. 2:14-cv-01287-DSC (W.D. Pa. Sept. 17, 2015).

Although the allegations in *Washington*, *Gaer*, *Laukaitis*, and *Robb* may be relevant to borrowers' allegations, the BDU does not currently have any documents or evidence²⁸ to substantiate the claims made in these lawsuits for the period July 1, 2003 through December 31, 2008. The existence of these lawsuits, absent corroborating evidence, does not constitute evidence to substantiate the borrower allegations against EDMC schools during the July 1, 2003 through December 31, 2008 timeframe.

III. Conclusion and Recommendations

Although BDU's investigation of EDMC Schools is ongoing, BDU currently does not have evidence in its possession to substantiate the borrower defense allegations of students who are the subject of this memorandum.

As a result, the BDU recommends that all EDMC Schools applications reflecting an enrollment date between July 1, 2003 and December 31, 2008, excluding those who make professional licensure allegations relating to psychology masters and doctorate level programs at Argosy University, be adjudicated in accordance with the following standard review protocol: BDU attorneys will individually adjudicate each application by opening each claim and reviewing all allegations made by the borrower and any supporting evidence provided by the borrower. If the borrower has provided evidence sufficient to support their allegations, then the application will be set aside for further review. However, where the borrower provides no evidence, or the evidence provided is insufficient to prove any allegations, denial of the application is appropriate. If additional evidence is obtained in the future, these claims may be subject to redetermination as warranted.

²⁸ As noted with respect to the *Washington* case, while it is BDU's understanding that the returned Department records are not likely to contain corroborative evidence, BDU will confirm the contents and revise this memorandum as needed to the extent that there is any corroborating evidence in the materials. In the unlikely event that the records would change the outcome of any borrower cases, BDU would consider this as new evidence and reopen any such case(s).

Exhibit 51

MEMORANDUM

TO: Colleen Nevin

FROM: Alana Smith

DATE: June 1, 2020

RE: Borrower Defense Unit Investigation of Anthem Education Group

Anthem Education Group, LLC was founded in 1965 under the name High Tech Institute, Inc. and included schools operating under the names of High-Tech Institute, Anthem Career College, Anthem College, Anthem College Online, Anthem Institute, Morrison University, and the Bryman School of Arizona.¹ At its peak, Anthem Education Group included 22 campuses in 15 states and an online division.² In 2014, Anthem Education Group, LLC declared bankruptcy and closed.³

As of June 1, 2020, the Borrower Defense Unit (BDU) has received approximately 1,508 applications from borrowers who attended a school under the Anthem Education Group, LLC umbrella. These cases span the entire history of Anthem's existence with the bulk of the cases from borrowers who first enrolled from 2007 to 2010.⁴

As of the date of this memorandum, the BDU has obtained limited evidence relevant to the borrower defense allegations filed against Anthem Education Group. BDU has reviewed evidence in connection with the following: (1) information from the Minnesota Attorney General's Office, (2) letters to the Department of Education from the Minnesota Attorney General requesting that the Department provide federal loan forgiveness to the borrowers, and (3) final program review determination reports generated by the Department. BDU also reviewed Anthem Education Group's website from 2008 on for representations that the school was registered with Minnesota Office of Higher Education⁵. The only relevant evidence BDU has obtained pertains to the campus in Minnesota. BDU has been unable to locate evidence to support the allegations of students who attended campuses in other states.

Based upon a review of the above evidence, the BDU recommends individual adjudication of all claims where the borrower attended a campus located in states other than Minnesota. To adjudicate these cases, the BDU will open each case and review each allegation and any evidence the borrower attached to the case. If the borrower has provided evidence sufficient to support their allegations, then the application will be set aside for further review. In cases where the borrower provides no evidence or the evidence provided does not prove any

¹ For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, 2012 U.S. Senate Committee Findings, Senate Health, Education, Labor and Pensions (HELP) Committee, 254.

² For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, 2012 U.S. Senate Committee Findings, Senate Health, Education, Labor and Pensions (HELP) Committee, 254.

³ See Tyson, Charlie, Anthem Bows Out, INSIDE HIGHER ED, August 29, 2014, <https://www.insidehighered.com/news/2014/08/29/profit-anthem-education-abruptly-closes-campus-after-filing-bankruptcy>.

⁴ Salesforce reports generated by BDU personnel (on file with the Department)

⁵ <https://web.archive.org/web/20110326054346/http://anthem.edu/accreditations/>

allegation, then the case will be flagged for denial. If additional evidence is discovered in the future, these cases at campuses other than in Minnesota may be revised.

