

Transferring Credits

Borrower Narrative	I already had an associate degree from the community college when I started at LMU, but I ended up having to take all those classes over again even though they told me that I wouldn't.
Denial Reason	Insufficient evidence
Reason	Borrower explicitly alleges both the representation (that previously earned credits would be accepted) and the falsity of that representation.
Letter	You allege that LMU misrepresented your ability to transfer previously earned credits into LMU. You wrote that you "already had an associate degree from the community college" but you "ended up having to take all those classes over again even though they told [you] that [you] wouldn't." This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

Transferring Credits

LMU lied to me about being accredited. They said they were but no other schools will take my LMU credits and I have to take those classes again if I ever want to finish my degree

Insufficient evidence

Borrower alleges a misrepresentation of the nature and/or value of the school's accreditation, combined with an allegation of an inability to transfer credits.

You allege that LMU misrepresented the nature and value of its accreditation. You wrote that "they said they were [accredited] but no other schools will take [your] LMU credits." This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

- **Program Cost and Nature of Loan**
- The following five claims appeared in the program cost and nature of loan section of BD applications. Assuming there is no evidence to support these claims please determine which denial reason to use in order to deny these allegations

Program Cost and Nature of Loan

Borrower Narrative I never knew I would have to pay these loans back. When I filled out the forms, they told me they were for grants, so I did it.

Denial Reason Insufficient evidence

Reason Borrower alleges a misrepresentation of the nature of the aid.

Letter You allege that LMU misrepresented the nature of your financial aid. Specifically, you wrote that when you “filled out the forms, they told [you] they were for grants, so [you] did it,” and that you “never knew [you] would have to pay these loans back.” This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

Program Cost and Nature of Loan

Borrower Narrative
All the hair styling materials were supposed to be included in the tuition, but I had to spend an extra \$200 buying dyes and colors. I feel ripped off.

Denial Reason
Insufficient evidence

Reason
Borrower alleges a misrepresentation regarding what materials were included with the tuition.

Letter
You allege that LMU misrepresented what was included with your tuition. Specifically, you wrote that “all the hair styling materials were supposed to be included in the tuition, but [you] had to spend an extra \$200 buying dyes and colors.” This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

Program Cost and Nature of Loan

The school did not inform me about The National Defense Student Loan Discharge Program. When applying for financial aid, I was told programs like this do not exist. After trying to find programs like these, the school could not provide me with the information. I was told that I do not qualify for any special programs relating to military service.

Doesn't state a claim

Basis of allegation is that the school did not inform the borrower of other financial aid options.

You allege that LMU failed to inform you of other financial aid programs. Specifically, the failed to inform you "about the National Defense Student Loan Discharge Program." You wrote that "when applying for financial aid, [you were] told programs like this do not exist." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Program Cost and Nature of Loan

Borrower Narrative	I never knew how interest worked. The school should have given me loan counseling before I finished but they didn't
Denial Reason	Doesn't state a claim
Reason	Failure to provide loan counseling does not state a claim.
Letter	You allege that LMU failed to provide loan counseling. You wrote that as a result, you "never knew how interest worked." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Program Cost and Nature of Loan

This school was a total rip-off! People laugh at my degree I paid \$10K for and I could have gone to the same program at LCC for half the tuition.

Doesn't state a claim

Basis of allegation is the price and/or comparative lack of value of program.

You allege that LMU was overpriced and failed to deliver appropriate value for the cost. You wrote that "people laugh at [the] degree [you] paid \$10K for" and that you could have attended a similar program at the local community college for "half the tuition." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

- **Employment Prospects**
- The following five claims appeared in the employment prospects section of BD applications. Assuming there is no evidence to support these claims please determine which denial reason to use in order to deny these allegations:

Employment Prospects

Borrower Narrative	<p>My school engaged in misleading marketing. I thought I was going to get a job. My recruiter Josephine told me overly optimistic statistics about graduation and employment rates— all the while just wanted to overcharge the federal government and me loans that perpetuated their lies of higher earnings and job prospects. I owe tons of debt, with a monthly payment of 800 dollars.</p>
Denial Reason	Insufficient evidence
Reason	Misrepresented employment statistics and future earnings
Letter	<p>You allege that your school misrepresented your employment prospects. Specifically, you allege that your school presented “overly optimistic statistics about graduation and employment rates.” You further allege that your school “perpetuated their lies of higher earnings.” This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.</p>

Employment Prospects

I was supposed to get a job. They told me 80% of students get jobs but I never got one. I did everything they told me to. I studied hard, got good grades. Still, no job.

Doesn't state a claim

Potential misrepresentation where the falsity doesn't match the representation

You allege you never found a job, despite the school advertising high placement rates. Specifically, you allege that your school "told [you] 80% of students get jobs but [you] never got one." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Employment Prospects

Borrower Narrative
 They told me it would be easy, that if I signed up they were gonna give me a quality education so I could be successful. But they never told me how hard it would be to get a job. It took me 3 months just to get a job and then I barely got paid any more money. This was such a rip off.

Denial Reason
 Doesn't state a claim

Reason
 Pure omissions without the student alleging that the school had a duty to inform the student of the pertinent information

Letter
 You allege that your school failed to provide information about the job market. Specifically, you allege that your school told that “if [you] signed up they were gonna [sic] give [you] a quality education so [you] could be successful,” but that your school never informed you “how hard it would be to get a job.” You further stated that, when you got a job, you “barely got paid any more money.” This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Employment Prospects

When I signed up at Lemur U they told me I would for sure get a job. They never helped me at all and I never got a job.

Insufficient evidence

Guaranteed Job

You allege that Lemur University falsely guaranteed you a job after graduation. You wrote that “they told [you that you] would for sure get a job” but you “never got a job.” This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

Employment Prospects

Borrower Narrative	I went to Lemur University (Go LMU!) because of the awesome externships they offered. They told me that I was guaranteed to get an externship that would turn into a full-time phlebotomist gig. I couldn't get the externship so I never got a job.
Denial Reason	Insufficient evidence
Reason	Misrep regarding an externship resulting in job placement
Letter	You allege that your school misrepresented your employment prospects. Specifically, you allege that your school misrepresented that you were "guaranteed to get an externship that would turn into a full-time phlebotomist gig." This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

- **Career Services [worksheet with questions and answers]**

- The following five claims appeared in the career services section of BD applications. Assuming there is no evidence to support these claims please determine which denial reason to use in order to deny these allegations:

Career Services

When I met with Nancy the recruiter she said this would change my life and not to worry because they would help me find a job.

Borrower Narrative

Doesn't State a claim

Denial Reason

No allegation of falsity

Reason

You allege that your school's recruiter promised the school would provide career services assistance. Specifically, you allege that your school told you "they would help [you] find a job This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Letter

Career Services

We were assured the school had partnerships with top employers to recruit graduates. The career services office would meet with me but none of the top employers would hire Lemur U graduates.

Insufficient evidence

Misrep of the relationships the school has with employers

You allege that your school misrepresented its relationship with employers. Specifically, you allege that your school represented that it “had partnerships with top employers to recruit graduates,” but that, in reality, “none of the top employers would hire Lemur U graduates.” This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

Career Services

Borrower Narrative	Lemur U told me that its career services department was what set it apart, but all they did was send me to Monster.com!
Denial Reason	Doesn't State a claim
Reason	Complaints about quality of career services
Letter	You allege that your school misrepresented the quality of its career services. Specifically, you allege that your school represented that "its career services department was what set it apart, but all they did was send me to Monster.com!" This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Career Services

Borrower Narrative	They PROMISED they would help me get a job. I worked my butt off and got perfect grades. No job.
Denial Reason	Doesn't State a claim
Reason	Misrep allegation with missing element
Letter	You allege that you have not found a job, despite the school's promise of career services assistance. You wrote that your school "promised they would help [you] get a job," but you have not found a job. This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Career Services

Borrower Narrative	Career services was terrible. They never helped me at all and I never got a job.
Denial Reason	Doesn't State a claim
Reason	Misrep allegation with missing element
Letter	You allege that Lemur University had poor career services. Specifically, you wrote "[c]areer services was terrible" at your school. You further allege that your school's career services "never helped [you] at all." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

- **Educational Services**

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- The following five claims appeared in the educational services section of BD applications. Assuming there is no evidence to support these claims please determine which denial reason to use in order to deny these allegations:

Educational Services

Borrower Narrative	My school told me that there would be many opportunities to get extra help from teachers. However, when I tried to get extra help nobody was ever available to help me.
Denial Reason	Insufficient evidence
Reason	Misrepresentation regarding the availability of services such as tutoring
Letter	You allege that your school misrepresented the availability of extra help from your teachers. Specifically, you state that your school told you that “there would be many opportunities to get extra help from teachers.” However, you further state that “when [you] tried to get extra help nobody was ever available to help [you].” This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

Educational Services

Borrower Narrative

When I was first deciding whether on whether to attend this school an admissions office told me that the teachers loved teaching and always worked to make sure all students would succeed. However, once I started classes I quickly learned that this was a lie. The teachers did not seem invested in our future and only seemed to help the students they personally liked or the students who already knew the material. If you fell behind in class the teachers basically ignored you.

Denial Reason

Doesn't state a claim

Reason

Complaint about teachers not being helpful or playing favorites

Letter

You allege that your school misrepresented how helpful and supportive your teachers would be. Specifically, you state that an admissions officer told you that “the teachers loved teaching and always worked to make sure all students would succeed.” However you go on to state that “the teachers did not seem invested in [your] future and only seemed to help the students they personally liked or the students who already knew the material.” This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Educational Services

Borrower Narrative
 My school promised to assign me to an externship so that I could get hands on training in the field. My externship was terrible. There was hardly any work to do and almost no supervision. The closest thing to work I did was sort through mail, but most of the time I was just sitting around with nothing to do.

Denial Reason
 Doesn't state a claim

Reason
 Externship Quality

Letter
 You allege that your school placed you in a low quality externship. Specifically you state that your school "promised to place [you] into an externship so that [you] could get hands on training in the field." However, you go on to state that "there was hardly any work to do and almost no supervision." Further, you state that "the closest thing to work [you] did was sort through mail." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Educational Services

I am a single parent and work a full time job so that I can support my kids. Before I enrolled at BDU I asked the school whether I could take all my classes at night because I work during the day. John Doe, an admissions officer, told me that their schedules are very flexible and that I would have no problem designing my class schedule around my work schedule. After two years of classes I learned that in order to graduate you have to take a course that is only offered during the day.

Insufficient evidence

Misrepresentation regarding class schedule

You allege that your school misrepresented the flexibility of its class schedule. Specifically, you state that before you enrolled you asked “whether [you] could take all [your] classes at night because [you] work during the day” and you state that you were told that you “would have no problem designing [your] class schedule around [your] work schedule.” However, you further state that “after two years of classes [you] learned that in order to graduate you have to take a course that is only offered during the day.” This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

Educational Services

Borrower Narrative
 BDU advertises that their teachers have years of in field experience and are experts in the field. My experience at BDU is that the teachers are terrible and don't know anything. I knew more than my diesel repair teacher and would have done a better job teaching the class. The school was a total waste of money.

Denial Reason
 Doesn't state a claim

Reason
 Teacher Quality/falsity not matching the misrep

Letter
 You allege that Borrower Defense University had poor quality teachers despite the school claiming that their teachers were experts in the field. Specifically, you state that the school "advertises that their teachers have years of in field experience and are experts in the field," but that you felt that that "the teachers are terrible" and that you "knew more than [your] diesel repair teacher." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

- **Other Allegations**

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- The following five claims appeared in various sections of BD applications. Assuming there is no evidence to support these claims please determine which denial reason to use in order to deny these allegations:

Other Allegations

Borrower Narrative	After I graduated my school lost its accreditation. Now nobody wants to hire me.
Denial Reason	Doesn't state a claim
Reason	Loss of accreditation
Letter	You allege that after you graduated your school lost its accreditation. Specifically, you state that because your school lost its accreditation "nobody wants to hire [you]." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Other Allegations

Borrower Narrative	My school promised to that its teachers would help all students excel in class. However, my teacher only helped white students. Anytime myself or any other minority student tried to get extra help my teacher would say he was too busy. But when a white student asked for help he would provide extra help.
Denial Reason	Not a BD type Claim
Reason	Discrimination
Letter	<p>You allege that your professor at Borrower Defense University discriminated against you on the basis of race. Specifically, you state that your teacher “only helped white students” and that “anytime [you] or any other minority student tried to get extra help [your] teacher would say he was too busy.” This claim fails because this allegation, even if true, does not directly relate to the reason you took out your loan or the educational services for which it was intended to pay and, therefore, does not provide a basis for a borrower defense discharge. Your claim for relief on this basis therefore is denied. Please note that allegations regarding discrimination are handled by the Department’s Office of Civil Rights. For more information, please go to: https://www2.ed.gov/about/offices/list/ocr/complaintintro.html</p>

Other Allegations

Borrower Narrative	After I graduating from BDU I never received my diploma. I was told they would mail me my paper diploma a few weeks after graduation. When I called the school they told me that I graduated and that paper diploma isn't important.
Denial Reason	Doesn't State a Claim
Reason	Failure to receive hard copy of diploma
Letter	You allege that Borrower Defense University failed to provide you with a paper diploma. Specifically, you state that you were told that Borrower Defense University "would mail [you your] paper diploma a few weeks after graduation," but that you "never received [your] diploma." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

Other Allegations

I was sexually harassed in the school dorm. When I reported the incident to the school the school did nothing to investigate my claim or punish my assaulter.

Not a BD type Claim

Sexual harassment

You allege that you were sexually harassed while attending Borrower Defense University. Specifically, you state that you were “sexually harassed in the school dorm” and that “the school did nothing to investigate [your] claim or punish [your] assaulter. This claim fails because this allegation, even if true, does not directly relate to the reason you took out your loan or the educational services for which it was intended to pay and, therefore, does not provide a basis for a borrower defense discharge. Your claim for relief on this basis, therefore, is denied.

Other Allegations

Borrower Narrative	A recruiter for BDU came to an event at my work. The recruiter pressured me to sign up for classes saying that a degree would help my career. He said that I could start classes as soon as the next week if I signed up that day. The recruiter didn't give me a chance to read the forms before I signed them.
Denial Reason	Doesn't state a claim
Reason	Urgency to Enroll
Letter	You allege that Borrower Defense University pressured you into enrolling. Specifically, you state that a recruiter told you that you "could start classes as soon as the next week if [you] signed up that day." Further you state the recruiter "didn't give [you] a chance to read the forms before [you] signed them." This claim fails because this allegation, even if true, does not amount to an act or omission by the school that violates state law. Your claim for relief on this basis, therefore, is denied.

STANDARD CLAIM REVIEW PROTOCOL

STANDARD PROTOCOL

1. Open Salesforce, go to Reports -> BD Enforcement Unit Reports, and open/run the report that has been assigned to you.
2. Open the files and/or attachments for the case you are reviewing. Confirm the application is actually against your school (if not, send to 1.4 with a task to the Tier 1 reviewer identifying the school claimed against for correction and/or asking whether there are outstanding loans against the school). Review any documents provided, noting anything that may support a BD claim.
3. Review all the allegations individually, using the [Types of Claims 10.23.2018](#) document as a guide to identify allegations that do not state a claim, allegations that do not state a BD claim, and allegations which state a potentially approvable claim.
 - a. Make sure the allegations are properly labeled, i.e., that allegations in the “Educational Services” narrative box relate to Educational Services, and not another type of allegation. You can either edit the allegation type dropdown or create new allegations, as appropriate.
 - b. If the allegations have not been transcribed, you do not need to transcribe the application into the tool. Create a new allegation of the appropriate type(s), and enter the narrative “See attached.” Identify the page number and, if there are multiple documents, identify which document to refer to (“[Transfer of Credits]: See attached, ‘John Smith Letter,’ p. 3”).
4. If the borrower attaches any evidence that indicates a larger attorney general action or class action or any lawsuit has been undertaken against the school,
 - a. Email your assigned QC attorney with the case # and explanation of the evidence/action
 - b. Stop work on the school. Do not open another case for this school at this time.
5. If the borrower attaches any evidence that supports that borrower’s particular allegation, but does not indicate any larger action against the school,
 - a. Email your assigned QC attorney with the case # and why you think the evidence supports the allegation
 - b. Stop work on the case. Move onto the next case.
6. If the allegation does not state a claim, does not state a BD claim, or does not have sufficient evidence to support a claim,
 - a. set the allegation review recommendation as “denied”
 - b. select the appropriate denial reason:
 - i. does not state a claim = “No claim stated”
 - ii. does not state a BD claim = “Failure to state a claim actionable under BD reg”
 - iii. insufficient evidence = “Lack of evidence”
 - c. Update the allegation.
 - d. Move onto the next allegation.

7. Once all the allegations have been reviewed, update the application decision and status
 - a. Set the application decision to “Flagged for Denial,” and select the appropriate denial reason (use “other” if there are multiple allegations that were denied for different reasons):
 - i. If all allegations were denied for the same reason, select that reason;
 - ii. If the allegations were denied for multiple reasons, one of which was “Lack of Evidence”, select “Lack of Evidence”;
 - iii. If the allegations were denied for a combination of “No Claim Stated” and “Failure to state a claim actionable under BD reg”, select “No Claim Stated.”
 - b. Update the status to 2.22 and assign the case to your QC attorney (please choose the option to not send an email).
8. Move on to the next case in the list, periodically running the report again so that cases that have been reviewed drop out.

DRAFT

STANDARD CLAIM REVIEW PROTOCOL TEMPLATE

Initial Review of Medium Batch Applications

BACKGROUND

Name of Institution	
Corporate Owner(s)	
Open or Closed	
Total Number of Applications	
Patterns of Alleged Misconduct	
Evidence/Litigation	
Name of Reviewer	
Date Review Completed	

SUMMARY APPLICATION OVERVIEW

BD Case Number	School/Campus listed on App	Program(s)	Year of Enrollment	Nature of Allegation(s)	Evidence

RECOMMENDATION:

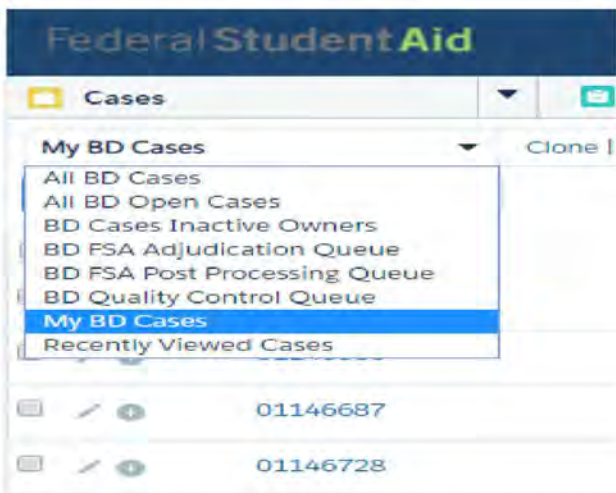
APPROVED BY:

DATE:

STANDARD CLAIM REVIEW QC PROTOCOL

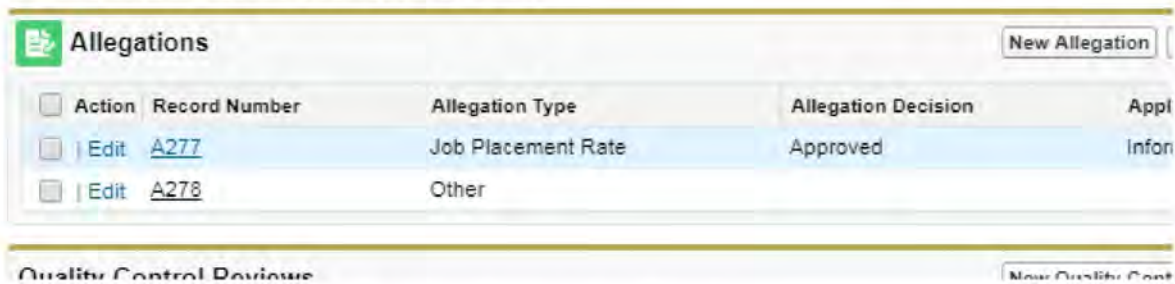
Standard Protocol QC Process

- (1) During 100% QC contractors and staff will be tasking completed cases to you for a QC review. To access these claims, click on “Cases” and select “My BD Cases” from the drop down.



During non-100% QC the designated QCer will review all medium batch claims in 2.22 not assigned to a BD attorney.

- (2) Click into your first case by selecting the first case number. Scroll down to the “Allegations” section and click into the first allegation you are QCing:



- (3) Once you are in the allegation, click “New Second-Level Review”



- (4) In the second level review, select the first level reviewer as the initial reviewer and fill in the applicable sections in the "Review" section. If your review matches the first level review change the "Outcome" to "Pass" and save your review.

If your review does NOT match the first level review change the "Outcome" to "Fail."

Repeat this step for all applicable allegations (JPR/Guaranteed Employment/Transferability).

Review Edit
Save Cancel

Assessment ! Required Info

Initial Reviewer

Outcome

Resolution Details

Review

Recommendation

Recommendation Reason

Suggested Relief

Controlling Begin Date

Controlling End Date

Controlling Date Source

Applicable Program

Applicable Program Source

Relevant State Law

Statute of Limitations Date

Review Notes

System Information

Allegation

Save Cancel

- (5) Ensure that the case level information (i.e. application decision and decision reason) is completed correctly. If this information is incorrect, correct it.
- (6) Add a QC review following steps (5) - (7) of the "Contractor QC Process for Salesforce" protocol.
- (7) Move the case to status 2.3 and change the owner to "BD Adjudication Queue"

RECONSIDERATION DENIAL TEMPLATE

[DATE]

Sally Jones
123 Fake Street
Apt. 5C
Washington, DC 20002

Case: 0000001

Dear Sally Jones:

The U.S. Department of Education (the Department) has completed its review of your application under the Borrower Defense regulations for discharge of your Federal student loans taken out in connection with your enrollment at [School]. Your application has been denied, which means that your Federal student loans will not be discharged.

Why was my application denied?

The Department reviewed your application, any evidence attached to your application, as well as loan documents and associated data from the National Student Loan Data System (NSLDS).

Allegation 1: Employment Prospects

You allege that SCHOOL _____. Specifically you state [quote to the extent possible]. This claim fails because [insert denial reason]. Your claim for relief on this basis, therefore, is denied.

Additionally you allege that SCHOOL _____. Specifically you state [quote to the extent possible ALLEGATION 1]. This claim fails because [insert denial reason]. Your claim for relief on this basis, therefore, is denied.

Allegation 2: Cost and Nature of the Loan

You allege that SCHOOL _____. Specifically you state [quote to the extent possible]. This claim fails because [insert denial reason]. Your claim for relief on this basis, therefore, is denied.

Applicable Law

A borrower may be eligible for a discharge (forgiveness) of one or more Direct Loans if the borrower's school engaged in acts or omissions that would give rise to a cause of action against the school under applicable State law. See § 455(h) of the Higher Education Act, 20 U.S.C. § 1087e(h), and 34 C.F.R. § 685.206(c)(1) (the Borrower Defense regulation). The Department will recognize a borrower's defense to repayment

of a loan only if the cause of action directly relates to the loan or to the school's provision of educational services for which the loan was provided. U.S. Department of Education, Notice of Interpretation, 60 Fed. Reg. 37,769 (Jul. 21, 1995).

