BORROWER DEFENSE UNIT
CLAIMS REVIEW PROTOCOL
GUIDING PRINCIPLES

- Develop and implement an administrative process capable of ensuring supportable and timely decisions
- Achieve consistency among similarly-situated borrowers
- Base decisions on evidence
- Provide relief for harmed borrowers and protect taxpayers
LEGAL FRAMEWORK FOR ELIGIBILITY

• BD application must state a claim under state law:
  
  o "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." 34 C.F.R. § 685.206(c).

  o Applicable state law typically is law governing alleged misrepresentations and material omissions made by a school

• Legal threshold for eligibility = preponderance of the evidence

• Must base decisions granting or denying relief on a record sufficient to withstand court scrutiny
REVIEW PROCESS FOR JOB PLACEMENT RATE FINDINGS CLAIMS

- Five steps to determine eligibility under ED's published job placement rate findings:

1. Verify the claim is **complete**, noting pertinent missing information for follow up with borrower.

2. Determine whether borrower attended a **covered campus**, including reviewing NSLDS data if necessary.

3. Determine whether borrower attended a **covered program**, including reviewing the transcript and other documentation to determine whether the borrower attended more than one eligible program.

4. Confirm the enrollment date is within the **covered eligibility period**, including reviewing the transcript, NSLDS, and school records if necessary to determine eligibility and the date from which loans should be forgiven.

5. Verify the borrower signed the form and made the required attestation of **reliance**.
TRAINING AND QUALITY CONTROL FOR CONTRACTORS

- **Training:**
  - Full day training by BD Unit, including reviewing several claims with BD Unit attorney.
  - Until contractors demonstrate 100% accuracy, every claim reviewed by another experienced reviewer.
  - Once contractors demonstrate 100% accuracy, statistically significant number of claims spot checked.
  - If significant errors, contractors returned to 100% review of all claims or removed from project.

- **Quality Control:**
  - Project manager spot checks statistically significant number of all contractor-reviewed claims.
  - BD Unit conducts final QC check to ensure no claim is accidently processed as an approval.
Includes making sure all approved claims alleged a placement rate misrepresentation and ensures denied claims are not inadvertently included.

ELIGIBILITY AND RELIEF: SEPARATE DETERMINATIONS

- First – determine eligibility of BD application under the regulation
  - i.e., whether preponderance of the evidence establishes a valid claim under applicable state law

- Second – determine any appropriate relief only for claims determined eligible
DETERMINING ELIGIBILITY: NON-FINDINGS

- Evaluate all available relevant evidence to determine whether preponderance is satisfied:
  - Possible sources of evidence:
    - BD claim
    - Evidence from ED investigations
    - Evidence from other law enforcement investigations
    - Evidence obtained from whistleblower suits
    - Corroborating evidence from other similar BD claims

- Preponderance and thus eligibility is not met when there is a single uncorroborated claim

- Single claim may be denied without further investigation where:
  - Application does not state a claim (e.g., applicant does not identify any misrepresentation actionable under state law); or
  - There is no corroborating evidence of the misrepresentation
    - Consistent with ED’s false certification rules
    - Consistent with other agencies deciding benefits claims

- Conduct additional investigation of claim or claims where warranted by size of affected group, ability to develop extrinsic evidence efficiently, and other operational considerations.
RELIEF DETERMINATION

- **Full Relief:** In recognition of the considerable impact a material misrepresentation or omission has on a person's decision to enter a transaction (*e.g.* to take out loans to enroll at a school), many state laws provide for full restitution to restore the person to the status quo.
  
  o Full relief may be particularly appropriate when a student did not receive a central attribute of the education the student was promised, such as certain programmatic accreditation (*e.g.*, promised ability to sit for law enforcement or nursing exam).
  
  o All findings claims and non-findings claims approved to date have received full relief.

- **Partial relief:** State law also may recognize an "offset" of the full amount of restitution for the value of goods or services a person subject to a material misrepresentation or omission nonetheless received.
**BREAKDOWN OF NON-CCI SCHOOLS WITH BORROWER DEFENSE CLAIMS PENDING**

As of February 21, 2017

| (b)(5) |
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Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act
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Withheld pursuant to exemption

(5)

of the Freedom of Information and Privacy Act
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Borrower Defense Claims

APPROVALS

BD Unit forwards particular claims that fall within scope of approved recommendation to CEO and COO for authorization to discharge loans.

Fiscal impact greater than $10 million OR Raises policy issues?

No

Office of General Counsel (OGC) Concurs

Chief Operating Officer (COO) Approves

Chief Enforcement Officer (CEO) Approves

FSA Internal Control Notification

BD Unit formulates recommendation for approval of type of claims that qualify for BD relief

Yes

Under Secretary (OUS) Approves
Effect of Outreach on Number of Borrower Defense Claims

- November 2015 -> Everest/WyoTech findings published for California and online campuses.
- December 2015 -> Postal outreach to Heald student borrowers.
- February 2016 -> Email outreach to Heald student borrowers.
- March 2016 -> Everest/WyoTech findings published.
- April 2016 -> Outreach to Corinthian borrowers.
- May 2016 -> Email outreach to Corinthian borrowers.
- June 2016 -> Postal outreach to Corinthian borrowers.
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