Exhibit 52

To: Colleen Nevin
From: Michael Alonso
Date: June 19, 2020 (**Updated December 2, 2020**)
Re: Career Education Corporation (CEC) n/k/a Perdoceo Education Corporation (PEC)

December 2, 2020 Update: The Department has recently received additional evidence that may require a change in our adjudication protocols for CEC and potentially would support reopening some of the previously adjudicated borrower defense claims. As a result, the Department has paused the adjudication or processing of CEC claims pending its review of the scope of this evidence. This memo will be updated again once we have completed that review.

Introduction

The Borrower Defense Unit (BDU) recommends adjudication of certain Borrower Defense (BD) applications submitted by borrowers attending Career Education Corporation schools, including those currently owned by Perdoceo Education Corporation (collectively, “CEC”). School brands currently or previously owned by CEC include the following:

- American Intercontinental University
- Briarcliffe College
- Brooks College
- Brooks Institute (a/k/a/ Brooks Institute of Photography)
- Brown College
- Brown Institute
- Collins College (a/k/a Al Collins Graphic Design School)
- Colorado Technical University
- Harrington College of Design (a/k/a Harrington Institute of Interior Design)
- International Academy of Design & Technology (a/k/a School of Computer Technology; a/k/a International Academy of Merchandising & Design)
- Le Cordon Bleu College of Culinary Arts (a/k/a Le Cordon Bleu Institute of Culinary Arts; a/k/a Kitchen Academy; a/k/a Southern California School of Culinary Arts; a/k/a California School of Culinary Arts; a/k/a Pennsylvania Culinary Institute; a/k/a Orlando Culinary Academy; a/k/a Cooking and Hospitality Institute of Chicago; a/k/a Scottsdale Culinary Institute; a/k/a/ Western Culinary Institute; a/k/a California Culinary Academy)
- Lehigh Valley College (a/k/a Allentown Business School)
- Katharine Gibbs School (a/k/a Gibbs College; a/k/a Washington Business School)
- McIntosh College
- Missouri College
- Sanford-Brown College (a/k/a Ultrasound Diagnostic Schools)
- Sanford-Brown Institute (a/k/a Western School of Health and Business Careers; n/k/a Pittsburgh Career Institute¹)
- SBI Campus—An Affiliate of Sanford-Brown Institute

¹ "In 2014, New Opportunity Calling LLC purchased Sanford-Brown Institute and changed its name to Pittsburgh Career Institute." About Pittsburgh Career Institute, available at <https://pci.edu/about-pci/> (last reviewed on 3/30/2020).

All CEC's school brands are currently closed (or were sold and remained open, in the case of schools now known as Pittsburgh Career Institute), except for the brands American Intercontinental University and Colorado Technical University, which remain open.

RECOMMENDATION

BDU recommends adjudication of applications from borrowers who attended any CEC school and had an enrollment start date on or after January 1, 2013.

Based on a review of public information and filings on Westlaw, none of the schools above – during the specified time period – are the subject of a known investigation or lawsuit that would likely reveal supporting evidence relevant to BD claims. In light of the absence of any such evidence in the Department's possession regarding CEC schools after 2012, BDU will apply a standard protocol and open each claim, review all allegations and any evidence appended by individual borrowers, and conduct an individual adjudication of each case. If evidence attached by the borrower proves any of his/her allegations, then the case will be set aside for consideration for approval. However, where the borrower provides no evidence or evidence provided fails to satisfactorily prove any allegations, will be denial of the application is appropriate.

Exhibit 53

Initial Review of Medium Batch Applications

BACKGROUND

Name of Institution and OPEID	Keller Graduate School of Management – 02075400; 12075400
Open or Closed	Open
Additional Locations • Add closure date if applicable	See Attachment A – Keller Graduate School of Management Locations ¹
Corporate Owner(s)	DeVry Education Group Inc. DeVry/New York Inc. After December 5, 2017: Adtalem Global Education, Inc.
Total Number of Applications	810 applications as of April 2, 2020
Patterns of Alleged Misconduct	Patterns of alleged misconduct include misrepresentations of employment prospects and transferring of credits/school accreditation.
Class Issue or Singular	Class issue
Internal ED Investigation(s) • PC, AAASG, OIG	N/A
Internal Contact(s) for Further Investigation	N/A
External Investigations (AG), Evidence or Litigation Related to BD	<ul style="list-style-type: none"> • <u>Lindberg et al v. Adtalem Global Education Inc. f/k/a DeVry Education Group, Inc. and DeVry University, Inc.</u>² – The plaintiffs of the suit were enrolled in Keller Graduate School of Management. The plaintiffs contend that DeVry University and Keller Graduate School of Management “made deceptive representations about the benefits of obtaining a degree from DeVry University and Keller Graduate School of Management” in violation of Texas state law. The Lindberg case was consolidated with the Rangel v. Adtalem and DeVry University, Inc. case because the allegations against DeVry and Keller were

¹ See Attachment A: Keller Graduate School of Management Locations.