What if I do not agree with this decision?

This is the Department's final decision on all allegations raised to date in connection with your Federal student loans for your attendance at [SCHOOL]. If you disagree with this decision, you may file a lawsuit in U.S. District Court.

Can I apply for borrower defense if I have additional claims?

If you wish to file a new application regarding acts or omissions by the school other than those described in the application (Case: [Click here to enter text](#)) that you believe support a valid borrower defense claim, please refer to the information and application available on the Department's website on borrower defense at StudentAid.ed.gov/borrower-defense. In that application, you should explain in the relevant section(s) the basis for your new borrower defense claim and submit all supporting evidence.

What should I do now?

Because the Department has denied your borrower defense claim, you are responsible for repayment of your loans. If your loans were placed in forbearance as a result of your borrower defense application, those loans will be removed from forbearance by your servicer.

If your loans are in default and are currently in stopped collections, your loans will be removed from stopped collections. Failure to begin or resume repayment could result in collection activity such as administrative wage garnishment, offset of State and Federal payments you may be owed, and litigation.

If your application was pending for more than one year and your applicable loans are owned by the Department, the Department will take steps to reduce the amount of interest that has accrued on your loan(s). Your servicer will provide additional information in the coming months regarding the specific amount of interest adjusted.

If you have questions about the status of your loans or questions about repayment options, please contact your servicer(s) or the Default Resolution Group (if your loan is in default) at 1-800-621-3115. If you do not know the name of your loan servicer, you can find that information at nslds.ed.gov. For further information on Federal Student Loan repayment and discharge, please visit: <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation>.

Sincerely,

Borrower Defense Unit
Federal Student Aid
U.S. Department of Education



REPORTING

Reporting

The designated team lead will be responsible for creating the following reports:

Daily Report: Each contractor is expected to keep track of the number of hours worked per day, the number of JPR claims moved to 2.21, the number of JPR claims moved to 1.4/2.2, the number of non-JPR cases reviewed, the number of files reviewed if on evidence review, the number of cases QCd if applicable, and any other workstream at the direction of FSA. Each contractor must track the number of hours devoted to each workstream. At the end of each day contractors must send their data to the team lead. The following day the team lead will compile a daily report, using the template provided by FSA.¹ The daily report will be sent to individuals designated by FSA and the vendor company. A copy of the report will also be uploaded to a designated folder.

Error Report: At the end of each week the designated QCer will send the errors found during QC to the team lead. The team lead will review the errors for accuracy and categorize the errors as major or minor using the established criteria. The team lead will compile the errors into a report, using a template provided by FSA. The error report will be sent to FSA and the vendor company weekly with the weekly report. A copy of the report will also be uploaded to a designated folder.

Weekly Report: At the end of each week the team lead will compile the daily reports into a weekly report, using a template provided by FSA. The team lead will review the report to ensure it accurately reflects the week's work by contractors. The team lead will address anticipated concerns, such as a contractor underperforming or lost time due to technical issues, in the comments section of the report. The team lead will send the weekly report to individuals designated by FSA and the vendor company. A copy of the report will also be uploaded to a designated folder.

Monthly Report: At the end of each month the team lead will compile the weekly reports into a monthly report, using a template provided by FSA. The team lead will send the monthly report to individuals designated by FSA and the vendor company. A copy of the report will also be uploaded to a designated folder.

¹ All report templates are subject to change at FSA's request.

QUALITY CHECKS OF CONTRACTOR RESOURCES

Quality Checks on Contractor Resources

The Borrower Defense Unit has implemented several systems to ensure cases are reviewed accurately and proper oversight is given to contractor resources.

QC of the QC

A BDU team member is responsible for checking the accuracy of the designated QCer. The QCer will inform the designated team member of every 5th batch of claims they QCd. The team member is responsible for ensuring the accuracy of the batch. If the designated team member discovers an error during QC the team lead will send the case number and a description of the error to individuals designated by FSA. The team lead will also inform FSA if no errors are found.

Check of Relativity

If any evidence review is conducted in a week, a BDU team member will spot check a randomly selected contractor's self-reported hours and files reviewed. To perform this check the designated team member will log into Relativity and select the database currently being reviewed. The designated team member will select "Reporting" and then select "History." The team member is then able to filter down to a selected day and contractor to review how many files were tagged as "1st Pass Review Complete." If there is a discrepancy with the number reported by the contractor remedial action may be taken.

Spot Check of Claims Adjudicated

Once per week a BDU team member will spot check two randomly selected contractors self-reported hours and claims adjudicated. To perform this check, the team member will open Salesforce and go to the "Latest Contractor Work" report in the "BD Enforcement Unit" report folder. The team member will change the date field to "Reviews: Created Date" and modify the date range to the appropriate date. The report will show the number of reviews created by each contractor for the selected date. If there is a discrepancy with the number reported by the contractors remedial action may be taken.

FORMS

SALESFORCE WEBFORM



U.S. DEPARTMENT OF EDUCATION APPLICATION FOR BORROWER DEFENSE TO LOAN REPAYMENT

OMB Number: 1845-0146
Expiration Date: 12/31/2019

If your school misled you or engaged in other misconduct, you may be eligible for "borrower defense to repayment," which is the forgiveness of some or all of your federal student loan debt.

FORM INSTRUCTIONS: To apply, you must complete, sign, and submit this form to the U.S. Department of Education for review.

You may attach additional documents, such as transcripts, enrollment agreements, and promotional materials from your school. Once completed, please submit this form and any additional documents you believe will help us review your application by email to BorrowerDefense@ed.gov or mail to US Department of Education - Borrower Defense to Repayment, PO Box 1854, Monticello, KY 42633.

Fields marked with an asterisk (*) are required for your application to be considered complete.

SECTION I: BORROWER INFORMATION

Please provide contact information for the borrower:

*Name (First, Middle, Last)		*Date of Birth (mm/dd/yyyy)	*Social Security Number	
*Telephone Number	*Email Address			
*Street Address		*City	*State	*Zipcode

*Are you a PARENT who took out a federal loan on behalf of the student?

Yes No

*If yes, please enter the full name of the student (Last, First, Middle):

*If yes, please enter the student's Social Security Number:

SECTION II: SCHOOL INFORMATION

*School

Campus (including on-line campuses for distance education borrowers)

*Location (City, State)

* Enrollment Dates at this school:

*From (month/year):

*To (month/year):

If you are still attending this school/campus, please indicate by checking the box.

Check if the enrollment dates above are approximate, or if you are unsure of them.

If your attendance at the school listed above was not or has not been continuous (for example, from October 2015 to March 2016, then again from August 2016 to November 2016), please describe all dates that you attended.

*Program Name or Major (e.g. *Nursing, Medical Assistant, Paralegal*).

Credential/Degree Sought (e.g. *Certificate, Diploma, Associates, Bachelors, Masters*).

If you enrolled in multiple programs at the school listed above, please describe all programs that you were enrolled in.

*Current Status at school listed above

Graduated Transferred Out Withdrew Attending

SECTION III: OTHER LOAN REDUCTION OR TUITION RECOVERY REQUESTS

*Have you made any other requests to have your Federal loans forgiven (for example, under a closed school discharge or false certification discharge from the U.S. Department of Education)?

Yes No

*If yes, please describe these other request(s), including the amount of any loan forgiveness that you received, and attach any documentation about the requests, if available.

*Have you made any requests to anyone else to recover tuition amounts that you paid to your school (for example, a lawsuit against the school or a claim made to a tuition recovery program)?

Yes No

*If yes, please describe these other request(s), including the amount of the payment that you received (if any), and attach any documentation about the requests, if available.

SECTION IV. BASIS FOR BORROWER DEFENSE

Answer the questions for each section below that applies to you.

For each section below that applies to you, please provide a **detailed** description of why you believe you are entitled to borrower defense, including the following information:

1. How the school communicated with you, whether in a brochure, online, over the phone, by email, or in person
2. The name/title of people who you believe misled you (*if known*)
3. What the school told you or failed to tell you.
4. Why you believe you were misled.

Attach any related documents, such as transcripts, enrollment agreements, promotional materials from the school, emails with school officials or your school's manual, or course catalog.

Note: You only need to provide information for the sections below that apply to you, but you must complete at least one section. If you are a Parent PLUS borrower, the word "you" in the following sections also refers to the student.

If you need more space to complete any section, please attach additional pages to your application.

EMPLOYMENT PROSPECTS

Did the school mislead you *(or fail to tell you important information)* about promises of future employment, likelihood of finding a job, eligibility for certification or licensure in your field of study, how many students graduate, and/or earnings after graduation?

Yes No

If yes, you must provide detailed information about how the school misled you. Please also describe any financial harm to you as a result of the school's conduct.

*Did you choose to enroll in your school based in part on the issues you describe above?

Yes No

PROGRAM COST AND NATURE OF LOAN

Did the school mislead you *(or fail to tell you important information)* about how much your classes would cost, how you would pay for your education, the terms of loan repayment, and/or other issues about the cost of your education?

Yes No

If yes, you must provide detailed information about how the school misled you. Please also describe any financial harm to you as a result of the school's conduct.

*Did you choose to enroll in your school based in part on the issues you describe above?

Yes No

TRANSFERRING CREDITS

Did the school mislead you *(or fail to tell you important information)* about transferring your credits from this school to other schools?

Yes No

If yes, you must provide detailed information about how the school misled you. Please also describe any financial harm to you as a result of the school's conduct.

*Did you choose to enroll in your school based in part on the issues you describe above?

Yes No

CAREER SERVICES

Did the school mislead you *(or fail to tell you important information)* about the availability or quality of job placement, career services assistance, or the school's connections to employers within your field of study?

Yes No

If yes, you must provide detailed information about how the school misled you. Please also describe any financial harm to you as a result of the school's conduct.

*Did you choose to enroll in your school based in part on the issues you describe above?

Yes No

EDUCATIONAL SERVICES

Did the school mislead you (*or fail to tell you important information*) about educational services, such as the availability of externships, qualifications of teachers, instructional methods, or other types of educational services?

Yes No

If yes, you must provide detailed information about how the school misled you. Please also describe any financial harm to you as a result of the school's conduct.

*Did you choose to enroll in your school based in part on the issues you describe above?

Yes No

ADMISSIONS AND URGENCY TO ENROLL

Did the school mislead you (*or fail to tell you important information*) about the importance of enrolling immediately, the consequences of failure to enroll, how difficult it was to be admitted, or anything else about the admission process?

Yes No

If yes, you must provide detailed information about how the school misled you. Please also describe any financial harm to you as a result of the school's conduct.

*Did you choose to enroll in your school based in part on the issues you describe above?

Yes No

OTHER

Do you have any other reasons relating to your school that you believe qualify you for borrower defense, such as your school failing to perform its obligations under its contract with you, or that there is a judgment against your school in a Federal court, a State court, or in front of an administrative board or that you believe that you have a state law cause of action against the school?

Yes No

Is there some other reason you feel your school misled you?

Yes No

If yes, you must provide detailed information about how the school misled you. Please also describe any financial harm to you as a result of the school's conduct.

*Did you choose to enroll in your school based in part on the issues you describe above?

Yes No

SECTION V: FORBEARANCE/STOPPED COLLECTIONS

If you are not currently in default on your federal student loans, you may request to have them placed into **forbearance** status while your application is under review. **Forbearance means that you do not have to make loan payments and your loans will not go into default.** Forbearance will continue until the borrower defense review process of your application is completed. Your servicer will notify you when your loans have been placed into forbearance status.

If your federal student loans are in **default**, you may request to have debt collection on your loan stopped ("**stopped collections status**"). **This means that the federal government or debt collection companies will stop attempting to collect on the loans, including by not withholding money from your wages or income tax refunds.** Stopped collections status will continue until the borrower defense review process of your application is completed.

Please see the "Common Questions and Answers Regarding Forbearance/Stopped Collections" section on the Borrower Defense website (<https://studentaid.ed.gov/borrower-defense>) if you have any questions regarding choosing to enter forbearance or stopped collections.

Note that interest will continue to accumulate on federal loans regardless of what status they are in, including subsidized loans. If your application for borrower defense is denied, or partially approved, the total amount you owe on those loans may be higher.

PLEASE NOTE: You do not have to place your loans in forbearance or stopped collections to apply for borrower defense relief.

For the most current information with regard to your rights and obligations regarding forbearance and stopped collections, please visit the Borrower Defense website at <https://studentaid.gov/borrower-defense>.

*Are you requesting forbearance/stopped collections?

- Yes, I want all of my federal loans currently in repayment to be placed in forbearance and for collections to stop on any loans in default while my borrower defense application is reviewed. During this time period, I understand that interest will continue to accrue.
- No, I do not want all of my federal loans currently in repayment to be placed in forbearance and for collections to stop on any loans in default while my borrower defense application is reviewed. During this time period, I understand that interest will continue to accrue and that I must continue to make loan payments.

If you do not select one of the options immediately above, your federal loans currently in repayment will automatically be placed into forbearance and collections will stop for any defaulted loans, and the Department will request forbearance for any commercially held Federal Family Education Loan (FFEL) program loans currently in repayment and for debt collection to stop for any defaulted, commercially held FFEL program loans that you have currently (*as applicable*).

SECTION VI. CERTIFICATION

By signing this attestation I certify that:

All of the information I provided is true and complete to the best of my knowledge. Upon request, I agree to provide to the U.S. Department of Education information that is reasonably available to me that will verify the accuracy of my completed attestation.

I agree to provide, upon request, testimony, a sworn statement, or other documentation reasonably available to me that demonstrates to the satisfaction of the U.S. Department of Education or its designee that I meet the qualifications for borrower defense.

I certify that I received proceeds of a federal loan, in whole or in part, to attend the school/campus identified in Section II (above).

I understand that if my application is approved and some or all of my loans are forgiven, I am assigning to the U.S. Department of Education any legal claim I have against the school for those forgiven loans. By assigning my claims, I am effectively transferring my interests in any claim that I could make against the school relating to the forgiven loans (including the ability to file a lawsuit over those forgiven loans and any money ultimately recovered in compensation for those forgiven loans in court or other legal proceedings) to the U.S. Department of Education. I am not assigning any claims I may have against the school for any other form of relief --including injunctive relief or damages related to private loans, tuition paid out-of-pocket, unforgiven loans, or other losses.

I understand that the U.S. Department of Education has the authority to verify information reported on this application with other federal or state agencies or other entities. I authorize the U.S. Department of Education, along with its agents and contractors, to contact me regarding this request at the phone number above using automated dialing equipment or artificial or prerecorded voice or text messages.

I understand that any rights and obligations with regard to borrower defense to repayment are subject to the provisions currently in effect under Title 34 of the Code of Federal Regulations.

I understand that if I purposely provided false or misleading information on this application, I may be subject to the penalties specified in 18 U.S.C. § 1001, including fines. I understand that I may be asked to confirm the truthfulness of the statements in this application to the best of my knowledge under penalty of perjury.

*Signature

Date

Submit this form and any additional documents you believe will help us review your application by email to BorrowerDefense@ed.gov or by mail to: U.S. Department of Education - Borrower Defense to Repayment, PO Box 42633, Monticello, KY 42633.

PRIVACY ACT NOTICE

Information required by subsection (e)(3) of the *Privacy Act of 1974*, as amended (*Privacy Act*) (5 U.S.C. 552a(e)(3)) requires the following notice be provided to you:

The authorities for collecting the requested information from and about you are Section 455(h) of the *Higher Education Act of 1965*, as amended (*HEA*) (20 U.S.C. 1087e(h)) and 34 C.F.R. § 685.206(c) and the authorities for collecting and using your Social Security Number (SSN) are the same but also include 31 U.S.C. 7701(b). The primary purpose of the information collected is for the use and administration of the U.S. Department of Education's office of Federal Student Aid (ED/we) for borrower defense to loan repayment program. The information you provide ED on this form and your SSN are voluntary, but you may need to provide the requested information on this form, including your SSN and/or a Federal Student Aid ID (FSA ID) that provides ED your verified SSN and other individual information pertaining to a student's or parent's Student Financial Assistance Programs account(s), for ED to process or complete our review of your borrower defense to loan repayment application. You may submit a form without your SSN or an FSA ID by filling out a form and sending it to ED via email or physical mail because disclosure of the information requested on this form is voluntary. However, without providing all the requested information on this form, ED may not be able to conduct a full investigation and complete the review of your application.

We use the information that you provided on this form including your name, SSN, date of birth, address, email address, telephone number(s), and / or an FSA ID, to receive, review, evaluate, and process requests for relief under the borrower defense to loan repayment regulations, to render decisions on the merits of such requests for relief, and, where requests for borrower defense to loan repayment are successful, to determine the relief that is appropriate to borrowers under the circumstances as well as to initiate appropriate proceedings to require schools whose acts or omissions resulted in the successful defenses against repayment to pay ED the amounts of the loans that apply to the defenses. Without your consent, ED may disclose the information that you provided and as otherwise allowed by the *Privacy Act*, pursuant to the routine uses identified in the system of records notice (SORN) entitled "Customer Engagement Management System (CEMS)" (18-11-11) and published in the Federal Register as [83 FR 27587-27591 \(June 13, 2018\)](#). These routine uses include, but are not limited to, a routine use that permits ED to disclose your information to foreign agencies, Federal agencies, State agencies, Tribal, or local agencies, accreditors, schools, lenders, guaranty agencies, servicers, and private collection agencies when further information is relevant to ED's resolution of your complaint, request, or other inquiry, tracking your application or your inquiry, and, where a request for borrower defense to loan repayment is successful, to determine the relief that is appropriate under the circumstances as well as to initiate the appropriate proceeding to require the school whose acts or omissions resulted in the successful defense against loan repayment to pay ED the amount of the loan that apply to the defenses. We may use your information for reporting, analyzing the data to make recommendations in student financial assistance programs, and assisting in the informal resolution of disputes. Disclosure of relevant information also may be made to the responsible foreign, Federal, State, Tribal or local agencies charged with investigating or prosecuting a violation or potential violation of law in the event that information indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority.

In the event of litigation or alternative dispute resolution (ADR) involving ED or that we have an interest in and if that a party is either any component of ED, any ED employee in his or her official capacity, any ED employee in his or her individual capacity where representation for the employee has been requested or has been agreed to by ED or the Department of Justice (DOJ), or the United States where ED determines that the litigation is likely to affect ED or any of its components, we may disclose your information to DOJ, a court, adjudicative body, a person or an entity designated by ED or otherwise empowered to resolve or mediate disputes, or a counsel, party, representative, or witness if the disclosure is relevant and necessary to the litigation or ADR. ED also may disclose your information to DOJ to the extent necessary for obtaining DOJ's advice on any matter relevant to an audit, inspection, or other inquiry. We may send information to members of Congress if you ask them to help you with federal student aid or Student Financial Assistance Programs account(s) questions. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. As part of such a contract, we will require the contractor to maintain safeguards to protect the security and confidentiality of the records that are disclosed to the contractor. If a record is relevant and necessary to a borrower complaint regarding participants in any Federal Student Financial Assistance Programs under title IV of the *HEA*, ED may disclose a record only during the course of

processing, reviewing, investigating, fact-finding, or adjudicating the complaint to: any party to the complaint; the party's counsel or representative; a witness; or a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter. ED also may disclose records to the DOJ or Office of Management and Budget (OMB) if ED concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the *Freedom of Information Act (FOIA)* or the *Privacy Act*. ED may disclose your information to appropriate agencies, entities, and persons when ED suspects or has confirmed that there has been a breach of the system maintaining your information; which poses a risk of harm to individuals, ED (including its information systems, programs, and operation), the Federal agencies, or national security and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist ED's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm. ED also may disclose your information to another Federal agency or Federal entity, when ED determines that your information is reasonably necessary to assist the recipient agency or entity in responding to a suspected or confirmed breach or preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal agencies, or national security, resulting from a suspected or confirmed breach.

PAPERWORK REDUCTION ACT NOTICE

According to the *Paperwork Reduction Act of 1995*, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0146. Public reporting burden for this collection of information is estimated to average 1 hour 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 or retain a benefit (20 U.S.C. 1087e(h)). If you have comments or concerns regarding the status of your individual submission of this application, please contact BorrowerDefense@ed.gov directly.

UNIVERSAL FORM

U.S. DEPARTMENT OF EDUCATION
APPLICATION FOR BORROWER DEFENSE TO LOAN REPAYMENT

If your school misled you or engaged in other misconduct, you may be eligible for “borrower defense to repayment,” which is the forgiveness of some or all of your federal student loan debt, and may include reimbursement for amounts paid.

FORM INSTRUCTIONS: To apply, you must complete and sign this form. Submit this form and any additional documents you believe will help us review your application by email to FSAOperations@ed.gov or by mail to: U.S. Department of Education, PO Box 194407, San Francisco, CA 94119.

SECTION I. BORROWER INFORMATION

Name (Last, First, Middle) _____

Date of Birth (mm/dd/yyyy) _____

Social Security Number (last 4 digits only - XXXX) _____

Telephone Number _____

Email Address _____

Street Address _____

City _____ State _____ ZIP Code _____

Are you a PARENT who took out a federal loan on behalf of the student? Yes No

If yes, please enter the full name of the student (Last, First, Middle): _____

SECTION II. PROGRAM INFORMATION

School Name: _____

Campus Name: _____

Location (City, State): _____

Dates of Enrollment: From (Month, Year): _____ To (Month, Year): _____ (if you are still attending this school/campus, please indicate “still enrolled”)

Program Name or Major (e.g. Nursing, Medical Assistant, Law) _____

Credential/Degree Sought (e.g. Certificate, Diploma, Associates, Bachelors, Masters) _____

Current Status at school: ___ Graduated ___ Transferred ___ Withdrew ___ Attending

Have you made any claims for loan relief from anyone else (for example, a tuition recovery program or a closed school discharge from the U.S. Department of Education)? Yes No

If yes, please describe the other claim(s), including the amount of any payment or loan relief that you received: _____

SECTION III. BASIS FOR BORROWER DEFENSE

Provide a **detailed** description of why you believe you are entitled to borrower defense:

1. Details about what the school told you or failed to tell you.
2. Details about how the school communicated with you, whether in a brochure, online, over the phone, or in person.
3. The name/title of people who you believe misled you (if known).
4. Details about why you believe you were misled.

You should also attach any documents related to your application. **Please note that you only need to provide information for the sections below that apply to you.**

EMPLOYMENT PROSPECTS

Did the school mislead you (or fail to tell you important information) about future employment, job placement rates, graduation rates, and/or post-graduate earnings? Yes No

If yes, please provide detailed information in this section.

Did you choose to enroll in your school based in part on the issues you describe above? Yes No

PROGRAM COST AND NATURE OF LOANS

Did the school mislead you (or fail to tell you important information) about tuition and fees, how you would repay the loan, the terms of repayment, and/or other issues about the cost of your education?

Yes No

If yes, please provide detailed information in this section.

Did you choose to enroll in your school based in part on the issues you describe above? Yes No

TRANSFERABILITY OF CREDITS

Did the school mislead you (or fail to tell you important information) about the transferability of credits?

Yes No

If yes, please provide detailed information in this section.

Did you choose to enroll in your school based in part on the issues you describe above? Yes No

CAREER SERVICES

Did the school mislead you (or fail to tell you important information) about the availability of job or career services assistance? Yes No

If yes, please provide detailed information in this section.

Did you choose to enroll in your school based in part on the issues you describe above? Yes No

EDUCATIONAL SERVICES

Did the school mislead you (or fail to tell you important information) about educational services, such as the availability of externships, teachers qualifications, the method of instruction, or other types of educational services? Yes No

If yes, please provide detailed information in this section.

Did you choose to enroll in your school based in part on the issues you describe above? Yes No

ADMISSIONS & THE URGENCY TO ENROLL

Did the school mislead you (or fail to tell you important information) about the importance of enrolling immediately, the consequences of failure to enroll, how difficult it was to be admitted, or anything else about the admission process? Yes No

If yes, please provide detailed information in this section.

Did you choose to enroll in your school based in part on the issues you describe above? Yes No

OTHER

Do you have any other reasons relating to your school that you believe qualify you for borrower defense, such as your school failing to perform its obligations under its contract with you, or that there is a judgment against your school in a Federal court, a State court, or in front of an administrative board? For more information about the basis for borrower defense relief, see StudentAid.gov/borrower-defense.

If yes, please provide detailed information in this section.

Did you choose to enroll in your school based in part on the issues you describe above? Yes No

SECTION IV. FORBEARANCE/STOPPED COLLECTIONS

By completing this form, you may have all of your federal loans placed into forbearance and have collections on any federal loans in default stopped (“stopped collections”) while we review your application. **However, please note that interest will continue to accrue (accumulate) on all of these federal loans, including subsidized loans. If your application for borrower defense is denied, then when you are taken out of forbearance or stopped collections, the interest that accumulated will be added to the amount you owed when you entered forbearance or stopped collections, and the total amount you owe in the future will be higher.**

You do not have to place your loans in forbearance or stopped collections to apply for borrower defense relief. Please read the following question and answer (“Q & A”) section carefully before you choose whether you want the U.S. Department of Education to place your loans into forbearance or stopped collections.

Q. What does forbearance or stopped collections status mean?

A. During any period that your loans are in forbearance, you do not have to make payments on those loans, and the loans will not go into default. If your loans are already in default, when you enter stopped collections status, collections on your loans will stop. This will continue until the borrower defense review process of your application is completed. Your servicer will notify you when your loan has been placed into forbearance or stopped collections status. Until you receive that notice, you should continue to make payments.

Q. Which of my loans are eligible to go into forbearance or stopped collections status?

A. Initially, if you choose forbearance or stopped collections, it will affect all of your federal student loans that are owned by the U.S. Department of Education and are being serviced by a federal loan servicer, including loans that are not eligible for borrower defense loan forgiveness, such as (1) loans taken out to attend another institution, and (2) any loans you have for which you are not asserting borrower defense. If you select forbearance and you have commercially held Federal Family Education Loans (FFEL) loans, the Department will request forbearance on your behalf.

Q. Can I remove some or all of my loans from forbearance or stopped collections status?

A. If you want the forbearance or stopped collections to apply only to those loans related to your borrower defense application, you must contact your loan servicer after you hear from them confirming the forbearance or stopped collection. Also, after your loans enter forbearance or stopped collection status, if at any time you want to remove all of your loans from forbearance or stopped collections, you must also contact your loan servicer.

Q. Can I make payments on my loans that are in forbearance or stopped collections?

A. Yes. While your federal loans are in forbearance or stopped collections, you are not required to pay your loans. However, you are allowed to make payments on any of your loans that are in forbearance or stopped collections, including payments for accrued interest. As noted above, interest will continue to accrue on all of these loans while they are in forbearance or stopped collections.

Q. What happens if my borrower defense application against the school noted in Section II (above) is successful?

A. Your federal loans related to your application may be discharged partially or completely. If you receive a partial discharge, you will be responsible for repaying any amounts that are not discharged through borrower defense. Also at that time, the forbearance or stopped collections period for any of your other federal loans will end. You will be responsible for repaying those other loans, if applicable, including interest that accrued during the forbearance or stopped collections period.

Q. What happens if my borrower defense application against the school noted in Section II (above) is denied?

A. You will not receive a discharge of any of your loans and the forbearance or stopped collections period will end for all of your loans. You will be responsible for repaying these loans, including interest that accrued during the forbearance or stopped collections period.

Are you requesting forbearance or stopped collections?

Yes, I want all of my federal loans to be placed in forbearance and for collections to stop on any loans in default while my borrower defense application is reviewed. During this time period, I understand that interest will continue to accrue.

No, I do not want all of my federal loans to be placed in forbearance and for collections to stop on any loans in default while my borrower defense application is reviewed. During this time period, I understand that interest will continue to accrue.

If you do not select one of the forbearance or stopped collection options immediately above, your federal loans will be placed into forbearance or stopped collection, and the Department will request forbearance or stopped collection for any commercially held FFEL program loans that you have currently.

SECTION V. CERTIFICATION

By signing this attestation I certify that:

I agree to provide, upon request, testimony, a sworn statement, or other documentation reasonably available to me that demonstrates to the satisfaction of the U.S. Department of Education or its designee that I meet the qualifications for borrower defense.

All of the information I provided is true and complete to the best of my knowledge. Upon request, I agree to provide to the U.S. Department of Education information that is reasonably available to me that will verify the accuracy of my completed attestation.

I certify that I received proceeds of a federal loan, in whole or in part, to attend the school/campus in Section II (above).

I understand that if my application is granted, I am deemed to have assigned my claim to, and relinquished it in favor of, the Secretary of the U.S. Department of Education.

I understand that the U.S. Department of Education has the authority to verify information reported on this application with other federal or state agencies or other entities. I authorize the U.S. Department of Education, along with its agents and contractors, to contact me regarding this request at the phone number above using automated dialing equipment or artificial or prerecorded voice or text messages.

I understand that if I purposely provided false or misleading information on this application, I may be subject to the penalties specified in 18 U.S.C. § 1001. I understand that I may be asked to confirm the truthfulness of the statements in this application to the best of my knowledge under penalty of perjury.

Signature: _____ Date: _____

Submit this form and any additional documents you believe will help us review your application by email to FSAOperations@ed.gov or by mail to: U.S. Department of Education, PO Box 194407, San Francisco, CA 94119.

PRIVACY ACT NOTICE

The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you: The authorities for collecting the requested information from and about you are §421 *et seq.*, §451 *et seq.* and §461 *et seq.* of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq.*, 20 U.S.C. 1087a *et seq.*, and 20 U.S.C. 1087aa *et seq.*) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 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, the Federal Family Education Loan (FFEL) Program, or the Federal Perkins Loan (Perkins 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, FFEL, or Perkins Loan Programs, 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) becomes delinquent or defaults. 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 statuses, 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.

PAPERWORK REDUCTION ACT NOTICE

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-NEW. Public reporting burden for this collection of information is estimated to average 1 hour 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 or retain a benefit (20 U.S.C. 1087e(h)). If you have comments or concerns regarding the status of your individual submission of this application, please contact FSAOperations@ed.gov directly.

EVEREST/WYOTECH ATTESTATION FORM



UNITED STATES DEPARTMENT OF EDUCATION

ATTESTATION FOR CERTAIN EVEREST AND WYOTECH STUDENTS APPLICATION FOR BORROWER DEFENSE TO REPAYMENT LOAN DISCHARGE

FORM APPROVED
OMB NO: 1845-0132
Exp 11/30/2018

The Department of Education has found that at various times between 2010 and 2014, Everest Institute, Everest College, and Everest University ("Everest"), and WyoTech published misleading job placement rates for many of its programs of study. This form is designed to expedite the process of obtaining loan forgiveness based on borrower defense to repayment for loans taken out by Everest and WyoTech students to enroll in these programs. This form covers federal Direct Loans (including Parent PLUS loans issued to parents of Everest and WyoTech students) received on or after July 1, 2010. A list of covered programs and dates of enrollment is available at <https://studentaid.ed.gov/ev-wy-findings>. Please fill out this attestation ONLY IF your program and dates of enrollment are included on this list.

Everest and WyoTech students who did not attend programs where the Department of Education found misleading job placement rates, or whose decision to enroll was not influenced by those job placement rates, may still be eligible for loan forgiveness based on borrower defense to repayment. Additional instructions to file a claim for loan forgiveness can be found at <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/borrower-defense>.

Instructions: Please complete this form. To sign the form, insert a digital image of your signature in the appropriate field below or print a hard copy of the form and sign. Submit your form and all supplementary documents referenced in question #4 via email to FSASOperations@ed.gov or mail to Department of Education, PO Box 429060, San Francisco, CA 94142.

SECTION I: BORROWER INFORMATION

First Name	Middle Name	Last Name	Date of Birth
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>
Social Security Number (last 4 digits)	Telephone Number	Email Address	
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	
Home Address	City	State	Zipcode
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

I, _____, attest to the following:

I am submitting this attestation and additional materials in support of my application for a borrower defense to repayment discharge of my Direct Loans under 34 C.F.R. § 685.206 (c).

SECTION II: PROGRAM INFORMATION

If you enrolled in more than one covered Everest/WyoTech program, you will need to complete the following for each covered program you attended. For example, if you were a criminal justice student in 2011 and returned in 2012 for an accounting program, you should complete the first Campus Program section based on your enrollment in criminal justice and the second Campus Program section based on your enrollment in accounting.

If you have more than one program, click the Add Campus Program button that appears at the bottom of the Campus Program section.

Note: This form applies to students who enrolled in a program after misleading placement rates were published for the program. A list of covered programs and dates of enrollment is available at <https://studentaid.ed.gov/ev-wy-findings>. The earliest enrollment date covered is July 1, 2010.

CAMPUS PROGRAM			
Campus		Enrollment Start Date* (MM/YYYY)	Enrollment End Date* (MM/YYYY)
Program Name			Credential

- Prior to my enrollment in this Everest/WyoTech program, I received information about job placement rates related to my program of study through one or more of the following ways (check each that applies)

 - Brochures advertising Everest/WyoTech academic programs or other printed materials, including those provided by Everest/WyoTech representatives or recruiters;
 - Emails, online materials, or online disclosures from or by Everest/WyoTech.
- I believed that the job placement rates related to my program of study indicated the level of quality an Everest/WyoTech education offered to students. I chose to enroll at Everest/WyoTech based, in substantial part, on the information I received about job placement rates related to my program of study and the quality of education I believed those placement rates represented.
- I applied for and received a federal Direct Loan to cover the cost of attendance of the Everest/WyoTech program in which I enrolled.
- As an attachment to this attestation, I have included document(s) with additional information to confirm that I was enrolled in the program of study at Everest/WyoTech that I identified above, and was enrolled for the dates I provided above. (Suggested documents include transcripts and registration documents indicating your specific program of study at Everest/WyoTech and dates of enrollment.)
 The document(s) I have attached are:

- *Select the check box if you had multiple periods of enrollment in a program, that is, if you enrolled in a program but subsequently discontinued enrollment, and then reenrolled in the same program at a later date, please provide all start and end dates applicable to this program. (Deselect the check box to remove any enrollment dates added in error.)

Add Campus Program	Remove Campus Program
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SECTION III: OTHER INFORMATION

Please provide or attach any other information about your experience at Everest/WyoTech that you believe is relevant: (2,000 characters max)

SECTION IV: DIRECT LOAN FORBEARANCE

By completing this form, you are eligible to have all of your federal loans placed into forbearance and for collections on any federal loans in default to stop while your claim is reviewed by the Department of Education. Please read the following information carefully before making your selection below.

During any period that your loans are in forbearance, you do not have to make payments on those loans, and the loans will not go into default. If your loans are already in default, collections will stop. This will continue until the loan discharge review process is completed. Your servicer will notify you when your loan has been placed into forbearance or stopped collections. Until you receive that notice, you should continue to make payments.

The forbearance or stopped collections will affect all of a borrower's federal loans, including loans that are **not** eligible for discharge through this form, such as Federal Family Education Loans (FFEL), loans taken out to attend an Everest and/or WyoTech program not on the enclosed list of covered programs, or loans taken out to attend another institution.

Note that interest will continue to accrue on all of these federal loans, including subsidized loans, during the forbearance or stopped collections period.

If you want the forbearance or stopped collections to apply only to those loans that may be eligible for a discharge using this form (federal Direct Loans received on or after July 1, 2010 to attend Everest and/or WyoTech programs covered by the enclosed list), you must notify your loan servicer. At any time during the forbearance or stopped collections period, you may voluntarily make payments on your loans, including payments for accrued interest, or end the forbearance or stopped collections by contacting your servicer.

If your claim made using this form is successful, your federal Direct Loans borrowed to attend a covered Everest/WyoTech program will be discharged. Also at that time, the forbearance or stopped collections period for your other federal loans will end. You will be responsible for repaying these other remaining loans, including interest that accrued during the forbearance or stopped collections period, under the terms of your promissory note.

If your claim is denied, you will not receive a discharge of any of your loans and the forbearance or stopped collections period will end for all of your loans. You will be responsible for repaying these loans, including interest that accrued during the forbearance or stopped collections period, under the terms of your promissory note.

- Yes, I want my federal loans to be placed in forbearance and for collections to stop on any loans in default while my loan discharge claim is reviewed.
- No, I do **not** want my federal loans to be placed in forbearance and for collections to stop on any loans in default while my loan discharge claim is reviewed.

SECTION V: CERTIFICATION

By signing this attestation I certify that:

I agree to provide, upon request, testimony, a sworn statement, or other documentation reasonably available to me that demonstrates to the satisfaction of the Department of Education or its designee that I meet the qualifications for borrower defense to repayment loan discharge.

All of the information I provided is true and complete to the best of my knowledge and I agree, if asked, to provide information reasonably available to me to the Department of Education that will verify the accuracy of my completed attestation.

I understand that the Department of Education has the authority to verify information reported on this application with other federal or state agencies or other entities. I authorize the Department of Education, along with its agents and contractors, to contact me regarding this request at the phone number above using automated dialing equipment or artificial or prerecorded voice or text messages.

I understand that if I purposely provided false or misleading information on this application, I may be subject to the penalties specified in 18 U.S. Code § 1001.

Signature _____

Date _____

Privacy Act Notice. The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you: The authorities for collecting the requested information from and about you are §421 *et seq.*, §451 *et seq.* and §461 *et seq.* of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq.*, 20 U.S.C. 1087(a) *et seq.*, and 20 U.S.C. 1087(a) *et seq.*, and the authorities for collecting and using your Social Security Number (SSN) are §428B(f) and §484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 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, the Federal Family Education Loan (FFEL) Program, or the Federal Perkins Loan (Perkins 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, FFEL, or Perkins Loan Programs, 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) becomes delinquent or defaults. 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 statuses, 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.

Paperwork Reduction Act Notice. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0132. Public reporting burden for this collection of information is estimated to average 1 hour 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 or retain a benefit (20 U.S.C. 1087e(h)). If you have comments or concerns regarding the status of your individual submission of this application, please contact FSASOperations@ed.gov.

HEALD ATTESTATION FORM



UNITED STATES DEPARTMENT OF EDUCATION

ATTESTATION FOR CERTAIN HEALD COLLEGE STUDENTS APPLICATION FOR BORROWER DEFENSE TO REPAYMENT LOAN DISCHARGE

FORM APPROVED
OMB NO: 1845-0132
Exp. 12/31/2015

The Department of Education has found that at various times between 2010 and 2014, Heald College published misleading job placement rates for many of its programs of study. This form is designed to expedite the process of obtaining loan forgiveness based on borrower defense to repayment for loans taken out by Heald College students to enroll in these programs. This form covers federal Direct Loans received on or after July 1, 2010. A list of covered programs and dates of enrollment is available at <https://studentaid.ed.gov/sa/sites/default/files/heald-findings.pdf>. Please fill out this attestation ONLY IF your program and dates of enrollment are included on this list.

Heald College students who did not attend programs where the Department of Education found misleading job placement rates, or whose decision to enroll was not influenced by those job placement rates, may still be eligible for loan forgiveness based on borrower defense to repayment. Additional instructions to file a claim for loan forgiveness can be found at studentaid.ed.gov.

Instructions: Please complete this form. To sign the form, insert a digital image of your signature in the appropriate field below or print a hard copy of the form and sign. Submit your form and all supplementary documents referenced in question #4 via email to FSAOperations@ed.gov or mail to Department of Education, PO Box 429060, San Francisco, CA 94142.

SECTION I: BORROWER INFORMATION

First Name	Middle Name	Last Name	Date of Birth
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>
Social Security Number (last 4 digits)	Telephone Number	Email Address	
<input style="width: 25%;" type="text"/> <input style="width: 25%;" type="text"/> <input style="width: 25%;" type="text"/> <input style="width: 25%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	
Home Address	City	State	Zipcode
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

I, _____, attest to the following:

I am submitting this attestation and additional materials in support of my application for a borrower defense to repayment discharge of my Direct Loans under 34 C.F.R. § 685.206 (c).

SECTION II: PROGRAM INFORMATION

If you enrolled in more than one covered Heald program, you will need to complete the following for each covered program you attended. For example, if you were a criminal justice student in 2011 and returned in 2012 for an accounting program, you should complete the first Campus Program section based on your enrollment in criminal justice and the second Campus Program section based on your enrollment in accounting. If you have more than one program, click the Add Campus Program button that appears at the bottom of the Campus Program section.

Note: This form applies to students who enrolled in a program after misleading placement rates were published for the program. A list of covered programs and dates of enrollment is available at <https://studentaid.ed.gov/sa/sites/default/files/heald-findings.pdf>.
The earliest enrollment date covered is July 1, 2010.

CAMPUS PROGRAM			
Campus		Enrollment Start Date* (MM/YYYY)	Enrollment End Date* (MM/YYYY)
Program Name			Credential

- Prior to my enrollment in this Heald College program, I received information about job placement rates related to my program of study through one or more of the following ways (check each that applies)

 - Brochures advertising Heald College's academic programs or other printed materials, including those provided by Heald College representatives or recruiters;
 - Emails, online materials, or online disclosures from or by Heald College.
- I believed that the job placement rates related to my program of study indicated the level of quality a Heald education offered to students. I chose to enroll at Heald based, in substantial part, on the information I received about job placement rates related to my program of study and the quality of education I believed those placement rates represented.
- I applied for and received a federal Direct Loan to cover the cost of attendance of the Heald program in which I enrolled.
- As an attachment to this attestation, I have included documents(s) with additional information to confirm that I was enrolled in the program of study at Heald College that I identified above, and was enrolled for the dates I provided above. (Suggested documents include transcripts and registration documents indicating your specific program of study at Heald College and dates of enrollment.) The document(s) I have attached are:

*Select the check box if you had multiple periods of enrollment in a program, that is, if you enrolled in a program but subsequently discontinued enrollment, and then reenrolled in the same program at a later date, please provide all start and end dates applicable to this program. (Deselect the check box to remove any enrollment dates added in error.)

Add Campus Program	Remove Campus Program
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SECTION III: OTHER INFORMATION

Please provide or attach any other information about your experience at Heald College that you believe is relevant: (2,000 characters max)

SECTION IV: DIRECT LOAN FORBEARANCE

By completing this form, you are eligible to have all of your federal loans placed into forbearance and for collections on any federal loans in default to stop while your claim is reviewed by the Department of Education. Please read the following information carefully before making your selection below.

During any period that your loans are in forbearance, you do not have to make payments on those loans, and the loans will not go into default. If your loans are already in default, collections will stop. This will continue until the loan discharge review process is completed. Your servicer will notify you when your loan has been placed into forbearance or stopped collections. Until you receive that notice, you should continue to make payments.

The forbearance or stopped collections will affect all of a borrower's federal loans, including loans that are **not** eligible for discharge through this form, such as Federal Family Education Loans (FFEL), loans taken out to attend a Heald College program not on the enclosed list of covered programs, or loans taken out to attend another institution.

Note that interest will continue to accrue on all of these federal loans, including subsidized loans, during the forbearance or stopped collections period.

If you want the forbearance or stopped collections to apply only to those loans that may be eligible for a discharge using this form (federal Direct Loans received on or after July 1, 2010 to attend Heald College programs covered by the enclosed list), you must notify your loan servicer. At any time during the forbearance or stopped collections period, you may voluntarily make payments on your loans, including payments for accrued interest, or end the forbearance or stopped collections by contacting your servicer.

If your claim made using this form is successful, your federal Direct Loans borrowed to attend a covered Heald College program will be discharged. Also at that time, the forbearance or stopped collections period for your other federal loans will end. You will be responsible for repaying these other remaining loans, including interest that accrued during the forbearance or stopped collections period, under the terms of your promissory note.

If your claim is denied, you will not receive a discharge of any of your loans and the forbearance or stopped collections period will end for all of your loans. You will be responsible for repaying these loans, including interest that accrued during the forbearance or stopped collections period, under the terms of your promissory note.

- Yes, I want my federal loans to be placed in forbearance and for collections to stop on any loans in default while my loan discharge claim is reviewed.
- No, I do **not** want my federal loans to be placed in forbearance and for collections to stop on any loans in default while my loan discharge claim is reviewed.

SECTION V: CERTIFICATION

By signing this attestation I certify that:

I have read and understand all of the information in this form.

I agree to provide, upon request, testimony, a sworn statement, or other documentation reasonably available to me that demonstrates to the satisfaction of the Department of Education or its designee that I meet the qualifications for borrower defense to repayment loan discharge.

All of the information I provided is true and complete to the best of my knowledge and I agree, if asked, to provide information reasonably available to me to the Department of Education that will verify the accuracy of my completed attestation.

I understand that the Department of Education has the authority to verify information reported on this application with other federal or state agencies or other entities. I authorize the Department of Education, along with its agents and contractors, to contact me regarding this request at the phone number above using automated dialing equipment or artificial or prerecorded voice or text messages.

I understand that if I purposely provided false or misleading information on this application, I may be subject to the penalties specified in 18 U.S. Code § 1001.

Signature _____

Date _____

Privacy Act Notice. The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you: The authorities for collecting the requested information from and about you are §421 *et seq.*, §451 *et seq.* and §461 *et seq.* of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq.*, 20 U.S.C. 1087(a) *et seq.*, and 20 U.S.C. 1087(a) *et seq.*, and the authorities for collecting and using your Social Security Number (SSN) are §428B(f) and §484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 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, the Federal Family Education Loan (FFEL) Program, or the Federal Perkins Loan (Perkins 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, FFEL, or Perkins Loan Programs, 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) becomes delinquent or defaults. 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 statuses, 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.

Paperwork Reduction Act Notice. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0132. Public reporting burden for this collection of information is estimated to average 1 hour 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 or retain a benefit (20 U.S.C. 1087e(h)). If you have comments or concerns regarding the status of your individual submission of this application, please contact FSASOperations@ed.gov.