² *Lindberg et al v. Adtalem Global Education Inc. f/k/a DeVry Education Group, Inc. and DeVry University, Inc.*, Case No. 18-cv-649, W. D. TX; <https://www.truthinadvertising.org/wp-content/uploads/2018/08/Lindberg-v-Adtalem-Global-Education-complaint.pdf>; <https://vetsedsuccess.org/wp-content/uploads/2018/10/texas-students-lawsuit-devry.pdf>; <https://www.courtlistener.com/docket/7302337/lindberg-v-adtalem-global-education-inc/>

	<p>identical. Plaintiffs refiled and consolidated, and the Rangel v. Adtalem and DeVry University, Inc.³ case is currently pending.⁴</p> <ul style="list-style-type: none"> • <u>Pierce v. DeVry Education Group</u>⁵ - On March 30, 2016, the plaintiff filed a case against DeVry University, Keller Graduate School of Management. The plaintiff alleged that DeVry made deceptive representations about the school accreditation, transferability of the credits, and job placement rates in violation of New Jersey state laws. The case was settled by the parties on December 21, 2016. This case has a pending borrower defense application.
External Contact(s) for Further Investigation	N/A
External Investigations, Evidence or Litigation NOT related to BD	N/A
News Articles/Media	N/A
Name of Reviewer	Nastashia Matos
Date Review Completed	04/03/2020

SUMMARY OF ALLEGATIONS AND RECOMMENDATION

Summary of Allegations Reviewed	<p style="text-align: center;">Application Summary:⁶</p> <p>Borrower defense reviewed a sample of 50 allegations for each allegation category to identify potential trends in the applicant pool. As of April 2, 2020, there are 810 borrower applications for the Keller Graduate School of Management. The most common allegations are employment prospects and transferring of credits/school accreditation. Many of the allegations regard misrepresentations or omissions made by the school, but borrowers have not provided relevant supporting evidence to support their allegations.</p> <p style="text-align: center;">Allegation Break Down:</p> <p><u>Employment Prospects: 649 allegations</u> Out of 50 sampled allegations, 34 of the 50 made employment prospect allegations that might warrant BD relief, if supported by evidence. The borrowers allege that Keller guaranteed jobs, that they were told career services would place them in a</p>
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³<https://usdedeop.sharepoint.com/teams/FSA/zdo%20not%20use/Forms/AllItems.aspx?id=%2Fteams%2FFSA%2Fzdo%20not%20use%2FBorrower%20Defense%20Team%2FInvestigations%2FMid%2DSize%2FIn%20Progress%2FNastashia%2FKeller%20Graduate%20School%20of%20Managment%2FConsolidated%2DAmended%20Rangel%20v%2E%20Adtalem%20Complaint%2Epdf&parent=%2Fteams%2FFSA%2Fzdo%20not%20use%2FBorrower%20Defense%20Team%2FInvestigations%2FMid%2DSize%2FIn%20Progress%2FNastashia%2FKeller%20Graduate%20School%20of%20Managment>; *Luis Rangel, et al. v. Adtalem Global Education, Inc. and DeVry University, Inc.*, Civil Action No. 5:18-cv-0082-DAE.

⁴ Attachment B: Plaintiffs of the Rangel Case with a Pending Borrower Defense Application.

⁵ <https://www.courtlistener.com/docket/13352609/peirce-v-devry-education-group/>; Borrower Defense case no. 01252100.

⁶ See Attachment C: Keller Graduate School of Management Summary of Application Overview

job after graduation, that they were offered job placement, and that 90% of DeVry graduates obtain a job within 6 months from the date of graduation. There was insufficient commonality of campus and/or time period to suggest a pattern that warrants further investigation, and the borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.

Program Cost and Nature of Loans: 426 allegations

Out of 50 sampled allegations, only 12 made allegations that might warrant BD relief, if supported by evidence. Those borrowers stated that Keller misrepresented the total cost of the program when the borrower was told a certain amount but was charged another. There was insufficient commonality of campus and/or time period to suggest a pattern that warrants further investigation, and the borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.