DEBT COLLECTIVE FORM

Borrower Defense to Repayment

Pursuant to 20 U.S.C. § 1087e(h), 34 C.F.R. § 685.206(c)(1), and Master Promissory Note (MPN) under the William D. Ford Federal Direct Loan (Direct Loan) Program and Federal Family Education Loan (FFEL) Program

As detailed below, I, [sample], am hereby applying for a full discharge of my federal student loans according to the “Defense to Repayment” provisions of the Higher Education Act and promulgating regulations.

Section 1: Borrower Information

SSN - -

Name

Address

City

State

Zip Code

Telephone (primary) - -

Telephone (alternate) - -

Email (optional)

Borrower is Employed

In field of study

Out of field of study

Unemployed

Loan Servicer

Section 2: School Information

School Name

School Address

Dates of Attendance From 01 / To 01 /

Name of program

Type of Credential

Status

Completed

Withdrew

Section 3: Illegal Conduct Of School

I assert that certain acts and omissions by [school] and/or its agents/representatives give me a defense to repayment of my federal student loan(s) under state and federal law and the terms of my federal student loan agreement(s).

The illegal conduct by [school] includes:

Misleading me about how this program would affect my job prospects, including:

Citing false and/or misleading job placement statistics and salary information to convince me to enroll in [school]. Explain:

Misleading me about the type of job placement assistance the school intended to provide me. Explain.

Other false/misleading conduct relating to job prospects. Explain:

Misleading me about the quality of the program, including:

The pass rate of program graduates in required licensing exams/certifications. Explain:

The fact that my program lacked the required accreditation to allow me to work in my field and/or transfer my credits to another college. Explain:

Other false/misleading conduct relating to the quality of the program. Explain:

Misleading me about how I would pay for the program, including:

Misleading me about the true cost of the program. Explain:

Misleading me about whether I would have to borrow money to attend [school] ,
rather than having it paid for entirely in grants. Explain:

Misleading me about the amount of student loans I was borrowing. Explain:

Misleading me about whether my loans were federal or private. Explain:

Misleading me about the terms of repayment on my federal student loans, including what my monthly payments would be. Explain:

Other false/misleading conduct in relation to financial aid. Explain:

Misleading me about my options as the school shut down, including:

Misleading me about the likelihood that the school would shut down. Explain:

Misleading me about my rights and options regarding the teach-out at School, including failing to inform me that I had a right to decline the teach out and receive a full discharge of my federal student loans. Explain:

Other misleading behavior, including:

Furthermore, the long history of systematic illegal activity and inadequate programs created a high likelihood that school's reputation would be irreparably damaged to the point where the degrees they issued would be worthless. [school] never notified me or otherwise made me aware that that my degree would be worthless due to [school] 's misconduct.

Absent this conduct, I would not have chosen to attend and/or continue attending [school] I decided to pursue a postgraduate education because I wanted to gain the relevant skills to find a more fulfilling career with higher earning potential than I was able to obtain previously. I chose to attend [school] because they represented to me that their program would give me useful skills, that their degree would allow me to earn more than I did previously, and that these benefits would outweigh the burden of paying off the obligations I would incur to finance the degree.

Because of this conduct, I have suffered injury, including:

Federal student loan debt, which has caused me stress, forced me to divert funds from other aspects of my life and otherwise unduly burdened me. Explain:

The inability to enroll in another degree-granting program. Explain:

A difficult time finding employment, either in the field I went to school for or otherwise. Explain:

Missing the opportunity to go to another, better higher education institution and lacking the eligibility for enough federal loans to do so now.

Other injury, including pain and suffering. Explain:

Section 4: Defense To Repayment of Federal Student Loans

The above conduct gives rise to a cause or causes of action under [state] law, which relate(s) directly to my loan and/or the provision of educational services for which the loan was given, including:

[state law description]

Common law action for Fraudulent Misrepresentation;
and/or common law action for Fraudulent Concealment.

Additionally, the above conduct violates federal law, including:

1. The Federal Trade Commission Act and Federal Trade Commission regulations, which prohibit “a school, in promoting a course of training, to misrepresent the availability of employment after graduation from a course, the success that the member graduates have realized in obtaining such employment, or the salary that the member’s graduates will receive in such employment.” 16 C.F.R. § 254.4(d).
2. Title IV of the Higher Education Act and Amendments, and Department of Education regulations, which prevent schools from participating in Title IV programs from committing “substantial misrepresentation” in interactions with students and prospective students.

Section 5: Requested Relief

Therefore, I request that the Servicer and/or Department of Education take the following steps:

1. Cancel any remaining principal, interest, fees and costs associated with my federal student loans, borrowed to attend [school]
2. Cease any collection actions against me in relation to my federal student loans, borrowed to attend [school]
3. Return any sums paid, whether voluntarily or involuntarily, toward my federal student loans, borrowed to attend [school]
4. Remove any adverse reports related to my federal student loans, borrowed to attend School, from all consumer credit reporting agencies.
5. Restore my eligibility to receive funds under Title IV, including by restoring any portions of my lifetime eligibility for Pell Grants and federal student loans previously used in order to attend [school]

I request a notification of a hearing or a determination of my asserted defense to repayment within thirty (30) days, in writing. Should you deny any or all of my defense, please inform me of the process for appealing this decision, in writing. I reserve the right to submit supplementary information in support of this application.

Section 6: Borrower Acknowledgment, Certifications, Assignment, And Authorization

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

I certify, under penalty of perjury, that all of the information I have provided on this form and in any accompanying documentation is true and accurate to the best of my knowledge and belief.

I certify that I will provide, upon request, testimony, a sworn statement, or other documentation reasonably available to me that demonstrates to the satisfaction of the Department that I meet the qualifications for defense to repayment of my student loans.

I certify that, if my defense is successful, upon request I will provide assistance and cooperation to the U.S. Department of Education (the Department) in any proceedings or enforcement actions against the school related to my defense or the conduct asserted herein.

I hereby assign and transfer to the U.S. Department of Education (the Department) any right to a refund on the amount discharged that I may have received from the school and/or any owners, affiliates, or assignees of the school, and from any third party that may pay claims for a refund because of the actions or omissions of the school, up to the amount discharged by the Department on my loan(s).

I authorize the loan holder to which I submit this request (and its agents or contractors) to contact me regarding my request or my loan(s), including repayment of my loan(s), at the number that I provide on this form or any future number that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

Borrower's Signature _____ Date _____

ONBOARDING INFORMATION

CEMS USER ACCESS FORMS

**Instructions for Filling Out and Submitting the
CEMS User Access Request Form
For Department of Education and Contract Users**

Please find embedded the **Customer Engagement Management System (CEMS) User Access Request Form and Rules of Behavior**. Please note the CEMS User Access Request Form includes options for the Feedback and Dispute Management System, Borrower Defense, Office of the Inspector General, Awareness and Outreach and Minority Serving and Under Resourced Schools Division. Below are some important notes for completing your form.

Background Investigations

To be granted access to CEMS as a user, you must have an active background investigation at the minimum level of a 5C. The background investigation must have originated within the last 5 years. If your last background investigation was not initiated in the last 5 years, you may be denied access. To be granted access to CEMS as an ISSO or System administration you must have an active background investigation at the minimum level of 6C.

Completing the Forms

AIMS ID

If you already have an AIMS ID (NSLDS login ID), provide it in the necessary field on the form. If you do not have an AIMS ID, after the processing of your request form, a separate email will be sent from the AIMS team providing you your assigned AIMS username and password. Please keep an eye out for the email from the AIMS team after you submit your form, as you will need the information to log in the application. If you know you have an AIMS ID but don't know what it is, you can obtain the information by contacting the AIMS team at Aimssupport@ed.gov.

Selecting Roles

Please see the below table of CEMS roles to determine your selection when completing the form. Questions about selecting your role should be addressed with your business unit's lead.

Role	Description
A&Q User	Awareness and Outreach staff only
Borrower Defense Enforcement Unit	Borrower Defense Enforcement Unit staff only
Borrower Defense Tier 1 Specialist	Borrower Defense Tier 1 Specialists only
DC Team Lead	FDMS Ombudsman Group Team Leads only
Dispute Management	FDMS Ombudsman Group Management staff only
ED External User	Staff with read-only access to records with the ability to create tasks
FDMS Tier 1 Supervisor	FDMS Tier 1 Supervisors only
FDMS Tier 1 Specialist	FDMS Tier 1 Specialists only
Feedback Management	Feedback Management staff only
Feedback Tier 2 – Controlled Correspondence	Oversees cases that come in with controlled correspondence associated
Feedback Tier 2 – CPS	Oversees cases that involve school additions/deletions to the FAFSA, orrecting a processed FAFSA, EFC calculations and Student Aid Reports.
Feedback Tier 2 – DMCS	Oversees cases that involve defaulted ED-held loans and are handled by the DMCS Contractor
Feedback Tier 2 – Escalated Issues	Oversees escalated cases, Suspicious Activity cases, and triage for cases in question
Feedback Tier 2 – FSAIC	Oversees cases in relation to the Federal Student Aid Information Center
Feedback Tier 2 – Grant & Loan Program	Oversees cases that involve issues related to the origination and disbursement of federal aid
Feedback Tier 2 – ISE	Oversees cases related to the website/online experience for StudentAid.gov
Feedback Tier 2 – NSLDS	Oversees case that involve data issues that can be corrected by the NSLDS team or contractor
Feedback Tier 2 – PCA Monitoring	Oversees cases that involve defaulted loans and are handled by private collection agencies
Feedback Tier 2 – Program Compliance	Oversees cases that involve complaints against schools

Feedback Tier 2 – PSLF	Oversees cases that relate to Public Service Loan Forgiveness
Feedback Tier 2 – Servicer Liaison	Oversees cases that involve non-defaulted loans and are handled by ED’s servicers
Feedback Tier 2 – Technology Office/FSA ID	Oversees cases related to FSA IDs, including the FSA ID website and help desk
OIG Content User	OIG staff who oversees the uploading of content
OIG Fraud Analyst	OIG staff and contractors who oversee the processing of allegations of fraud
SE/MSURSD User	MSURSD staff who oversee identifying service needs of all postsecondary education institutions

Providing Comments

For FDMS Feedback users, specify if additional **queue** access is required (other than the system role specified). If you are unsure if you require additional queue access, please contact your FDMS point of contact. For OIG and SE users, specify if the **enhanced user permission** is required. For OIG, this will allow users to edit the Final Disposition field. For SE, this will give data loader access as well as edit access to certain objects/fields.

Submitting Forms

Please submit the below list of completed documents to Victoria Malone, Lisa D. Washington, Krystle Wright and ShaVon Holland at victoria.malone@ed.gov; lisa.s.washington@ed.gov; krystle.wright@ed.gov and shavon.holland@ed.gov :

- The completed and signed CEMS User Access Request Form
- Signed and checked Rules of Behavior
- Your most recent Cyber Security and Privacy Awareness Certificate (Obtain a copy of your Cyber Security and Privacy Awareness Certificate from the TMS system or provide a screenshot of the completed training from Fed Talent.)
- Save your files in the following formats:
 - **Lastname_Firstname CEMS Access Form**
 - **Lastname_Firstname CEMS Rules of Behavior**
 - **Lastname_Firstname Cyber Security Certificate**
- The information requested on the form is considered personally identifiable information (PII) and to protect your information, we recommend you **send all three separate documents in 1 zip file and password protect** it before sending. Please do not scan all the documents into 1 PDF, there should be 3 separate files within your zip file saved in the format provided above.
- Send the password to unzip the files in a separate email

Receiving Emails from the Service Desk

To receive email messages from the CEMS Service Desk (and avoid them going to spam), please add the email address as a “safe sender.” The email address for the CEMS Service Desk is currently FDMS.Support@accenturefederal.com. Instructions on how to add an email address to your safe senders list in Outlook are below:

1. In Outlook, go to the Home tab
2. Click Junk > Junk Email Options
3. Select Safe Senders tab and Click Add
4. In the Add address or domain box, enter FDMS.Support@accenturefederal.com
5. Select Safe Recipients tab and Click Add
6. In the Add address or domain box, enter FDMS.Support@accenturefederal.com
7. Click OK and close the window

What to Expect Next

- Keep an eye out for any emails from FDMS.Support@accenturefederal.com.
- If you do not have an AIMS ID, look out for an email from their email address, aimssupport@ed.gov that will provide your AIMS ID.

- After your access has been granted, you will receive an email from one of the CEMS ISSO's (Victoria, Lisa, Krystle or ShaVon) with instructions on logging into the application. **Upon the receipt of that email, you will have 7 days to log in to your account to avoid deactivation.**
- Please have your departmental issued token readily available, it will be needed to login to the application.
- Issues with logging in should be sent to FDMS.Support@accenturefederal.com

Deactivation/Departed Staff

To maintain your access, you are required to login to CEMS at least every **90 days**. If you do not login with the designated 90 days, you will be deactivated due to inactivity. To be reactivated, you will be required to complete the access request process again.

If a user is no longer associated with the Department of Education, the user or the responsible party should complete the user access request form, with selection "**deactivation**" selected. Deactivation forms should be submitted with 24 hours of the user's departure. Signatures are not required for deactivation.

Submit the CEMS User Access Request Form to Victoria Malone, Lisa D. Washington, Krystle Wright and ShaVon Holland at victoria.malone@ed.gov; lisa.d.washington@ed.gov; krystle.wright@ed.gov and shavon.holland@ed.gov. In addition:

- Save your files in the following formats:
 - **Lastname_Firstname CEMS Access Form - Deactivation**
- The information requested on the form is considered personally identifiable information (PII) and to protect your information, we recommend you **zip the file and password protect** before sending.
- Send the password to unzip the files in a separate email

Forms

Below are the embedded Customer Engagement Management System (CEMS) User Access Request Form and Rules of Behavior. Please download, complete and submit using the above guidelines.



CEMS_User_Request
_Form_16Nov18.doc



CEMS_Rules of
Behavior_15June18.c

RELATIVITY ACCESS FORMS

**Civil Division MEGA4 Automated Litigation Support System
Account Request and Approval Form
For Non-Civil Division Users
Experts, Other Agency Users, Non-Civil Users**

Case/Project Information:

DJ NUMBER: N/A

OLS CASE NAME: Dept of Education FSA

LEAD CIVIL DIVISION ATTORNEY NAME AND PHONE NUMBER:

CIVIL/OLS CASE MANAGER NAME AND PHONE NUMBER:

Leonard Caston 202-616-5014

Application Information:

OMEGA- MEGANOC- PCTS- PHARMA- CORA- LAWeb- OTHER _____
 ORCA- MARS- MORE- LARS-

LIST OF SPECIFIC CASES/PROJECTS FOR WHICH ACCESS IS REQUIRED:

Dept of Education FSA

End User Information:

FULL NAME:	TELEPHONE NUMBER:
COMPANY/ORGANIZATION:	JOB TITLE:
DATE OF BIRTH:	EMAIL ADDRESS:
SSN* *PLEASE CALL AND GIVE THIS INFORMATION TO THE OLS SECURITY PROJECT MANAGER, DEBBIE POWELL AT (202) 305-0084.	WORK MAILING ADDRESS:
PLACE OF BIRTH:	COUNTRY OF CITIZENSHIP:
DO YOU HAVE A GOVERNMENT CLEARANCE? <i>If you answered "Yes", please complete items below. If you answered "No", proceed to the next section.</i>	
CLEARANCE LEVEL/TYPE:	GRANTING AUTHORITY:
DATE OF CLEARANCE:	STATUS (ACTIVE/INACTIVE):
ACTIVATION DATE	

APPROVED BY: OLS CASE MANAGER _____

Date _____

OLS SECURITY: PSTS DOJ/CIVIL/OA OTHER _____

Date: _____

U.S Department of Justice - Civil Division
General Rules of Behavior
Revised: April 8, 2013

Introduction

As a user of Department of Justice (DOJ) Information Technology (IT) data and systems, you are the first line of defense in support of Department and Component IT security. As a knowledgeable user, you are the foundation of a successful security program. The Rules of Behavior (ROB) for General Users concern use, security, and acceptable level of risk for Department systems. The rules also highlight that taking personal responsibility for the security of an information system and the data it contains is an essential part of your job. The intent of the ROB is to summarize for you, a user of DOJ IT resources, the applicable laws and requirements from various Federal and DOJ documents. These include, but are not limited to, the Office of Management and Budget (OMB) Circular A-130, DOJ Order 2640.2 (series), DOJ Order 2740.1 (series), and the DOJ IT Security Standard. To remain compliant with all applicable laws, Federal regulations, and DOJ Standards, the Department reserves the right to update these ROB at any time. Your organization may also include additional requirements. Please direct all questions relating to the ROB to your Help Desk, Security Manager, or Supervisor.

Who is covered by these rules?

These rules apply to all personnel (government employees and contractors) performing general, non-administrator-type work on DOJ systems, DOJ information, or providing services to DOJ. They also apply to any other persons using DOJ IT or accessing DOJ systems under formally established agreements. These rules are written for the vast majority of people for the vast majority of time. However, some people (e.g. Investigators) may be exempt from a specific item for a specific situation when performing their official duties and with proper authorization. In a similar manner, equipment and/or software limitations may prevent operation in accordance with some of these rules. These situations must be documented, the risks accepted, and the applicable processes approved by the system Authorizing Official. All users are required to review and provide signature or electronic verification acknowledging compliance with these rules. Users with advanced permissions and authorities shall also agree to and sign the ROB for Privileged Users.

What are the penalties for noncompliance?

Compliance with applicable laws, policies and standards will be enforced through sanctions commensurate with the level of infraction. Actions may include a verbal or written warning, removal of system access for a specific period of time, reassignment to other duties, or termination, depending on the severity of the violation. In addition, activities that lead to or cause the disclosure of classified information may result in criminal prosecution under the U.S. Code, Title 18, Section 798, and other applicable statutes.

Unauthorized browsing or inspection of Federal Taxpayer Information (Internal Revenue Code Sec. 7213A) is punishable with a fine of up to \$1,000 and/or up to one year imprisonment. Unauthorized disclosure of Tax Return information (Internal Revenue Code Sec. 7213) is a felony punishable with a fine of up to \$5,000 and/or up to five years in prison. In addition to these penalties, any Federal employee convicted under Sec. 7213 or Sec. 7213A will be dismissed from employment.

Your Responsibilities as a User –

General:

1. Comply with all Federal laws and Department and Component policies and requirements, including DOJ Orders and Standards. Use DOJ information and information systems for lawful, official use, and authorized purposes only.
2. Do not generate, download, store, copy, or send offensive or inappropriate e-mail messages, documents, images, videos, sound files, etc. Limit distribution of e-mail to only those with a “need to know”.
3. Do not open e-mails from suspicious sources (e.g., people you don’t recognize, know, or normally communicate with) and do not visit untrusted or inappropriate Websites (unless authorized). Only download files from known and reliable sources and use virus-checking procedures prior to file use.
4. Protect and safeguard all DOJ information, including that containing personally identifiable information (PII), commensurate with the sensitivity and value of the data at risk. Protect and safeguard all DOJ information and information systems from unauthorized access, unauthorized or inadvertent modification, disclosure, damage, destruction, loss, theft, denial of service, improper sanitization, and/or improper use.
5. Verify that each computer-readable data extract containing sensitive data has been erased within 90 days

of origination or that its use is still required.

6. Upon discovery of a known or suspected security incident, report the incident to your Help Desk, Security Manager, or Supervisor. The incident should be reported regardless of whether data was lost, PII disclosed, or classified information revealed. Immediately report lost or stolen devices (e.g., laptop, phone, tablet, thumb drive).

7. Unless authorized by an approved waiver, encrypt all Departmental Sensitive but Unclassified (SBU) data on mobile computers, laptops, tablets, and/or removable media (e.g., removable hard drives, thumb drives, and DVDs) using Department-approved solutions. Use only authorized removable media (e.g., Component approved thumb drives). For classified environments, follow the procedures required for those networks for data storage and transport. (Remember all data is considered sensitive unless designated as non-sensitive by the Component Director.)

8. Read and understand the DOJ standard security warning banner that appears prior to logging onto the network or mobile device.

9. Screen-lock or log-off your computer when leaving the work area. Log-off when departing for the day.

10. Keep all government-furnished equipment (GFE) mobile devices assigned to you in your physical presence whenever possible. When it is necessary for you to be away from your GFE, particularly at a non-secure location, secure all your portable electronic devices and removable media, preferably out-of-sight (e.g. in a locked container). In some locations, hotel safes are not considered very secure and hotel staff may not be trustworthy.

11. Do not use Peer-to-Peer (P2P) technology on the Internet, such as Skype, BitTorrent, etc. P2P is expressly forbidden throughout the Department unless a waiver is obtained from the Department's Chief Information Officer (CIO) or his/her designee.

12. Do not auto-forward emails from your DOJ email account to your personal email account (e.g., Gmail, Yahoo, and Hotmail).

13. Ensure that individuals have the proper clearance, authorization, and need-to-know before providing access to any DOJ information.

14. Consent to monitoring and search of any IT equipment that is brought into or removed from DOJ owned, controlled, or leased facilities.

15. Properly mark and label classified and sensitive documents, electronic equipment, and media in accordance with the DOJ Security Program Operating Manual (SPOM) and DOJ Order 2620.7. 16. Adhere to Separation of Duties principles. Understand conflict of interest in responsibilities, roles, and functions within a system or application. Duties of the System Administrator and Information System Security Officer (ISSO) should not be combined.

17. Unless specifically authorized, do not change any configurations and/or settings of the operating system and security-related software. Do not attempt to circumvent or test the security controls of the system. Do not bypass native mobile device operating system controls to gain increased privileges (i.e., jailbreaking or rooting the device).

18. Do not use anonymizer sites on the Internet, which bypass the Department security mechanisms designed to protect systems from malicious Internet sites.

19. Follow your organization's telework guidelines when working remotely and/or accessing DOJ information remotely.

Classified Systems/Information

20. Do not process classified information on an unclassified system. Send classified email only on systems authorized for that purpose and for the highest level of the classified data involved.

21. When in use, operate IT systems only in those areas or facilities certified for the highest classification or sensitivity level of the information involved. When not in use, store a classified computer, hard drive, removable media, etc. in an approved security container or in a facility approved for open storage.

22. Use classified laptops and similar devices only upon receiving approval from your security office, which must coordinate with the Department Security Officer (DSO) and Chief Information Officer (CIO).

Passwords:

23. Adhere to at least the minimum password requirements for the system on which you are working. Change the default password upon using your account for the first time.

24. Do not share account passwords with anyone and protect passwords at the highest classification and sensitivity level of the system to which they apply.

25. Never use the same or similar password for multiple accounts and especially between/among your personal accounts and DOJ or other government systems.

Hardware:

26. Unless specifically authorized, do not add, modify, or remove hardware, nor connect unauthorized accessories or communications connections to Department IT resources.
27. Unless specifically authorized, do not access the internal components of the computer, nor remove the computer or its hard drive from DOJ facilities.
28. Wipe all devices prior to reissue. There is no expectation of maintaining any personal information, data, or applications on these devices.

Software:

29. Do not copy or distribute intellectual property — including music, software, documentation, and other copyrighted materials — without permission or license from the copyright owner. Only use DOJ-licensed and authorized software.
30. Unless specifically authorized, do not install any software.
31. Unless specifically authorized, do not attempt to access any electronic audit trails that may exist on the computer.

Travel Users:

32. While travelling, minimize the information on your IT system to what is required to perform that particular mission and destroy copies of sensitive data when no longer required.
33. Power down IT devices when possible and not needed. If the IT device is needed but not the associated network capability, turn off/disable the network/wireless network functionality. (See the *Secure Use of Wireless Networks FAQ* at http://dojnet.doj.gov/jmd/irm/itsecurity/ises_team.php)
34. In a foreign country or airline, assume your transmissions (including cellular services) and conversations are being intercepted, read, and/or heard.
35. When possible, keep your remote access token separate from the laptop/tablet (preferably on your person).

Mobile Computing & Remote Access Users:

36. Use mobile GFE (e.g., laptop, tablet, Smartphone) for official business and authorized uses. Mobile GFE is for use by DOJ personnel only (no spouse or relative) and shall only connect through an authorized DOJ remote access network when accessing the Internet.
37. Software and applications can only be downloaded and installed on Departmental mobile GFE as authorized. Ensure that all software is properly purchased, licensed, and obtained from DOJ approved sources before installing it on mobile GFE.
38. Limit Short Message Service (SMS) messages to non-sensitive information if SMS is approved by the Authorizing Official.
39. Only connect to secure wireless networks where possible and take precautionary measures to prevent the compromise of DOJ data when insecure wireless networks must be used. (See the *Secure Use of Wireless Networks FAQ* at http://dojnet.doj.gov/jmd/irm/itsecurity/ises_team.php)
- Remote Web Access:**
40. Ensure the confidentiality of government information when using remote web access (e.g., OWA) from a non-GFE client (public or private). This includes the following: a. When downloading attachments to registered non-GFE private computers, immediately remove any attachments, encrypt them locally, or transfer them to an approved encrypted USB drive; b. Delete attachments when finished on registered non-GFE private computers; and c. Do not download attachments on non-GFE public computers.
41. Do not print emails in public areas and with public non-GFE printers. Users may print with non-GFE private printers at home. Users will be held responsible for the compromise of Government information through negligence or a willful act.
42. Maintain a reasonable security posture (i.e., updated antivirus, local firewall, updated OS and software patch levels) on registered non-GFE private computers used for remote web access.

Civil Division Password Requirements -

- All passwords must be at least twelve characters in length.
- Passwords are case-sensitive.
- Passwords must contain characters from at least three (3) of the following four (4) categories (the table below includes several examples of acceptable and unacceptable passwords):

<u>Description</u>	<u>Example</u>
Upper case letters	A, B, C, ... Z
Lower case letters	a, b, c, ... z
Numerals	0, 1, 2, ... 9

Non-alphanumeric characters \$, #, @, &, *, !, +, and other punctuation symbols

- Passwords may not contain your username or any part of your full name.
- Passwords will expire no later than every 90 days. You will receive notification before the password expires and will be required to choose a new one.
- The system will track up to the last 24 passwords that you used. It will not permit you to reuse any old passwords within the group of 24. For example, if you have a password of *Civil#4954* then you will be unable to reuse that password until 24 other password changes have occurred.
- A maximum of five failed logon attempts will be permitted. After five attempts, if you still have not logged on successfully, you will be locked out from logging on and will need to have the Help Desk reactivate your account.

Do not process or store classified information on your PC – OLS Servers is not approved for handling classified information. Should you need to process or store classified information, please contact Jeff Ryan at 202-305-7969. Classified information shall only be processed in accordance with applicable security procedures. Removable media containing classified information must be stored in approved security containers when not in use.

If you have any questions, please contact:

John Palm
202-616-5014
john.palm@usdoj.gov

I acknowledge receipt of, understand my responsibilities as identified in, and will comply with the DOJ IT Security ROB for General Users. This includes my responsibility to ensure protection of PII that I may handle.

_____ Date

_____ Email Address

_____ Phone

_____ Signature

_____ Printed Name

DOJ/CIVIL MEGA4 ALS System User Security Guide & Confidentiality Agreement

In consideration of being provided access to the Department of Justice (DOJ), Civil Division MEGA4 Automated Litigation Support System (System), the User hereby agrees to the following:

1 The provisions of this agreement shall apply to and be binding upon the User, the User's company, business, employees, agents, officers, successors and assigns, and any person acting upon behalf of the User in relation to the DOJ case(s) or project(s) he or she is authorized to access.

2 Except as required by law, as otherwise provided in this agreement, or as directed in writing by the Department of Justice, no information obtained, developed, gathered, or created as a result of work performed in connection with this matter, including any training materials or guidance concerning the System, shall be provided or disclosed orally, in writing, or in any other form, including the transmission of electronic data, to any third party or person who is not a part of this agreement. In any case in which disclosure of such information is or may be appropriate, no disclosures shall be made without prior written approval of the Department of Justice. This prohibition includes, but is not limited to, communications with any person representing the media, any industry representatives, and any colleagues or fellow researchers. Disclosures may be made to persons who have signed and filed Confidentiality Agreements with the Department of Justice in connection with this case or project, as well as your management, supervisory, or support personnel as they may be necessary to execute your role as an authorized User in connection with this case or project.

3 Except as required by law, as otherwise provided in this agreement, or as directed by the Department of Justice, all documents, information, electronic data, or other work obtained, developed, gathered, or created as a result of System access, including documents or other information provided by the United States or other parties, shall be treated as privileged Sensitive But Unclassified (SBU) information. The User shall not reveal such materials to any third party or person without prior written approval from the Department of Justice, except for those persons who have signed and filed Confidentiality Agreements with the Department of Justice in connection with this case or project.

4 Should any documents, information, or electronic data, provided, obtained, developed, gathered, or created in connection with this System be lost, discovered missing, or mistakenly or inadvertently turned over without DOJ consent to an unauthorized person or third party, the User shall immediately report the details of such incident to the lead Department of Justice attorney responsible for this case or matter and the Office of Litigation Support (OLS) Case Manager assigned to this case or project. In the event the User receives any requests in any form for such information, the User shall immediately notify the lead Department of Justice attorney and OLS Case Manager and await and follow DOJ instructions on how to proceed.

5 The User is responsible for notifying the OLS Case Manager when his or her involvement in this case or matter has concluded, at which time the User will request termination of access to the System. The User shall deliver upon request, within 30 days of notification that System access has been terminated, all documents, devices, electronic data, and other information provided, obtained, developed, gathered, or created in connection with System access and related to the case or project he or she was supporting to the Department of Justice.

6 Notwithstanding the terms of this agreement, documents created by third-parties and gathered as evidence in litigation that are stored as images on the System will not be deemed to be privileged or confidential by virtue of this agreement. Nothing in this agreement limits the authority of agents or attorneys assigned to the matters in which that evidence is, was or will be collected from disclosing that evidence to witnesses, courts, or other persons who are not parties to this agreement in any manner authorized by law as necessary for those assigned agents and attorneys to discharge their duties in investigating and prosecuting the matters.

Should you have any questions regarding these documents or your responsibilities, please contact your OLS Case Manager or John Palm, Information Systems Security Manager, at (202) 616-5014 or at john.palm@usdoj.gov.

I acknowledge receipt of the "DOJ/CIVIL MEGA4 ALS System Rules of Behavior for General Users" and the "DOJ/CIVIL MEGA4 ALS System User Security Guide & Confidentiality Agreement" and understand my responsibilities as identified. This includes my responsibility to ensure the protection of PII that I may handle.

Signature: _____ **Date:** _____

Printed Name: _____

Employing Organization: _____

PIV ENROLLMENT FORMS



**DEPARTMENT OF EDUCATION
REQUEST FOR PERSONAL IDENTIFICATION VERIFICATION**

PRIVACY ACT STATEMENT: Department of Education (ED) is authorized to ask for the information requested on this form by Homeland Security Presidential Directive (HSPD)-12, and 31 USC 7701. The information and biometrics collected as part of the Federal identity-proofing program under HSPD-12 are used to verify the personal identity of ED applicants for employment, employees, contractors, and affiliates (such as students or interns) prior to issuing a Department identification credential. The credentials are used to authenticate electronic access requests from ED employees, contractors, and affiliates issued a Department identification credential to gain access to ED facilities and networks (where available) through digital access control systems, as well as to other federal government agency facilities and systems where permitted by law. The information collected on this form is protected by the Privacy Act, 5 USC Section 552(a) and maintained under the authority of 38 USC Section 501 and 38 USC Sections 901-905 in ED system of records.

The Privacy Act (5 U.S.C. § 552a(b)) permits ED to disclose the information you provide on this form in accordance with published routine uses, which include but are not limited to the following: civil or criminal law enforcement, constituent congressional communications initiated at your request, litigation or administrative proceedings, administration of the program, including verification of identity and status, personnel administration by Federal agencies, to contractors performing agency functions, FOIA administration, intelligence activities, employment, benefits, and contracting disclosure, employee grievance, complaint, or conduct, responding to breach of data, safety and security of Department employees, customers, and facilities.

Failure to provide all of the requested information may result in ED being unable to process your request for a Personal Identity Verification Card (PIV), or denial of issuance of a PIV. If you do not have a PIV, you may not be granted access to ED facilities or networks, which could have an adverse impact on your application to become, or status as, an ED employee, contractor or affiliate where such access is required to perform your assigned duties or responsibilities.

****To complete the PIV enrollment process you must have this completed form and two (2) forms of Photo ID (as listed on Table 1)****

SECTION I – APPLICANT INFORMATION (Completed by Applicant)									
1. LEGAL NAME OF APPLICANT (Last, First, Middle, Suffix Name)				2. DATE OF BIRTH (MM/DD/YYYY)			3. SOCIAL SECURITY NO.		
4. WORK ADDRESS				5. EMPLOYEE TYPE					
				6. WORK PHONE NUMBER (Include Area Code)					
7. HOME ADDRESS (Street, City, State, ZIP)				8. PLACE OF BIRTH (City, State, Country)					
				9. COUNTRY OF CITIZENSHIP					
10. GENDER	11. EYE COLOR	12. HAIR COLOR	13. HEIGHT Feet Inches		14. WEIGHT (LBS)	15. RACE		16. MARITAL STATUS	
17. CONTRACTOR COMPANY NAME (N/A If Not Applicable)				18. COR NAME (N/A If Not Applicable)					
19. Do you currently possess a PIV ID from another agency? <input type="checkbox"/> Yes <input type="checkbox"/> No									
19 a. If yes, what agency issued the ID?									
20. What is your Active Directory Login ID or your ED email address?									
21. SIGNATURE OF APPLICANT					22. DATE SIGNED				

SECTION II – SECURITY OFFICE USE ONLY				
1. ID DOCUMENT 1			2. ID DOCUMENT 2	
3. PRINCIPAL OFFICE		4. ENROLLMENT OFFICIAL		5. DATE OF ENROLLMENT
6. COMMENTS				

PIV ACCEPTABLE DOCUMENTS

U.S. Department of Justice, Immigration and Naturalization Service, Form I-9

All forms of ID must be up-to-date (unexpired).

All forms of ID must have the same exact name printed.

LIST A

The primary identity source document shall be one of the following forms of identification:

1. U.S. Passport or a U.S. Passport Card
2. Permanent Resident Card or an Alien Registration Receipt Card (Form I-551)
3. foreign passport
4. Employment Authorization Document that contains a photograph (Form I-766)
5. Driver's license or an ID card issued by a state or possession of the United States provided it contains a photograph
6. U.S. Military ID card
7. U.S. Military dependent's ID card
8. PIV Card (*unexpired*)

LIST B

The secondary identity source document may also be one of the following:

1. U.S. Social Security Card issued by the Social Security Administration
2. original or certified copy of a birth certificate issued by a state, county, municipal authority, possession, or outlying possession of the United States bearing an official seal
3. ID card issued by a federal, state, or local government agency or entity, provided it contains a photograph
4. voter's registration card
5. U.S. Coast Guard Merchant Mariner Card
6. Certificate of U.S. Citizenship (Form N-560 or N-561)
7. Certificate of Naturalization (Form N-550 or N-570)
8. U.S. Citizen ID Card (Form I-197);an Identification Card for Use of Resident Citizen in the United States (Form I-179)
9. Certification of Birth Abroad or Certification of Report of Birth issued by the Department of State (Form FS-545 or Form DS-1350)
10. Temporary Resident Card (Form I-688)
11. Employment Authorization Card (Form I-688A)
12. Reentry Permit (Form I-327)
13. Refugee Travel Document (Form I-571)
14. Employment authorization document issued by Department of Homeland Security (DHS)
15. Employment Authorization Document issued by DHS with photograph (Form I-688B)
16. Driver's License issued by a Canadian government entity
17. Native American tribal document

March 15, 2016

HELP DESK INFORMATION

HELP DESK CONTACT INFORMATION

Main ED Help Desk: (202) 708-4357

Relativity Help Desk: (202) 719-7704

Salesforce Help Desk: CEMS.SUPPORT@accenturefederal.com

John Stephenson: (202) 377-3836/John.Stephenson@ed.gov

Brian Bayne: (202) 377-3807/Brian.Bayne@ed.gov

DOE00006893-DOE00006895

Borrower Defense (BD) Work Plan – November 2019

Purpose:

OUS has requested that FSA hold off on processing the adjudicated borrower defense applications until November 30 with the intent being that FSA would process the following all at the same time:

- 6,000+ “ineligible”/denied CCI applications
- 990 CCI non-JPR approvals using the new tiered relief methodology
- 70+ ITT approvals using the new tiered relief methodology

Additionally, OUS has directed that we adjudicate and process another 20,000+ CCI applications by November 30.

While it is highly unlikely that we will be able to adjudicate the volume that OUS has requested in the next few weeks, we will focus all adjudication work on the CCI (non-JPR) applications in order to optimize the number of applications that can be processed on November 30.

The following is a summary of the BD work plan for November.

Assumptions:

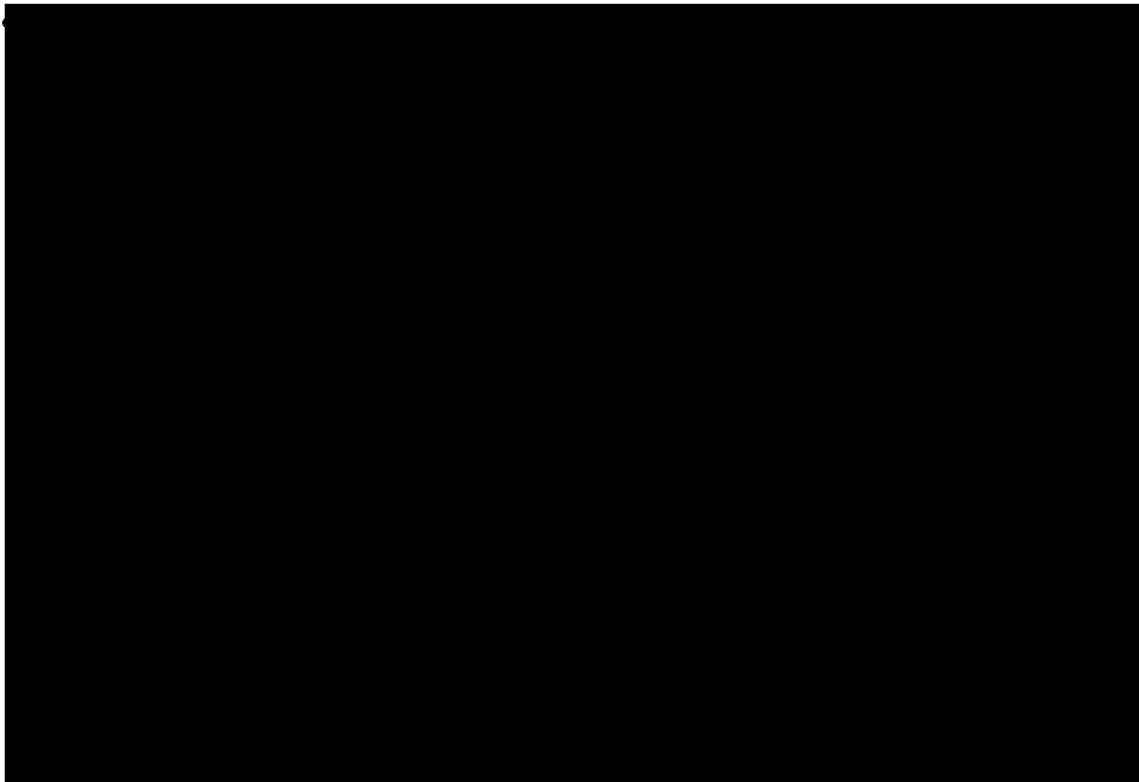
- There are only 14 business days between November 8 and November 30.
- Available resources for November:
 - There are only 6 fully trained senior BD attorneys (one of which is part-time);
 - One of the 6 is on extended medical leave.
 - Additionally, several of the senior BD attorneys have scheduled leave over the next three weeks, and there are two holidays between now and November 30.
 - Nine of the term-appointment law clerks/attorneys have been onboarded and are trained on the established review protocols. They will require further training to implement the new relief methodology when finalized.
 - Nine contractor resources also are trained on established protocols but will need additional training to implement the new relief methodology.

BD Team Work Streams for the Senior BD Attorneys in November:

November will be an exceptionally busy month for the senior BD attorneys – a team that is routinely very busy even during a “slow” month due to the many high-priority, time-sensitive projects and work streams assigned to them.

- **Training New Staff** – A large percentage of the available man hours in November will be spent on training new staff:
 - We are onboarding and training 10 additional law clerks/attorneys starting on November 12.

- Training includes on-site training for a week (Phase I), followed by closely monitored and controlled reviews, generally for the following two to three weeks to ensure proficiency (Phase II).
- Two of the senior BD attorneys are scheduled to conduct the onsite training for the next two weeks: the training in DC will be next week, followed by training in Atlanta the week of November 18.
- The remaining senior BD attorneys will be expected to spend a significant portion of their time for the next three weeks on the Phase II controlled reviews for the 10 new staff members.



- **Technology/platform work:**

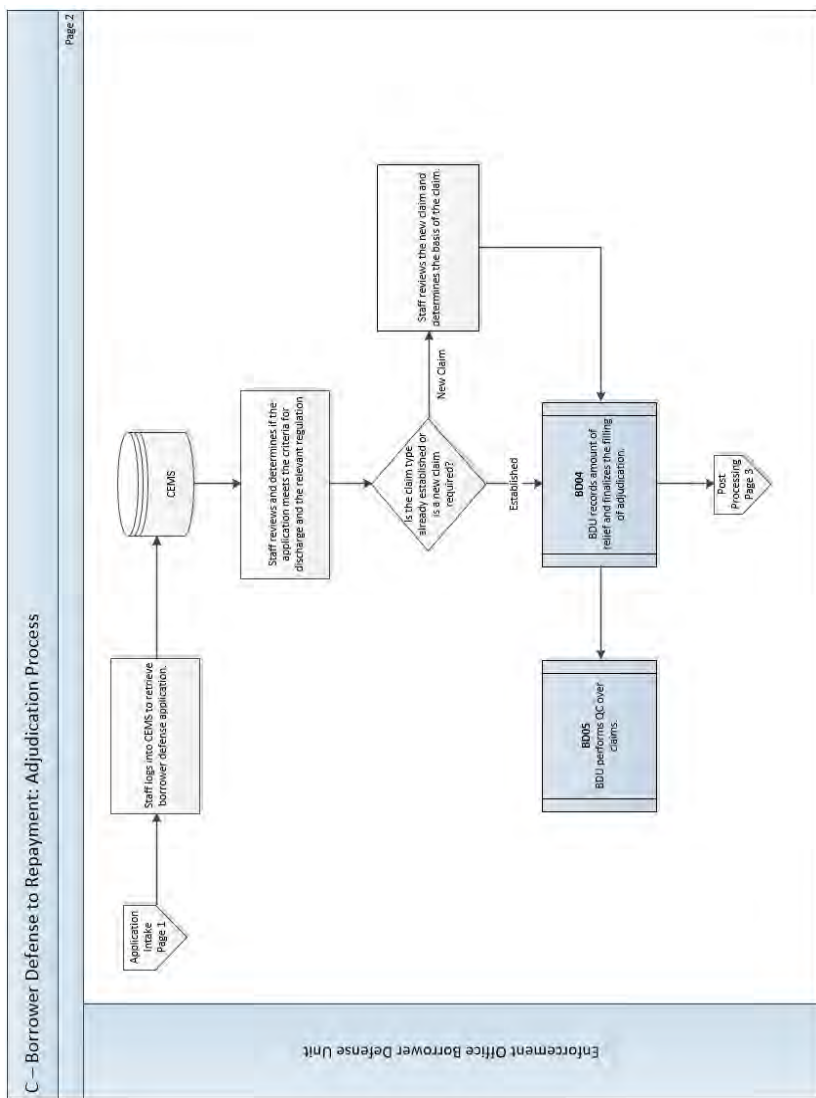
- User Testing for the November BD platform updates is scheduled for next week.
- DCC and 2020 BD Regulation implementation design meetings begin the week of the 18th and will require 10 to 20 hours per week for the two senior attorneys assigned to platform design/development.
 - This work is required now in order to not delay DCC implementation for other business units.
 - In order to develop the requirements for the platform to accommodate the new 2020 BD Regulation, the team – and the two assigned senior attorneys, in particular – also will need to fully analyze the regulation.
- Data cleanup: the transition and data migration to the Salesforce platform in late 2018 resulted in numerous data anomalies, errors and other problems, many of which have only recently been exposed. The BD team is working with Accenture to fix the recently identified data problems.

- **Work Required to Process the Approved and Denied Applications:**
 - BD is consulting with and assisting Bus Ops in developing approval and denial processes for the servicers and vendor so that the adjudicated decisions can be implemented soon after there is a signed relief decision memo.
- **Inspector General (IG) Action Items:**
 - We have several action items due in December. We already received an extension from the IG and are unlikely to get another one.
 - Many of the action items were assigned to Sara Hayhurst, so BD likely will need time to review her drafts and consult with others as to additional work that is required before the materials can be submitted to the IG.
- Contractor oversight and monitoring of productivity/proficiency reporting
- Supervising the new law clerks and attorneys

The above-referenced work is likely to consume all or nearly all available man hours in November for the five available senior attorneys. Any remaining time will be used to adjudicate

**"C – Adjudication" Tab Excerpt from
Spreadsheet Bates No. DOE00006974**

Borrower Defense to Repayment
Adjudication Process



This document is "C – Adjudication" Tab Excerpt from Spreadsheet Bates No. DOE0006974, produced in Native (PDF Converted Page 1 of 2. This notation in red font was added by Plaintiffs for attachment to Supplemental Complaint; not on original.