Transferring Credits: 226 allegations

Out of 50 sampled allegations, 31 made allegations that might warrant BD relief, if supported by evidence. The borrowers allege that Keller misrepresented the nature of their accreditation and the transferability of credits. There was insufficient commonality of campus and/or time period to suggest a pattern that warrants further investigation, and the borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.

Career Services: 574 allegations

Out of 50 sampled allegations, 30 made career services allegations that might warrant BD relief, if supported by evidence. The borrowers allege that Keller misrepresented the nature and availability career services, job placement ability and offered job placement, and that 90% of Keller graduates obtain a job within 6 months from the date of graduation. There was insufficient commonality of campus and/or time period to suggest a pattern that warrants further investigation, and the borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.

Educational Services: 327 allegations

Out of 50 sampled allegations, only 2 made educational services allegations that might warrant BD relief. The educational service allegations were that borrowers were promised tutoring services, and that the school represented that professors who taught the classes were IT experts. The borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.

Admissions and Urgency to Enroll: 343 allegations

After sampling 50 allegations, none of the allegations were the type to warrant borrower defense relief. Additionally, borrowers failed to provide relevant supporting evidence for these allegations.

	<p><u>Other: 421 allegations</u> After sampling 50 allegations, only 2 out of the 50 made allegations that might warrant BD relief, alleging promises of a job and misrepresenting accreditation by DeVry University/Keller Graduate School of Management. The other allegations reference the FTC settlement with DeVry; none of the applicants' state that they were involved in the suit or benefited from the suit.</p>
Recommended Next Steps	<p>Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct by Keller Graduate School of Management to warrant further investigation, with the possible exception of the borrowers listed on Attachment B (discussed below). Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.</p> <p>BD recommends that the cases be adjudicated using the standard protocol, with the exception of the Rangel plaintiffs identified in Attachment B. The cases identified in Attachment B should be set aside, and the applicants contacted by Investigations.</p>
Recommended Focus Area(s)	N/A
APPROVED BY:	Michael Page
DATE:	4/24/2020

Evidence Considered	<ul style="list-style-type: none"> <input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission <input type="checkbox"/> Department of Justice <input type="checkbox"/> Securities and Exchange Commission <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Consumer Financial Protection Bureau <input type="checkbox"/> ED - FSA/OIG <input type="checkbox"/> Other
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Attachment A:

Keller Graduate School of Management Locations

OPE ID	Location	Status
02075400	Downers Grove, IL	Open
02075401	Phoenix, AZ	Open
02075402	Kansas City, MO	Open
02075403	Milwaukee, WI	Open
02075404	Schaumburg, IL	Open
02075405	Naperville, IL	Open
02075406	Lincolnshire, IL	Open
02075407	Tinley Park, IL	Open
02075408	Kansas City, MO	Open
02075409	Mesa, AZ	Open
02075410	Elgin, IL	Open
02075411	Waukesha, WI	Open
02075412	Saint Louis, MO	Open
02075413	Decatur, GA	Open
02075414	Atlanta, GA	Closed: 2/7/2013
02075415	Long Beach, CA	Open
02075416	Pomona, CA	Open
02075417	Manassas, VA	Open
02075418	Chicago, IL	Open
02075419	Merrillville, IN	Open
02075420	St, Louis, MO	Closed: 5/29/2007
02075421	San Diego, CA	Open
02075422	San Jose, CA	Closed: 02/27/2007
02075423	Atlanta, GA	Closed: 11/22/1999
02075424	Atlanta, GA	Open
02075425	Fremont, CA	Open
02075426	Alpharetta, GA	Open
02075427	Irvine, CA	Open
02075428	Fremont, CA	Closed: 08/10/2000
02075429	Tampa, FL	Open
02075430	Orlando, FL	Open
02075431	Phoenix, AZ	Open
02075432	Arlington, VA	Open
02075433	Chicago, IL	Open
02075434	Sherman Oaks, CA	Open
02075435	Broomfield, CO	Closed: 07/01/2004
02075436	Miami, FL	Open
02075437	Bethesda, MD	Open
02075438	Columbus, OH	Open
02075439	Orlando, FL	Open
02075440	Bellevue, WA	Open
02075441	Irving, TX	Open
02075442	Duluth, GA	Open
02075443	Cleveland, OH	Closed: 8/6/2008
02075444	Federal Way, WA	Open