Borrower Defense to Repayment Adjudication Process

A senior attorney determines what evidence is relevant and works with a team to review the evidence.

attorney logs into CEMS and pulls up assigned cases

attorney checks file in CEMS to identify correct review protocol

If there is no evidence relevant to a school or categories of borrowers relating to a school, the cases are reviewed under the standard protocol.

attorney reviews case in accordance with protocol

If there is evidence, the senior attorney(s) work with the team to develop an appropriate protocol. For schools or categories with over X cases or where there are potential approvals supported by the evidence, the protocol is reviewed by the Director. If not, it can be approved by a senior attorney. The senior attorney will consult with the Director on any novel or challenging issues.

last step in completed review is to move case into 2.21 (ready for QC) unless reviewer is still in training, in which case the last step is to move the case into 2.22 (QC in progress) all cases in 2.22 are QC'd and then moved into 2.23 (evidence clearance)

For protocols that set parameters for potential approvals, they must be approved by the Director.

Each night, 2.12 cases are "rolled over." 20% are loaded into 2.22 for QC, and the remainder go into 2.23 (evidence clearance).

after 2.23, if the case is approved, it is moved into 2.31 (awaiting relief determination) for application of the Sec's relief methodology or a hold status due to litigation, pending policy decisions, etc.

A "final QC" check by a senior team member is performed before the case moves into 3.1 for processing. At this step, the adjudication decision is final.

On reconsideration, the borrower can request reconsideration of the decision (if the case was denied) or relief (if the case was approved). The platform updates needed to address reconsideration requests have not yet been completed.

Appropriate protocols will be developed once the platform is updated and pending policy issues are addressed.

This document is "C – Adjudication" Tab Excerpt from Spreadsheet Bates No. DOE00006974, produced in Native (PDF Converted Page 2 of 2. This notation in red font was added by Plaintiffs for attachment to Supplemental Complaint; not on original.

DOE00007209-DOE00007214

I. Detailed Briefing: Borrower Defense and 2016 Rule - Corinthian Colleges (CCi) and ITT Technical Institute (ITT)

Overview:

• Background:

- Section 455(h) of the Higher Education Act of 1965, as amended (HEA), authorizes the Secretary to specify, in regulation, which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan, i.e., borrower defense (BD).
- The original BD regulation went into effect in 1995 and allowed for borrowers to assert, as a defense to repayment, an act or omission by the institution that violated state law. The 1995 regulation was rarely used until the collapse of Corinthian Colleges Incorporated (CCi) in 2015, when the previous administration leveraged it to expand loan forgiveness to CCi students.
- In 2016, in response to an influx of BD discharge requests, the Department established an Enforcement Office within FSA, which is responsible for adjudicating BD applications, among other oversight-related activities.
- In the wake of a school closure, students may also apply for loan forgiveness through Closed School Loan Discharge (CSLD).
 - As of December 31, 2018, the Department has issued \$164 million in CSLD relief to over 14,000 former CCi students and \$251 million in CSLD relief to 18,000 former ITT students. *[Internal note: this does not include the recent automatic closed school discharges (ACSD) as a result of the 2016 rule implementation.]*
 - The Secretary has discretion to extend the CSLD withdraw window to allow students who withdrew earlier to qualify.
- In order to expand the number of CCi students entitled to loan discharge, after CCi closed in 2015, the Department extended the CSLD withdrawal window for students and recommended that CCi borrowers apply for BD relief. Additionally, the Internal Revenue Service (IRS) waived the tax liability typically associated with BD student loan forgiveness for CCi students.
- After ITT Technical Institute (ITT) closed in 2016, the Department did not make a similar recommendation that ITT students apply for BD relief. Instead, the Department recommended that ITT students apply for CSLD but did not extend the withdrawal window for ITT students nor did the IRS provide an exemption from BD loan discharge tax liability.

• BD Rulemaking:

- Under the 1995 regulation, the previous administration discharged loans for borrowers, including CCi and ITT loans.
- In November 2016, the previous administration issued a new BD regulation (the 2016 rule) that replaced the 1995 regulation and was to take effect July 2017. Prior to July 2017, following a change in administration, the Department delayed the implementation of the 2016 rule due to pending litigation.
- In 2017, the Department also began a negotiated rulemaking process to revise and replace the 2016 rule. The Department's efforts are ongoing and a final rule is expected to be issued by November 2019, with a July 2020 effective date.

- In October 2018, a federal district court found that the Department's delay of the 2016 rule was legally impermissible. Consequently, the 2016 rule instantly came into effect, retroactive to July 2017.
- **BD Adjudication of Applications:**
 - As of September 2018, the Department has issued \$534 million in BD relief to 48,000 borrowers. About a third of those borrowers received BD discharge under this administration. *[Internal note: be careful with the wording; approx. 1/3 of borrowers received discharged under this admin but not all borrowers were approved for discharge under this admin. According to DRT, approximately 16,169 borrowers received discharge during this administration, which is 33.7 percent of all approved BD applications.]*
 - In 2017, the current administration announced a new methodology (2017 methodology) for processing approved BD applications for CCI students. Under the 2017 methodology, BD applications are reviewed for their legitimacy and the Department seeks to determine the harm suffered by a student as a result of institutional fraud or misrepresentation. The Department determined the level of student harm by relying on gainful employment (GE) program data to compare average earnings of BD claimants to average earnings of students in similar programs at other schools. The methodology compensates borrowers with legitimate BD applications based on damages incurred rather than the previous administration's "all or nothing" approach to discharge.
 - The 2017 methodology relied on earnings data provided by the Social Security Administration (SSA). However, in May 2018, a federal court determined that this was an impermissible use of SSA data thus halting the Department's ability to process approved CCI BD applications. The Department is appealing this decision. Although the court found this use of SSA data to be impermissible, it did recognize the Department's discretion to establish a tiered relief methodology. The Department is working diligently to evaluate the best course of action given the lawsuit on the Department's BD relief methodology and the court injunction preventing the Department from using it.
 - Additionally, the Department recently transitioned to a new BD application management platform with increased functionality, while also making modifications to the platform to reflect the requirements and provisions of the 2016 rule. Once the data migration to the new application management platform is complete and the platform is consistent with the 2016 rule, the Department may resume evaluating applications that are not otherwise delayed due to the 2017 methodology lawsuit.

Response:

- The Department is currently implementing provisions of the 2016 rule in response to the federal district court ruling.
 - The provisions of the 2016 rule are broader than just borrower defense issues, and also include provisions on: automatic closed school discharge (ACSD), certain consumer disclosures, false certification, etc.
- The Department is pursuing an appeal of the court ruling that found the 2017 methodology for BD relief impermissible. Approved CCI applications cannot be processed until the Department decides how to address calculating BD relief in light of this litigation. The

Department can either develop an alternative BD relief methodology or hold all approved CCI applications pending the final outcome of the litigation.

- Additionally, other BD relief methodologies will have to be developed for non-CCI programs and schools.

Current Action:

- The Department continues to implement and operationalize the 2016 rule.
 - The Department is working to publish guidance implementing the 2016 rule's financial protection provisions and the ban on pre-dispute mandatory arbitration agreements and class action waivers. *[Internal Note: Guidance is currently under review with OMB.]*
 - In December 2018, the Department began implementing the 2016 rule's ACSD provision by processing ACSD for eligible borrowers. To date, the Department has processed ACSD for almost 12,000 borrowers amounting to over \$129 million in relief, over 6,000 of which are CCI borrowers amounting to over \$67 million in relief. *[Internal note: Because the main campus for ITT will not hit the three-year closed requirement until September 2019, we do not currently have numbers for ITT.]* The Department will continue to perform ongoing monthly ACSD for eligible borrowers. This will allow the Department to close pending BD applications, if the same borrower receives an ACSD.
 - The Secretary also has discretion to extend the ACSD withdraw window to allow students who withdrew earlier to qualify. The previous administration extended this withdraw window and the Secretary affirmed it for CCI applicants, which provided a greater number of borrowers ACSD relief. The Secretary may decide to also extend the withdraw window for ITT borrowers.

II. Talking Points: Borrower Defense and 2016 Rule - Corinthian Colleges (CCI) and ITT Technical Institute (ITT)

Issue 1: The Department delayed the previous administration's borrower defense regulations (2016 rule) from taking effect in July 2017.

Current status/position or action taken by ED: In October 2018, a federal court found the Department's delay of the 2016 rule was legally impermissible and the 2016 rule instantly came into effect. The Department is currently implementing provisions of the 2016 rule and efforts to revise borrower defense regulations are ongoing.

Reaction (push back/support): Multiple news outlets and congressional members (e.g., Senator Dick Durbin (D-IL) and Senator Elizabeth Warren (D-MA)) believe that the delay of the 2016 rule was a tactic to prevent students from getting the relief they deserved while the administration rewrote the rules to make it harder for students to get relief.

Talking Points:

- We found the previous administration's borrower defense regulations to be a muddled process that was unfair to students and schools, while leaving taxpayers on the hook for significant costs. We felt it was time to take a step back and make sure these rules achieved

their purpose: helping harmed students. It is the Department's aim and this Administration's commitment to protect students from predatory practices while also providing clear, fair, and balanced rules for colleges and universities to follow.

- The Department is currently implementing the provisions of the 2016 rule.
- Specifically, the Department is working to publish guidance implementing the 2016 rule's financial protection provisions and the ban on pre-dispute mandatory arbitration agreements and class action waivers.
- Furthermore, the Department has made considerable progress in implementing the 2016 rule's Automatic Closed School Discharge (ACSD) provision. The Department will process ACSDs on a monthly basis ensuring that eligible students receive relief and allowing the Department to close pending BD applications, if the same borrower receives an ACSD.
- The Department's first priority is to protect students, so we're undergoing a rulemaking process to ensure that the BD regulations are fair, effective, and improved. The newly proposed regulations will propose a process intended to be clearer to the applicant and more consistent in outcomes. It will propose measures to hold institutions, rather than hardworking taxpayers, accountable for making whole these students who were harmed by an institution's deceptive practices.

Issue 2: In 2017, the Department changed the methodology, to a tiered approach, for determining the borrower defense relief granted to approved CCI applicants.

Current status/position or action taken by ED: The 2017 methodology compensates students based on damages incurred. The 2017 methodology relied on SSA earnings data, but a federal court found the use of these data impermissible, thus halting the Department's ability to process approved CCI borrower defense applications.

Reaction (push back/support): "For the tens of thousands of students and families still waiting for help, being stuck in limbo is causing tremendous mental and financial anguish," wrote 26 Members of Congress in a Nov. 2017 letter that also stated "the idea that borrowers may continue to be saddled with at least some of the debt they incurred to attend institutions that misrepresented information to them is simply unacceptable and does not pass the most basic test of fairness."

Talking Points:

- We are committed to providing borrower defense relief to eligible students. Institutional fraud and acts of misrepresentation are simply unacceptable. However, it is also unacceptable for students who were not victims of fraud or misrepresentation and who did not suffer harm to be forgiven of their loan repayment obligations, while other borrowers are making sacrifices to repay their loans. It is equally unacceptable for taxpayers to absorb the cost of loan forgiveness when such forgiveness is not well justified.

- The 2017 methodology allows applications to be adjudicated quickly and harmed students to be treated fairly. It also protects taxpayers from being forced to shoulder massive costs that may be unjustified.
- The tiered relief assesses borrower harm by comparing average earnings of borrower defense claimants to average earnings of students who had completed similar programs at other schools.
- The principle of relief based on value of education received is consistent with the legal authorization of borrower defense under the HEA and existing regulations.
- This improved methodology was developed following a report from the Inspector General (IG) that found weaknesses with FSA's previous procedures for application review and processing. The Department has worked diligently to address the issues cited in this report, which led to the new methodology for tiered relief, among other improvements.
- The Department's processing of borrower defense applications was abruptly halted by the court's injunction preventing the use of the tiered relief methodology, which the Department is appealing.
- The Department appreciates the importance of providing relief to defrauded borrowers and is actively implementing other forms of relief such as Automatic Closed School Discharge, etc.

III. Q&As: Borrower Defense and 2016 Rule - Corinthian Colleges (CCi) and ITT Technical Institute (ITT)

Issue 1: The Department delayed the previous administration's borrower defense regulations (2016 rule) from taking effect in July 2017.

Question: Why did you delay implementation of the 2016 rule? What are you doing now to implement it? Why are you not moving faster? Why haven't you done more?

Proposed Response: No fraud or acts of misrepresentation are acceptable and students deserve relief, if the school they attended acted dishonestly. The Department has been working to get this right for students since day one. We found the previous administration's borrower defense regulations to be unfair to students and schools, while putting taxpayers on the hook for significant costs. However, the Department acknowledges the court's recent decision to implement the 2016 rule and is making the necessary changes.

Issue 2: In 2017, the Department changed the methodology, to a tiered approach, for determining the relief granted to approved CCi BD applicants.

Question: Why did you change the relief methodology to a tiered approach?

Proposed Response: The Department is committed to providing justified BD relief to eligible students, which is why the tiered approach takes into account the harm suffered, while protecting taxpayers from being forced to shoulder massive costs. In May 2018, a federal court enjoined the Department from using the tiered methodology, which we are appealing.

Issue 3: The borrower defense report for the quarter ending in September 2018 shows that the number of received claims has increased by 35K since the June 2018 report was released. However, the numbers of approved claims, denied claims, and total amount discharged have remained the same.

Question: Why is the Department not processing claims?

Proposed Response: Our first priority is to protect harmed students, which is why a third of the borrowers who have received BD discharge have had their loans discharged under this administration. In May 2018, the Department was halted from processing claims when a federal court enjoined the Department from using the tiered methodology. We are appealing this ruling.

Issue 4: FSA's Enforcement Office staff has greatly decreased under the current administration.

Question: Why is the Department purposefully reducing the staffing in FSA's Borrower Defense Group and Investigations Groups? Is the Department no longer investigating allegations of institutional fraud and misrepresentation to students?

Proposed Response: The Department recognizes the importance of ensuring compliance with laws and regulations governing student financial assistance programs. FSA's Enforcement Office continues to investigate fraudulent activities at colleges and universities. The office also continues to pursue justified penalties against institutions of higher education. The decrease in the total number of staff under the current administration is the result of routine attrition. The Department is not purposefully reducing the staffing of the Enforcement Office.

DOE00007269-DOE00007271

DELIBERATIVE DRAFT DOCUMENT

Institutional Accountability Regulations (Formerly called the Borrower Defense to Repayment Regulations)

Full Talking Points

1. The Department of Education is embarking on rulemaking to replace the 2016 borrower defense to repayment (BDR) regulations originally scheduled to take effect on July 1, 2017, but now delayed until 2019.
2. The rulemaking process will proceed as follows:
 - a. The Department conducted public hearings in 2017
 - b. Three four-day, formal negotiated rulemaking sessions from December 2017 to February 2018 did not reach consensus
 - c. The Department developed its own proposal, which it will publish as a Notice of Proposed Rulemaking (NPRM) the week of July 23;
 - d. The Department will accept public comments on the NPRM for 30 days
 - i. Only 30 days as the Department has conducted two public hearings and three negotiated rulemaking sessions on these issues
 - e. The Department will respond to those comments in a Final Regulation, which the Department intends to publish by November 1, 2018
3. The current regulation:
 - a. Has been effective since 1995
 - b. Was designed to allow borrowers in collections proceedings on a defaulted loan (“defensive” claim) to seek loan forgiveness if the borrower relied upon misinformation provided by the institution that resulted in harm to the borrower
 - c. Claims were evaluated based on state standards, which made the review process complicated and inequitable since state standards vary considerably
 - d. From 1994-2015, the Department received on average fewer than 10 claims per year
4. The prior administration solicited claims from certain borrowers still in repayment (“affirmative claims”).
 - a. Between 2015 and 2018, the Department received nearly 170,000 claims, of which 12,000 have been denied or closed and 48,000 have been approved, averaging \$11,315 per borrower
 - b. Department must base its review of these claims on State legal standards, the process has been prolonged, and borrowers suffering the same harm may not receive the same relief due to different legal standards among the States
 - c. Institutions receive no notice of claims and have no opportunity to respond to claims under the current rule
 - d. The Secretary can recover losses from an institution only if the claim was approved within three years after the student left the institution.
5. In 2016, the prior administration promulgated new defense to repayment regulations that included the following provisions:
 - a. Changed the review of claims from a state standard to a federal standard
 - b. Created a wildly expansive federal standard that went far beyond cases of fraud to cover breach of contract and a lax misrepresentation standard

DELIBERATIVE DRAFT DOCUMENT

- c. Allowed the Secretary to initiate group claims on behalf of borrowers, with no effective requirement that a borrower show individual reliance on an institution's conduct or financial harm
 - d. Failed to provide notice to institutions prior to the adjudication of the claim
 - e. Failed to allow institutions the opportunity to respond to allegations of wrongful conduct prior to the adjudication of the claim
 - f. Disallowed institutions from responding to claims made against them until after the Department adjudicated the claim and the Department sought reimbursement from the institution for the cost of the claim
 - g. Disallowed institutions to require students to engage in mandatory arbitration prior to legal action or to prevent students from participating in class action suits
 - h. Implemented mandatory financial triggers based on allegations asserted in a lawsuit or borrower defense claims that would enable the Department to require a letter of credit from an institution
 - i. Provided for automatic student loan relief if a borrower who attended a closed school did not re-enroll at another institution within three years
 - j. Was estimated to cost the taxpayer \$10 billion over 10 years
6. Our proposed regulation provides a fair, impartial approach to the borrower defense to repayment review process and includes due process rights for institutions, which will result in more data and information for the Department to decide defenses to repayment. It also ensures that institutions, rather than taxpayers, bear the financial costs when institutions commit a misrepresentation. The proposed regulation :
- a. Rescinds that portion of the 2016 borrower defense to repayment regulations that did not become effective July 1, 2017
 - b. Provides two options on which we will seek comment, including one which restores the Clinton-era interpretation that limits borrower defense to repayment to collection proceedings and another option that allows for affirmative claims outside of collection proceedings
 - c. Establishes a single Federal standard for both options
 - d. Provides institutions with the opportunity to respond to a borrower's defense to repayment claim Requires institutions that use mandatory arbitration and class action waiver agreements to provide clear, plain language disclosures to students and prospective students and to post those disclosures on a website available to the public
 - e. Eliminates the ability for the Secretary to initiate group claims because the Department needs an application from each borrower to determine the harm suffered by that borrower;
 - f. Limits financial triggers to those that impact the institution's composite score (financial responsibility ratio) and those that are a sign of imminent closure of the school
 - g. Imposes mandatory and discretionary financial triggers on institutions arising from certain events and occurrences that have a negative impact on a school's composite score
 - h. Implements changes in the way composite scores are calculated to conform with changes in FASB standards regarding the treatment of leases in audited financial statements
 - i. Extends the closed school student loan discharge period from 120 to 180 days
 - j. Encourages closing institutions to conduct orderly teach-outs and to avoid precipitous closures by disallowing closed school discharges for schools that offer an accreditor

DELIBERATIVE DRAFT DOCUMENT

approved teach-out plan that enables students to complete their programs at the institution or another institution

- k. Enables students who are unable to obtain an official high school transcript or diploma to attest to the fact that they have completed high school but disallows such students from receiving loan forgiveness based on false certification if they submitted a false attestation
- l. Prohibits guaranty agencies from charging collection costs to a defaulted borrower who enters into a repayment agreement with the guaranty agency within 60 days of receiving notice of default from the agency

DOE00007289-DOE00007291

Borrower Defense to Repayment

- The revised 2019 BD regulation continues to provide student loan relief to students who have been the victim of misrepresentation – and our regulation extends that right to all students, regardless of the tax status of their institution. In other words, students who attend non-profit law schools that misrepresent their job placement rates and large universities that misrepresent their selectivity or admissions requirements to ranking agencies, or who once claimed to adhere to EEO laws and now admit to systemic racism are eligible for BD relief in the same way that students whose proprietary institutions engaged in misrepresentations about job placement rates are.
 - The revised 2019 BD ensures due process rights to all involved – which is a fundamental American principle. It also ensures that the student and the institution have access to all of the information the Secretary will use to adjudicate the claim, and it gives the student the last word in responding to that evidence. No longer can the Department serve as prosecutor, judge and jury based on “secret” evidence.
 - The 2016 regulation allowed the Department to require institutions to post large letters of credit simply because the institution had been sued or was subject to an investigation that *could* result in a financial settlement that would impact the institution’s financial stability. This enabled activists to destroy an institution financially by making accusations against it, even if in the end the institution is not found guilty of the allegations made against it or the investigation results in no findings. The 2019 regulation limits financial penalties, such as letters of credit, to instances when an institution has actually been required to make a financial payment or settlement that changes the institution’s financial viability.
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- *Borrower Defense to Repayment*
 - Federal Student Aid also released monthly borrower defense data reports through August. As of August 2020, more than 330,000 borrower defense to repayment applications have been submitted. Of those applications, 39 percent are pending decision, including approximately 85,000 applications that are awaiting adjudication and approximately 45,000 applications that

are pending notification. More than 61,000 applications were deemed eligible for borrower defense to repayment, 129,000 applications were deemed ineligible, and the remaining 10,000 applications were closed.

Of the over 128,000 BD claims the Department has adjudicated so far, less than 70,000 were actually valid claims. Many claims are “stab in the dark” efforts to get loans forgiven because a student didn’t like a particular instructor or because, in general, the student feels like the education wasn’t what they expected it to be. Disappointment and dissatisfaction are not grounds for BD relief – a disappointed student should have transferred to another institution. It is important to keep in mind that when frivolous BD claims result in student loan relief,ACKGROUND

When the Department of Education decided to force Corinthian Colleges out of business, it re-interpreted a 1995 regulation that had rarely been used in the past to provide loan forgiveness to certain Corinthian students. Called the Borrower Defense to Repayment (BD) provision, the statutory purpose of BD was to provide borrowers in default, who otherwise lose access to borrower benefits such as alternative payment arrangements, a “last resort” opportunity to shed the debt in the event that the institution violated a relevant state law (meaning consumer protection laws related to the making of a student loan).

- The Department decided to launch the attack against a school in California – the state with the most liberal consumer protection laws – and worked closely with the California AG to investigate the school. In fact, when the Department required Corinthian to produce volumes of student records, the Department merely boxed them up and shipped them to the CA AG so that her office could review them. Based on claims by the CA AG that the institution had misrepresented job placement rates (a claim that the Department has never itself validated, except for Heald Colleges, one of Corinthian’s brand names), the Department determined that there had been widespread misrepresentations by all Corinthian schools, and using CA law, promised BD relief to students who had attended certain Corinthian programs during certain periods of time, regardless of the state in which the student or campus that student attended was located. Documents show that often times the determination of “widespread” abuse was based on interviews with as few as 15 students – despite the fact that tens of thousands of students completed Corinthian programs over the years.
- In 2016, the Obama Administration promulgated new regulations for BD that moved from a state law standard to a Federal standard, added breach of contract as a source of BD relief, and eliminated the reference to “intent” with regard to misrepresentation. This meant that even if the misrepresentation was really just puffery (i.e. – a student who says that the colleges is “the best” or a faculty member who says that a group of students they are teaching are “the brightest” they’ve ever taught), the school could be found guilty of a misrepresentation and the student’s loan would be forgiven.
 - Importantly, the 2016 Obama regulation stated directly that if the institution guilty of misrepresentation was a non-profit institution, then the borrower would not be entitled to relief because he or she would have gotten a good education despite the misrepresentation. On the other hand, the presumption was that all proprietary institutions offer poor quality education, and therefore, if the institution engaged in misrepresentation the student was naturally harmed.

- The 2016 regulation also required institutions to obtain large letters of credit based on allegations made against them – as opposed to final judgments on the merits – meaning that as activist AGs banded together to file large lawsuits, they could literally force a school out of business even if the school was ultimately found not guilty of the allegations made against them.
- The 2016 regulation denied institutions due process rights and put the Department in the position of being accuser, judge and jury – of course playing this role with other people’s money.
- ***Because the 2016 regulation eliminated the need for intent, all institutions that promised a ground based experience last spring, but then switched to on-line due to COVID-19, are now subject to BD claims. This could mean that institutions would be required to reimburse the Department for all student loans for students who were enrolled during the Spring, and the reimbursement would not be limited to their Spring loans – it would include the entire federal student loan debt accumulated for the program in which the student was enrolled during the spring term.***
- Unfortunately, when students who are not harmed by an institution receive loan relief, that means that taxpayers who may have not been able to send their own kids to college are stuck footing the bill for a person who had the advantage of attending college. It also suggests that students are incapable of making good choices or of being wise consumers – and it eliminates any level of personal responsibility in selecting a school or program that meets the needs of the student.
- In 2019, we promulgated new BD regulations that maintained the focus on providing BD relief for students who were harmed by misrepresentations – regardless of the tax status of the institution that committed the misrepresentation. Our regulation continues to provide relief to borrowers who have been the victim of misrepresentation – regardless of the tax status of the institution. However, institutions have due process rights restored, specious claims can be more quickly removed so that we can focus on students who have truly been harmed, the adjudication process requires something more than hearsay evidence to find a school guilty (though the regulation does not require the borrower to meet the level of evidence required to prove that he or she was defrauded), and each claim will be reviewed to ensure that taxpayers who didn’t have the luxury of going to college aren’t stuck with the bill for those who did

DOE00007866-DOE00007879

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 BD155524.

⁶ BD155784.

⁷ BD155698.

⁸ BD154018.

⁹ BD151426.

¹⁰ BD1600328.

¹¹ BD157436.

¹² BD151163.

¹³ BD153799.

¹⁴ BD153784.

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.

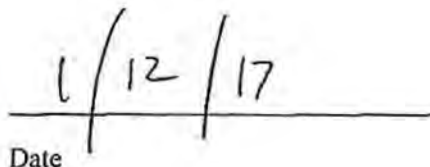
⁸⁸ BD157356.

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.

DOE00008693-DOE00008694

Borrower Defense Claim Review Productivity Requirements, Incentives and Support Plan - 2020

All Borrower Defense Unit (“BDU”) attorneys and law clerks are expected to perform accurate and efficient claim review as an essential element of the position. From the outset of training, you have been advised that BDU attorneys and law clerks are required to adjudicate a minimum of five cases per hour while also maintaining a very low error rate. The following is intended to further clarify how your metrics are evaluated, as well as the thresholds for incentive eligibility and support available for those needing to improve their performance. Please note that these apply for junior attorneys and law clerks who have worked at FSA for three months after completion of claim review training (hereinafter “Trained Reviewers”).¹

Required Metrics

- **Case Review:** Trained Reviewers must review, on average, a **minimum** of 5 cases per hour.²
 - Claim review rate averages shall be determined on a weekly basis.
 - Assigning any case to a new status constitutes “reviewing a case.”³
 - Exceptions may apply at supervisors’ discretion depending on the nature of the claims at issue.
- **Error Rates:** Trained Reviewers are required to maintain an error rate under 5%.
 - The error rate is based on all allegations reviewed over the past four weeks, including both minor and major errors, as determined by QC staff.

Incentives

- **Credit Hours:** Trained Reviewers who regularly exceed the Required Metrics for claim review productivity and error rates are eligible for credit hours in accordance with FSA policies.
 - Eligibility will be reevaluated for any Trained Reviewer whose performance declined in the preceding pay period.
- **Compensatory Time / Overtime:** Trained Reviewers who maintain a minimum average of 7 cases reviewed per hour with an error rate under 3%, subject to BDU workflow and supervisor approval, are eligible for compensatory time and/or overtime in accordance with FSA policies.⁴
 - Eligibility will be reevaluated for any Trained Reviewer whose performance declined in the preceding pay period.
- **Individual Awards:** The Director of the Borrower Defense Unit may, at her discretion and subject to availability, approve monetary bonuses or time-off awards to high achievers in claim review and QC.

¹ Junior attorneys and law clerks who have served on the BDU for fewer than three months after their claim review training will adhere to the claim review expectations set by their supervisors and will work to ramp up to the above standard (5 cases per hour, on average, with an error rate under 5%).

² BDU Supervisors will collect and analyze Trained Reviewers’ self-reported case review rate data, perform spot-checking validation, and perform periodic audits to ensure the accuracy of self-reported data. Inaccurate self-reported data may result in a full audit of the Trained Reviewers’ work and appropriate disciplinary action.

³ Inappropriately assigning a case to a new status is an error. Any Trained Reviewer who appears to be assigning cases to new statuses in order to increase review numbers may be subject to a full audit of the Reviewer’s completed work and appropriate disciplinary action.

⁴ This category will also include active members of the QC Team.

Support

- **Training**: To promote claim review accuracy and efficiency, and to assist Trained Reviewers in achieving the higher metrics required for incentives, the BDU will provide ongoing and remedial training. This may include:
 - Continual Training
 - Weekly question and answer sessions
 - Training sessions on topics such as increasing speed and accuracy, identifying and distinguishing between different federal student loans, producing Salesforce reports and using Excel to extrapolate data, determining whether an allegation states a claim, and other topics, as necessary
 - Remedial Training
 - Mandatory attendance at targeted continual training sessions
 - One on one sessions with a member of the QC team
 - One on one sessions with your supervisor

- **Heightened Monitoring**: The metrics of Trained Reviewers who do not meet the Required Metrics for the preceding pay period⁵ will be monitored very closely by their Supervisors and the Director of Borrower Defense (“Heightened Monitoring”).
 - Trained Reviewers who meet all Required Metrics for two consecutive pay periods will be removed from Heightened Monitoring.
 - Attendance at supplemental or remedial training sessions may be required.
 - For Trained Reviewers on Heightened Monitoring for more than two pay periods, the Reviewer and his or her Supervisor will meet with the Director of Borrower Defense to discuss the Reviewer’s failure to meet the requirements of the attorney/law clerk position.

⁵ While this process is consistent with the current informal monitoring, formal Heightened Monitoring will begin on June 22, 2020 for any Trained Reviewer who fails to meet Required Metrics for the pay period beginning June 8, 2020.

DOE00008841-DOE00008843

To: Mark Brown
Robin Minor
From: Colleen M. Nevin
CC: Jeff Appel
Date: August 18, 2019
Re: Borrower Defense Quality Control Procedures

There are layers of quality control (“QC”) built into the borrower defense adjudication process, both at the reviewer level and at the claim level. The QC processes are designed to ensure both that the attorney adjudicators have very low error rates and also that no new type of claim is approved without the involvement of multiple attorneys.

Because of the decision to hire approximately sixty (60) new attorneys that will be comprised of primarily recent law graduates, as discussed below, we are revisiting the percentage of applications that are re-reviewed in the general adjudication quality control process and likely will be adjusting that level to ensure closer scrutiny with respect to the less experienced attorneys.

The various QC aspects of the adjudication process are discussed below:

Adjudicator Proficiency and Low Error Rates

The Borrower Defense Unit has proficiency and error rate requirements that must be met. When a new attorney (whether FSA staff or contractor) is onboarded, the attorney goes through a five (5) day introductory training process which includes extensive testing designed to ensure that the attorney understands and is able to follow the BD protocols. After the training, the attorney is on what we refer to as “100% QC” – which means that 100% of the attorney’s adjudications will be reviewed over the course of at least a few days. During that time, the new attorney receives additional one-on-one training until the attorney has achieved a proficiency level with a nearly error-free rate.

When the senior attorney conducting the training is satisfied that the new attorney can be moved “off of 100% QC,” the senior attorney makes that recommendation to the BD Director, and the senior attorney and BD Director meet to review the data on the new attorney’s adjudications. If the BD Director is satisfied, the new attorney is moved into the general quality control category.

The senior attorneys and BD Director periodically review the proficiency and error rates of all attorneys. If an attorney’s error rate increases, additional training may be required. In the past, BD has released contractors whose error rates were unacceptable. If any of the new attorneys or contractors fail to maintain satisfactory error rates after a reasonable period of time, it is expected that we similarly would release those employees or contractors.

General Adjudication Quality Control

From 2016 until the fall of 2018, the BD Unit had a quality control process that required a second level of review (a full re-review by a second attorney) for 20% of all claims and 100% of any new types of claims. In the interest of more efficiently adjudicating claims, in 2018, a decision was made to reduce the QC on all claims to 5%, and the CFO Internal Controls Unit agreed that that level of QC was sufficient.

At the time, all of the attorneys working on BD adjudications – both full-time staff and contractors – were very experienced at BD adjudications and, therefore, the risk of lowering the percentage of claims that received a second look was low. Nevertheless, it is noteworthy that both BD Unit and the Director expressed a preference in maintaining the 20% to ensure that the quality of the decisions was maintained at the level that we expect. While we were overruled then, we now know that there will be many new attorneys adjudicating BD claims, and the likelihood of mistakes is now higher. Therefore, we will be revisiting the quality control percentages and likely, raising them to the previous levels. Alternatively or additionally, we will significantly increase the “spot checking” referenced below based on the seniority and error rates of the attorneys.

New Types of Approvals

The bar for new approvals is high. To date, BD has reviewed and adjudicated applications from over 1,400 schools; only three schools have approvals, and all of the approvals to date are based on existing criteria that were subject to the IG investigation.

The majority of applications will be denied – based on either the insufficiency of the borrower’s allegations or the lack of sufficient evidence to support the borrower’s application. BD has denied thousands of applications from borrowers due to a lack of evidence just in the last several months.

For applications where there is no existing memorandum and protocol (*i.e.*, not Corinthian or ITT), but where there is evidence to support a sufficiently stated claim, those applications will not be approved by the new attorneys on initial review. Rather, if the new attorney reviews an application that is potentially approvable but does not have an existing memorandum and protocol, the new attorney will refer the case to a senior attorney. That attorney will review the evidence from both the borrower and the school (where the school responds) and any findings and evidence from the Department; if the evidence is voluminous, additional attorneys may be assigned to assist. The attorney or group of attorneys then will summarize the evidence, consider the applicable regulation, and decide whether the claim (the new approval type) should be approved.

All new approval types will be reviewed by the senior BD attorneys. If a majority of the senior attorneys and the Director agree that approval is supported by a preponderance of the evidence, the new claim type will be approved; if not, the claim will be denied for insufficient evidence.

OGC will be apprised as new approval types for other (non-CCI and ITT) schools are established. This will allow OGC to assess the applicability of the available methodologies, and where necessary, identify the need for the development of alternative methodologies.

Additional Review for Some Approvals

To the extent that a new relief methodology may require reopening borrower applications and data, it is likely that the implementation of the new methodology may also serve as another check on the application decision. This possibility will be revisited when a final approach is determined.

Spot Checking by BD Director and Sr. Attorneys

In addition to the training, and the general adjudication QC, the BD Director and senior attorneys periodically do spot checking of the adjudicated applications to ensure that they were decided correctly. (The spot checking is not exclusive to approvals as borrowers previously were advised to file lawsuits if they did not agree with the denial of their applications). Because we will be onboarding a large number of very junior attorneys and law clerks with limited relevant experience, we will be increasing the spot checking to identify any attorneys who require additional training or supervision.

Supplemental Complaint

Exhibit Index

Bates Stamped Documents

Documents appear in this order, with Bates-Numbered Slip-Sheets Between them. The documents are cited **by Bates Number** in the Supplemental Complaint.

Document Order	Bates Range	Document Title / Identifier
21.	DOE00009291	“Approval Rates” Memo
22.	DOE00009378-DOE00009379	DeVry School Notice letter
23.	DOE00009380-DOE00009382	Ashford School Notice Letter
24.	DOE00009383-DOE00009385	Infilaw School Notice Letter
25.	DOE00009386-DOE00009388	University of Phoenix School Notice Letter
26.	DOE00009399-DOE00009412	ITT Guaranteed Employment Memo
27.	DOE00009509-DOE00009518	Borrower Defense Presentation
28.	DOE00009519-DOE00009520	Anthem Education Group Memo
29.	DOE00009550-DOE00009551	CEC Memo With December 2020 Update
30.	DOE00009552-DOE00009553	CEC Memo
31.	DOE00009583	DeVry Memo
32.	DOE00009585	Keller Memo
33.	DOE00009626-DOE00009630	EDMC Memo
34.	DOE00010045-DOE00010049	Beckfield College Memo
35.	DOE00010089-DOE00010093	Berkeley College Memo
36.	DOE00010201-DOE00010205	Brookline College Memo

37.	DOE00010297-DOE00010298	Business Industrial Resources Memo
38.	DOE00010339-DOE00010340	Career Institute of Health and Technology
39.	DOE00010341-DOE00010345	Career Point College Memo
40.	DOE00010364-DOE00010367	Carrington College Memo

DOE00009291-DOE00009291

Approval Rates

The historical data demonstrating the high percentage of approvals among the borrower defense applications processed since 2015 is not representative of the likely adjudication outcomes for most of the 158,000 pending applications. To date, the Department has prioritized one type of claim: job placement rate (JPR) claims asserted by CCI borrowers based on the Department's explicit findings that CCI had engaged in widespread misrepresentations regarding its job placement rates. JPR claims from CCI borrowers should be viewed differently than all other claims for two reasons:

1) The Department set up a specific, "expedited" process for handling these claims in light of the (correctly) anticipated high volume of applications; and

2) Using data obtained from CCI, the Department performed fairly extensive outreach to borrowers who appeared to be eligible for borrower defense discharges based on the CCI JPR misrepresentations.

Therefore, the CCI JPR applications – using the expedited process with an application specific to CCI JPR claims – require a much shorter period of time to review. All other applications and types of claims are reviewed under a less streamlined process that requires an assessment of evidence.

Further, the approval rates for CCI JPR claims are dramatically higher than we expect to see for all other claims. Because the Department performed outreach to borrowers who were likely to be have successful JPR claims, it is not surprising that many of those borrowers' applications were, in fact, approved after the borrower applied and their claims were reviewed. The approval rate for CCI JPR applications historically is about 67%.

Our data to date suggests that the approval rate for all other claims will be much lower. For non-JPR applications, the data indicates that the approval rate is likely to be approximately under 10%. We anticipate (based on the limited data available) that the approval rate for other schools with a large volume of applications similarly will be under 10%.

Further, for applications from borrowers who attended schools that have fewer than 20 applications pending, our data to date indicates that the approval rate will be under 5% and may be as low as 2-3%.

As Applied to Pending Claims:

We have approximately 15,000 to 20,000 JPR claims remaining to review and would expect that about 67% of them will be approved unless there is a departure from the percentage applicable to the tens of thousands reviewed to date.

For the other CCI allegations and the "other big schools" buckets, we would expect under 10% approvals.

For the borrowers who attended schools that have fewer than 20 applications pending, our data to date indicates that the approval rate will be under 5% and may be as low as 2-3%.

DOE00009378-DOE00009379



June 23, 2020

Mr. F. Willis Caruso, Jr., Interim President and CEO
Mr. John Lorenz, Chief Financial Officer
Ms. Barbara Bickett, Chief Financial Aid Director

Cogswell Education LLC
DeVry University
1200 East Diehl Road
Naperville, IL 60563

Dear School Officials:

Under 34 CFR §§ 685.206 and 685.222, borrowers of federal student loans may apply for a discharge of some or all of their federal student loans based on certain types alleged misconduct by their (or their children's) school. We currently have several thousand borrower defense applications that make allegations regarding DeVry University and that will require a fact-finding process pursuant to 34 CFR § 685.222(e)(3)(i).

For each such application, we will email a separate notification (the "School Notice Email") and a password-protected copy of the borrower's application to the President, Chief Financial Officer, and Financial Aid Officer of record for your school. You and the other officials will receive the same School Notice Email and attachment. We will send password information in a separate email. The School Notice Email will also provide your school an opportunity to submit responses to borrower defense applications, either individually or collectively, with instructions for how to do so.

Note: Given the large volume of email notifications you are about to receive, you may want to set up a rule within your email client to place the emails in a location other than your inbox. The School Notice Emails will be sent from borrowerdefense@ed.gov.

After preliminary review of the borrower defense applications, we have some general requests that will assist us in evaluating those applications. Borrowers who have filed applications against your school allege misrepresentations concerning job prospects, transferability of credits, program cost, and other types of claims.

To facilitate the fact-finding process for these borrower claims, we request that you send us documents as described below. For each category of document, please provide responsive documents from 2008 to 2015.

- Copies of any civil investigative demands served on your institution along with an inventory of the records produced in response to the civil investigative demand. In particular, we would like to see the civil investigative demand served by the U.S. Department of Justice in 2019.

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- Copies of any accreditor or auditor reviews or reports regarding:
 - a) Job placement rates, including methodologies used to calculate the rates, for the years 2008-2015;
 - b) Advertisements focused on job placement rates; and
 - c) Job prospects for graduates of DeVry.
- Any and all annual employment rate disclosures and methodologies used to calculate the disclosures made to any accreditor, state agency, governmental agency or other entity, for any and all years available, but specifically the years 2008-2015.
- For each advertisement used to solicit prospective students, that was placed in any advertising medium, documents sufficient to identify the name of the advertising medium and all dates and times and locations each advertisement ran in the United States.

Please note that your responses and any evidence are due within 30 days of your receipt of the School Notice Email for each borrower defense application. Please contact us at BDSchoolEvidence@ed.gov to arrange for the transmittal of your responses and documents. Include the name of your school in the subject of the email and provide a description of the materials that your school plans to submit and the estimated byte size in the body of the email. We will assess and advise how to transmit the materials to us.

As part of our initial fact-finding process, we may reach out to you in the future with follow-up questions. For additional information regarding the borrower defense to loan repayment process and applicable regulations, visit us at StudentAid.gov/borrower-defense.

If you have questions about this communication, email us at BDSchoolEvidence@ed.gov.

Sincerely,

U.S. Department of Education
Office of Federal Student Aid
Borrower Defense Unit

DOE00009380-DOE00009382



7/7/2020

Mr. Craig Swenson
President
Ashford University
8320 Spectrum Center Boulevard
San Diego, CA 92123

Dear Mr. Swenson,

Under 34 CFR §§ 685.206 and 685.222, borrowers of federal student loans may apply for a discharge of some or all of their federal student loans based on certain types of alleged misconduct by their (or their children's) school. We currently have over a thousand borrower defense applications that make allegations regarding your school and that will require a fact-finding process pursuant to 34 CFR § 685.222(e)(3)(i).

For each such application, we will email a separate notification (the "School Notice Email") and a password-protected copy of the borrower's application to the President, Chief Financial Officer, and Financial Aid Officer of record for your school. You and the other officials will receive the same School Notice Email and attachment. We will send password information in a separate email. The School Notice Email will also provide your school an opportunity to submit responses to borrower defense applications, either individually or collectively, with instructions for how to do so.

Note: Given the large volume of email notifications you are about to receive, you may want to set up a rule within your email client to place the emails in a location other than your inbox. The School Notice Emails will be sent from borrowerdefense@ed.gov.

After preliminary review of the borrower defense applications, we have some general requests that will assist us in evaluating those applications. Borrowers who have filed applications against your school allege misrepresentations concerning the transferability of credits and the ability to obtain a teaching license with an Ashford degree. We are also aware of your 2014 Assurance of Voluntary Compliance with the State of Iowa and your ongoing litigation with the State of California.

To facilitate the fact-finding process for these borrower claims, we request that you send us documents as described below. For each category of document, if a date is not specified, please provide responsive documents from January 1, 2005 through April 8, 2016.

- A. Documents sufficient to show whether and where an online Ashford degree would qualify a graduate to obtain a state teaching certification;
- B. Documents sufficient to show Ashford policies and procedures for determining whether a student or prospective student's credits from another institution would be accepted by Ashford;

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- C.** Copies of any civil investigative demands, document requests, or subpoenas (collectively, “demand”) served on or sent to your institution by a federal agency, state agency, local agency, state attorney general, or other law enforcement or oversight entity that relate to the ability to obtain a teaching license with an Ashford degree, or the ability to transfer credits into Ashford, including an inventory of the records produced in response to such demands;
- D.** Copies of any reports or findings by your current or former accreditor (the Western Association of Schools and Colleges Senior College and University Commission, and the Higher Learning Commission, respectively) or by your state licensing authorities concerning the ability to obtain a teaching license with an Ashford degree, or the ability to transfer credits into Ashford;
- E.** Copies of the following:

 - Call-monitoring reports generated between January 1, 2008 and January 1, 2012 that make any reference to the ability to obtain a teaching license with an Ashford degree, or the ability to transfer credits into Ashford;
 - Speech analytics transcripts generated between January 1, 2008 and January 1, 2012 that make any reference to the ability to obtain a teaching license with an Ashford degree, or the ability to transfer credits into Ashford;
 - Mystery shopping reports generated between January 1, 2008 and January 1, 2012 that make any reference to the ability to obtain a teaching license with an Ashford degree, or the ability to transfer credits into Ashford;
 - Whistleblower hotline reports and transcripts generated between January 1, 2008 and January 1, 2012 that make any reference to the ability to obtain a teaching license with an Ashford degree, or the ability to transfer credits into Ashford;
 - Issue Resolution Committee reports generated between January 1, 2008 and January 1, 2012 that make any reference to the ability to obtain a teaching license with an Ashford degree, or the ability to transfer credits into Ashford;
- F.** Copies of all Marketing Compliance and Marketing Accuracy Committee reports generated between January 1, 2008 and January 1, 2012 that make any reference to the ability to obtain a teaching license with an Ashford degree, or the ability to transfer credits into Ashford;
- G.** All documents relating to employee and contractor training that refers, in any way, to the ability to obtain a teaching license with an Ashford degree, or the ability to transfer credits into Ashford used between January 1, 2008 and January 1, 2010, and between May 15, 2014 and May 15, 2016, including, but not limited to, the review and approval of any training material including:

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- Documents sufficient to show all formal or informal, approved or unapproved, scripts, instructions, and guidelines referred to or used in any way during Ashford's recruitment, admissions, enrollment, or financial aid processes;
- H.** Course Catalogs, Student Handbooks, and exemplar Enrollment Agreements in effect from January 1, 2005 to April 8, 2016; and
- I.** A cover letter and table of contents cataloguing the documents you have provided in response to the requests above.

Please note that for each borrower defense application, your responses and any evidence are due within 30 days of your receipt of the School Notice Email. Please contact us at BDSchoolEvidence@ed.gov to arrange for the transmittal of your responses and documents. Include the name of your school in the subject of the email and provide a description of the materials that your school plans to submit and the estimated byte size in the body of the email. We will assess and advise how to transmit the materials to us.