02075445	Oakland, CA	Open
02075446	Columbus, OH	Open
02075447	Houston, TX	Open
02075448	Charlotte, NC	Open
02075449	Fort Washington, PA	Open
02075450	King of Prussia, PA	Open
02075451	Colorado Springs, CO	Open
02075452	Richardson, TX	Open
02075453	Miramar, FL	Open
02075454	Atlanta, GA	Open
02075455	Long Island City, NY	Closed: 1/25/2012
02075456	New York, NY	Open
02075457	Beachwood, OH	Closed: 8/13/2003
02075458	Indianapolis, IN	Open
02075459	Pittsburgh, PA	Open
02075460	Portland, OR	Open
02075461	Henderson, NV	Open
02075462	Independence, OH	Open
02075463	Gurnee, IL	Open
02075464	Philadelphia, PA	Open
02075465	Atlanta, GA	Open
02075466	Atlanta, GA	Closed: 2/7/2013
02075467	Westminster, CO	Open
02075468	Fort Lauderdale, FL	Open
02075469	Fort Worth, TX	Open
02075470	Greenwood Village, CO	Open
02075471	Elk Grove, CA	Open
02075472	Austin, TX	Open
02075473	Edina, MN	Open
02075474	Stockbridge, GA	Open
02075475	St. Louis Park, MN	Closed: 6/29/2012
02075476	San Antonio, TX	Open
02075477	Morrisville, NC	Open
02075478	Fresno, CA	Open
02075479	Cincinnati, OH	Open
02075480	Oklahoma City, OK	Open
02075481	Houston, TX	Open
02075482	Colton, CA	Open
02075483	Sandy, UT	Open
02075484	Dayton, OH	Open
02075485	Memphis, TN	Open
02075486	Tampa, FL	Open
02075487	Jacksonville, FL	Open
02075488	San Jose, CA	Open
02075489	Nashville, TN	Open
02075490	Chesapeake, VA	Open

02075491	Southfield, MI	Open
02075492	Bakersfield, CA	Open
02075493	Palmdale, CA	Open
02075494	Louisville, KY	Open
02075495	Paramus, NJ	Open
02075496	Daly City, CA	Open
02075497	Alhambra, CA	Open
02075498	Anaheim, CA	Open
02075499	Chicago, IL	Open
12075400	Glendale, AZ	Open
12075401	North Brunswick, NJ	Open
12075402	Cedar Hill, TX	Closed: 2/7/2013
12075403	Sugar Land, TX	Open
12075404	Rego Park, NY	Open
12075405	Oxnard, CA	Open
12075406	Lynnwood, WA	Open
12075407	Cranberry, PA	Closed: 2/8/2012
12075408	Cherry Hill, NJ	Open

Attachment B:
Plaintiffs of the Rangel Case with a Pending Borrower Defense Application

Luis Rangel, et al. v. Adtalem Global Education, Inc. and DeVry University, Inc.,
Civil Action No. 5:18-cv-0082-DAE.

Case No.	Name	Status
01498515	Christina Cabello	Open
01258902	Elisabeth Nguyen	Open
01378809	Christal Turner	Open
01497289	Martin Oloyede	Open
01536610	Nathalie A. Yeka	Open
01357947	Tristen Keith Wilson	Open
01395834	Emmanuel T. Makari	Open
01373933	Victor P. Sekgantso	Open
01325018	Candance D. Smith	Open
02028380	Alan Ta	Open
01483392	Sharonda Monique' Ford	Open
01464123	Jayson R. Fox	Open
01376523	Courtney Frazier	Open
02105111	Nathaniel Jones	Open
01467302	Derrick Milan Keith	Open
01404956	Andres Orlando Salazar	Open
01372594	Scott Anthony Sullivan	Open
01379962	Sean Monyese Williams	Open
01478559	Richard A Shaw	Open
01411595	Heather M. Emmons	Open
01240869	Ruben A. Espinoza	Open
01376578	Barrie Bergans	Open
01375978	David Michael Corvin	Open
01607080	Bobby Garza	Closed
01383764	Kevin Michael Guest	Open
01367463	Teneika L. Tillis	Open
01376566	Billy Jerome Morris	Open
01306556	Eddie Silas	Open
01403434	Tuwandra L. Harris	Open
01904328	Joshua A Palczynsky	Open
01527803	Ebony R. Ijeh	Open

Attachment C:

[Keller Graduate School of Management Application Sample Overview](#)