As part of our initial fact-finding process, we may reach out to you in the future with follow-up questions. For additional information regarding the borrower defense to loan repayment process and applicable regulations, visit us at StudentAid.gov/borrower-defense.

If you have questions about this communication, email us at BDSchoolEvidence@ed.gov.

Sincerely,

U.S. Department of Education
Office of Federal Student Aid

DOE00009383-DOE00009385



6/10/2020

Mr. Rick Inatome
President
Infilaw Holding, LLC
8625 Tamiami Trail North, Suite 500
Naples, FL 34108

Dear Mr. Inatome:

Under 34 CFR §§ 685.206 and 685.222, borrowers of federal student loans may apply for a discharge of some or all of their federal student loans based on certain types of alleged misconduct by their (or their children's) school. We currently have several hundred borrower defense applications that make allegations regarding Charlotte School of Law and that will require a fact-finding process pursuant to 34 CFR § 685.222(e)(3)(i).

For each such application, we will email notification (the "School Notice Email") and a password-protected copy of the borrower's application to you and Kyle J. Schobloher, who have been designated as the recipients on behalf of Charlotte School of Law. We will send password information in a separate email. If there is somebody else who should receive the School Notice Emails please let us know by emailing BDSchoolEvidence@ed.gov.

Note: Given the large volume of email notifications you are about to receive, you may want to set up a rule within your email client to place the emails in a location other than your inbox. The School Notice Emails will be sent from borrowerdefense@ed.gov.

After preliminary review of the borrower defense applications, we have some general requests that will assist us in evaluating those applications. Borrowers who have filed applications against your school allege misrepresentations concerning the school's accreditation, the rigorousness of your school's academic program, your school's admissions process, and your school's bar passage rates. We also are aware of the *Barchiesi v. Charlotte School of Law* litigation as well as the investigations conducted by the American Bar Association, the University of North Carolina Board of Governors, and the North Carolina Department of Justice.

To facilitate the fact-finding process for these borrower claims, we request that you send us documents as described below. For each category of document, if a date is not specified, please provide responsive documents from 2014 to 2017.

1. Copies of your responses to the January 24, 2017 Document Request from the Licensure Division at the University of North Carolina-General Administration ("UNC") with respect to the following requests:
 - a) Description of curriculum approval procedures
 - b) Description of course approval methods
 - c) Description of course evaluation procedures
 - d) Copy of admissions policy and copies of recruitment, advertisement, and marketing materials describing that policy
 - e) Graduation and job placement rates (2014-2017) and explanation of how rates were calculated
 - f) Job placement records for students who graduated in 2014-2017 and copies of recruitment, advertising, and marketing materials mentioning CSL job placement record

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- g) Description of job placement assistance provided by CSL and copies of recruitment, advertising, and marketing materials containing that description
 - h) Copy of annual Compliance Report
 - i) List of any significant correspondence with regulatory agencies and officials
 - j) Advertising, marketing, recruiting, and promotional materials
 - k) Bar examination pass rate and other indicators of student/graduates' success
 - l) Statement about ongoing and pending litigation
 - m) Description of all adverse regulatory and accreditation actions from 2014-2017
 - n) Record/log of student complaints from 2014-2017 and summary of resolution
2. Copies of your responses to the March 10, 2017 Investigative Demand issued by the North Carolina Department of Justice (NC DOJ) with respects to the following requests:
 - a. All promotional materials intended to be reviewed by prospective CSL students and made available by CSL to students at any time from January 1, 2016 to the present (NC DOJ Request #5)
 - b. All documents related to the program under which CSL financially assisted students who deferred taking the bar examination after graduation ("Deferral Program"), including but not limited to:
 - i) The total amount of financial assistance provided to students who participated in the Deferral Program
 - ii) The total number of students who received financial assistance under the Deferral Program
 - iii) The total number who participated in the Deferral Program and ultimately took the bar; and
 - iv) The total number of students who participated in the Deferral Program and ultimately passed a bar exam (NC DOJ Request #12)
 - c. All records of the interview Mr. Ogene had with the *Charlotte Business Journal* on or about November 30, 2016 (NC DOJ Request #16)
 3. With respect to CSL's compliance certificate program and any other non-JD program, please provide the following documents:
 - a. All marketing and promotional material related to the compliance certificate program
 - b. A timeline of when the program was created
 - c. The total number of students who participated in the program
 - d. A breakdown of when in their law school career students signed up for the program
 - e. The total number of students who participated in the compliance certificate program who ultimately took the bar and of those how many ultimately passed the bar.
 4. Course Catalogs and Student Handbooks from 2014-2017
 5. All required public disclosures to students and public relating to Charlotte School of Laws accreditation status
 6. Documents sufficient to show Charlotte School of Law's document retention or destruction policies during the relevant time period
 7. Copies of any litigation holds in effect between 2014 and the present.

Please note that for each borrower defense application, your responses and any evidence are due within 30 days of your receipt of the School Notice Email. Please contact us at BDSchoolEvidence@ed.gov to arrange for the transmittal of your responses and documents. Include the name of your school in the subject of the email

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and provide a description of the materials that your school plans to submit and the estimated byte size in the body of the email. We will assess and advise how to transmit the materials to us.

As part of our initial fact-finding process, we may reach out to you in the future with follow-up questions. For additional information regarding the borrower defense to loan repayment process and applicable regulations, visit us at StudentAid.gov/borrower-defense.

If you have questions about this communication, email us at BDSchoolEvidence@ed.gov.

Sincerely,

U.S. Department of Education
Office of Federal Student Aid

DOE00009386-DOE00009388



June 24, 2020

Mr. Peter Cohen, President
Mr. Chris Lynn, Chief Financial Officer
Ms. Sandra Perez, Financial Aid Officer

University of Phoenix
4035 South Riverpoint Parkway
Phoenix, AZ 85040

Dear School Officials:

Under 34 CFR §§ 685.206 and 685.222, borrowers of federal student loans may apply for a discharge of some or all of their federal student loans based on certain types of alleged misconduct by their (or their children's) school. We currently have thousands of borrower defense applications that make allegations regarding the University of Phoenix and that will require a fact-finding process pursuant to 34 CFR § 685.222(e)(3)(i).

For each such application, we will email notification (the "School Notice Email") and a password-protected copy of the borrower's application to the President, Chief Financial Officer, and Financial Aid Officer of record for your school. You and the other officials will receive the same School Notice Email and attachment. We will send password information in a separate email. If there is somebody else who should receive the School Notice Emails please let us know by emailing BDSchoolEvidence@ed.gov.

Note: Given the large volume of email notifications you are about to receive, you may want to set up a rule within your email client to place the emails in a location other than your inbox. The School Notice Emails will be sent from borrowerdefense@ed.gov.

After preliminary review of the borrower defense applications, we have some general requests that will assist us in evaluating those applications. Borrowers who have filed applications against your school allege misrepresentations concerning relationships with Microsoft, American Red Cross, Adobe, Cisco, Methodist Hospital System, and other potential employers. We are also aware of your 2019 settlement with the Federal Trade Commission, and the Department of Veterans Affairs' 2020 findings.

To facilitate the fact-finding process for these borrower claims, we request that you send us documents as described below. For each category of document, if a date is not specified, please provide responsive documents from January 1, 2012 through December 31, 2016.

1. A list identifying each company with which your school established a partnership or other relationship, including the group within your school that established or was responsible for the relationship (e.g. Workforce Solutions, Phoenix Career Services, others as relevant), the benefits provided to students by the relationship, the active dates of the relationship and, if the relationship was terminated, any communications with the company or within UOP regarding the decision to terminate;
2. Copies of exemplar agreements establishing the types of relationships responsive to Request A above;

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3. Copies of correspondence between your school and any company requesting or directing your school to discontinue use of its brand or name in the *Let's Get to Work* advertising campaign or any other advertising;
4. Copies of your agreements establishing the partnership with the following companies advertised in certain *Let's Get to Work* advertisements:
 - A. Adobe
 - B. American Red Cross
 - C. AT&T
 - D. Cisco
 - E. Methodist Hospital System
 - F. Microsoft
 - G. Sodexo
 - H. Twitter
 - I. Yahoo!
5. Documents relating to substantiation of the representations in the *Let's Get to Work* advertising campaign, including but not limited to copies of each Research Request Form in the form of document AEGFTC0044099, or any other format of a request for substantiation, and any response to the request;
6. Exemplar Enrollment Agreements, Course Catalogs, and Student Handbooks in effect from January 1, 2012 to the present;
7. Copies of your responses to the July 23, 2015 Federal Trade Commission (FTC) Civil Investigative Demands (CID) with respect to the following requests:
 - A. Documents sufficient to show the Company's organizational structure relating, in any way, to UOP's advertising and marketing, recruiting and enrollment, financial aid, academic advising, student retention, billing and debt collection, legal, compliance, or the military (FTC Request 1);
 - B. Documents sufficient to show the Company's document retention or destruction policies during the relevant time period (FTC Request 4);
 - C. All documents relating to any Mystery Shopper Program operated by or on behalf of UOP, including, but not limited to, any determinations, findings, recommendations, or reports (FTC Request 15);
8. Copies of your responses to the following requests from the July 23, 2015 FTC CID only with respect to the advertisements *Parking Lot*, *Train Stops*, *Hall of Success*, and any other advertisement that references UOP's corporate partnerships and their benefits to students:
 - A. All documents relating to any training that refers, in any way, to UOP's marketing, recruiting, admissions, enrollment, cost of education, financial aid, student advisement, billing or debt collection, withdrawal, leave of absence, complaints, or audits, including, but not limited to, the review and approval of any training material (FTC Request 19);

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- B. Documents sufficient to show all formal or informal, approved or unapproved, scripts, instructions, guidelines, applications, agreements, handbooks, notices or any other materials referred to or used in any way during UOP's recruitment, admissions, enrollment, or financial aid processes (FTC Request 20);
 - C. Documents sufficient to show all marketing or promotional material, including advertisements in any medium, used to promote UOP to prospective, current, or former students, including documents relating to the review and approval of any such material (FTC Request 22);
9. Copies of any litigation holds in effect between January 1, 2012 and the present.

Please note that for each borrower defense application, your responses and any evidence are due within 30 days of your receipt of the School Notice Email. Please contact us at BDSchoolEvidence@ed.gov to arrange for the transmittal of your responses and documents. Include the name of your school in the subject of the email and provide a description of the materials that your school plans to submit and the estimated byte size in the body of the email. We will assess and advise how to transmit the materials to us.

As part of our initial fact-finding process, we may reach out to you in the future with follow-up questions. For additional information regarding the borrower defense to loan repayment process and applicable regulations, visit us at StudentAid.gov/borrower-defense.

If you have questions about this communication, email us at BDSchoolEvidence@ed.gov.

Sincerely,

U.S. Department of Education
Office of Federal Student Aid

DOE00009399-DOE00009412

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”).

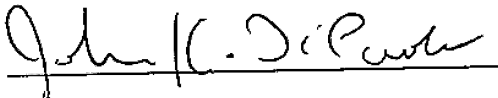
⁹⁴ The exhibits attached to the *Villalba* Complaint include the following: 521 statements explaining how an ITT degree operates as a disadvantage in the job market (Ex. 1); 326 statements explaining how ITT misrepresented the quality of instructors, training, curriculum, or facilities (Ex. 6); 62 statements 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).

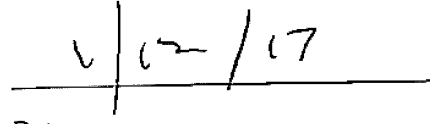
⁹⁵ *See, e.g. CFPB Case, MA AG Case, NM AG Case, Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-7A)* (Bankr. S.D. Ind. Compl. filed Jan.3, 2017), and *Lipscomb v. ITT Ed. Servs. Inc.* (M.D. FL Compl. filed Apr. 8, 2015). In addition, over 15 state AGs have issued subpoenas or CIDs 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).

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Borrower Defense to Repayment

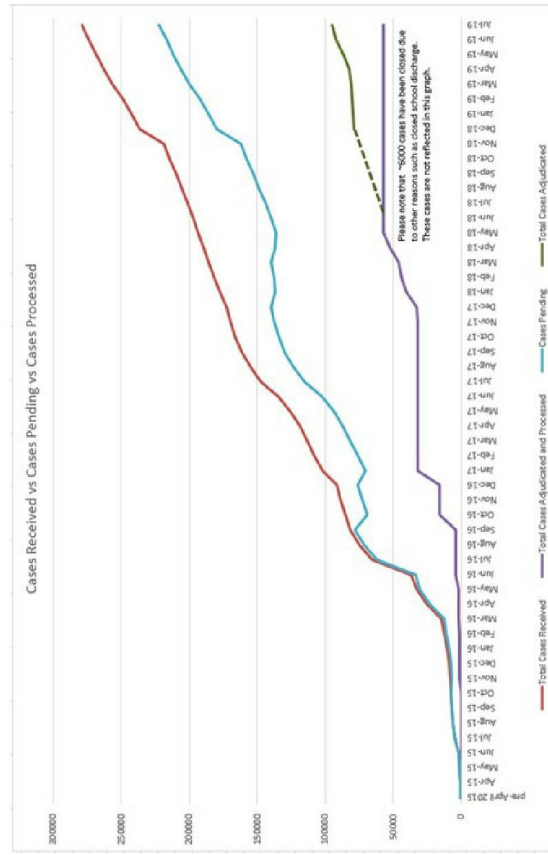
August 21, 2019

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AR-A-0223

Status of Borrower Defense Applications Received

Of the nearly 280,000 Borrower Defense applications received since 2015:

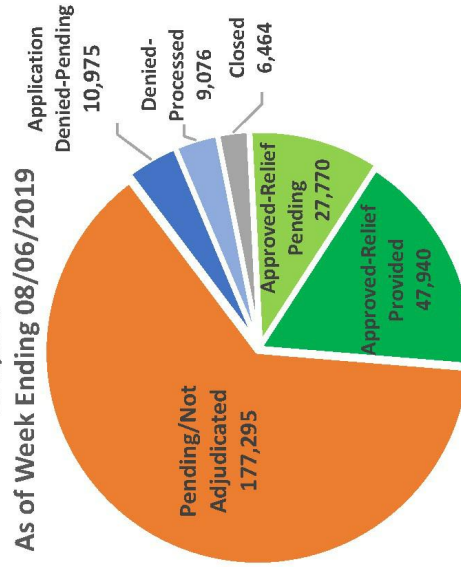
- 57,000 have been adjudicated, processed, and closed
- 38,700 have been adjudicated but have not yet been processed
 - Over 27,700 approved applications will be finalized when appropriate relief is determined
 - Nearly 11,000 applications have been adjudicated as denied applications but have not yet been processed



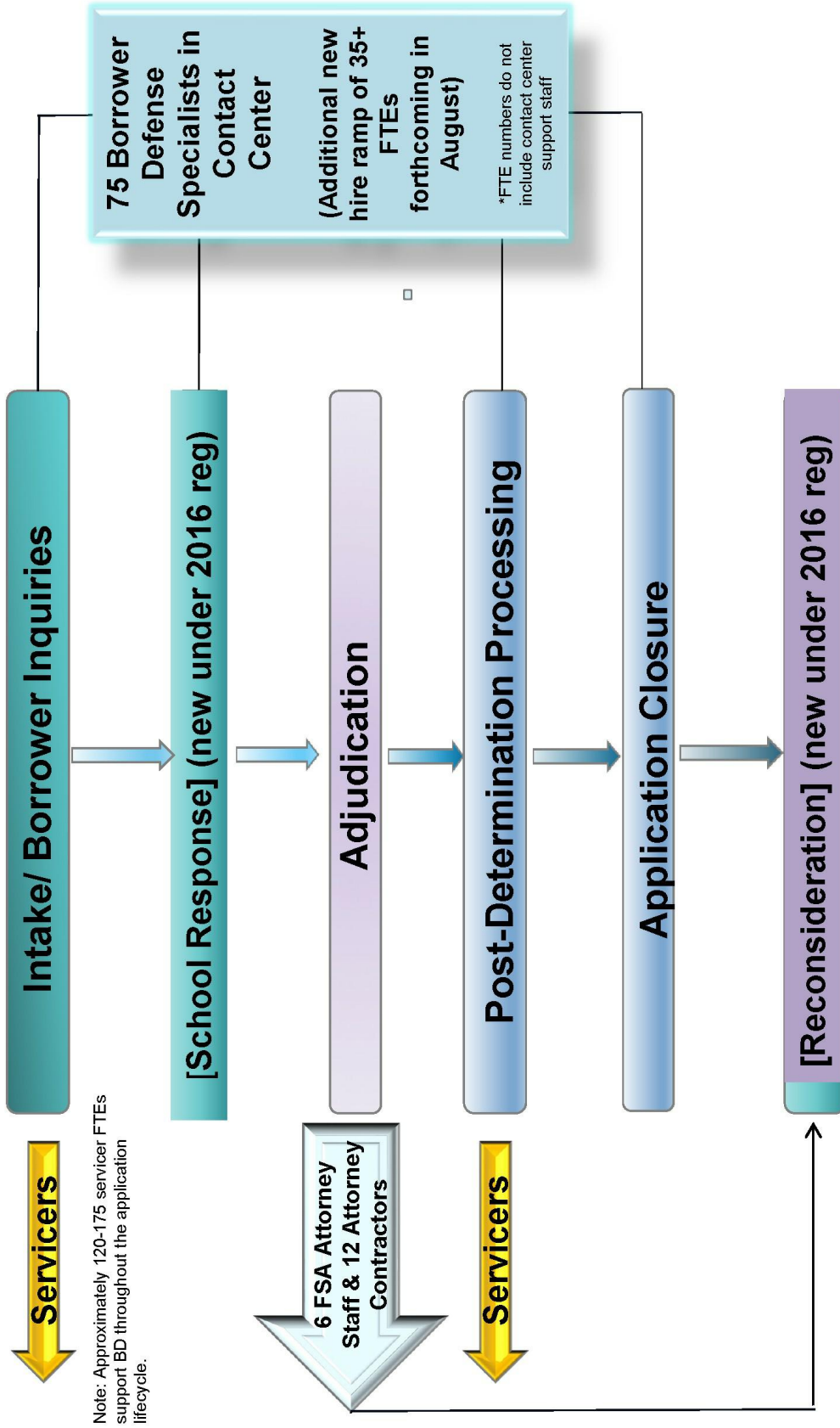
Total Borrower Defense Applications:

279,520

As of Week Ending 08/06/2019



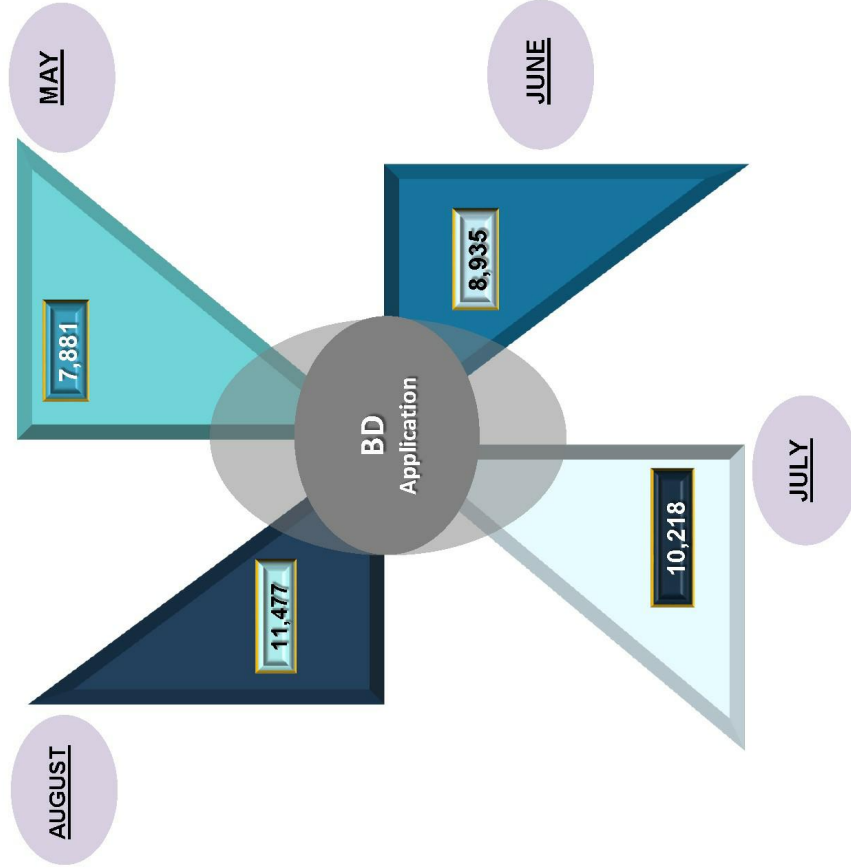
Six Stages of a BD Application



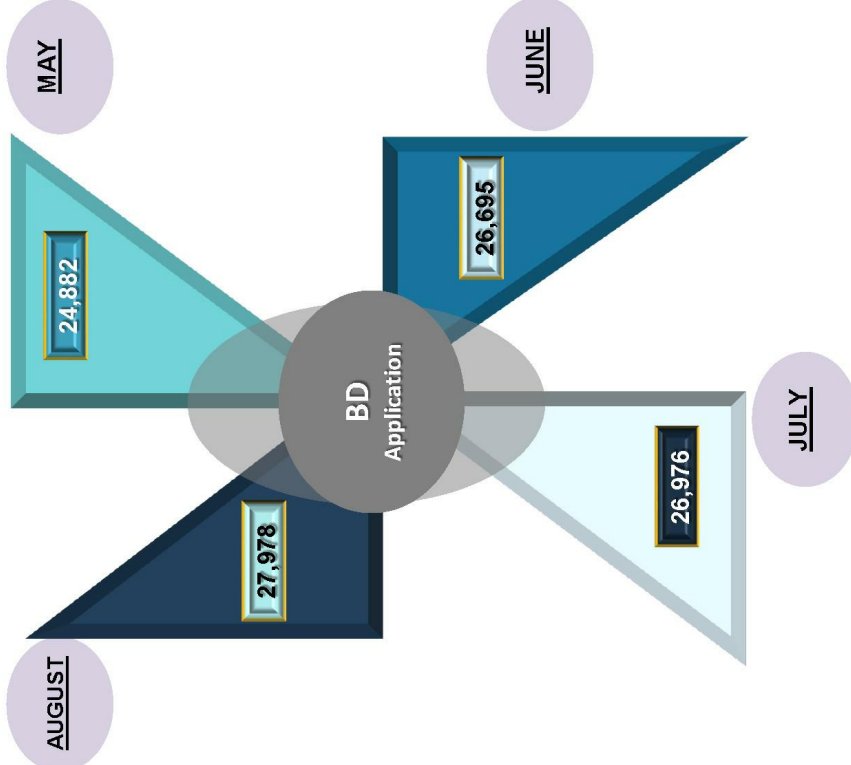
Note: Approximately 120-175 servicer FTEs support BD throughout the application lifecycle.

Growth Progression for BD Applications

Application Denied-Pending



Applications Approved Pending



A decision on the relief methodology would result in the ability to proceed with approximately 40,000 applications

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